

D R A F T

FOR DISCUSSION ONLY

AGRICULTURAL AND AGRICULTURAL RELATED COOPERATIVES ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM LAWS

For Drafting Committee Meeting February 20-22, 2004

With Preliminary Reporter's Notes and Comments

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS

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1 **REPORTER’S PRELIMINARY NOTE TO SECOND DRAFT**
2

3 Following is the second discussion draft of the Agricultural and Agricultural Related
4 Cooperative Act. It is still a very rough cut and is, in large part, the Minnesota Act rather than
5 the Wyoming Act. Several, but not all, of the suggestions made at the first meeting are
6 incorporated and others are incorporated in the comments to specific sections.
7

8 One global suggestion is not reflected in this draft in reorganizing the order of the sections
9 and a reallocation of sections to articles.
10

11 This draft has not been styled and there is still “boilerplate” to be included. Thus, for
12 example, the language is not yet gender neutral.
13

14 The organization is not reflected because the Minnesota based language has not yet been
15 vetted by the Committee and pending an update on state legislative activity relating to Minnesota
16 based statutes.
17

18 Selected definitions need be discussed; however, the next step is probably a rather
19 painstaking line-to-line read through of the draft followed by specific direction concerning
20 whether any reorganization is advisable.

REPORTER'S NOTE TO INITIAL DRAFT

Introduction

The purpose of this initial draft of the Agricultural and Agricultural Related Cooperative Act is to raise some of the primary issues that must be initially discussed and tentatively decided by the Committee in order to give the Reporter direction for the next draft. Thus, it would be somewhat remarkable (in the pathological sense) if the next draft has any close resemblance to this draft either in textual language or, possibly, even organization. Even so, the Reporter believes it helpful to provide statutory language and a draft act that contains sections dealing with most of the issues that must be addressed. This approach is consistent with Conference protocol.

This preliminary note contains two parts in addition to the introduction. They are (1) background information concerning this drafting project and (2) a brief overview of the first structure of the draft of the act.

The brief overview is divided into two sections. The first section contains the charge of the committee and the scope of the task at hand including the perceived need for the act. This information will be helpful for all participants. The second section, which is the longest of any of the sections or parts, attempts to provide a general substantive overview of cooperatives. It is incomplete by necessity. The Commissioners are likely familiar with this information, and many of the participants will be generally familiar with this information. Therefore, the information therein may prove only marginally helpful and should be read at leisure.

The second major part of the preliminary note attempts to explain the format of the first draft and a brief commentary explaining the Reporter's choice of the base statutory text.

Background Information

A. Committee Charge and Scope

The Committee is charged with drafting an Agricultural and Agriculturally Related Cooperative Act. Its genesis of the charge is reflected by recently enacted statutes in Wyoming and Minnesota. Saskatchewan enacted a similar coop act before either of these states enacted new acts. The Wyoming and Minnesota state statutes vary in scope and application. Minnesota's statute, the Minnesota Cooperative Associations Act, applies more generally to cooperatives than the Wyoming Processing Cooperative Law and its provisions much more detailed. Nonetheless, neither Act replaces other cooperative acts or related law in those states.

B. General Overview of Cooperatives

Basic and Traditional Legal Structure.

1 There are many similarities between cooperatives and other forms of business. Thus,
2 cooperatives organize under state statutes. Historically these statutes generally tracked the law
3 governing corporations in the various states. Typically, therefore, cooperatives have articles of
4 incorporation, bylaws, and a board of directors elected by its members. Cooperative statutes
5 frequently expressly refer to either the state's general business corporation act or its not-for-profit
6 corporation act to fill statutory gaps that may arise under the cooperative act. Many states have
7 both "stock" and "nonstock" cooperative statutes.
8

9 A key distinction between cooperatives and other forms of business organizations is that a
10 cooperative distributes its income to a particular member in accordance with the member's use
11 (patronage) of the cooperative's services. Indeed, one source flatly states: "The primary function
12 of a cooperative is the allocation of economic benefits, either in the form of net savings or net
13 earnings, to the member-patron based on the quantity of business done with the
14 member-patron."¹ This function, "is consistent with the goal of maximizing members' interests
15 and the notion that the cooperative is an extension of the members' business operations."² The
16 following illustrates this principle in the context of a commodities marketing cooperative:
17

18 To accomplish this objective, a cooperative attempts to market patrons' commodities at
19 the highest possible price and purchase quality inputs at the lowest possible cost. The
20 resulting savings (usually referred to as net income rather than profits) belong to the
21 patrons and are distributed to them at least annually, usually in the form of patronage
22 refunds, though not necessarily all in cash. Typically, at least 20% is paid out as a cash
23 patronage refund and the balance is invested in the users name as a retained patronage
24 refund. The retained portion is redeemed at a later time, usually when the user has
25 stopped using the cooperative.³
26

27 The focus on patronage as a metric for the allocation of net income limits the amount of
28 income and other sources of distribution from other sources available to pay for the use of capital
29 and, sometimes, state statutory law limits dividends paid on account of equity contribution
30 (return on capital) to 8 percent (although 8 percent is important for anti-trust and not tax
31 reasons).
32

33 The focus on returning income and savings based on patronage is consistent with the
34 historical values of cooperatives. The foundation of the law is the "Rochdale Principles." The
35 "Rochdale Principles" originated with the Rochdale Equitable Pioneers Society in 1844. The
36 Society was an English workers society and it established twelve principles; which seem to have
37 coalesced into four generally accepted principles. These principles are: "(1) business at cost with
38 net returns paid to members based on patronage; (2) democratic control, one person, one vote; (3)

¹ McEowen and Harl, *Taxation of Cooperatives*, BNA-Tax Mgmt. Series at 3.

² *Id.*

³ *Id.* at 3-4.

1 limited dividends on invested capital; and (4) ownership (or beneficial membership) limited to
2 patrons.”⁴ Additionally, most cooperatives have an “open” membership and allow nonmembers
3 to do business with the cooperative. The Rochdale Society ran a store (consumer cooperative)
4 and it might be safe to assume that the store was not capital intensive.⁵
5

6 State statutory provisions are generally consistent with these general principles (no matter of
7 their exact formulation). Thus, for example, state statutes variously govern the voting rights of
8 members. It is fair to say that most statutes provide for voting based on the one member – one
9 vote principle. That is, each member has one vote regardless of the amount of patronage by that
10 member in the current or preceding year and regardless of the amount of capital either
11 contributed by that member or allocated but retained in the member’s equity account. Such a
12 voting scheme is similar to default voting in the Uniform Partnership Act (both 1914 and 1997)
13 and some limited liability company acts. Some states, however, provide for outside investment
14 by allowing the issuance of preferred stock with very limited governance and dividend rights.
15

16 As stated previously, most statutes also allow for open use by non-members of the
17 cooperative. Net income derived from nonmember use is sometimes called “non-member
18 patronage.” Other miscellaneous and variable provisions in state statutes strictly govern board
19 membership (to “members” and, sometimes but rarely, to citizens or residents of specific states
20 or municipal subdivisions); capital retention requirements (Missouri’s stock cooperative, for
21 example, requires retaining ten percent of the net income until the retained fund equals fifty
22 percent of the paid-up capital stock); limitation on dividends (again, Missouri stock cooperatives
23 contain such a restriction); and, limiting membership to a specific occupation (agricultural
24 producers). Older statutes required ten or more *incorporators* and, reportedly, a few states
25 required new agricultural cooperatives to, in effect, receive “permission” (or at least advice) from
26 individuals holding specific titular positions in the state’s land grant college.
27

⁴ Hanson, “Legal Framework of Cooperative Development,” Ch. 5 *Cooperatives and Development* at 1 (in press). There is some slippage as to the number of principles. For example, J. Gary McDavid listed eight principles as the Rochdale Principles in a speech in 2002: (1) Open membership; (2) Democratic control based on one vote per member; (3) fixed low rate of interest on invested capital; (4) Patronage refunds; (5) Cash trading; (6) Good sold at retail, not wholesale, prices; (7) Promotion of education; (8) Political and religious neutrality.

The International Co-operative Alliance defines a cooperative as, “an autonomous association of person united voluntarily to meet their common economic, social, and cultural needs and aspirations through jointly-owned and democratically-controlled enterprise.” It has generated a values statement of its own as follows: “Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.” Finally the Alliance lists seven co-operative principles similar to those already set forth. Two of the principles, however, are somewhat unique in their emphasis. One of the two is that cooperatives “serve their members most effectively . . . by working together through local, national, regional, and international structures.” The other cooperatives “work for the sustainable development of their communities through policies approved by their members.”

⁵ Hanson, *supra*, at 1.

1 According to Mark Hanson: “The non-uniform development of agricultural cooperatives and
2 cooperative law has resulted in significant variations in state cooperative statutes many of which
3 were enacted from 1910 to 1925. In fact, few states have the same cooperative statute.”⁶
4 William H. Henning, NCCUSL Executive Director, briefly outlined the Conference history
5 concerning cooperatives in a memorandum to the Joint Editorial Board on Uniform
6 Unincorporated Organization Acts dated November 18, 2002. Therein he succinctly stated:

7
8 [I]n 1936 NCCUSL promulgated a Uniform Agricultural Cooperative Association
9 Act...that was especially designed for producers of agricultural products (The Act was
10 adopted, with modifications, in Utah, and declared obsolete by the Conference in
11 1944.). The procedures for organizing a cooperative under the uniform act were
12 consistent with the procedures for organizing ordinary business corporations, but stock
13 ownership was limited to members and there were restrictions on the payment of
14 dividends.

15
16 The United States Department of Agriculture developed a model non-stock cooperative act
17 in 1927. Approximately seven states adopted some version of that model. The most widely
18 adopted national model for commodity marketing purposes, however, was based on the
19 Bingham Act which predated the USDA model. It was adopted in Kentucky, for example, in
20 1922 and is sometimes referred to as the “Standard Act.”⁷

21
22 The variety of state cooperative statutes is evidenced by an obviously stale, but still useful,
23 book written by James Baarda and published by the United States Department of Agriculture
24 (USDA) in 1982. It is titled *State Incorporation Statutes for Farmer Cooperatives* and, as the
25 title indicates, it is limited to those statutes applicable to farmer cooperatives. Current secondary
26 sources and conversations with individuals actively involved in cooperative law by this Reporter
27 confirm that, with the exception of recent legal developments introduced in the following
28 section, much of Baarda’s analysis remains valid at least for the current purposes of illustrating
29 variety in state law.

30
31 Even though Baarda analyzed 86 statutes, he cautioned that his selections do “not include all
32 statutes that may be actually used by associations, and includes some that may not be available
33 under most circumstances.”⁸ Thus, the analysis neither includes general corporation statutes nor
34 nonprofit association laws even though, according to Baarda, those “statutes are occasionally
35 used for incorporation of farmer cooperatives. . . .”⁹ Important for current purposes, Baarda’s

⁶ *Id.* at 8.

⁷ Hanson, *supra* note 4, at 5.

⁸ James R. Baarda, *State Incorporation for Farmer Cooperatives*, 30 U.S.D.A. COOPERATIVE
INFORMATION REPORT at 2 (1982).

⁹ *Id.* at 3.

1 preface lists two pages of non-state specific comparative “Highlights.” For illustrative purposes
2 only, the “Highlight” concerning the financial structure and operation of cooperatives (circa
3 1982) is set forth below in its entirety:

4
5 Financial structure and operation of cooperative associations are addressed by a majority
6 of statutes, though the detail with which financial subjects are described varies widely.
7 Some statutes apply only to nonstock associations, but most apply to cooperatives with
8 or without capital stock. Subscription, payment, limits on ownership, and limits on
9 transfer of membership stock are common statutory provisions. Preferred stock is noted
10 in a majority of statutes. Other aspects of capital structure noted in many statutes are:
11 Number of shares and their value, limits on capital stock dividends, reserves, and stock
12 redemption.¹⁰

13
14 Interestingly Baarda suggested that, “[i]n a few States, cooperative provisions are structured so
15 identification of separate statutes is difficult; one, two, or three statutes may be involved in one
16 cluster of cooperative principles.”¹¹

17
18 The cooperative acts upon which most cooperatives in the United States are built date from
19 mid-twentieth century and, therefore, it is probably reasonable to assume that there has been a
20 lock-in effect with other sources of law and regulation that effect cooperatives. Several sources
21 of other law are briefly highlighted in a subsequent section of this preliminary note. It is
22 probably helpful, however, to briefly discuss the basic current income taxation of cooperatives
23 here even though tax law, at best, is an indirect source of cooperative law. The reason tax law
24 might be particularly relevant is because the daily operation of cooperatives is often coordinated
25 and constrained by the unique interaction of state law and the tax treatment of cooperatives.
26 Therefore tax law provides an important part of the current context in which the state law of
27 cooperatives is evolving even though any thumbnail outline of this area of taxation probably
28 raises more questions than it answers.

29
30 The federal income tax of many, but not all, cooperatives is found in Subchapter T of the
31 Internal Revenue Code (§§ 1381 et seq.). Subchapter T governs the taxation of most farmers
32 cooperatives including *exempt farmer cooperatives* under IRC § 521. Nonetheless, the
33 cooperative need not be a farmer cooperative to be governed by the general provisions of
34 Subchapter T. That is, as a general matter, “[a]ny business ‘operating on a cooperative basis’
35 uses Subchapter T when computing its tax liability.”¹² There are, however, exceptions to the
36 general statement. Indeed, Subchapter T expressly excludes utility cooperatives (rural electric
37 and telephone cooperatives taxed under § 501(c)(12)). It also expressly excludes mutual savings
38 banks, mutual insurance companies and cooperative housing corporations.

¹⁰ *Id.* at xiii.

¹¹ *Id.* at 3.

¹² *Taxation of Cooperatives*, *supra* note 1 at 7 (citing IRC § 1381(a)(2)).

1 Perhaps the most efficient way of explaining the general taxing scheme of Subchapter T is
2 simply to quote the two introductory paragraphs from the BNA Tax Management Portfolio on the
3 subject:
4

5 In general, earnings of a cooperative flow through the cooperative to the patrons, with
6 the cooperative not retaining any margins as profit. Thus, earnings are taxed only once.
7 The tax is ultimately paid by the cooperative patron, although under some
8 circumstances, the cooperative pays tax on a temporary basis, then receives a deduction
9 when the money is finally passed on to the patron. The rule of single taxation, however,
10 only applies if business income sources and distribution methods are “cooperative” in
11 nature. Earnings derived from nonpatronage sources and margins not distributed in
12 accordance with the Code are generally ineligible for single-level tax treatment.
13

14 Upon the satisfaction of certain statutory conditions, cooperatives treat retained
15 patronage refunds and per-unit retains as if the funds retained had been paid to the
16 patron, deducted by the cooperative, accounted for in the patron’s income as ordinary
17 income, then invested in the cooperative. Conditions for this tax treatment include
18 agreement by the patrons to recognize full patronage refund for tax purposes even
19 though not received in cash or negotiable form.¹³
20

21 Taxation under Subchapter T, therefore, is a variant on regular corporate tax provisions and
22 could be seen *in approach* as roughly analogous to the way S corporation tax provisions vary the
23 regular corporate tax scheme for electing small business corporations.
24

25 Cooperatives eligible to be taxed as *exempt* farmer cooperatives under § 521 receive a
26 couple of tax benefits in addition to the benefits more generally afforded to cooperatives under
27 Subchapter T. The label “exempt” is a misnomer because “exempt” farmer cooperatives are *not*
28 exempt from income taxation but, rather, are allowed deductions for distributions on capital
29 stock (as compared with patronage-based distributions) and for patronage-based distributions of
30 nonpatronage dividends.
31

32 Eligibility for the § 521 exemption has several specific requirements and limitations some of
33 which reference underlying state governing law. One of the requirements, as set forth in § 521
34 (b)(1), mandates that the organization must be “a farmers’, fruit growers’, or like association
35 organized and operated on a cooperative basis . . . for the purpose of marketing the products of
36 members or other producers . . . or . . . for the purpose of purchasing supplies and equipment for
37 the use of members or other persons. . . .”
38

39 Finally, as previously mentioned, other kinds of cooperative organizations are “truly”
40 exempt (but not necessarily charitable; charitable status allows for deductibility of donations by a
41 contributor) under IRC § 501. These exempt organizations must pay tax on such things as

¹³ *Id.* at 5-6.

1 unrelated business income but are taxed separate and independent from treatment under
2 Subchapter T.

3
4 Other Law.

5
6 State law and federal tax law are not the only law that shapes cooperatives. Anti-trust law,
7 federally encouraged debt financing programs, and an exemption from securities regulation are
8 important features in the cooperative law landscape.

9
10 The Capper-Volstead Act was enacted by Congress in 1922. It provides an exemption from
11 anti-trust enforcement for cooperatives. “Cooperatives” are defined narrowly for purposes of the
12 exemption. The definition includes, generally, farmer cooperatives “that limit membership to
13 agricultural producers, restrict voting to one vote per member or limit dividends on equity to 8
14 percent per year, and handle products for members that exceeds the value of the products handled
15 for nonmembers.”¹⁴

16
17 The Farm Credit System is important for two reasons. *First*, it is generally organized as a
18 cooperative under federal law. *Second*, and more relevant for current purposes, it includes
19 elements specifically designed to loan to cooperatives. According to secondary sources CoBank,
20 ACB and St. Paul Bank for Cooperatives provide about 80 percent of the lending to farmer
21 cooperatives. In 1997 these organizations had about \$11 billion in outstanding loans to farmer
22 and rural utility cooperatives.¹⁵ Rural electric and telephone cooperatives also have access to
23 funds from the National Rural Utilities Cooperative Finance Corporation. Finally, the National
24 Cooperative Bank (NCB) “has become a leader in providing development funding for new,
25 non-agricultural cooperatives and in devising methods of attracting outside capital to leverage its
26 investments.”¹⁶

27
28 The exemption from securities registration, too, has eased the cost of capital formation for
29 farmer cooperatives. Generally, this exemption is from the provisions of the Securities Act of
30 1933 and is available only to farmer cooperatives exempt from taxation under § 521 of the
31 Internal Revenue Code. It is, however, a limited exemption. Indeed one of the most famous
32 cases construing the definition of a security is *Reves v. Ernst & Young*, 494 U.S. 56 (1990),
33 which involved the “sale” of demand promissory notes to both members and nonmembers (and
34 that were found to be securities).

35
36 Finally the USDA’s Cooperative Services unit is part of its Rural Business-Cooperative
37 Service within the Rural Development Mission Area. Ways in which Cooperative Services assist
38 cooperatives include development assistance, technical assistance, education, research, and grant

¹⁴ Hanson, *supra* note 4 at 4.

¹⁵ *Co-ops 101*, *infra* note 21, at 21.

¹⁶ *Id.* at 9.

1 programs that fund cooperative research and educational efforts.

2 3 Categorizing Cooperatives. 4

5 Cooperatives are major players in the national economy. For example: (1) the net business
6 value of agricultural cooperatives in 2000 was \$99.7 billion; (2) there are 3,346 agricultural
7 cooperatives marketing about thirty percent of farmers' products in the United States; (3) more
8 than twenty cooperatives have annual sales in excess of \$1 billion; (4) retailer-owned food and
9 hardware cooperatives make it possible for independent store owners to compete with large
10 "chains"; (5) cooperative health maintenance organizations (HMOs) provide health care services
11 to nearly 1.4 million people in the United States; and (6) more than 48,000 different cooperatives
12 provide more than 120 million people with a wide range of goods and services and nearly forty
13 percent of the U.S. population belong to a cooperative.¹⁷ Moreover, a study published by the
14 United States Department of Agriculture (USDA) reported that "new-generation and traditional
15 co-ops have major beneficial impacts on rural communities."¹⁸ An official summary of the
16 Report states:

17
18 During the 1990s, more than 50 new cooperatives were established in the Upper
19 Midwest, with most of them based in rural communities. This surge of interest in
20 forming new-generation cooperatives (NGCs) is creating spin-off economic benefits to
21 the communities where these businesses locate.¹⁹
22

23 The study focused only on the Midwest during late 1997 and early 1998.

24
25 "New generation cooperatives" (NGC) are discussed in greater detail later in this
26 memorandum (see, *supra*, "Recent Legal and Economic Developments"); however, a case study
27 illustrates the organizing principles of the NGC and its potential economic benefit to members
28 and the community.
29

30 One of the most successful and well-known value-added agricultural cooperatives is Dakota
31 Growers Pasta Company (DGPC) which is owned by approximately 1,000 farmers in North
32 Dakota, Montana, and Minnesota. It began operation in a \$40 million pasta factory near
33 Carrington, North Dakota in 1993. By 1995 it produced about 100 million pounds of its own
34 branded pasta in fifty different varieties. It doubled its capacity in 1997 with a \$5 million plant
35 expansion funded, in part, by the sale of equities. In 2001 it purchased two processing plants
36 near Minneapolis and, again, expanded its production facility at Carrington.
37

¹⁷ National Cooperative Business Association website, www.ncba.coop/stats.cfm (last visited 6/10/2003).

¹⁸ "Generating Rural Progress: A Summary of USDA/RBS Research Report 177" at www.rurdev.usda.gov/rbs/pub/aug00 (last visited 4/23/2003).

¹⁹ *Id.*

1 The plant has provided premium prices to farmers, created almost 200 jobs in Carrington,
2 and earned farmer-members a twenty percent annual return through 1995. In 1999 the shares,
3 which were originally issued at \$3.85, were worth approximately \$10.²⁰ Obviously, not all
4 NGCs (or even most of them) have achieved this kind of success. Nonetheless the DGPC
5 cooperative is an example of the NGC model.
6

7 Interestingly, Dakota Growers Past Company might be an example, too, of the restrictions of
8 the current cooperative structure because in July 2002 it converted from a cooperative to a
9 corporation. A story in the Grand Forks Herald (Ap. 7, 2002) which quoted SEC filings stated:
10

11 The filing says the change would enhance the possibility of relationships with strategic
12 partners and improve the liquidity of the corporation's capital stock. Conversion will
13 afford greter access to capital markets, which may allow it to expand its business over
14 time, the company says in the filing.
15

16 The document says the company is unlikely to obtain significant additional capital from
17 its current members or other durum wheat producers and has been having difficulty
18 getting durum - a consequence of widespread disease problems in recent North Dakota
19 crops.
20

21 In the last three years, the company has relied on non-members for durum but doesn't
22 say how much. The co-op maintains it hasn't run afoul of federal income tax rules but
23 acknowledges concerns.
24

25 (T)here is legal authority suggesting that, if a cooperative's inputs are obtained
26 predominantly from non-patron sources, its tax status as a cooperative might be
27 jeopardized, the filing says.
28

29 Cooperatives are limited neither to agriculture nor marketing and may be categorized several
30 ways. A few of the most important are by geographical territory served, by governance system,
31 and by the function served.²¹ Geographical territory categorization is based on the area served
32 and the best known categorization scheme includes local, super local, regional, national and
33 international. For geographical categorization purposes "super local" cooperatives typically
34 serve an area of two or more counties and frequently have several branches within that territory
35 while "regional cooperatives" serve an area anywhere from a few counties to one or more states.
36

37 Cooperatives are also categorized by governance system (or membership structure). This
38 categorization includes division between and among centralized cooperatives, federated

²⁰ New Generation Cooperative Case Studies Expanded 2001, p.27 (Illinois Institute for Rural Affairs).

²¹ Frederick, *Co-ops 101: An Introduction to Cooperatives*, Cooperative Information Report 55, p.20 (USDA, Rural Business-Cooperative Service, 1997) (hereinafter "*Co-ops 101*").

1 cooperatives and mixed cooperatives. The “centralized cooperative” has individuals and other
2 business entities as members. “Federated cooperatives,” on the other hand, have other
3 cooperatives as members:
4

5 Local cooperatives commonly form federateds to perform activities too complex and
6 expensive for them to do individually, such as manufacturing production supplies,
7 tapping major financial markets, and marketing on a national or worldwide scale.²²
8

9 “Mixed cooperatives,” unsurprisingly, have a mixture of membership which may include either
10 individuals or other non-cooperative entities *and* other cooperatives.
11

12 The most detailed categorization system is based on function performed. The basic
13 functional types include marketing, purchasing, and service provision but each of the basic
14 functional types may be subdivided much further.²³ Most marketing cooperatives involve some
15 portion of a broadly defined agriculture industry. Nonetheless: “New marketing ventures are
16 developing in such diverse industries as handicrafts, professional services and information
17 technology.”²⁴
18

19 *Marketing cooperatives* may negotiate favorable prices for members, serve as
20 “first-handlers” by aggregating bulk produce for sale, or further process or manufacture goods
21 from the base product or commodity (value-added processing cooperatives). Some marketing
22 cooperatives process and brand products and integrate all processes including delivery to grocery
23 or other retail or consumer cooperative stores. Examples of the cooperatives engaged in
24 processing, branding, and distribution include Land O’Lakes, Ocean Spray, Tree Top, and
25 Welch.
26

27 In addition to providing farmers’ supplies like fertilizer, fuel and feed; *purchasing*
28 *cooperatives* include many well known non-farm business purchasing cooperatives like True
29 Value, Ace Hardware, IGA, and Shurfine Foods. Restaurant purchase cooperatives have been
30 established for franchisees in the Burger King, KFC and Popeyes organizations and Wendy’s
31 franchisees use a financing cooperative. Finally, one of the fastest growing areas is
32 pharmaceutical purchasing for hospitals and independent pharmacies.
33

34 *Service cooperatives* apply fertilizer for farmers and provide electricity and telephone

²² *Id.* at 21.

²³ A slightly different functional classification includes the following categories: Marketing Cooperatives, business Purchasing Cooperative, Worker’s Productive Cooperatives, Financial Cooperatives, Insurance Cooperatives, Labor Unions, Trade Associations; Self-Help Cooperatives, and Consumer Cooperatives. Consumer Cooperatives, in turn, include consumer stores, housing cooperatives, condominiums, electric, telephone and other utility cooperatives, and health cooperatives. Packel, *The Organization and Operative of Cooperatives*, p.xv (1970).

²⁴ *Co-ops 101*, *supra* note 21 at 21.

1 service. According to the USDA:

2
3 Nonagricultural service cooperatives are also flourishing. Credit unions and the
4 National Cooperative Bank provide credit on a cooperative basis to nonfarm individuals
5 and cooperatives. School systems, health care providers, and insurance buyers are
6 among the general public segments making use of service cooperatives.²⁵

7
8 Insurance service cooperatives are sometimes known as cooperative health alliances and
9 such alliances have been formed by employers in Seattle, Memphis, and Sacramento, among
10 other cities. Direct health care is provided by HMOs. Moreover, *financing cooperatives* are
11 anecdotally becoming popular.

12
13 Finally, for purposes of categorization, there is another “old” kind of co-op that is more
14 popular in Europe than the United States. It is the “Workers’ Productive Cooperative” which in
15 some ways resembles the operation and function of an Employee Stock Ownership Plan (ESOP).
16 “Workers’ is broadly defined to include professionals.

17
18 Recent Developments.

19
20 In the late 1980s and 1990s, at least Minnesota, Colorado, Iowa, Oregon and Ohio redrafted
21 their cooperative statutes.²⁶ The recodification of Minnesota’s cooperative statutes is
22 instructive: “In Minnesota, five different stock and nonstock cooperative statutes were recodified
23 and revised into one corporate cooperative statute” in 1989.²⁷ Moreover, Hanson states that
24 “many” states loosened the statutory restrictions in their commodity marketing acts to allow
25 nonagricultural producers to form cooperatives. Again according to Hanson, “[t]he modern
26 corporate cooperative statutes are general cooperative statutes with certain provisions to
27 accommodate agricultural producer cooperatives.”²⁸

28
29 A major part of this renewed interest in cooperative business organizations and cooperative
30 organization statutes is the evolution of value-added agricultural cooperative illustrated by the
31 case vignette, *supra*, in “The Cooperative Industry” portion of this memorandum. A book
32 published by the Illinois Institute for Rural Affairs delineates this evolution as follows:

33
34 The development of cooperatives in the Upper Midwest from the 1970s through the
35 1990s provides vivid examples of several new phenomena and trends. Among the most
36 important are the New Generation Cooperatives (NGCs). The term, used since the

²⁵ *Id.* at 23.

²⁶ Hanson, *supra* note 4 at 6.

²⁷ *Id.*

²⁸ *Id.*

1 mid-1990s, was proposed by the Centre for the Study of Cooperatives, University of
2 Saskatchewan, Canada [citation omitted].

3
4 These NGCs represent the newest wave of U.S. co-ops. While earlier generations had
5 emerged in the 1900s, the 1920s, and again in the 1940s, NGCs have several features
6 that distinguish them from traditional farmers co-ops.²⁹

7
8 These distinguishing NGC features include: (1) a focus on value-added processing; (2)
9 expanded use of equity as a funding source; and, (3) restricted membership with equity shares
10 limited by the requirements to build plant, process, and/or product (thus, many NGCs are
11 “closed-end” while generally retaining the one member one vote concept and maintaining
12 effective governing control in producers while at the same time providing a governance “voice”
13 for nonproducer outside investors).³⁰

14
15 In 1996 Iowa enacted a cooperative statute specifically designed for agricultural value-added
16 purposes. It was a corporation-based statute and it required, among other things, that “farming
17 entities” have at least 60 percent of the voting and financial rights.³¹ Further, it provided
18 “authorized persons” to have 75 percent of the voting and financial rights.³² Some organizations
19 incorporated under the 1996 Iowa Act sought “Exempt Farmer Cooperative” Certification from
20 the IRS under § 521 and, according to Hanson, questions were raised whether they qualified for §
21 521 status as operating on a cooperative basis.³³ As a result of these questions the Iowa statute
22 was amended to replace corporate terms like “incorporation,” “stock” and “shareholders” with
23 unincorporated entity terms like “organizers,” “members” and “interests” so that the organization
24 might qualify for partnership income tax status (like a limited liability company under state law)
25 and, therefore, be taxed on a purer flow-through basis under Subchapter K.

26
27 This different statutory design approach which attempts to take advantage of partnership tax
28 classification should not be underestimated because it evidences that the organizers were willing
29 to leave the traditional protective confines of the corporate tax structure as modified by
30 Subchapter T in order to make value-added processing financially viable based on a different
31 capital structure. In other words, the approach evolved from perceived real-world need.

32
33 Wyoming enacted a “Wyoming Processing Cooperative Law,” effective in 2001, for

²⁹ Igor Kotov, “New Generation Cooperatives: A Short History of the Idea and the Enterprise,” *NEW GENERATION COOPERATIVES: CASE STUDIES EXPANDED 2001* at 19 (2001).

³⁰ *Id.* at 19-20.

³¹ Hanson, *supra* note 4 at 10.

³² *Id.*

³³ *Id.* (Citation omitted.)

1 purposes similar to Iowa’s law. The impetus for the Wyoming law was from lamb producers in
2 Wyoming and adjoining states. Its purpose was to allow the producers to “acquire lamb, meat,
3 wool and pelt processing and marketing businesses to make lamb production more marketable on
4 a cooperative basis.”³⁴ It was drafted to allow for partnership taxation or, at the discretion of the
5 particular entity, to elect corporate taxation and thereby be eligible for Subchapter T and,
6 perhaps, § 521 tax treatment. As a result, the Wyoming Act is more flexible than traditional
7 cooperative acts and gives far more freedom to the organizers in their entity documents than
8 typically afforded under traditional cooperative statutes.
9

10 Neither the Wyoming nor the Iowa cooperative statutes have received revenue rulings,
11 however, an entity organized under the Wyoming Act has apparently received a private letter
12 ruling (PLR) from the Internal Revenue Service indicating that it will be eligible for partnership
13 income tax classification. Identifying facts are excised from published letter rulings.
14 Nonetheless PLR 2001-125369 included the following statement of relevant fact:
15

16 Company A is a new entity that will be organized on Date 1, under the State
17 Cooperative LLC Act (Act). The Act was enacted on Date 2, with an effective date of
18 Date 1. The Act defines “Cooperative” as association organized under this article
19 conducting business on a cooperative plan as provided under this Article.
20

21 It concluded:
22

23 In the present case, Company A is organized as an unincorporated association under the
24 Act, which does not refer to an association as incorporated or as a corporation, body
25 corporate, or body politic... Therefore, it is an “eligible entity” and not a per se
26 corporation under section 301.7701-2(b)(1).
27

28 Minnesota enacted a new agricultural processing statute during the past legislative session;
29 one was introduced in Wisconsin, and; an industry study group has been formed in Iowa. It is
30 not known whether legislative study activity in other states has been undertaken.
31

32 The Legal, Tax & Accounting Committee of the National Council of Farmer Cooperatives
33 (NCFC) has been following the legal and economic developments concerning cooperatives
34 closely. It has not taken a position on any specific changes and its general approach to the new
35 acts is prudently cautious. Nevertheless, J. Gary McDavid, a member of that committee,
36 individually observed that the success of cooperatives might be attributed to several factors
37 including: “1. Tax, SEC, antitrust, and other benefits provided to co-ops, 2. Special banks that
38 provided financing for co-ops, 3. Encouragement and assistance from USDA and NCFC, and 4.

³⁴ *Id.*

1 the fact the concept worked.”³⁵

2
3 He also identified several current structural challenges for cooperatives (and the continued
4 viability of the cooperative business organization) given the advent of other entity choices.
5 Structural challenges included “lack of outside equity” and the “inability to access going concern
6 value.”³⁶ Other challenges included “competition from LLCs” and the desire of investment
7 return on the part of member-investors and stock options in order to retain qualified
8 management.³⁷ He specifically stated, “some cooperatives have converted to LLCs and many
9 new ventures are structured as LLCs... [because] LLCs are flexible vehicles and allow patronage
10 and non-patronage income to pass through to the members.”³⁸ McDavid’s comments seem to be
11 supported generally by agricultural economists.
12

13 An article in the 1995 *American Journal of Agricultural Economics* lists five problems
14 inherent in operating within the traditional cooperative structure. All five relate to “vaguely
15 defined property rights.”³⁹ According to the article, a *free-rider problem* exists for
16 open-membership cooperatives because new members receive the same patronage dividends as
17 do members who originally invested in the cooperative; *portfolio* and *horizon* problems arise due
18 to lack of share transferability; that is, members cannot adjust their investment over time to
19 match their investment profiles; and, there is a disincentive for members to invest more capital
20 because of lack of liquidity of the investment and lack of the ability for the investor to time sales
21 (e.g. redemption fixed upon death or retirement). Finally, the *control* and *influence cost*
22 *problems* (e.g., agency cost and monitoring costs) inherent in any nonpublicly traded business are
23 present in cooperatives. According to follow-up research conducted in 1996 and 1997,
24 “[e]mpirical work confirmed the connection between theory and practice.”
25

26 The research analyzed,
27 [A]ll rural or agricultural-related cooperative formations in the Upper Midwest between
28 1988 and 1996 . . . and made the following observations:
29

- 30 1. More than 80 percent of cooperative formations in the Upper Midwest adopted
31 non-traditional cooperative organization characteristics.
32
33 2. Why? According to the results of the survey – to solve for a set of problems cause

³⁵ J. Gary McDavid, “Evolving Cooperative Structures,” *Study subcommittee: Legal, Tax & Accounting Conference of the National Council of Farmer Cooperatives*, Jan. 21, 2002, at 1.

³⁶ *Id.* at 2.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Michael L. Cook, *The Future of U.S. Agricultural Cooperatives: A Neo-Institutional Approach*, 77 AMER. J. AGR. ECON. 1153 AT 1156 (1995).

1 by vaguely defined property rights.

- 2
- 3 3. A coordinated set of simple organizational policies to solve for vaguely defined
- 4 property rights; transferable and appreciable equity shares, defined membership,
- 5 uniform grower agreements, and a minimum upfront equity investment requirement
- 6 were identified.
- 7
- 8 4. Ninety-six percent of the cooperatives in the survey reduced the free-rider problem
- 9 by linking member investment to use.
- 10
- 11 5. Ninety-four percent allowed members the ability to adjust their asset portfolio to
- 12 meet the risk preferences by allowing the transfer of equity shares.
- 13
- 14 6. In addition, 93.6 percent of the cooperatives allowed producers to realize changes
- 15 in the cooperative's value upon divestment of their equity shares.
- 16
- 17 7. Defined (closed) membership policies were popular among newly organized
- 18 agricultural cooperatives with 98 percent of the survey cooperatives implementing a
- 19 defined membership structure.
- 20
- 21 8. Direct investment through the sale of nonvoting equity stock was the primary
- 22 method employed to raise producer equity in these cooperatives. Nearly 98.7
- 23 percent of equity raised from producers took this form.⁴⁰
- 24

25 The findings, above, are consistent with theoretical suggestions to amend the cooperative
26 form to include some combination of such features as transferability of equity shares, appreciable
27 equity shares, defined membership, legally binding delivery contract or uniform grower
28 agreement, and minimum up-front equity investment.⁴¹ These features, however, are not
29 necessarily consistent with cooperative values as described by the Rochdale Principles.

30
31 In 2000 the USDA proposed to expand the authority of its Cooperative Services unit to
32 include programs to all types of rural cooperatives. The goal of the expanded authority of
33 Cooperative Services would be to provide, "[t]he same bundle of services currently offered to
34 farmer cooperatives..., with proper budget support and staffing, to rural nonfarm cooperative
35 businesses such as those in housing, health care, child and elder care, credit, rural utility,
36 purchasing and worker owned [cooperatives].⁴² Moreover, at least as of June 29, 2002, the

⁴⁰ Michael L. Cook, Constantine Iliopoulos, *Beginning to Inform the Theory of the Cooperative Firm: Emergence of the New Generation Cooperative* 1999 THE FINNISH JOURNAL OF BUSINESS ECONOMICS 525 at 530 (Issue 4).

⁴¹ *Id.*

⁴² Speech at www.usdaeconomists.org (last visited 4/23/03).

1 House and Senate Appropriations Committees had increased appropriation for rural development
2 grant programs. There is other evidence of strong interest in Congress in the cooperative
3 industry.
4

5 Another possible reason for renewed interest in agricultural cooperatives within the federal
6 government might be the changing international trade climate concerning direct farm subsidies.
7 As the immediate past Deputy Administrator of the Rural Business-Cooperative Service stated at
8 the USDA Economists Group Meeting in late 1999:
9

10 Current trends that are leading to a renewed interest in cooperatives include
11 industrialization and concentration, increased contracting, phase-out of farm price
12 supports... and the “new generation” cooperative phenomena.⁴³
13

14 He also noted that there was an increase of mergers or consolidation of cooperatives in many
15 sectors in order for cooperatives to become global competitors.
16

17 **A Brief Overview of the First Discussion Draft** 18

19 The primary purpose of the first draft is to structure the discussion of global issues. The Act
20 itself is the Wyoming Processing Cooperative Act with few revisions or additions. The
21 comments provide comparative provisions from the Minnesota Cooperative Associations Act.
22

23 The Wyoming Act was selected primarily because it is closer to the initial charge to the
24 Committee and the articulated scope of the Agricultural and Agricultural Related Cooperative
25 Drafting Project. The Wyoming Processing Cooperative Act also exhibits a more traditional
26 unincorporated entity “look and feel” which is shared by other uniform entity acts. Minnesota’s
27 Act is broader and more detailed reflecting a different drafting approach similar to its state LLC
28 act which has a more corporate “look and feel.” The more corporate styled LLC style is shared,
29 for example, with LLC Acts in North Dakota, Tennessee, and Nevada.
30

31 Both the Minnesota and Wyoming Cooperative Acts contemplate enabling cooperatives to
32 organize for broader purposes than those traditionally contemplated by agricultural or farmer
33 cooperatives. They are designed to enable the formation of “new generation” cooperatives. The
34 Minnesota Act, however, may be used by any cooperative formed for a broad variety of purposes.
35 Nonetheless, neither the Wyoming Processing Cooperative Act and, to a lesser and arguable
36 extent, the Minnesota Cooperative Association Act seek to replace existing state cooperative
37 statutes. That is, neither contain repealer provisions. Thus, these two act may be contrasted with
38 revisions to the cooperative laws in states like Oregon and Colorado which have unified and
39 restated most of the organic law of all cooperatives in their states in a single cooperative act. The
40 purpose of the latter acts, therefore, differs from the current scope of this project.
41

⁴³ *Id.*

1 Other uniform laws and drafting projects that might be relevant for comparison purposes
2 include the Revised Uniform Limited Partnership Act (2001), the Uniform Limited Liability
3 Company Act which is currently the subject of a revision committee, and the Revised Uniform
4 Partnership Act (1997). Additionally, the Conference has undertaken a joint drafting project with
5 the ABA on multiple entity transactions (e.g., mergers, conversions, share exchanges). The joint
6 drafting project (META) contemplates a “hub and spokes” or “junction box” structure attempting
7 to unify the law governing these transactions for all entities in a single place with reference back
8 to the underlying corporate or specific unincorporated entity law where necessary. Thus, META
9 may directly affect this project.

10
11 Finally, of course, cooperatives have traditionally been incorporated and are, therefore, a
12 variety of corporation. The traditional use of a corporate model leads to two observations: (1)
13 practitioners and the public have developed expectations about cooperative statutes and (2) the
14 existing statutes do not necessarily reflect the traditional policy or traditional language of
15 unincorporated entities. Of course most entities share the same basic concerns and needs no
16 matter of the organizational statute. For these reasons, another comparative source for
17 cooperative law is corporate law like the Revised Model Business Corporation Act (RMBCA).

18
19 The common issues reflect two different analytical paradigms that need to be addressed by
20 an act governing an entity. The first paradigm is simply the life-cycle of the entity; that is,
21 getting, operating and getting out. Simply an organizational act must contemplate the entire life
22 cycle. In addition, the life-cycle paradigm suggests an analysis of purpose. The other paradigm
23 is more issue specific and relationship driven and includes the definition of “member” and the
24 relationship between and among members; between members and the entity; between the
25 members and the agents of the entity; between the agents of the entity and the entity; and
26 between and among the entity, the members, the entity’s agents and third parties. Each of these
27 relationships can be further divided into governance and fiduciary issues and financial issues.

1 **AGRICULTURAL AND AGRICULTURAL RELATED COOPERATIVES ACT**

2 **ARTICLE 1**

3
4 **GENERAL PROVISIONS**

5 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Agricultural and
6 Agricultural Related Cooperatives Act [year of enactment].
7

8 **SECTION 102. DEFINITIONS.**

9 (1) Scope. The definitions in this section apply to this chapter.

10 (2) “Address” means mailing address, including a zip code. In the case of a registered
11 address, the term means the mailing address and the actual office location, which may not be a
12 post office box.

13 (3) “Agricultural” and “Agricultural Related” means farming or related to farming
14 included cultivation and tillage of soil; dairying; the production, cultivation, growing, and
15 harvesting of agricultural or horticultural commodities; the storage, marketing and processing of
16 the resultant products of farming; and services and goods used in agricultural production of any
17 type.

18 (4) “Alternative Ballot” means a method of voting on a candidate or issue prescribed by
19 the board of directors in advance of the vote, and may include voting by electronic, telephonic,
20 Internet, or other means that reasonably allow members the opportunity to vote.

21 (5) "Articles" means the articles of organization of a cooperative as originally filed and
22 subsequently amended.

1 (6) "Association" means an organization conducting business on a cooperative plan under
2 the laws of this state or another state that is chartered to conduct business under other laws of this
3 state or another state.

4 (7) "Board" means the board of directors of a cooperative.

5 (8) "Business entity" means a company, limited liability company, limited liability
6 partnership, or other legal entity, whether domestic or foreign, association, or body vested with
7 the power or function of a legal entity.

8 (9) "Cooperative" means an association organized under this chapter conducting business
9 on a cooperative basis as provided under this chapter.

10 (10) "Domestic business entity" means a business entity organized under the laws of this
11 state.

12 (11) "Domestic cooperative" means a cooperative organized under this [act] or chapters
13 _____.

14 (12) "Filed with the secretary of state" means that a document meeting the applicable
15 requirements of this chapter, signed and accompanied by the required filing fee, has been
16 delivered to the secretary of state. The secretary of state shall endorse on the document the word
17 "filed" or a similar word determined by the secretary of state and the month, day, and year of
18 filing, record the document in the office of the secretary of state, and return a document to the
19 person or entity who delivered it for filing.

20 (13) "Foreign business entity" means a business entity that is not a domestic business
21 entity.

22 (14) "Foreign cooperative" means a foreign business entity organized to conduct business

1 on a cooperative plan consistent with this chapter or chapter _____.

2 (15) "Member" means a person or entity reflected on the books of the cooperative as the
3 owner of governance rights of a membership interest of the cooperative and includes patron and
4 nonpatron members.

5 (16) "Membership interest" means a member's interest in a cooperative consisting of a
6 member's financial rights, a member's right to assign financial rights, a member's governance
7 rights, and a member's right to assign governance rights. Membership interest includes patron
8 membership interests and nonpatron membership interests.

9 (17) "Members' meeting" means a regular or special members' meeting.

10 (18) "Nonpatron membership interest" means a membership interest that does not require
11 the holder to conduct patronage business for or with the cooperative to receive financial rights or
12 distributions.

13 (19) "Patron" means a person or entity who conducts patronage business with the
14 cooperative.

15 (20) "Patronage" means business, transactions, or services done for or with the
16 cooperative as defined by the cooperative.

17 (21) "Patron member" means a member holding a patron membership interest.

18 (22) "Patron membership interest" means the membership interest requiring the holder to
19 conduct patronage business for or with the cooperative, as specified by the cooperative to receive
20 financial rights or distributions.

21 (23) "Person" means an individual, corporation, business trust, estate, trust, partnership,
22 limited liability company, association, joint venture, government; governmental subdivision,

1 agency or instrumentality; public corporation, or any other legal or commercial entity.

2 (24) "Sign" means (a) to execute or adopt a tangible symbol with the present intent to
3 authenticate a record; or (b) to attach or logically associate an electronic symbol, sound, or
4 process to or with a record with the present intent to authenticate the record.

5 **COMMENT:**

6 Comment to second draft:
7

8 This draft is based on Minnesota law. The definitions of "person" and "sign" are taken
9 from ULPA (2001). The definitions for "agricultural and "agriculturally related" are new based
10 on discussion from the first meeting. It is likely that additional defined terms will be necessary in
11 subsequent drafts. For example, a more traditional definition of "Patronage" would be
12 something like: "pursuant to a pre-existing written agreement to return earnings on the
13 underlying business, transactions, or services to the patrons on the basis of the quantity or value
14 of business done with or for such patrons."
15

16 There was discussion at the first meeting concerning replacing the term "business" with
17 "activity" or defining "business" to include any lawful purpose.
18

19 The initial draft read:
20

21 **SECTION 103. DEFINITIONS.**
22

23 (a) As used in this article:
24

25 (i) "Address" means mailing address, including a zip code. In the case of a
26 registered address, the term means the mailing address and the actual office location, which may
27 not be a post office box;
28

29 (ii) "Articles" means the articles of organization of a cooperative as
30 originally filed and subsequently amended;
31

32 (iii) "Association" means an organization conducting business on a
33 cooperative plan under the laws of this state or another state that is chartered to conduct business
34 under other laws of this state or another state;
35

36 (iv) "Board" means the board of directors of a cooperative;
37

38 (v) "Business entity" means a company, limited liability company, limited

1 liability partnership or other legal entity, whether domestic or foreign, association or body vested
2 with the power or function of a legal entity;

3
4 (vi) "Cooperative" means an association organized under this article
5 conducting business on a cooperative plan as provided under this article;

6
7 (vii) "Domestic business entity" means a business entity organized under
8 the laws of this state;

9
10 (viii) "Filed with the secretary of state" means that a document meeting the
11 applicable requirements of this article, signed and accompanied by the required filing fee, has
12 been delivered to the secretary of state of this state. The secretary of state shall endorse on the
13 document the word "Filed" or a similar word determined by the secretary of state and the month,
14 day, and year of filing, record the document in the office of the secretary of state, and return a
15 document to the person or entity who delivered it for filing;

16
17 (ix) "Foreign business entity" means a business entity that is not a
18 domestic business entity;

19
20 (x) "Member" means a person or entity reflected on the books of the
21 cooperative as the owner of governance rights of a membership interest of the cooperative and
22 includes patron and nonpatron members;

23
24 (xi) "Membership interest" means a member's interest in a cooperative
25 consisting of a member's financial rights, a member's right to assign financial rights, a member's
26 governance rights and a member's right to assign governance rights. Membership interest
27 includes patron membership interests and nonpatron membership interests;

28
29 (xii) "Members' meeting" means a regular or special members' meeting;

30
31 (xiii) "Nonpatron membership interest" means a membership interest that
32 does not require the holder to conduct patronage business for or with the cooperative to receive
33 financial rights or distributions;

34
35 (xiv) "Patron" means a person or entity who conducts patronage business
36 with the cooperative;

37
38 (xv) "Patronage" means business, transactions, or services done for or with
39 the cooperative as defined by the cooperative;

40
41 (xvi) "Patron member" means a member holding a patron membership
42 interest;

(xvii) "Patron membership interest" means the membership interest requiring the holder to conduct patronage business for or with the cooperative, as specified by the cooperative to receive financial rights or distributions;

(xviii) "Signed" means that the signature of a person has been written on a document, and, with respect to a document required by this article to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this article, the articles or bylaws, or by a resolution approved by the directors or the members. A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically or in any other manner reproduced on the document;

(xix) "The act" means _____ through _____.

Comment to Initial Draft

The source for this provision is Wyoming Rev. Stat. § 17-10-202.

This section will probably be expanded as the need arises in discussing the substantive provisions contained elsewhere. Moreover, the definition of "signing" must be conformed with other uniform laws to provide for the notion of record.

Preliminary matters that need be addressed include whether (1) the Act should include a definition of "agriculture," "agriculturally related," "farmer," "value added," and "cooperative." The committee determination on the last four definitions will cascade throughout the Act and the drafting process. Moreover, it is noted that no definitions for "foreign cooperative" or related "foreign" terms are included. For other related comparative provisions in existing law, see the comments to the next several sections.

SECTION 103. KNOWLEDGE AND NOTICE.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) knows of it;

(2) has received notification of it;

(3) has reason to know it exists from all of the facts known to the person at the time in question; or

1 (4) has notice of it under subsection (c) on file in the [office of the
2 Secretary of State] is notice that the cooperative is a cooperative and the persons designated in
3 the Articles.

4 (c) A person has notice of:

5 (1) another person's dissociation as a general partner, 90 days after the
6 effective date of an amendment to the certificate of limited partnership which states that the other
7 person has dissociated or 90 days after the effective date of a statement of dissociation pertaining
8 to the other person, whichever occurs first;

9 (2) a limited partnership's dissolution, 90 days after the effective date of
10 an amendment to the certificate of limited partnership stating that the limited partnership is
11 dissolved;

12 (3) a limited partnership's termination, 90 days after the effective date of
13 a statement of termination;

14 (4) a limited partnership's conversion under [Article] 11, 90 days after the
15 effective date of the articles of conversion; or

16 (5) a merger under [Article 11] 90 days after the effective date of the
17 articles of merger.

18 (d) A person notifies or gives a notification to another person by taking steps
19 reasonably required to inform the other person in ordinary course, whether or not the other
20 person learns of it.

21 (e) A person receives a notification when the
22 notification:

1 (1) comes to the person's attention; or
2 (2) is delivered at the person's place of business or at any other place held
3 out by the person as a place for receiving communications.

4 (f) Except as otherwise provided in subsection (g), a person other than an
5 individual knows, has notice, or receives a notification of a fact for purposes of a particular
6 transaction when the individual conducting the transaction for the person knows, has notice, or
7 receives a notification of the fact, or in any event when the fact would have been brought to the
8 individual's attention if the person had exercised reasonable diligence. A person other than an
9 individual exercised reasonable diligence if it maintains reasonable routines for communicating
10 significant information to the individual conducting the transaction for the person and there is
11 reasonable compliance with the routines. Reasonable diligence does not require an individual
12 acting for the person to communicate information unless the communication is part of the
13 individual's regular duties or the individual has reason to know of the transaction and that the
14 transaction would be materially affected by the information.

15 (g) A general partner's knowledge, notice, or receipt of a notification of a fact
16 relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt
17 of a notification by the limited partnership, except in the case of a fraud on the limited
18 partnership committed by or with the consent of the general partner. A limited partner's
19 knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not
20 effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

21 **COMMENT**

22 Comment to the Second Draft:

1 This is taken from ULPA (2001). Subsections (c) and (d) retain the use of “limited
2 partnership” and the title substituting for limited partnerships needs to be discussed.
3
4

5 **SECTION 104. RESERVATION OF POWER TO AMEND OR REPEAL.** The
6 [name of state legislature] has the power to amend or repeal all or part of [this Act] at any time
7 and all domestica and foreign cooperatives subject to [this Act] are governed by the amendment
8 or repeal. A cooperative organized or governed by this chapter is subject to this reserved right.

9 **COMMENT**

10
11 Comment to the Second Draft:
12

13 The source of section 104 is the RMBCA.
14
15

16 **SECTION 105. FILING FEE; RULES AND REGULATIONS; ANNUAL**
17 **REPORTS AND LICENSE TAXES.**

18 (a) Unless otherwise provided, the filing fee for documents filed under this article
19 with the secretary of state shall be subject to the provisions of [the general business corporation
20 law of this state]. The secretary of state shall promulgate rules and regulations necessary to
21 implement the provisions of this article.

22 (b) The provisions of [the general business corporation law of this state] regarding
23 the filing of reports, license taxes and records shall apply to cooperatives formed under this
24 article.

25 **COMMENT**

26
27 Comment to the Second Draft:
28

29 The source for this provision is Wyoming Rev. Stat. § 17-10-203. The Minnesota Act
30 simply states: Unless otherwise provided, the filing fee for documents filed under this Chapter

1 with the secretary of state is \$ _____.
2
3

4 **SECTION 106. REGISTERED OFFICE AND AGENT.**

5 (a) Registered Office and Agent. A cooperative must establish and continuously
6 maintain in this state:

7 (1) a registered office that may be, but need not be, the same as its place of
8 business; and

9 (2) a registered agent, which agent may be either an individual resident in this
10 state whose business office is identical with the registered office, or a domestic business entity,
11 or a foreign business entity authorized to transact business in this state, having an office identical
12 with the registered office.

13 (b) Change of Office and Agent. A cooperative may designate or change its registered
14 office or agent, or both, upon filing in the office of the secretary of state a statement setting forth:

15 (1) the name of the cooperative;

16 (2) the address of its then registered office;

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

19 (4) the name of its then registered agent;

20 (5) if its registered agent is to be changed, the name of its successor registered
21 agent;

22 (6) that the address of its registered office and the address of the business office of
23 its registered agent, as changed, will be identical; and

1 (7) that the change was authorized by affirmative vote of a majority of the board
2 of the cooperative.

3 (c) Filing. The statement shall be signed and delivered to the secretary of state. If the
4 secretary of state finds that the statement conforms to the provisions of this section, the secretary
5 of state shall file the statement, and upon filing the change of address of the registered office or
6 the appointment of a new registered agent or both, as the case may be, is effective.

7 (d) Resignation of Agent. Any registered agent of a cooperative may resign as agent
8 upon filing a written notice resignation, signed with one original and one exact or conformed
9 copy, with the secretary of state, who shall mail a copy to the cooperative at its principal mailing
10 address as defined and prescribed by the secretary of state. The appointment of the agent shall
11 terminate upon the expiration of 30 days after receipt of notice by the secretary of state.

12 (e) Change of Address or Name of Agent. If the address or name of a registered agent
13 changes, the agent must change the address of the registered office or the name of the registered
14 agent of the cooperative represented by the agent by filing with the secretary of state the
15 statement required in paragraph (b), except that the statement need only be signed by the
16 registered agent, need not be responsive to paragraph (b), clause (5), but must state that a copy of
17 the statement has been mailed to the cooperative or to the legal representative of the cooperative.

18 COMMENT

19 The Initial Draft read:
20

21 SECTION 105. REGISTERED AGENT; CHANGE OF REGISTERED OFFICE 22 OR REGISTERED AGENT. 23

24 (a) Each cooperative shall have and continuously maintain in this state:
25

1 (i) A registered office which may be, but need not be, the same as its place
2 of business;

3
4 (ii) A registered agent, which agent may be either an individual resident in
5 this state whose business office is identical with such registered office, or a domestic corporation,
6 or a foreign corporation authorized to transact business in this state, having a business office
7 identical with such registered office.
8

9 (b) A cooperative may change its registered office or agent, or both, upon filing in
10 the office of the secretary of state a statement setting forth:

11
12 (i) The name of the cooperative;

13 (ii) The address of its then registered office;

14
15 (iii) If the address of its registered office be changed, the address to which
16 the registered office is to be changed;

17
18 (iv) The name of its then registered agent;

19
20 (v) If its registered agent be changed, the name of its successor registered
21 agent;

22
23 (vi) That the address of its registered office and the address of the business
24 office of its registered agent, as changed, will be identical;

25
26 (vii) That the change was authorized by affirmative vote of a majority of
27 the board of directors of the cooperative.
28

29
30 (c) The statement shall be signed and delivered to the secretary of state. If the
31 secretary of state finds that the statement conforms to the provisions of this act, he shall file the
32 statement in his office, and upon filing the change of address of the registered office or the
33 appointment of a new registered agent or both, as the case may be is effective.
34

35 (d) Any registered agent of a cooperative may resign as agent upon filing a written
36 notice thereof, signed with one (1) original and one (1) exact or conformed copy, with the
37 secretary of state, who shall forthwith mail a copy thereof to the cooperative at its principal
38 mailing address as defined and prescribed by the secretary of state. The appointment of the agent
39 shall terminate upon the expiration of thirty (30) days after receipt of notice by the secretary of
40 state.
41

42 (e) If any cooperative has failed for thirty (30) days to appoint and maintain a
43 registered agent in this state, or has failed for thirty (30) days after change of its registered office

1 or registered agent to file in the office of the secretary of state a statement of the change it shall
2 be deemed to be transacting business within this state without authority and to have forfeited any
3 franchises, rights or privileges acquired under the laws thereof and the forfeiture shall be made
4 effective in the following manner. The secretary of state shall mail by certified mail a notice of
5 its failure to comply with aforesaid provisions. Unless compliance is made within thirty (30) days
6 of the delivery of notice, the cooperative shall be deemed defunct and to have forfeited its
7 certificate of organization acquired under the laws of this state. Provided, that any defunct
8 cooperative may at any time within two (2) years after the forfeiture of its certificate, in the
9 manner herein provided, be revived and reinstated, by filing the necessary statement under this
10 act and paying a reinstatement fee established by the secretary of state by rule, together with a
11 penalty of one hundred dollars (\$100.00). The reinstatement fee shall not exceed the costs of
12 providing the reinstatement service. The cooperative shall retain its registered name during the
13 two (2) year reinstatement period under this section.

14
15 **Comment to Initial Draft**
16

17 The source for this provision is Wyoming Rev. Stat. § 17-10-204.
18
19

20 **SECTION 107. ANNUAL REPORT FOR [SECRETARY OF STATE].**

21 (a) A domestic cooperative or a foreign cooperative authorized to transact business in this
22 State shall deliver to the [Secretary of State] for filing an annual report that states :

23 (1) the name of the domestic cooperative or foreign cooperative;

24 (2) the street and mailing address of its designated office and the name and street
25 and mailing address of its agent for service of process in this State;

26 (3) in the case of a domestic cooperative, the street and mailing address of its
27 principle office; and

28 (4) in the case of a foreign cooperative the State or other jurisdiction under whose
29 law the foreign cooperative is formed and any alternative name adopted under Section [_____].

30 (b) Information in an annual report must be current as of the date the annual report is
31 delivered to the [Secretary of State].

1 (c) The first annual report must be delivered to the [Secretary of State] between [January
2 1 and April 1] of the year following the calendar year in which a domestic cooperative was
3 formed or a foreign cooperative was authorized to transact business. An annual report must be
4 delivered to the [Secretary of State] between [January 1 and April 1] of each subsequent calendar
5 year.

6 (d) If an annual report does not contain the information required in subsection (a), the
7 [Secretary of State] shall promptly notify the reporting domestic cooperative or foreign
8 cooperative and return the report to it for correction. If the report is corrected to contain the
9 information required in subsection (a) and delivered to the [Secretary of State] within 30 days
10 after the effective date of the notice, it is timely delivered.

11 (e) If a filed annual report contains an address of a designated office or the name or
12 address of an agent for service of process which differs from the information shown in the
13 records of [Secretary of State] immediately before the filing, the differing information in the
14 annual report is considered a statement of change under Section 115.

15 (f) Penalty; Dissolution.

16 (1) A cooperative that has failed to file a registration under the requirements of
17 this section must be dissolved by the secretary of state as described in paragraph (b).

18 (2) If the cooperative has not filed the registration by December 31 of that
19 calendar year, the secretary of state must issue a certificate of involuntary dissolution and the
20 certificate must be filed in the office of the secretary of state. The secretary of state must
21 annually inform the attorney general and the commissioner of revenue of the methods by which
22 the names of cooperatives dissolved under this section during the preceding year may be

determined. The secretary of state must also make available in an electronic format the names of the dissolved cooperatives. A cooperative dissolved in this manner is not entitled to the benefits of section _____.

(g) Reinstatement. A cooperative may, within one year of the date of dissolution under this section, retroactively reinstate its existence by filing a single annual registration and paying a \$____ fee. Filing the annual registration with the secretary of state:

(1) returns the cooperative to active status as of the date of the dissolution;

(2) validates contracts or other acts within the authority of the articles and the cooperative is liable for those contracts or acts; and

(3) restores to the cooperative all assets and rights of the cooperative and its shareholders or members to the extent they were held by the cooperative and its shareholders or members before the dissolution occurred, except to the extent that assets or rights were affected by acts occurring after the dissolution or sold or otherwise distributed after that time.

SECTION 108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S. C. Section 7001 et seq., but this [act] does not modify, limit, or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

COMMENT

Comment to the Second Draft:

Source: ULP A (2001) § 1203.

1 **SECTION 109. FOREIGN COOPERATIVES.**

2 (a) Authority.

3 (1) Subject to the constitution of this state, the laws of the jurisdiction under
4 which a foreign cooperative is organized govern its organization and internal affairs and the
5 liability of its members. A foreign cooperative may not be denied a certificate of authority to
6 transact business in this state by reason of any difference between those laws and the laws of this
7 state.

8 (2) A foreign cooperative holding a valid certificate of authority in this state has
9 no greater rights and privileges than a domestic cooperative. The certificate of authority does not
10 authorize the foreign cooperative to exercise any of its powers or purposes that a domestic
11 cooperative is forbidden by law to exercise in this state.

12 (3) A foreign cooperative may apply for a certificate of authority under any name
13 that would be available to a cooperative, whether or not the name is the name under which it is
14 authorized in its jurisdiction of organization.

15 (b) Certificate of Authority.

16 (1) Before transacting business in this state, a foreign cooperative shall obtain a
17 certificate of authority. An applicant for the certificate shall file with the secretary of state a
18 certificate of status from the filing office in the jurisdiction in which the business entity is
19 organized and an application executed by an authorized person and setting forth:

20 (A) the name of the foreign cooperative and, if different, the name under
21 which it proposes to transact business in this state;

22 (B) the jurisdiction of its organization;

1 (C) the name and business address of the proposed registered agent in this
2 state, which agent shall be an individual resident of this state, a domestic business entity, or a
3 foreign cooperative having a place of business in, and authorized to do business in, this state;

4 (D) the address of the office required to be maintained in the jurisdiction
5 of its organization by the laws of that jurisdiction or, if not so required, of the principal place of
6 business of the foreign cooperative; and

7 (E) the date the foreign cooperative expires in the jurisdiction of its
8 organization.

9 (2) The application must be accompanied by payment of \$____, which includes a
10 \$____ initial license fee in addition to the \$____ filing fee required by section _____.

11 (3) If the secretary of state finds that an application for a certificate of authority
12 conforms to law and all fees have been paid, the secretary of state shall:

13 (A) endorse on the application the word "Filed" and the date of filing the
14 application;

15 (B) file the original application; and

16 (C) return the original application to the person who filed it with a
17 certificate of authority issued by the secretary of state.

18 (4) A certificate of authority issued under this section is effective from the date
19 the application is filed with the secretary of state accompanied by the payment of the requisite
20 fees.

21 (5) If any statement in the application for a certificate of authority by a foreign
22 cooperative was false when made or any arrangements or other facts described have changed,

1 making the application inaccurate in any respect, the foreign cooperative shall promptly file with
2 the secretary of state:

3 (A) in the case of a change in its name, a termination, or a merger, a
4 certificate to that effect authenticated by the proper officer of the state or country under the laws
5 of which the foreign cooperative is organized; or

6 (B) in the case of a change in the name or address of the registered agent
7 required to be maintained by section _____, an amendment to the certificate of authority
8 signed by an authorized person.

9 The fee for filing the document is the same as for filing an amendment.

10 (c) Registered Agent and Certain Reports. A foreign cooperative authorized to transact
11 business in this state shall:

12 (1) appoint and continuously maintain a registered agent in the same manner as
13 provided in section _____; or

14 (2) file a report upon any change in the name or business address of its registered
15 agent in the same manner as provided in section _____.

16 (d) Biennial Registration.

17 (1) A foreign cooperative must file a periodic registration with the secretary of
18 state in the same manner as provided in section ____ containing:

19 (A) the name of the foreign cooperative;

20 (B) the alternate name, if any, the foreign cooperative has adopted for use
21 in this state;

22 (C) the address of its registered office;

1 (D) the name of its registered agent, if any;
2 (E) the jurisdiction in which the foreign cooperative is organized; and
3 (F) the name and business address of the manager or other person
4 exercising the principal functions of the chief manager of the foreign cooperative.

5 (2) A foreign cooperative that fails to file a registration under the requirements of
6 this subdivision loses its good standing in this state. The business entity may regain its good
7 standing in this state by filing a registration and paying a \$___ fee.

8 (3) If a foreign cooperative has not filed a registration during a reporting period,
9 the secretary of state shall notify the business entity that its authority to do business in this state
10 will be revoked if the biennial registration is not filed by the due date of the next registration.
11 This notice must be sent to the foreign cooperative at its registered office address of record as
12 part of the registration form. If the foreign cooperative does not file the biennial registration by
13 the due date, the secretary of state shall revoke the authority of the foreign cooperative to do
14 business in this state. The secretary of state shall issue a certificate of revocation, which shall be
15 sent to the foreign cooperative at its registered office address. A copy of the certificate must be
16 filed with the secretary of state.

17 (4) If a foreign cooperative has its authority to do business in this state revoked, it
18 may retroactively reinstate its authority to do business by filing a single biennial registration and
19 paying a \$___ fee but only within one year of the date of termination or revocation.

20 (5) A foreign cooperative filing the biennial registration restores the foreign
21 cooperative's ability to do business in this state and the rights and privileges that accompany that
22 authority.

1 (e) Certificate of Withdrawal.

2 (1) A foreign cooperative authorized to transact business in this state may
3 withdraw from this state upon procuring from the secretary of state a certificate of withdrawal.
4 In order to procure the certificate, the foreign cooperative shall file with the secretary of state an
5 application for withdrawal which must set forth:

6 (A) the name of the foreign cooperative and the state or country under the
7 laws of which it is organized;

8 (B) that the foreign cooperative is not transacting business in this state;

9 (C) that the foreign cooperative surrenders its authority to transact
10 business in this state;

11 (D) that the foreign cooperative revokes the authority of its registered
12 agent in this state to accept service of process and consents to that service of process in any
13 action, suit, or proceeding based upon any cause of action arising in this state during the time the
14 business entity was authorized to transact business in this state. Service may be made on the
15 business entity by service upon the secretary of state; and

16 (E) a post office address to which a person may mail a copy of any process
17 against the business entity.

18 (2) The filing with the secretary of state of a certificate of termination or a
19 certificate of merger if the foreign cooperative is not the surviving organization from the proper
20 officer of the state or country under the laws of which the business entity is organized constitutes
21 a valid application of withdrawal and the authority of the business entity to transact business in
22 this state shall cease upon filing of the certificate.

1 (3) The certificate of authority of a foreign cooperative to transact business in this
2 state may be revoked by the secretary of state upon the occurrence of any of these events:

3 (A) the foreign cooperative has failed to appoint and maintain a registered
4 agent as required by this chapter, file a report upon any change in the name or business address of
5 the registered agent, or file in the office of the secretary of state any amendment to its application
6 for a certificate of authority as specified in section _____; or

7 (B) a misrepresentation has been made of any material matter in any
8 application, report, affidavit, or other document submitted by the foreign cooperative under this
9 chapter.

10 (4) No certificate of authority of a foreign cooperative shall be revoked by the
11 secretary of state unless:

12 (A) the secretary of state has given the foreign cooperative not less than 60
13 days' notice by mail addressed to its registered office in this state or, if the foreign cooperative
14 fails to appoint and maintain a registered agent in this state, addressed to the office address in the
15 jurisdiction of organization; and

16 (B) during the 60-day period, the foreign cooperative has failed to file the
17 report of change regarding the registered agent, to file any amendment, or to correct the
18 misrepresentation.

19 (5) Sixty days after the mailing of the notice, the authority of the foreign
20 cooperative to transact business in this state ceases. The secretary of state shall issue a certificate
21 of revocation and shall mail the certificate to the address of the principal place of business or the
22 office required to be maintained in the jurisdiction of organization of the foreign cooperative.

1 (f) Transaction of Business Without Certificate of Authority.

2 (1) A foreign cooperative transacting business in this state may not maintain any
3 action, suit, or proceeding in any court of this state until it possesses a certificate of authority.

4 (2) The failure of a foreign cooperative to obtain a certificate of authority does not
5 impair the validity of any contract or act of the foreign cooperative or prevent the foreign
6 cooperative from defending any action, suit, or proceeding in any court of this state.

7 (3) A foreign cooperative, by transacting business in this state without a certificate
8 of authority, appoints the secretary of state as its agent upon whom any notice, process, or
9 demand may be served.

10 (4) A foreign cooperative that transacts business in this state without a valid
11 certificate of authority is liable to the state for the years or parts of years during which it
12 transacted business in this state without the certificate in any amount equal to all fees that would
13 have been imposed by this chapter upon that business entity had it duly obtained the certificate,
14 filed all reports required by this chapter, and paid all penalties imposed by this chapter. The
15 attorney general shall bring proceedings to recover all amounts due this state under the provisions
16 of this section.

17 (5) A foreign cooperative that transacts business in this state without a valid
18 certificate of authority is subject to a civil penalty, payable to the state, not to exceed
19 \$_____. Each director or, in the absence of directors, each member or agent who
20 authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign
21 cooperative that does not have a certificate is subject to a civil penalty, payable to the state, not to
22 exceed \$_____.

1 (6) The civil penalties set forth in paragraph (5) may be recovered in an action
2 brought in the district court for _____ county by the attorney general. Upon a finding
3 by the court that a foreign cooperative or any of its members, directors, or agents have transacted
4 business in this state in violation of this chapter, the court shall issue, in addition to the
5 imposition of a civil penalty, an injunction restraining the further transaction of the business of
6 the foreign cooperative and the further exercise of any business entity's rights and privileges in
7 this state. The foreign cooperation must be enjoined from transacting business in this state until
8 all civil penalties plus any interest and court costs that the court may assess have been paid and
9 until the foreign cooperative has otherwise complied with the provisions of this chapter.

10 (7) A member of a foreign cooperative is not liable for the debts and obligations
11 of the foreign cooperative solely by reason of the business entity's having transacted business in
12 this state without a valid certificate of authority.

13 (g) Transactions Not Constituting Transacting Business.

14 (1) The following activities of a foreign cooperative, among others, do not
15 constitute transacting business within the meaning of this section:

- 16 (A) maintaining, defending, or settling any proceeding;
- 17 (B) holding meetings of its members or carrying on any other activities
18 concerning its internal affairs;
- 19 (C) maintaining bank accounts;
- 20 (D) maintaining offices or agencies for the transfer, exchange, and
21 registration of the foreign cooperative's own securities or maintaining trustees or depositories
22 with respect to those securities;

1 (E) selling through independent contractors;

2 (F) soliciting or obtaining orders, whether by mail or through employees or
3 agents or otherwise, if the orders require acceptance outside this state before they become
4 contracts;

5 (G) creating or acquiring indebtedness, mortgages, and security interests in
6 real or personal property;

7 (H) securing or collecting debts or enforcing mortgages, and security
8 interests in property securing the debts;

9 (I) holding, protecting, renting, maintaining, and operating real or personal
10 property in this state;

11 (J) selling or transferring title to property in this state to any person; or

12 (K) conducting an isolated transaction that is completed within 30 days
13 and that is not one in the course of repeated transactions of a like manner.

14 (2) The term "transacting business" as used in this section has no effect on
15 personal jurisdiction under section _____.

16 (3) For purposes of this section, any foreign cooperative that owns
17 income-producing real or tangible personal property in this state, other than property exempted
18 under paragraph (1), is considered to be transacting business in this state.

19 (4) The list of activities in paragraph (1) is not exhaustive. This subdivision does
20 not apply in determining the contracts or activities that may subject a foreign cooperative to
21 service of process or taxation in this state or to regulation under any other law of this state.

22 (h) Action to Restrain Foreign Cooperative. The attorney general may bring an action to

1 restrain a foreign cooperative from transacting business in this state in violation of this chapter,
2 chapter _____, or other laws of this state.

3 (i) Service of Process. Service of process on a foreign cooperative must be as provided
4 under section _____.

5
6 **SECTION 110. ORGANIZATION.**

7 (a) Organizational Purpose. A cooperative may be formed and organized on a
8 cooperative basis for any agricultural or agricultural related lawful purpose, including:

9 (1) to market, process, or otherwise change the form or marketability of products,
10 including crops, livestock, and other agricultural products, the manufacturing and further
11 processing of those products, other purposes that are necessary or convenient to facilitate the
12 production or marketing of products by patron members and others, and other purposes that are
13 related to the business of the cooperative;

14 (2) to provide products, supplies, and services to its members; and

15 (3) for any other purposes that cooperatives are authorized by law.

16 (b) Organizers.

17 (1) Qualification. A cooperative may be organized by one or more organizers
18 who shall be adult natural persons, and who may act for themselves as individuals or as the
19 agents of other entities. The organizers forming the cooperative need not be members of the
20 cooperative.

21 (2) Role of Organizers. If the first board is not named in the articles of
22 organization, the organizers may elect the first board or may act as directors with all of the

1 powers, rights, duties, and liabilities of directors, until directors are elected or until a contribution
2 is accepted, whichever occurs first.

3 (3) Meeting. After the filing of articles of organization, the organizers or the
4 directors named in the articles of organization shall either hold an organizational meeting at the
5 call of a majority of the organizers or of the directors named in the articles, or take written action
6 for the purposes of transacting business and taking actions necessary or appropriate to complete
7 the organization of the cooperative, including, without limitations, amending the articles, electing
8 directors; adopting bylaws, adopting banking resolutions, authorizing or ratifying the purchase,
9 lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials;
10 adopting a fiscal year for the cooperative; contracting to receive and accept contributions; and
11 making any appropriate tax elections. If a meeting is held, the person or persons calling the
12 meeting shall give at least three days' notice of the meeting to each organizer or director named,
13 stating the date, time, and place of the meeting. Organizers and directors may waive notice of an
14 organizational meeting in the same manner that a director may waive notice of meetings of the
15 board.

16 COMMENT

17 The Initial Draft read:
18

19 **SECTION 106. ORGANIZATIONAL PURPOSE.** A cooperative may be formed and
20 organized on a cooperative plan as provided under this article to market, process, or otherwise
21 change the form or marketability of crops, livestock and other agricultural products, including
22 manufacturing and further processing of those products and other purposes that are necessary or
23 convenient to facilitate the production or marketing of agricultural products by patron members
24 and other purposes that are related to the business of the cooperative.
25

26 Comment to Initial Draft 27

1 The source for this provision is Wyoming Rev. Stat. § 17-10-205.

2
3 The Initial Draft read:

4
5 **SECTION 201. ORGANIZERS.** A cooperative may be organized by one (1) or more
6 organizers who shall be adult natural persons, who may act for themselves as individuals or as
7 the agents of other entities. The organizers forming the cooperative need not be members of the
8 cooperative.
9

10 **Comment to Initial Draft**

11
12 The source for this provision is Wyoming Rev. Stat. § 17-10-206.

13
14
15 **SECTION 111. COOPERATIVE NAME AND RESERVATION OF**
16 **CORPORATE NAME.**

17 (a) The name of a cooperative:

18 (1) may not contain the name of any individual and

19 (2) must contain the word “cooperative” or the abbreviation “coop”.

20 (b) The name of a cooperative must be distinguishable upon the records in the office of
21 the secretary of state from the name of any domestic entity or a foreign entity, authorized or
22 registered to do business in this state, or a name the right to which is, at the time of organization,
23 reserved or provided for by law.

24 (c) Reservation. The cooperative name shall be reserved for the cooperative during its
25 existence.

26 (d) Any entity not governed by [this act] or [other law directly governing cooperatives]
27 may use the term “cooperative” or any abbreviation thereof in its name.

28 **COMMENT**

29 Comment to the Second Draft:

1 Subsection (b) and (c) are modifications of the Minnesota Act.

2
3 The initial draft read:

4
5 **SECTION 202. COOPERATIVE NAME.**

6
7 (a) The name of a cooperative shall distinguish the cooperative upon the records
8 in the office of the secretary of state from the name of a domestic business entity or a foreign
9 business entity, authorized or registered to do business in this state or a name the right to which
10 is, at the time of organization, reserved or provided for by law.

11
12 (b) The cooperative name shall be reserved for the cooperative during its
13 existence.

14
15 **Comment to Initial Draft**

16
17 The source for this provision is Wyoming Rev. Stat. § 17-10-207.

18
19 Several States provide for penalties for noncooperative organizations using the term
20 cooperative as part of their names.

21
22
23 **SECTION 112. ARTICLES OF ORGANIZATION.**

24 (a) Requirements.

25 (1) The articles of the cooperative shall include:

26 (A) the name of the cooperative;

27 (B) the purpose of the cooperative;

28 (C) the name and address of each organizer; and

29 (D) the period of duration for the cooperative, if the duration is not to be
30 perpetual.

31 (2) The articles may contain any other lawful provision.

32 (3) The articles shall be signed by the organizers.

33 (b) Filing. The original articles and a designation of the cooperative's registered office

1 and agent, including a registration form under section _____, shall be filed with the
2 secretary of state. The fee for filing the articles with the secretary of state is \$ ____.

3 (c) Effect of Filing. When the articles, the registration form under section _____,
4 and the designation of the cooperative's registered office and agent have been filed with the
5 secretary of state and the required fee has been paid to the secretary of state, it shall be presumed
6 that:

7 (1) all conditions precedent that are required to be performed by the organizers
8 have been complied with; and

9 (2) the organization of the cooperative has been chartered by the state as a
10 separate legal entity.

11 COMMENT

12 The Initial Draft read:

13 SECTION 203. ARTICLES OF ORGANIZATION.

14 (a) The organizers shall prepare the articles, which shall include:

15 (i) The name of the cooperative;

16 (ii) The purpose of the cooperative;

17 (iii) The principal place of business for the cooperative and the name and
18 address of its registered agent in this state;

19 (iv) The period of duration for the cooperative, if the duration is not to be
20 perpetual;

21 (v) The capital structure of the cooperative including a statement of the
22 classes and relative rights, preferences, and restrictions granted to or imposed upon each class of
23 member interests, the rights to share in profits or distributions of the cooperative, and the
24 authority to issue member interests, which may be designated to be determined by the board;

1 (vi) A provision designating the voting and governance rights, including
2 which membership interests have voting power and any limitations or restrictions on the voting
3 power, which shall be in accordance with the provisions of this article;
4

5 (vii) A statement that patron membership interests with voting power shall
6 be restricted to one (1) vote for each member regardless of the amount of patron membership
7 interests held in the affairs of the cooperative or a statement describing the allocation of voting
8 power allocated as prescribed in this article;
9

10 (viii) A statement that membership interests held by a member are
11 transferable only with the approval of the board or as provided in the bylaws;
12

13 (ix) The names, post office addresses, and terms of office of the directors
14 of the first board;
15

16 (x) A statement as to how profits and losses will be allocated and cash will
17 be distributed between patron membership interests collectively and nonpatron membership
18 interests collectively, a statement that net income allocated to a patron membership interests as
19 determined by the board in excess of dividends and additions to reserves shall be distributed on
20 the basis of patronage, and that the records of the cooperative shall include the interests of patron
21 membership interests and nonpatron membership interests which may be further described in the
22 bylaws, of any classes, and in the reserves; and
23

24 (xi) The registered address of the cooperative.
25

26 (b) The articles shall contain the provisions in subsection (a) of this section,
27 except that the names, post office addresses of the directors of the first board may be omitted
28 after their successors have been elected by the members or the articles are amended in their
29 entirety.
30

31 (c) The articles may contain any other lawful provision.
32

33 (d) The articles shall be signed by the organizers.
34

35 (e) The original articles shall be filed with the secretary of state. The fee for filing
36 the articles with the secretary of state shall be subject to the provisions of _____.
37

38 (f) When the articles of organization have been filed with the secretary of state
39 and the required fee has been paid to the secretary of state, it shall be presumed that:
40

41 (i) All conditions precedent that are required to be performed by the
42 organizers have been complied with;
43

1 (ii) The organization of the cooperative has been chartered by the state as a
2 separate legal entity; and

3
4 (iii) The secretary of state shall issue a certificate of organization to the
5 cooperative.

6
7 **Comment to Initial Draft**
8

9 The source for this provision is Wyoming Rev. Stat. § 17-10-208.
10
11

12
13 **SECTION 113. AMENDMENT OF ARTICLES.**

14 (a) Procedure.

15 (1) The articles of a cooperative shall be amended as follows:

16 (A) the board, by majority vote, shall pass a resolution stating the text of
17 the proposed amendment. The text of the proposed amendment and an attached mail or
18 alternative ballot, if the board has provided for a mail or alternative ballot in the resolution or
19 alternative method approved by the board and stated in the resolution, shall be mailed or
20 otherwise distributed with a regular or special meeting notice to each member. The notice shall
21 designate the time and place of the meeting for the proposed amendment to be considered and
22 voted on;

23 (B) if a quorum of the members is registered as being present or
24 represented by alternative vote at the meeting, the proposed amendment is adopted:

25 (i) if approved by a majority of the votes cast; or

26 (ii) for a cooperative with articles or bylaws requiring more than
27 majority approval or other conditions for approval, the amendment is approved by a proportion
28 of the votes cast or a number of total members as required by the articles or bylaws and the

1 conditions for approval in the articles or bylaws have been satisfied.

2 (2) After an amendment has been adopted by the members, the amendment shall
3 be signed by the chair, vice chair, records officer, or assistant records officer and a copy of the
4 amendment filed in the office of the secretary of state.

5 (b) Certificate.

6 (1) A certificate shall be prepared stating:

7 (A) the vote and meeting of the board adopting a resolution of the
8 proposed amendment;

9 (B) the notice given to members of the meeting at which the amendment
10 was adopted;

11 (C) the quorum registered at the meeting; and

12 (D) the vote cast adopting the amendment.

13 (2) The certificate shall be signed by the chair, vice chair, records officer, or
14 financial officer and filed with the records of the cooperative.

15 (c) Amendment by Directors. A majority of directors may amend the articles if the
16 cooperative does not have any members with voting rights.

17 (d) Filing. An amendment of the articles shall be filed with the secretary of state with a
18 registration statement under section _____, and the amendment is effective upon filing or
19 the date specified in the resolution adopting the amendment.

20 **COMMENT**

21 The Initial Draft read:

22 **SECTION 204. AMENDMENT OF ARTICLES.**
23

1 (a) The articles of a cooperative shall be amended as follows:
2

3 (i) The board by majority vote shall pass a resolution stating the text of the
4 proposed amendment. The text of the proposed amendment and an attached mail ballot, if the
5 board has provided for a mail ballot in the resolution or alternative method approved by the
6 board and stated in the resolution, shall be mailed or distributed with a regular or special meeting
7 notice to each member. The notice shall designate the time and place of the meeting for the
8 proposed amendment to be considered and voted on;
9

10 (ii) If a quorum of the members is registered as being present or
11 represented by alternative vote at the meeting, the proposed amendment is adopted:
12

13 (A) If approved by a majority of the votes cast; or
14

15 (B) For a cooperative with articles or bylaws requiring more than
16 majority approval or other conditions for approval, the amendment is approved by a proportion
17 of the votes cast or a number of total members as required by the articles or bylaws and the
18 conditions for approval in the articles or bylaws have been satisfied.
19

20 (b) After an amendment has been adopted by the members, the amendment shall
21 be signed by the chair, vice-chair, records officer, or assistant records officer and a copy of the
22 amendment filed in the office of the secretary of state.
23

24 (c) A certificate shall be prepared stating:
25

26 (i) The vote and meeting of the board adopting a resolution of the
27 proposed amendment;
28

29 (ii) The notice given to members of the meeting at which the amendment
30 was adopted;
31

32 (iii) The quorum registered at the meeting; and
33

34 (iv) The vote cast adopting the amendment.
35

36 (d) The certificate shall be signed by the chair, vice-chair, records officer or
37 financial officer and filed with the records of the cooperative.
38

39 (e) A majority of directors may amend the articles if the cooperative does not have
40 any members with voting rights.
41

42 **Comment to Initial Draft**
43

1 The source for this provision is Wyoming Rev. Stat. § 17-10-209.

2
3
4 **SECTION 114. AMENDMENT OF ORGANIZATIONAL DOCUMENTS TO BE**
5 **GOVERNED BY THIS CHAPTER.**

6 (a) Authority.

7 (1) A cooperative organized under chapter _____ may convert and become
8 subject to this chapter by amending its organizational documents to conform to the requirements
9 of this chapter.

10 (2) A cooperative organized under chapter _____ that becomes subject to this
11 chapter must provide its members with a disclosure statement of the rights and obligations of the
12 members and the capital structure of the cooperative before becoming subject to this chapter. A
13 cooperative organized under chapter _____, upon distribution of the disclosure required in this
14 subdivision and approval of its members as necessary for amending its articles under chapter
15 _____, may amend its articles to comply with this chapter.

16 (3) A cooperative organized under chapter _____ that is converting to be subject
17 to this chapter must prepare a certificate stating:

18 (A) the date on which the entity was first organized;

19 (B) the name of the chapter _____ cooperative and, if the name is
20 changed, the name of the cooperative to be governed under this chapter; and

21 (C) the future effective date and time, which must be a date and time
22 certain, that it will be governed by this chapter, if the effective date and time is not to be the date
23 and time of filing.

1 (4) Upon filing with the secretary of state of the articles for compliance with this
2 chapter and the certificate required under paragraph (), a cooperative organized under chapter
3 _____ is converted and governed by this chapter unless a later date and time is specified in the
4 certificate under paragraph ().

5 (5) In connection with a conversion under which a cooperative becomes governed
6 by this chapter, the rights, securities, or interests in the chapter _____ cooperative may be
7 exchanged or converted into rights, property, securities, or interests in the cooperative as
8 governed by this chapter.

9 (b) Effect of Being Governed by This Chapter. The conversion of a cooperative
10 organized under chapter _____ to a cooperative governed by this chapter does not affect any
11 obligations or liabilities of the cooperative before the conversion or the personal liability of any
12 person incurred before the conversion. When the conversion is effective, the rights, privileges,
13 and powers of the cooperative, real and personal property of the cooperative, debts due to the
14 cooperative, and causes of action belonging to the cooperative, remain vested in the cooperative
15 and are the property of the cooperative as converted and governed by this chapter. Title to real
16 property vested by deed or otherwise in the cooperative organized under chapter _____ does
17 not revert and is not impaired by reason of the cooperative being converted and governed by this
18 chapter. Rights of creditors and liens upon property of the cooperative under chapter _____ are
19 preserved unimpaired, and debts, liabilities, and duties of the cooperative under chapter _____
20 remain attached to the cooperative as converted and governed by this chapter and may be
21 enforced against the cooperative to the same extent as if the debts, liabilities, and duties had
22 originally been incurred or contracted by the cooperative as organized under this chapter. The

1 rights, privileges, powers, and interests in property of the cooperative under chapter _____, as
2 well as the debts, liabilities, and duties of the cooperative are not deemed, as a consequence of
3 the conversion, to have been transferred for any purpose of the laws of this state.

4 **COMMENT**

5 The Initial Draft read:

6 7 **SECTION 205. AMENDMENT OF ORGANIZATIONAL DOCUMENTS TO BE** 8 **GOVERNED BY THIS ARTICLE.**

9
10 (a) A business entity organized and doing business under other statutes of this
11 state or under the laws of other states that has or will conduct business as a cooperative may
12 become subject to this article by amending its organizational documents to conform to the
13 requirements of articles of organization under this article.

14
15 (b) A business entity organized under other statutes of this state may amend its
16 articles in the manner provided under the statute that it is governed by for the adoption of
17 amendments to comply with the provisions of this article and file the amended articles with the
18 secretary of state to be a cooperative governed under this article. The status of the business entity
19 under the other statutes terminates with the filing of articles to be governed under this article.

20
21 (c) A business entity organized under laws of other states shall amend its
22 organizational documents in the manner required by the laws of the state where it was organized
23 to comply with the provisions of this article. After the organizational documents are amended,
24 the business entity shall file a certified copy of the organizational documents as amended with
25 the secretary of state to comply with the provisions of this article with the fees and requirements
26 prescribed for filing articles. After filing, the business entity is a cooperative in this state
27 organized under and subject to the provisions of this article.

28 29 **Comment to Initial Draft**

30
31 The source for this provision is Wyoming Rev. Stat. § 17-10-210.

32
33 The issue about the quantum of the required vote raised in the comment to section 204
34 exists in this section, too. This section 205, together with sections 204 (articles) and 207
35 (bylaws) also raise the issue of the primacy of any organic law including that provided by statute.

36
37 Section 205 also provides an opportunity to discuss the issue of “business entity” and the
38 applicability of this act for “businesses not-for-profit”; “charitable businesses”; and cooperation
39 between governmental entities and businesses (however defined).

1 Finally, subsection (b) and (c) contemplate conversions from one entity type to another.
2 Whether conversions should be allowed is a policy issue. How such conversions should be
3 executed, if allowed, needs to be discussed.
4

5
6 **SECTION 115. CURATIVE FILING.** If the secretary of state determines that a filing
7 has been made in error by the cooperative, the secretary of state may revoke and expunge the
8 erroneous filing and authorize a curative document to be filed. A filing fee of \$____ shall be
9 charged for any such revocation or expungement and subsequent curative filing.
10

11 **SECTION 116. EXISTENCE.**

12 (a) Commencement Upon Filing. The existence of a cooperative shall commence when
13 the articles are filed with the secretary of state.

14 (b) Duration. A cooperative shall have a perpetual duration unless the cooperative
15 provides for a limited period of duration in the articles.

16 **COMMENT**

17 The Initial Draft read:
18

19 **SECTION 206. EXISTENCE.**
20

21 (a) The existence of a cooperative shall begin when the articles are filed with the
22 secretary of state.
23

24 (b) A cooperative shall have a perpetual duration unless the cooperative provides
25 for a limited period of duration in the articles of organization.
26

27 **Comment to Initial Draft**
28

29 The source for this provision is Wyoming Rev. Stat. § 17-10-211.
30
31
32

1 **SECTION 117. BYLAWS.**

2 (a) Required. A cooperative shall have bylaws governing the cooperative's business
3 affairs, structure, the qualifications, classification, rights and obligations of members, and the
4 classifications, allocations, and distributions of membership interests, which are not otherwise
5 provided in the articles or by this chapter.

6 (b) Contents.

7 (1) If not stated in the articles, the bylaws must state:

8 (A) the capital structure of the cooperative to the extent not stated in the
9 articles, including a statement of the classes and relative rights, preferences, and restrictions
10 granted to or imposed upon each class of member interests, the rights to share in profits or
11 distributions of the cooperative, and the authority to issue membership interests, which may be
12 designated to be determined by the board;

13 (B) a provision designating the voting and governance rights, to the extent
14 not stated in the articles, including which membership interests have voting power and any
15 limitations or restrictions on the voting power, which shall be in accordance with the provisions
16 of this chapter;

17 (C) a statement that patron membership interests with voting power shall
18 be restricted to one vote for each member regardless of the amount of patron membership
19 interests held in the affairs of the cooperative or a statement describing the allocation of voting
20 power allocated as prescribed in this chapter;

21 (D) a statement that membership interests held by a member are
22 transferable only with the approval of the board or as provided in the bylaws; and

1 (E) if nonpatron membership interests are authorized, a statement as to
2 how profits and losses will be allocated and cash will be distributed between patron membership
3 interests collectively and nonpatron membership interests collectively to the extent not stated in
4 the articles, a statement that net income allocated to a patron membership interest as determined
5 by the board in excess of dividends and additions to reserves shall be distributed on the basis of
6 patronage, and a statement that the records of the cooperative shall include patron membership
7 interests and, if authorized, nonpatron membership interests, which may be further described in
8 the bylaws of any classes and in the reserves.

9 (2) The bylaws may contain any provision relating to the management or
10 regulation of the affairs of the cooperative that are not inconsistent with law or the articles and,
11 unless provided in the articles, unless provided in the articles, shall include the following:

12 (A) the number of directors and the qualifications, manner of election,
13 powers, duties, and compensation, if any, of directors;

14 (B) the qualifications of members and any limitations on their number;

15 (C) the manner of admission, withdrawal, suspensions, and expulsion of
16 members;

17 (D) generally, the governance rights, financial rights, assignability of
18 governance and financial rights, and other rights, privileges, and obligations of members and
19 their membership interests, which may be further described in member control agreements; and

20 (E) any provisions required by the articles to be in the bylaws.

21 (c) Adoption.

22 (1) Bylaws shall be adopted before any distributions to members, but if the articles

1 or bylaws provide that rights of contributors to a class of membership interest will be determined
2 in the bylaws, then the bylaws must be adopted before the acceptance of any contributions to that
3 class.

4 (2) Subject to subdivisions 4, 5, and 6, the bylaws of a cooperative may be
5 adopted or amended by the directors, or the members may adopt or amend bylaws at a regular or
6 special members' meeting if:

7 (A) the notice of the regular or special meeting contains a statement that
8 the bylaws or restated bylaws will be voted upon and copies are included with the notice, or
9 copies are available upon request from the cooperative and summary statement of the proposed
10 bylaws or amendment is included with the notice;

11 (B) a quorum is registered as being present or represented by mail or
12 alternative voting method if the mail or alternative voting method is authorized by the board;
13 and

14 (C) the bylaws or amendment is approved by a majority vote cast, or for a
15 cooperative with articles or bylaws requiring more than majority approval or other conditions for
16 approval, the bylaws or amendment is approved by a proportion of the vote cast or a number of
17 the total members are required by the articles or bylaws and the conditions for approval in the
18 articles or bylaws have been satisfied.

19 (3) Until the next annual or special members' meeting, the majority of directors
20 may adopt and amend bylaws for the cooperative that are consistent with subdivisions 4 to 6,
21 which may be further amended or repealed by the members at an annual or special members'
22 meeting.

1 (d) Amendment of Bylaws by Board or Members.

2 (1) The board may amend the bylaws at any time to add, change, or delete a
3 provision, unless:

4 (A) this [act], the articles, or the bylaws reserve the power exclusively to
5 the members in whole or in part; or

6 (B) a particular bylaw expressly prohibits the board from doing so.

7 (2) Any amendment of the bylaws by the board must be distributed to the
8 members no later than ten days after adoption and the notice of the annual meeting of the
9 members must contain a notice and summary of the actual amendments to the bylaws adopted by
10 the board.

11 (3) The members may amend the bylaws even though the bylaws may also be
12 amended by the board.

13 (e) Bylaw Changing Quorum or Voting Requirement for Members.

14 (1) The members may amend the bylaws to fix a greater quorum or voting
15 requirement for members, or voting groups of members, than is required under this chapter. An
16 amendment to the bylaws to add, change, or delete a greater quorum or voting requirement for
17 members shall meet the same quorum requirement and be adopted by the same vote and voting
18 groups required to take action under the quorum and voting requirements then in effect or
19 proposed to be adopted, whichever is greater.

20 (2) A bylaw that fixes a greater quorum or voting requirement for members under
21 paragraph (a) may not be adopted and shall not be amended by the board.

22 (f) Bylaw Changing Quorum or Voting Requirement for Directors.

1 (1) A bylaw that fixes a greater quorum or voting requirement for the board may
2 be amended:

3 (A) if adopted by the members, only by the members; or

4 (B) if adopted by the board, either by the members or by the board.

5 (2) A bylaw adopted or amended by the members that fixes a greater quorum or
6 voting requirement for the board may provide that it may be amended only by a specified vote of
7 either the members or the board, but if the bylaw is to be amended by a specified vote of the
8 members, the bylaw must be adopted by the same specified vote of the members.

9 (3) Action by the board under paragraph (a)(2), to adopt or amend a bylaw that
10 changes the quorum or voting requirement for the board shall meet the same quorum requirement
11 and be adopted by the same vote required to take action under the quorum and voting
12 requirement then in effect or proposed to be adopted, whichever is greater.

13 (g) Emergency Bylaws.

14 (1) Unless otherwise provided in the articles or bylaws, the board may adopt
15 bylaws to be effective only in an emergency as defined in paragraph (4). The emergency bylaws,
16 which are subject to amendment or repeal by the members, may include all provisions necessary
17 for managing the cooperative during the emergency, including:

18 (A) procedures for calling a meeting of the board;

19 (B) quorum requirements for the meeting; and

20 (C) designation of additional or substitute directors.

21 (2) All provisions of the regular bylaws consistent with the emergency bylaws
22 shall remain in effect during the emergency. The emergency bylaws shall not be effective after

1 the emergency ends.

2 (3) Action taken in good faith in accordance with the emergency bylaws:

3 (A) binds the cooperative; and

4 (B) may not be the basis for imposition of liability on any director, officer,
5 employee, or agent of the cooperative on the grounds that the action was not authorized
6 cooperative action.

7 (4) An emergency exists for the purposes of this section, if a quorum of the
8 directors cannot readily be obtained because of some catastrophic event.

9 **COMMENT**

10 Comment to the Second Draft:

11
12 _____ There is precedence in emergency powers in the RMBCA. This provision, however, is
13 both amorphous and broad and inclusion needs to be discussed.

14
15 The Initial Draft read:

16
17 **SECTION 207. BYLAWS.**

18
19 (a) A cooperative shall have bylaws governing the cooperative's business affairs,
20 structure, the qualifications, classification, rights and obligations of members, and the
21 classifications, allocations and distributions of membership interests.

22
23 (b) The bylaws of a cooperative may be adopted or amended by the directors as
24 provided in subsection (c) of this section, or at a regular or special members' meeting if:

25
26 (i) The notice of the meeting contains a statement that the bylaws or
27 restated bylaws will be voted upon and copies are included with the notice, or copies are
28 available upon request from the cooperative and summary statement of the proposed bylaws or
29 amendment is included with the notice;

30
31 (ii) A quorum is registered as being present or represented by mail or
32 alternative voting method if the mail or alternative voting method is authorized by the board; and

33
34 (iii) The bylaws or amendment is approved by a majority vote cast, or for a

1 cooperative with articles or bylaws requiring more than majority approval or other conditions for
2 approval, the bylaws or amendment is approved by a proportion of the vote cast or a number of
3 the total members as required by the articles or bylaws and the conditions for approval in the
4 articles or bylaws have been satisfied.

5
6 (c) Until the next annual or special members' meeting, the majority of directors
7 may adopt and amend bylaws for the cooperative that are consistent with subsection (d) of this
8 section which may be further amended or repealed by the members at an annual or special
9 members' meeting.

10
11 (d) Bylaws may contain any provision relating to the management or regulation of
12 the affairs of the cooperative that are not inconsistent with law or the articles, and shall include
13 the following:

14
15 (i) The number of directors, and the qualifications, manner of election,
16 powers, duties, and compensation, if any, of directors;

17
18 (ii) The qualifications of members and any limitations on their number;

19
20 (iii) The manner of admission, withdrawal, suspensions, and expulsion of
21 members;

22
23 (iv) Generally the governance rights, financial rights, assignability of
24 governance and financial rights, and other rights, privileges and obligations of members and their
25 membership interests, which may be further described in member control agreements.

26 27 **Comment to Initial Draft**

28
29 The source for this provision is Wyoming Rev. Stat. § 17-10-212.

30
31 Note that subsection (d)(iv) uses the term “member control agreements.” This section
32 might be compared with the comparative statutory provisions contained in the Comment to
33 Section 203. Note, too, that bylaws are required.

34 35 36 **SECTION 118. COOPERATIVE RECORDS.**

37 (a) A cooperative shall keep as permanent records minutes of all meetings of its members
38 and of the board, a record of all actions taken by the members or the board without a meeting by
39 a written unanimous consent in lieu of a meeting, and a record of all waivers of notices of

1 meetings of the members and of the board.

2 (b) A cooperative shall maintain appropriate accounting records.

3 (c) A cooperative shall maintain its records in record form. (d) A cooperative shall keep a
4 copy of each of the following records at its principal office:

5 (1) its articles and other governing instruments;

6 (2) its bylaws or other similar instruments;

7 (3) a record of the names and addresses of its members, in a form that allows
8 preparation of an alphabetical list of members with each member's address;

9 (4) the minutes of members' meetings, and records of all actions taken by
10 members without a meeting by unanimous written consent in lieu of a meeting, for the past three
11 years;

12 (5) all written communications within the past three years to members as a group
13 or to any class of members as a group;

14 (6) a list of the names and business addresses of its current board members and
15 officers;

16 (7) a copy of its most recent periodic registration delivered to the secretary of state
17 under section _____; and

18 (8) all financial statements prepared for periods ending during the last fiscal year.

19 (e) Except as otherwise limited by this chapter, the board of a cooperative shall have
20 discretion to determine what records are appropriate for the purposes of the cooperative, the
21 length of time records are to be retained, and policies relating to the confidentiality, disclosure,
22 inspection, and copying of the records of the cooperative.

1 **COMMENT**

2 Comment to the Second Draft:

3
4 This section does not anticipate the required filing of member control
5 agreements with the co-op or the use of voting trusts.

6
7 Compare with RMBCA § 16.01(e) which states:

8
9 (e) A corporation shall keep a copy of the following records at its principal
10 office:

11
12 (1) its articles or restated articles of incorporation, all amendments
13 to them currently in effect, and any notices to shareholders
14 referred to in section 1.20(k)(5) regarding the facts on which a
15 filed document is dependent;

16
17 (2) its bylaws or restated bylaws and all amendments to them
18 currently in effect;

19
20 (3) resolutions adopted by its board of directors creating one or
21 more classes or series of shares, and fixing their relative rights,
22 preferences, and limitations, if shares issued pursuant to those
23 resolutions are outstanding;

24
25 _____ (4) the minutes of all shareholders' meetings, and records of all
26 action taken by shareholders without a meeting, for the past
27 three years;

28
29 (5) all written communications to shareholders generally within the
30 past three years, including the financial statements furnished
31 for the past three years under section 16.20;

32
33 (6) a list of the names and business addresses of its current
34 directors and officers; and

35
36 (7) its most recent annual report delivered to the secretary of state
37 under section 16.21.

38
39
40 The Initial Draft read:

41
42 **SECTION 209. COOPERATIVE RECORDS.**

1 (a) A cooperative shall keep as permanent records minutes of all meetings of its members
2 and of the board, a record of all actions taken by the members or the board without a meeting by
3 a written unanimous consent in lieu of a meeting, and a record of all waivers of notices of
4 meetings of the members and of the board.

5
6 (b) A cooperative shall maintain appropriate accounting records.
7

8 (c) A cooperative shall maintain its records in written form or in another form capable of
9 conversion into written form within a reasonable time.
10

11 (d) A cooperative shall keep a copy of each of the following records at its principal office:
12

13 (1) its articles and other governing instruments;
14

15 (2) its bylaws or other similar instruments;
16

17 (3) a record of the names and addresses of its members, in a form that allows
18 preparation of an alphabetical list of members with each member's address;
19

20 (4) the minutes of members' meetings, and records of all actions taken by members
21 without a meeting by unanimous written consent in lieu of a meeting, for the past three years;
22

23 (5) all written communications within the past three years to members as a group or to
24 any class of members as a group;
25

26 (6) a list of the names and business addresses of its current board members and
27 officers;
28

29 (7) a copy of its most recent periodic registration delivered to the secretary of state
30 under section _____; and
31

32 (8) all financial statements prepared for periods ending during the last fiscal year.
33

34 (e) Except as otherwise limited by this chapter, the board of a cooperative shall have
35 discretion to determine what records are appropriate for the purposes of the cooperative, the
36 length of time records are to be retained, and policies relating to the confidentiality, disclosure,
37 inspection, and copying of the records of the cooperative.
38

39 **Comment to Initial Draft**

40
41 The source for this provision is Minnesota § 308B.245.
42

43 The scope of records is covered in uniform unincorporated acts under the label "required

records.” This section is important for determining the informational rights of various players and, thus, is related integrally to other duties and rights.

SECTION 119. POWERS.

(a) Generally.

(1) In addition to other powers, a cooperative as an agent or otherwise:

(A) may perform every act necessary or proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative;

(B) has other rights, powers, or privileges granted by the laws of this state to other cooperatives, except those that are inconsistent with the express provisions of this chapter; and

(C) has the powers given in section 308A.201 and in this section.

(2) This section does not give a cooperative the power or authority to exercise the powers of a credit union under chapter __, a bank under chapter __, or a savings association under chapter ____.

(b) Dealing in Products. A cooperative may buy, sell, or deal in its own products; the products of its individual members, patrons, or nonmembers; the products of another cooperative association or of its members or patrons; or the products of another person or entity. A cooperative may negotiate the price at which its products may be sold.

(c) Contracts with Members. A cooperative may enter into or become a party to a contract or agreement for the cooperative or for the cooperative's individual members or patrons or between the cooperative and its members.

(d) Holding and Transactions of Real and Personal Property.

1 (1) A cooperative may purchase and hold, lease, mortgage, encumber, sell,
2 exchange, and convey as a legal entity real, personal, and intellectual property, including real
3 estate, buildings, personal property, patents, and copyrights as the business of the cooperative
4 may require, including the sale or other disposition of assets required by the business of the
5 cooperative as determined by the board.

6 (2) A cooperative may take, receive, and hold real and personal property,
7 including the principal and interest of money or other funds and rights in a contract, in trust for
8 any purpose not inconsistent with the purposes of the cooperative in its articles or bylaws and
9 may exercise fiduciary powers in relation to taking, receiving, and holding the real and personal
10 property.

11 (e) Buildings. A cooperative may erect buildings or other structures or facilities on the
12 cooperative's owned or leased property or on a right-of-way legally acquired by the cooperative.

13 (f) Debt Instruments. A cooperative may issue bonds, debentures, or other evidence of
14 indebtedness and may borrow money, may secure any of its obligations by mortgage of or
15 creation of a security interest in or other encumbrances or assignment of all or any of its property,
16 franchises, or income, and may issue guarantees for any legal purpose. The cooperative may
17 form special purpose business entities to secure assets of the cooperative.

18 (g) Advances to Patrons. A cooperative may make advances to its members or patrons
19 on products delivered by the members or patrons to the cooperative.

20 (h) Deposits. A cooperative may accept donations or deposits of money or real personal
21 property from other cooperatives or associations from which it is constituted.

22 (i) Lending, Borrowing, Investing. A cooperative may loan or borrow money to or from

1 individual members, cooperatives, or associations from which it is constituted with security that
2 it considers sufficient. A cooperative may invest and reinvest its funds.

3 (j) Pensions and Benefits. A cooperative may pay pensions, retirement allowances, and
4 compensation for past services to and for the benefit of; and establish, maintain, continue, and
5 carry out, wholly or partially at the expense of the cooperative, employee or incentive benefit
6 plans, trust, and provisions to or for the benefit of any or all of its and its related organizations'
7 officers, managers, directors, governors, employees, and agents; and in the case of a related
8 organization that is a cooperative, members who provide services to the cooperative, and any of
9 their families, dependents, and beneficiaries. It may indemnify and purchase and maintain
10 insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans,
11 trusts, and provisions.

12 (k) Insurance. A cooperative may provide for its benefit life insurance and other
13 insurance with respect to the services of any or all of its members, managers, directors,
14 employees, and agents, or on the life of a member for the purpose of acquiring at the death of the
15 member any or all membership interests in the cooperative owned by the member.

16 (l) Ownership Interests in Other Entities.

17 (A) A cooperative may purchase, acquire, hold, or dispose of the ownership
18 interests of another business entity or organize business entities whether organized under the
19 laws of this state or another state or the United States and assume all rights, interests, privileges,
20 responsibilities, and obligations arising out of the ownership interests, including a business entity
21 organized:

22 (i) as a federation of associations;

(ii) for the purpose of forming a district, state, or national marketing sales or service agency; or

(iii) for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states.

(B) A cooperative may purchase, own, and hold ownership interests, including stock and other equity interests, memberships, interests in nonstock capital, and evidences of indebtedness of any domestic business entity or foreign business entity.

(m) Fiduciary Powers. A cooperative may exercise any and all fiduciary powers in relations with members, cooperatives, associations, or business entities from which it is constituted.

COMMENT

Comment to the Second Draft:

The powers referred to in (m) need yet to be discussed. Compare the very different model as set forth in section 105 of ULPA (2001):

A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

The Initial Draft read:

SECTION 208. POWERS.

(a) In addition to other powers, a cooperative as an agent or otherwise:

(i) May perform every act and thing necessary or proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative;

(ii) Has other rights, powers, or privileges granted by the laws of this state to other cooperatives, except those that are inconsistent with the express provisions of this

1 article; and

2
3 (iii) Has the powers given in this section.
4

5 (b) A cooperative may buy, sell, or deal in its own products, the products of the
6 cooperative's individual members, patrons or nonmembers, the products of another cooperative
7 association, or of its members or patrons, or the products of another person or entity. A
8 cooperative may negotiate the price at which the products the cooperative is selling may be sold.
9

10 (c) A cooperative may enter into or become a party to a contract or agreement for
11 the cooperative or for the cooperative's individual members or patrons or between the
12 cooperative and its members.
13

14 (d) A cooperative may purchase and hold, lease, mortgage, encumber, sell,
15 exchange and convey as a legal entity real estate, buildings and personal property as the business
16 of the cooperative may require including the sale or other disposition of assets required by the
17 business of the cooperative as determined by the board.
18

19 (e) A cooperative may erect buildings or other structures or facilities on the
20 cooperative's owned or leased property or on a right-of-way legally acquired by the cooperative.
21

22 (f) A cooperative may issue bonds or other evidence of indebtedness and may
23 borrow money to finance the business of the cooperative.
24

25 (g) A cooperative may make advances to the cooperative's members or patrons on
26 products delivered by the members or patrons to the cooperative.
27

28 (h) A cooperative may accept deposits of money from other cooperatives,
29 associations or members from which it is constituted.
30

31 (j) A cooperative may loan or borrow money to or from individual members,
32 cooperatives or associations from which it is constituted with security that it considers sufficient
33 in dealing with the members, cooperatives, or associations.
34

35 (k) A cooperative may purchase, acquire, hold, or dispose of the ownership
36 interests of another business entity whether organized under the laws of this state or another state
37 and assume all rights, interests, privileges, responsibilities and obligations arising out of the
38 ownership interests.
39

40 (m) A cooperative may acquire and hold ownership interests in another business
41 entity organized under the laws of this state or another state of the United States, including a
42 business entity organized:
43

- 1 (i) As a federation of associations;
2
3 (ii) For the purpose of forming a district, state, or national marketing, sales
4 or service agency; or
5
6 (iii) For the purpose of acquiring marketing facilities at terminal or other
7 markets in this state or other states.
8
9 (n) A cooperative may purchase, own, and hold ownership interests,
10 memberships, interests in nonstock capital, evidences of indebtedness of any domestic business
11 entity or foreign business entity when reasonably necessary or incidental to accomplish the
12 purposes stated in the articles.
13
14 (o) A cooperative may exercise any and all fiduciary powers in relations with
15 members, cooperatives, associations or business entities from which it is constituted.
16
17 (p) A cooperative may take, receive, and hold real and personal property,
18 including the principal and interest of money or other funds and rights in a contract, in trust for
19 any purpose not inconsistent with the purposes of the cooperative in its articles and may exercise
20 fiduciary powers in relation to taking, receiving, and holding the real and personal property.
21

22 **Comment to Initial Draft**

23
24 The source for this provision is Wyoming Rev. Stat. § 17-10-213. (MISSING
25 SUBSECTIONS (i) AND (l))
26
27

28 **SECTION 120. EMERGENCY POWERS.**

- 29 (a) In anticipation of or during an emergency defined in paragraph (d), the board may:
30 (1) modify lines of succession to accommodate the incapacity of any director,
31 officer, employee, or agent; and
32 (2) relocate the principal office, designate alternative principal offices or regional
33 offices, or authorize the officers to do so.
34 (b) During an emergency as contemplated in paragraph (d), unless emergency bylaws
35 provide otherwise:

(1) notice of a meeting of the board need be given only to those directors to whom it is practicable to reach and may be given in any practicable manner, including by publication or radio; and

(2) one or more officers of the cooperative present at a meeting of the board may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Cooperative action taken in good faith during an emergency under this section to further the ordinary business affairs of the cooperative:

(1) binds the cooperative; and

(2) may not be the basis for the imposition of liability on any director, officer, employee, or agent of the cooperative on the grounds that the action was not an authorized cooperative action.

(d) An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of a catastrophic event.

COMMENT

Comment to the Second Draft:

This section needs to be analyzed for consistency with subsection 116(a).

SECTION 121. AGRICULTURAL PRODUCT MARKETING CONTRACTS.

(a) Authority. A cooperative and its patron member or patron may make and execute a marketing contract, 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 certain

1 area exclusively to or through the cooperative or facility established by the cooperative.

2 (b) Title to Products. If a sale is contracted to the cooperative, the sale shall transfer title
3 to the product absolutely, except for a recorded lien or security interest against the agricultural
4 products of the patron member or patron in the state central notification system and liens granted
5 against farm products under federal law, to the cooperative on delivery of the product or at
6 another specified time if expressly provided in the contract. The contract may allow the
7 cooperative to sell or resell the product of its patron member or patron with or without taking
8 title to the product, and pay the resale price to the patron member or patron, after deducting all
9 necessary selling, overhead, and other costs and expenses, including other proper reserves and
10 interest.

11 (c) Term of Contract. A single term of a marketing contract shall not exceed ten years,
12 but a marketing contract may be made self-renewing for periods not exceeding five years each,
13 subject to the right of either party to terminate by giving written notice of the termination during
14 a period of the current term as specified in the contract.

15 (d) Damages for Breach of Contract. The bylaws or the marketing contract, or both, may
16 set a specific sum as liquidated damages to be paid by the patron member or patron to the
17 cooperative for breach of any provision of the marketing contract regarding the sale or delivery or
18 withholding of a product and may provide that the member or patron shall pay the costs,
19 premiums for bonds, expenses, and fees if an action is brought on the contract by the cooperative.
20 The remedies for breach of contract are valid and enforceable in the courts of this state. The
21 provisions shall be enforced as liquidated damages and are not considered a penalty.

22 (e) Injunction Against Breach of Contract. If there is a breach or threatened breach of a

1 marketing contract by a patron member or patron, the cooperative is entitled to an injunction to
2 prevent the further breach of the contract and to a decree of specific performance of the contract.
3 Pending the adjudication of the action after filing a complaint showing the breach or threatened
4 breach and filing a sufficient bond, the cooperative is entitled to a temporary restraining order
5 and preliminary injunction against the patron member or patron.

6 (f) Penalties for Contract Interference and False Reports. Any person who knowingly
7 induces or attempts to induce any member or patron of a cooperative organized under this
8 chapter to breach a marketing contract with the cooperative, or who maliciously and knowingly
9 spreads false reports about the cooperative's finances or management, is guilty of a misdemeanor
10 and subject to a fine of not less than \$____, and not more than \$_____, for each such offense.

11 (g) Civil Damages for Contract Interference and False Reports. In addition to the penalty
12 provided in subdivision (f), the person may be liable to the cooperative for civil damages for any
13 violation of subdivision (f). Each violation shall constitute a separate offense.

14 **COMMENT**

15 Comment to the Second Draft:

16 Subsections (d), (f) and (g) are unique to cooperative law.

17 The initial draft read:

20 **SECTION 301. AGRICULTURAL PRODUCT MARKETING CONTRACTS.**

21 (a) A cooperative and its patron member or patron may make and execute a
22 marketing contract, requiring the patron member or patron to sell a specified portion of his
23 agricultural product or specified commodity produced from a certain area exclusively to or
24 through the cooperative or facility established by the cooperative.
25

26 (b) If a sale is contracted to the cooperative, the sale shall transfer title to the
27 product absolutely, except for a recorded lien or security interest, to the cooperative on delivery
28
29

1 of the product or at another specified time if expressly provided in the contract. The contract may
2 allow the cooperative to sell or resell the product of its patron member or patron with or without
3 taking title to the product, and pay the resale price to the patron member or patron, after
4 deducting all necessary selling, overhead and other costs and expenses, including other proper
5 reserves and interest.
6

7 (c) A single term of a marketing contract shall not exceed ten (10) years, but a
8 marketing contract may be made self-renewing for periods not exceeding five (5) years each,
9 subject to the right of either party to terminate by giving written notice of the termination during
10 a period of the current term as specified in the contract.
11

12 (d) The bylaws or the marketing contract, or both, may set a specific sum as
13 liquidated damages to be paid by the patron member or patron to the cooperative for breach of
14 any provision of the marketing contract regarding the sale or delivery or withholding of a product
15 and may provide that the member or patron shall pay the costs, premiums for bonds, expenses
16 and fees if an action is brought on the contract by the cooperative. The remedies for breach of
17 contract are valid and enforceable in the courts of this state. The provisions shall be enforced as
18 liquidated damages and are not to be considered or regarded as a penalty.
19

20 (e) If there is a breach or threatened breach of a marketing contract by a patron
21 member or patron, the cooperative is entitled to an injunction to prevent the further breach of the
22 contract and to a decree of specific performance of the contract. Pending the adjudication of the
23 action after filing a certified complaint showing the breach or threatened breach and filing a
24 sufficient bond, the cooperative is entitled to a temporary restraining order and preliminary
25 injunction against the patron member or patron.
26

27 (f) Any person who knowingly induces or attempts to induce any member or
28 patrons of a cooperative organized under this article to breach his marketing contract with the
29 cooperative, or who maliciously and knowingly spreads false reports about the finances or
30 management thereof, shall be guilty of a misdemeanor and subject to a fine of not less than one
31 hundred dollars (\$100.00), and not more than one thousand dollars (\$1,000.00), for each such
32 offense; provided, that this section shall not apply to a bona fide creditor of such cooperative, or
33 the agent or attorney of any such bona fide creditor, endeavoring to make collections of the
34 indebtedness.
35

36 (g) In addition to the penalty provided in subsection (f) of this section, the person,
37 corporation or other entity may be liable to the cooperative for civil damages for any violation of
38 the provisions of subsection (f) of this section. Each violation shall constitute a separate offense
39 and is subject to the penalties in this subsection and subsection (f) of this section.
40

41 **Comment to Initial Draft**

42

43 The source for this provision is Wyoming Rev. Stat. § 17-10-214.

1
2 **SECTION 122. DIRECTORS AND OFFICERS.**

3 (a) Board Governs Cooperative. A cooperative shall be governed by its board, which
4 shall take all action for and on behalf of the cooperative, except those actions reserved or granted
5 to members. Board action shall be by the affirmative vote of a majority of the directors voting at
6 a duly called meeting unless a greater majority is required by the articles or bylaws. A director
7 individually or collectively with other directors does not have authority to act for or on behalf of
8 the cooperative unless authorized by the board. A director may advocate interests of members or
9 member groups to the board, but the fiduciary duty of each director is to represent the best
10 interests of the cooperative and all members collectively.

11 (b) Number of Directors. The board shall not have less than five directors, except that a
12 cooperative with 50 or fewer members may have three or more directors as prescribed in the
13 articles or bylaws.

14 (c) Election of Directors.

15 (1) First Board. The organizers shall elect and obtain the acknowledgment of the
16 first board to serve until directors are elected by members. Until election by members, the first
17 board shall appoint directors to fill any vacancies.

18 (2) Generally.

19 (A) Directors shall be elected for the term, at the time, and in the manner
20 provided in this section and the bylaws.

21 (B) A majority of the directors shall be members and a majority of the
22 directors shall be elected exclusively by the members holding patron membership interests unless

1 otherwise provided in the articles or bylaws.

2 (C) The voting authority of the directors may be allocated according to
3 allocation units or equity classifications of the cooperative provided that at least one-half of the
4 voting power on general matters of the cooperative shall be allocated to the directors elected by
5 members holding patron membership interests, or in the alternative, the directors elected by the
6 members holding patron membership interests shall have an equal or shall not have a minority
7 voting power on general matters of the cooperative.

8 (D) A director holds office for the term the director was elected and until a
9 successor is elected and has qualified, or until the earlier death, resignation, removal, or
10 disqualification of the director.

11 (E) The expiration of a director's term with or without election of a
12 qualified successor does not make the prior or subsequent acts of the director or the board void or
13 voidable.

14 (F) Subject to any limitation in the articles or bylaws, the board may set
15 the compensation of directors.

16 (G) Directors may be divided into or designated and elected by class or
17 other distinction as provided in the articles or bylaws.

18 (H) A director may resign by giving written notice to the chair of the board
19 or the board. The resignation is effective without acceptance when the notice is given to the
20 chair of the board or the board unless a later effective time is specified in the notice.

21 (3) Election at Regular Meeting. Directors shall be elected at the regular
22 members' meeting for the terms of office prescribed in the bylaws. Except for directors elected at

1 district meetings or special meetings to replace a vacancy, all directors shall be elected at the
2 regular members' meeting. There shall be no cumulative voting for directors except as provided
3 in this chapter and the articles or bylaws.

4 (4) District or Local Unit Election of Directors. For a cooperative with districts
5 or other units, members may elect directors on a district or unit basis if provided in the bylaws.
6 The directors may be nominated or elected at district meetings if provided in the bylaws.
7 Directors who are nominated at district meetings shall be elected at the annual regular members'
8 meeting by vote of the entire membership, unless the bylaws provide that directors who are
9 nominated at district meetings are to be elected by vote of the members of the district, at the
10 district meeting, or the annual regular members' meeting.

11 (5) Vote by Mail or Alternative Ballot. The following shall apply to voting by
12 mail or alternative ballot voting:

13 (A) a member may not vote for a director other than by being present at a
14 meeting or by mail ballot or alternative ballot authorized by the board;

15 (B) the ballot shall be in a form prescribed by the board;

16 (C) the member shall mark the ballot for the candidate chosen and mail the
17 ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's
18 name, or shall vote designating the candidate chosen by alternative ballot in the manner
19 prescribed by the board; and

20 (D) if the ballot of the member is received by the cooperative on or before
21 the date of the regular members' meeting or as otherwise prescribed for alternative ballots, the
22 ballot shall be accepted and counted as the vote of the absent member.

1 (6) Business Entity Members May Nominate Persons for Director. If a member
2 of a cooperative is not a natural person, and the bylaws do not provide otherwise, the member
3 may appoint or elect one or more natural persons to be eligible for election as a director.

4 (7) Term. A director holds office for the term the director was elected and until a
5 successor is elected and has qualified, or the earlier death, resignation, removal, or
6 disqualification of the director.

7 (8) Acts Not Void or Voidable. The expiration of a director's term with or
8 without the election of a qualified successor does not make prior or subsequent acts of the
9 director void or voidable.

10 (9) Compensation. Subject to any limitation in the articles or bylaws, the board
11 may fix the compensation of the directors.

12 (10) Classification. Directors may be divided into classes as provided in the
13 articles or bylaws.

14 **COMMENT**

15 Comment to the Second Draft:

16
17 At the first meeting there was spirited discussion concerning (c)(2)(C).
18 Strong sentiment existed that “one-half” be modified to a minimum of 51 percent or,
19 alternatively set at a higher percentage as a matter of default with provision to allow the by-laws
20 or articles to leave it to 51 percent.

21 22 The initial draft read:

23
24 **SECTION 401. BOARD GOVERNS COOPERATIVE.** A cooperative shall be
25 governed by its board.

26 27 **Comment to Initial Draft**

28
29 The source for this provision is Wyoming Rev. Stat. § 17-10-215.

1 The initial draft read:
2

3 **SECTION 402. NUMBER OF DIRECTORS.** The board shall have not less than three
4 (3) directors.
5

6 The initial draft read:
7

8 **SECTION 403. ELECTION OF DIRECTORS.**
9

10 (a) Directors shall be elected for the term, at the time, and in the manner provided
11 in this section and the bylaws. A majority of the directors shall be members and at least one (1)
12 director shall be elected exclusively by the members holding patron membership interests. The
13 voting authority of the directors may be allocated according to allocation units or equity
14 classifications of the cooperative provided that at least one-half (1/2) of the voting power on
15 general matters of the cooperative shall be allocated to one (1) or more directors elected by
16 members holding patron membership interests or in the alternative the one (1) or more directors
17 elected by the members holding patron membership interests shall have an equal or shall not
18 have a minority voting power on general matters of the cooperative.
19

20 (b) Directors shall be elected at the regular members' meeting for the terms of
21 office prescribed in the bylaws. Except for directors elected at district meetings, all directors shall
22 be elected at the regular members' meeting.
23

24 (c) For a cooperative with districts or other units, members may elect directors on
25 a district or unit basis if provided in the bylaws. The directors may be nominated or elected at
26 district meetings if provided in the bylaws. Directors who are nominated at district meetings shall
27 be elected at the annual regular members' meeting by vote of the entire membership, unless the
28 bylaws provide that directors who are nominated at district meetings are to be elected by vote of
29 the members of the district at the annual regular members' meeting.
30

31 (d) The following shall apply to alternative voting:
32

33 (i) A member may not vote other than by their presence at a meeting for a
34 director unless alternative voting is authorized for election of directors by the articles or bylaws;
35

36 (ii) The ballot shall be in a form prescribed by the board;
37

38 (iii) The member shall mark the ballot for the candidate chosen and mail
39 the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the
40 member's name, or shall vote in the alternative manner prescribed by the board;
41

42 (iv) If the ballot of the member is received by the cooperative on or before
43 the date of the regular members' meeting, the ballot shall be accepted and counted as the vote of

1 the absent member.

2
3 (e) If a member of a cooperative is not a natural person, and the bylaws do not
4 provide otherwise, the member may appoint or elect one (1) or more natural persons to be
5 eligible for election as a director to the board.

6
7 **Comment to Initial Draft**
8

9 The source for this provision is Wyoming Rev. Stat. § 17-10-217.

10
11 Comment to the Second Draft:
12

13 This section like others in this draft, is taken from the Minnesota Act. It is unique from
14 other law in its detail. It must be interpreted together with sections 128 through 130. The
15 RMBCA provision that is comparative to 121 and 128 through 130 is RMBCA § 8.30 which
16 states:
17

- 18 (a) Each member of the board of directors, when discharging the duties of the
19 director, shall act (1) in good faith, and (2) in a manner the director
20 reasonably believes to be in the best interests of the corporation.
21
22 (b) The members of the board of directors or a committee of the board, when
23 becoming informed in connection with their decision-making function or
24 devoting attention to their oversight function, shall discharge their duties
25 with the care that a person in a like position would reasonably believe
26 appropriate under similar circumstances.
27
28 (c) In discharging board or committee duties a director, who does not have
29 knowledge that makes reliance unwarranted, is entitled to rely on the
30 performance by any of the person specified in subsection (e)(1) or
31 subsection (e)(3) to whom the board may have delegated, formally or
32 informally by course of conduct, the authority or duty to perform one or
33 more of the board's functions that are delegable under applicable law.
34
35 (d) In discharging board or committee duties a director, who does not have
36 knowledge that makes reliance unwarranted, is entitled to rely on
37 information, opinions, reports or statements, including financial statements
38 and other financial data, prepared or presented by any of the persons
39 specified in subsection (e).
40
41 (e) A director is entitled to rely, in accordance with subsection (c) or (d), on:
42
43 (1) one or more officers or employees of the corporation whom the

1 director reasonably believes to be reliable and competent in the
2 functions performed or the information, opinions, reports, or
3 statements provided;
4

5 (2) legal counsel, public accountants, or other persons retained by
6 the corporation as to matters involving skills or expertise the
7 director reasonably believes are matters (i) within the particular
8 person's professional or expert competence or (ii) as to which
9 the particular person merits confidence; or
10

11 (3) a committee of the board of directors of which the director is
12 not a member if the director reasonably believes the committee
13 merits confidence.
14

15
16 **SECTION 123. FILLING VACANCIES.**

17 (a) Patron Directors. If a patron member director's position becomes vacant or a new
18 director position is created for a director that was or is to be elected by patron members, the
19 board, in consultation with the directors elected by patron members, shall appoint a patron
20 member of the cooperative to fill the director's position until the next regular or special members'
21 meeting. If there are no directors elected by patron members on the board at the time of the
22 vacancy, a special patron members' meeting shall be called to fill the patron member director
23 vacancy.

24 (b) Nonpatron Directors. If the vacating director was not elected by the patron members
25 or a new director position is created, unless otherwise provided in the articles or bylaws, the
26 board shall appoint a director to fill the vacant position by majority vote of the remaining or then
27 serving directors even though less than a quorum. At the next regular or special members'
28 meeting, the members or patron members shall elect a director to fill the unexpired term of the
29 vacant director's position.

1 **COMMENT**

2 The initial draft read:

3
4 **SECTION 404. FILLING VACANCIES.** If a patron member director's position
5 becomes vacant for a director that was elected by patron members, the board shall appoint a
6 patron member of the cooperative to fill the director's position until the next regular or special
7 members' meeting. If the vacating director was not a patron member, the board shall appoint a
8 patron member to fill the vacant position. At the next regular or special members' meeting, the
9 members or patron members shall elect a director to fill the unexpired term of the vacant
10 director's position.

11
12 **Comment to Initial Draft**

13
14 The source for this provision is Wyoming Rev. Stat. § 17-10-218.

15
16
17 **SECTION 124. REMOVAL OF DIRECTORS.**

18 (a) Modification. The provisions of this section apply unless modified by the articles or
19 the bylaws.

20 (b) Removal of Directors. A director may be removed at any time, with or without
21 cause, if:

22 (1) the director was named by the board to fill a vacancy;

23 (2) the members have not elected directors in the interval between the time of the
24 appointment to fill a vacancy and the time of the removal; and

25 (3) a majority of the remaining directors present affirmatively vote to remove the
26 director.

27 (c) Removal by Members. Any one or all of the directors may be removed at any time,
28 with or without cause, by the affirmative vote of the holders of a majority of the voting power of
29 membership interests entitled to vote at an election of directors; provided that if a director has

been elected solely by the patron members or the holders of a class or series of membership interests as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of the patron members for a director elected by the patron members or of all membership interests of that class or series entitled to vote at an election of that director.

(d) Election of Replacements. New directors may be elected at a meeting at which directors are removed.

COMMENT

Comment to the Second Draft:

The removal of directors for cause or without cause was discussed at the initial meeting of the drafting committee. No firm consensus was reached and this matter needs to be revisited. In addition it seems that a gap may exist for director removal for cause by other directors.

The initial draft read:

SECTION 405. REMOVAL OF DIRECTORS. The members electing a director may remove the director at a members' meeting for cause related to the duties of the position of director and fill the vacancy caused by the removal.

Comment to Initial Draft

The source for this provision is Wyoming Rev. Stat. § 17-10-219.

The Wyoming Act provides for removal for cause only. The Minnesota Act allows removal without cause. The closest comparative provision in limited liability company law is the removal of a manager; in limited partnership law it is the removal of a general partner although in those entities the individual managers and general partners also have agency authority.

SECTION 125. BOARD OF DIRECTORS' MEETINGS.

(a) Time and Place. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any

1 means described in (b). If the board fails to select a place for a meeting, the meeting must be
2 held at the principal executive office, unless the articles or bylaws provide otherwise.

3 (b) Electronic Communications.

4 (1) A conference among directors by any means of communication through which
5 the directors may simultaneously hear each other during the conference constitutes a board
6 meeting, if the same notice is given of the conference as would be required by subdivision 3 for a
7 meeting, and if the number of directors participating in the conference would be sufficient to
8 constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence
9 in person at the meeting.

10 (2) A director may participate in a board meeting not described in paragraph(1) by
11 any means of communication through which the director, other directors so participating, and all
12 directors physically present at the meeting may simultaneously hear each other during the
13 meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

14 (c) Calling Meetings and Notice. Unless the articles or bylaws provide for a different
15 time period, a director may call a board meeting by giving at least ten days' notice or, in the case
16 of organizational meetings, at least three days' notice to all directors of the date, time, and place
17 of the meeting. The notice need not state the purpose of the meeting unless this chapter, the
18 articles, or the bylaws require it.

19 (d) Previously Scheduled Meetings. If the day or date, time, and place of a board
20 meeting have been provided in the articles or bylaws, or announced at a previous meeting of the
21 board, no notice is required. Notice of an adjourned meeting need not be given other than by
22 announcement at the meeting at which adjournment is taken.

1 (e) Waiver of Notice. A director may waive notice of a meeting of the board. A waiver
2 of notice by a director entitled to notice is effective whether given before, at, or after the meeting,
3 and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a
4 waiver of notice of that meeting, except where the director objects at the beginning of the
5 meeting to the transaction of business because the meeting is not lawfully called or convened and
6 does not participate in the meeting after the objection.

7 (f) Absent Directors. If the articles or bylaws so provide, a director may give advance
8 written consent or opposition to a proposal to be acted on at a board meeting. If the director is
9 not present at the meeting, consent or opposition to a proposal does not constitute presence for
10 purposes of determining the existence of a quorum, but consent or opposition must be counted as
11 the vote of a director present at the meeting in favor of or against the proposal and must be
12 entered in the minutes or other record of action at the meeting, if the proposal acted on at the
13 meeting is substantially the same or has substantially the same effect as the proposal to which the
14 director has consented or objected.

15 COMMENT

16 Comment to the Second Draft:

17
18 Section 124(f) is inconsistent with the theory of the Board of Directors and the use of
19 board proxies in the context of business corporations.
20

21
22 **SECTION 126. QUORUM.** A majority, or a larger or smaller portion or number
23 provided in the articles or bylaws, of the directors currently holding office is a quorum for the
24 transaction of business. In the absence of a quorum, a majority of the directors present may
25 adjourn a meeting from time to time until a quorum is present. If a quorum is present when a

1 duly called or held meeting is convened, the directors present may continue to transact business
2 until adjournment, even though the withdrawal of a number of directors originally present leaves
3 less than the proportion of number otherwise required for a quorum.

4 **COMMENT**

5 Comment to the Second Draft:

6
7 The RMBCA is more flexible. In § 8.24(b) it states:

8
9 The articles of incorporation or bylaws may authorize a quorum of a board of directors to
10 consist of no fewer than one-third of the fixed or prescribed number of directors determined
11 under subsection (a).
12

13 **SECTION 127. ACT OF BOARD OF DIRECTORS.** The board shall take action by
14 the affirmative vote of the greater of (1) a majority of directors present at a duly held meeting at
15 the time the action is taken, or (2) a majority of the minimum proportion or number of directors
16 that would constitute a quorum for the transaction of business at the meeting, except where this
17 chapter, the articles, or bylaws require the affirmative vote of a larger proportion or number. If
18 the articles or bylaws require a larger proportion or number than is required by this chapter for a
19 particular action, the articles or bylaws control.
20

21 **SECTION 128. ACTION WITHOUT A MEETING.**

22 (a) Method. An action required or permitted to be taken at a board meeting may be taken
23 by written action signed by all of the directors. If the articles or bylaws so provide, any action,
24 other than an action requiring member approval, may be taken by written action signed by the
25 number of directors that would be required to take the same action at a meeting of the board at
26 which all directors were present.

1 (b) Effective Time. The written action is effective when signed by the required number
2 of directors, unless a different effective time is provided in the written action.

3 (c) Notice and Liability. When written action is permitted to be taken by less than all
4 directors, all directors must be notified immediately of its text and effective date. Failure to
5 provide the notice does not invalidate the written action. A director who does not sign or consent
6 to the written action has no liability for the action or actions taken by the written action.

7 **COMMENT**

8 Comment to the Second Draft:
9

10 RMBCA § 8.21 does not allow the flexibility in subsection 127(a). Such flexibility is
11 also inconsistent with the general default notions of
12 unincorporated entity law.
13
14

15 **SECTION 129. AUDIT COMMITTEE.** The board shall establish an audit committee
16 to review the financial information and accounting report of the cooperative. The cooperative
17 shall have the financial information audited for presentation to the members unless the bylaws
18 allow financial statements that are not audited and the financial statements clearly state that they
19 are not audited and the difference between the financial statements and audited financial
20 statements that are prepared according to generally accepted accounting procedures. The
21 directors shall elect members to the audit committee. The audit committee shall ensure an
22 independent review of the cooperative's finances and audit.

23 **COMMENT**

24 Comment to the Second Draft:
25

26 This section states that “members” are to be elected to the audit committee. This creates
27 an ambiguity and members might be replaced by directors.

1
2 **SECTION 130. COMMITTEES.**

3 (a) Generally. A resolution approved by the affirmative vote of a majority of the board
4 may establish committees having the authority of the board in the management of the business of
5 the cooperative only to the extent provided in the resolution. Committees may include a special
6 litigation committee consisting of one or more independent directors or other independent
7 persons to consider legal rights or remedies of the cooperative and whether those rights and
8 remedies should be pursued. Committees other than special litigation committees are subject at
9 all times to the direction and control of the board.

10 (b) Membership. Committee members must be natural persons. Unless the articles or
11 bylaws provide for a different membership or manner of appointment, a committee consists of
12 one or more persons, who need not be directors, appointed by affirmative vote of a majority of
13 the directors present.

14 (c) Procedure. The procedures for meetings of the board apply to committees and
15 members of committees to the same extent as those sections apply to the board and individual
16 directors.

17 (d) Minutes. Minutes, if any, of committee meetings must be made available upon
18 request to members of the committee and to any director.

19 (e) Standard of Conduct. The establishment of, delegation of authority to, and action by
20 a committee does not alone constitute compliance by a director with the standard of conduct set
21 forth in section _____.
22

 (f) Committee Members Considered Directors. Committee members are considered to

1 be directors for purposes of sections _____.

2 **COMMENT**

3 Comment to the Second Draft:

4
5 The delegation of board members to non-board natural persons differs from RMBCA §
6 8.25 and, perhaps, the theory of delegation in governing boards generally.
7

8
9 **SECTION 131. STANDARD OF CONDUCT.**

10 (a) Standard and Liability. A director shall discharge the duties of the position of
11 director in good faith, in a manner the director reasonably believes to be in the best interests of
12 the cooperative, and with the care an ordinarily prudent person in a like position would exercise
13 under similar circumstances. A person who so performs those duties is not liable by reason of
14 being or having been a director of the cooperative.

15 (b) Reliance.

16 (1) A director is entitled to rely on information, opinions, reports, or statements,
17 including financial statements and other financial data, in each case prepared or presented by:

18 (A) one or more officers or employees of the cooperative who the director
19 reasonably believes to be liable and competent in the matters presented;

20 (B) counsel, public accountants, or other persons as to matters that the
21 director reasonably believes are within the person's professional or expert competence; or

22 (C) a committee of the board upon which the director does not serve, duly
23 established by the board, as to matters within its designated authority, if the director reasonably
24 believes the committee to merit confidence.

25 (2) Paragraph (1) does not apply to a director who has knowledge concerning the

1 matter in question that makes the reliance otherwise permitted by paragraph (1) unwarranted.

2 (c) Presumption of Assent and Dissent. A director who is present at a meeting of the
3 board when an action is approved by the affirmative vote of a majority of the directors present is
4 presumed to have assented to the action approved, unless the director:

5 (1) objects at the beginning of the meeting to the transaction of business because
6 the meeting is not lawfully called or convened and does not participate in the meeting after the
7 objection, in which case the director is not considered to be present at the meeting for any
8 purpose of this chapter;

9 (2) votes against the action at the meeting; or

10 (3) is prohibited by a conflict of interest from voting on the action.

11 (d) Considerations. In discharging the duties of the position of director, a director may,
12 in considering the best interests of the cooperative, consider the interests of the cooperative's
13 employees, customers, suppliers, and creditors, the economy of the state, and long-term as well
14 as short-term interests of the cooperative and its patron members, including the possibility that
15 these interests may be best served by the continued independence of the cooperative.

16 COMMENT

17 Comment to the Second Draft:

18
19 Section (d) is somewhat controversial in corporate law and needs to be discussed.
20

21 **SECTION 132. DIRECTOR CONFLICTS OF INTEREST.**

22
23 (a) Conflict and Procedure When Conflict Arises.

24 (1) A contract or other transaction between a cooperative and one or more of its

1 directors, or between a cooperative and a business entity in or of which one or more of its
2 directors are governors, directors, managers, officers, or legal representatives or have a material
3 financial interest, is not void or voidable because the director or directors or the other business
4 entities are parties or because the director or directors are present at the meeting of the members
5 or the board or a committee at which the contract or transaction is authorized, approved, or
6 ratified, if:

7 (A) the contract or transaction was, and the person asserting the validity
8 of the contract or transaction sustains the burden of establishing that the contract or transaction
9 was, fair and reasonable as to the cooperative at the time it was authorized, approved, or ratified
10 and:

11 (i) the material facts as to the contract or transaction and as to the
12 director's or directors' interest are disclosed or known to the members; and

13 (ii) the material facts as to the contract or transaction and as to the
14 director's or directors' interest are fully disclosed or known to the board or a committee, and the
15 board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a
16 majority of the board or committee, but the interested director or directors are not counted in
17 determining the presence of a quorum and must not vote; or

18 (B) the contract or transaction is a distribution, contract, or transaction that
19 is made available to all members or patron members as part of the cooperative's business.

20 (2) If a committee is elected or appointed to authorize, ratify, or approve a
21 contract or transaction under this section, the members of the committee must not have a conflict
22 of interest and be charged with representing the best interests of the cooperative.

1 (b) Material Financial Interest. For purposes of this section:

2 (1) a resolution fixing the compensation of a director or fixing the compensation
3 of another director as a director, officer, employee, or agent of the cooperative, is not void or
4 voidable or considered to be a contract or other transaction between a cooperative and one or
5 more of its directors for purposes of this section even though the director receiving the
6 compensation fixed by the resolution is present and voting at the meeting of the board or a
7 committee at which the resolution is authorized, approved, or ratified or even though other
8 directors voting upon the resolution are also receiving compensation from the cooperative; and

9 (2) a director has a material financial interest in each organization in which the
10 director or the spouse; parents; children and spouses of children; brothers and sisters and
11 spouses of brothers and sisters; and the brothers and sisters of the spouse of the director or any
12 combination of them have a material financial interest. For purposes of this section, a contract or
13 other transaction between a cooperative and the spouse; parents; children and spouses of
14 children; brothers and sisters and spouses of brothers and sisters; and the brothers and sisters of
15 the spouse of a director or any combination of them, is considered to be a transaction between the
16 cooperative and the director.

17 **COMMENT**

18 Comment to the Second Draft:

19
20 Section (a)(1) uses the term “business entity” which may be too restrictive.
21
22

23 **SECTION 133. LIMITATION OF DIRECTOR'S LIABILITY.**

24 (a) Articles May Limit Liability. A director's personal liability to the cooperative or

members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles or bylaws except as provided in (b).

(b) Restrictions on Liability Limitation. The articles or bylaws may not eliminate or limit the liability of a director:

(1) for a breach of the director's duty of loyalty to the cooperative or its members;

(2) for acts or omissions that are not in good faith or involve intentional misconduct or a knowing violation of law;

(3) for knowing violations of securities laws under section _____ or for illegal distributions;

(4) for a transaction from which the director derived an improper personal benefit;

or

(5) for an act or omission occurring before the date when the provision in the articles or bylaws eliminating or limiting liability becomes effective.

COMMENT

Comment to the Second Draft:

The phrase “improper personal benefit” in (4) may beg the issue. No where does this Act specifically delineate the duty of care and loyalty as limiting the broader fiduciary duties under common law. Should it?

The initial draft read:

SECTION 406. LIMITATION OF DIRECTOR’S LIABILITY.

(a) A director's personal liability to the cooperative or members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles except as provided in subsection (b) of this section.

(b) The articles may not eliminate or limit the liability of a director:

- 1
2 (i) For a breach of the director's duty of loyalty to the cooperative or its
3 members;
4
5 (ii) For acts or omissions that are not in good faith or involve intentional
6 misconduct or a knowing violation of law;
7
8 (iii) For a transaction from which the director derived an improper
9 personal benefit; or
10
11 (iv) For an act or omission occurring before the date when the provision in
12 the articles eliminating or limiting liability becomes effective.
13

14 **Comment to Initial Draft**

15
16 The source for this provision is Wyoming Rev. Stat. § 17-10-220.
17

18
19 **SECTION 134. INDEMNIFICATION.**

20 (a) Definitions.

21 (1) The definitions in this subdivision apply to this section.

22 (2) "Cooperative" includes a domestic or foreign cooperative that was the
23 predecessor of the cooperative referred to in this section in a merger or other transaction in which
24 the predecessor's existence ceased upon consummation of the transaction.

25 (3) "Official capacity" means:

26 (A) with respect to a director, the position of director in a cooperative;

27 (B) with respect to a person other than a director, the elective or appointive
28 office or position held by the person, member of a committee of the board, the employment
29 relationship undertaken by an employee of the cooperative, or the scope of the services provided
30 by members of the cooperative who provide services to the cooperative; and

31 (C) with respect to a director, chief executive officer, member, or

1 employee of the cooperative who, while a member, director, chief executive officer, or employee
2 of the cooperative, is or was serving at the request of the cooperative or whose duties in that
3 position involve or involved service as a governor, director, manager, officer, member, partner,
4 trustee, employee, or agent of another organization or employee benefit plan, the position of that
5 person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as
6 the case may be, of the other organization or employee benefit plan.

7 (4) "Proceeding" means a threatened, pending, or completed civil, criminal,
8 administrative, arbitration, or investigative proceeding, including a proceeding by or in the right
9 of the cooperative.

10 (5) "Special legal counsel" means counsel who has not represented the
11 cooperative or a related organization, or a director, manager, member of a committee of the
12 board, or employee whose indemnification is in issue.

13 (b) Indemnification.

14 (1) Subject to the provisions of (d), a cooperative shall indemnify a person made
15 or threatened to be made a party to a proceeding by reason of the former or present official
16 capacity of the person against judgments, penalties, fines, including, without limitation, excise
17 taxes assessed against the person with respect to an employee benefit plan, settlements, and
18 reasonable expenses, including attorney fees and disbursements incurred by the person in
19 connection with the proceeding, if, with respect to the acts or omissions of the person
20 complained of in the proceeding, the person:

21 (A) has not been indemnified by another organization or employee benefit
22 plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed

1 against the person with respect to an employee benefit plan, settlements, and reasonable
2 expenses, including attorney fees and disbursements incurred by the person in connection with
3 the proceeding with respect to the same acts or omissions;

4 (B) acted in good faith;

5 (C) received no improper personal benefit and the person has not
6 committed an act for which liability cannot be eliminated or limited under section
7 _____, ();

8 (D) in the case of a criminal proceeding, had no reasonable cause to
9 believe the conduct was unlawful; and

10 (E) in the case of acts or omissions occurring in the official capacity
11 described in paragraph (a), paragraph (1), clause (A) or (B), reasonably believed that the conduct
12 was in the best interests of the cooperative, or in the case of acts or omissions occurring in the
13 official capacity described in paragraph (a), paragraph (3), clause (C), reasonably believed that
14 the conduct was not opposed to the best interests of the cooperative. If the person's acts or
15 omissions complained of in the proceeding relate to conduct of a director, officer, trustee,
16 employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to
17 the best interests of the cooperative if the person reasonably believed that the conduct was in the
18 best interests of the participants or beneficiaries of the employee benefit plan.

19 (2) The termination of a proceeding by judgment, order, settlement, conviction, or
20 upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did
21 not meet the criteria set forth in this subdivision.

22 (c) Advances. Subject to the provisions of (d), if a person is made or threatened to be

1 made a party to a proceeding, the person is entitled, upon written request to the cooperative, to
2 payment or reimbursement by the cooperative of reasonable expenses, including attorney fees
3 and disbursements incurred by the person in advance of the final disposition of the proceeding:

4 (1) upon receipt by the cooperative of a written affirmation by the person of a
5 good faith belief that the criteria for indemnification set forth in (b) have been satisfied, and a
6 written undertaking by the person to repay all amounts paid or reimbursed by the cooperative, if
7 it is ultimately determined that the criteria for indemnification have not been satisfied; and

8 (2) after a determination that the facts then known to those making the
9 determination would not preclude indemnification under this section.

10 The written undertaking required by clause (1) is an unlimited general obligation of the
11 person making it, but need not be secured and shall be accepted without reference to financial
12 ability to make the repayment.

13 (d) Prohibition or Limit on Indemnification or Advances. The articles or bylaws either
14 may prohibit indemnification or advances of expenses otherwise required by this section or may
15 impose conditions on indemnification or advances of expenses in addition to the conditions
16 contained in (b) and (c), including, without limitation, monetary limits on indemnification or
17 advances of expenses if the conditions apply equally to all persons or to all persons within a
18 given class. A prohibition or limit on indemnification or advances of expenses may not apply to
19 or affect the right of a person to indemnification or advances of expenses with respect to any acts
20 or omissions of the person occurring before the effective date of a provision in the articles or the
21 date of adoption of a provision in the bylaws establishing the prohibition or limit on
22 indemnification or advances of expenses.

1 (e) Reimbursement to Witnesses. This section does not require, or limit the ability of a
2 cooperative to reimburse expenses, including attorney fees and disbursements incurred by a
3 person in connection with an appearance as a witness in a proceeding at a time when the person
4 has not been made or threatened to be made a party to a proceeding.

5 (f) Determination of Eligibility.

6 (1) All determinations whether indemnification of a person is required because the
7 criteria set forth in paragraph (b) have been satisfied and whether a person is entitled to payment
8 or reimbursement of expenses in advance of the final disposition of a proceeding as provided in
9 paragraph (c) must be made:

10 (A) by the board by a majority of a quorum, if the directors who are, at the
11 time, parties to the proceeding are not counted for determining either a majority or the presence
12 of a quorum;

13 (B) if a quorum under clause (A) cannot be obtained by a majority of a
14 committee of the board consisting solely of two or more directors not at the time parties to the
15 proceeding duly designated to act in the matter by a majority of the full board, including directors
16 who are parties;

17 (C) if a determination is not made under clause (A) or (B) by special legal
18 counsel selected either by a majority of the board or a committee by vote under clause (A) or (B)
19 or if the requisite quorum of the full board cannot be obtained and the committee cannot be
20 established by a majority of the full board, including directors who are parties;

21 (D) if a determination is not made under clauses (A) to (C) by the
22 affirmative vote of the members, but the membership interests held by parties to the proceeding

1 must not be counted in determining the presence of a quorum, and are not considered to be
2 present and entitled to vote on the determination; or

3 (E) if an adverse determination is made under clauses (A) to (D) or paragraph (2),
4 or if no determination is made under clauses (A) to (D) or paragraph (2) within 60 days after (i)
5 the later to occur of the termination of a proceeding or a written request for indemnification to
6 the cooperative, or (ii) a written request for an advance of expenses, as the case may be, by a
7 court in this state, which may be the same court in which the proceeding involving the person's
8 liability took place upon application of the person and any notice the court requires. The person
9 seeking indemnification or payment or reimbursement of expenses under this clause has the
10 burden of establishing that the person is entitled to indemnification or payment or reimbursement
11 of expenses.

12 (2) With respect to a person who is not, and was not at the time of the acts or
13 omissions complained of in the proceedings, a director, chief executive officer, or person
14 possessing, directly or indirectly, the power to direct or cause the direction of the management or
15 policies of the cooperative, the determination whether indemnification of this person is required
16 because the criteria set forth in paragraph(b) have been satisfied and whether this person is
17 entitled to payment or reimbursement of expenses in advance of the final disposition of a
18 proceeding as provided in paragraph (c) may be made by an annually appointed committee of the
19 board, having at least one member who is a director. The committee shall report at least annually
20 to the board concerning its actions.

21 (g) Insurance. A cooperative may purchase and maintain insurance on behalf of a person
22 in that person's official capacity against any liability asserted against and incurred by the person

1 in or arising from that capacity, whether or not the cooperative would have been required to
2 indemnify the person against the liability under the provisions of this section.

3 (h) Disclosure. A cooperative that indemnifies or advances expenses to a person in
4 accordance with this section in connection with a proceeding by or on behalf of the cooperative
5 shall report to the members in writing the amount of the indemnification or advance and to whom
6 and on whose behalf it was paid not later than the next meeting of members.

7 (i) Indemnification of Other Persons. Nothing in this section must be construed to limit
8 the power of the cooperative to indemnify persons other than a director, chief executive officer,
9 member, employee, or member of a committee of the board of the cooperative by contract or
10 otherwise.

11 COMMENT

12 Comment to the Second Draft:

13
14 Section (f)(2) is broad and the situations to which it might apply need to be discussed.
15 This section differs from corporate law because it does not identify mandatory and permissive
16 indemnification. Finally, “notice” would probably suffice without the word “writing” given the
17 definition of “record”.
18
19

20 SECTION 135. OFFICERS.

21 (a) Required Officers.

22 (1) The board shall elect:

23 (A) a chair; and

24 (B) one or more vice chairs.

25 (2) The board shall elect or appoint:

26 (A) a records officer; and

1 (B) a financial officer.

2 (3) The officers, other than the chief executive officer, shall not have the authority
3 to bind the cooperative except as authorized by the board.

4 (b) Additional Officers. The board may elect additional officers as the articles or bylaws
5 authorize or require.

6 (c) Records Officer and Financial Officer May Be Combined. The offices of records
7 officer and financial officer may be combined.

8 (d) Officers That must Be Members. The chair and first vice chair shall be directors and
9 members. The financial officer, records officer, and additional officers need not be directors or
10 members.

11 (e) Chief Executive Officer. The board may employ a chief executive officer to manage
12 the day-to-day affairs and business of the cooperative, and if a chief executive officer is
13 employed, the chief executive officer shall have the authority to implement the functions, duties,
14 and obligations of the cooperative except as restricted by the board. The chief executive officer
15 shall not exercise authority reserved to the board or the members under this chapter, the articles,
16 or the bylaws.

17 **COMMENT**

18 Comment to the Second Draft:
19

20 The word “employ” in (e) is inconsistent with the word “elect,” *e.g.*, in (b). Is a
21 distinction meant? If so, what is it? Wyoming allows members to remove the officers. See
22 below.

23
24 The initial draft read:
25

26 **SECTION 407. OFFICERS.**

1 (a) The board shall elect:

2
3 (i) A chair; and

4
5 (ii) One (1) or more vice-chairs.

6
7 (b) The board shall elect or appoint:

8
9 (i) A records officer; and

10
11 (ii) A financial officer.

12
13 (c) The board may elect additional officers as the articles or bylaws authorize or
14 require.

15
16 (d) The offices of records officer and financial officer may be combined.

17
18 (e) The chair and first vice-chair shall be directors and members. The financial
19 officer, records officer, and additional officers need not be directors or members.

20
21 (f) The board may employ a chief executive officer to manage the day-to-day
22 affairs and business of the cooperative.

23
24 (g) Other than the chief executive officer, members may remove an officer at a
25 members' meeting for cause related to the duties of the position of the officer and fill the vacancy
26 caused by the removal.

27
28 **Comment to Initial Draft**

29
30 The source for this provision is Wyoming Rev. Stat. § 17-10-221.

31
32 This section seems to contemplate the election or appointment of a CEO (subsection (g))
33 but does not require such an officer. It does require the election of a chair. It appears somewhat
34 uncertain whether the chair or the required officers, in absence of a CEO, have agency authority
35 on behalf of the entity.

36
37
38 **SECTION 136. MEMBERS.**

39 (a) Requirement. A cooperative shall have one or more members.

40 (b) Grouping of Members.

1 (1) A cooperative may group members and patron members in districts, units, or
2 on another basis if and as authorized in its articles or bylaws. The articles or bylaws may include
3 authorization for the board to determine the groupings.

4 (2) The board may implement the use of districts or units, including setting the
5 time and place and prescribing the rules of conduct for holding meetings by districts or units to
6 elect delegates to members' meetings.

7 (c) Member Violations.

8 (1) A member who knowingly, intentionally, or repeatedly violates a provision of
9 the articles, bylaws, member control agreement, or marketing contract with the cooperative may
10 be required by the board to surrender the member's voting power or the financial rights of
11 membership interest of any class owned by the member, or both.

12 (2) The cooperative shall refund to the member for the surrendered financial rights
13 of membership interest the lesser of the book value or market value of the financial right of the
14 membership interest payable in not more than seven years from the date of surrender or the board
15 may transfer all of any patron member's financial rights to a class of financial rights held by
16 members who are not patron members, or to a certificate of interest, which carries the same
17 liquidation rights as membership interests and is redeemed within seven years after the transfer as
18 provided in the certificate.

19 (3) Membership interests required to be surrendered may be reissued or be retired
20 and canceled by the board.

21 (d) Inspection of Cooperative Records by Member.

22 (1) A member is entitled to inspect and copy, at the member's expense, during

1 regular business hours at a reasonable location specified by the cooperative, any of the records
2 described in section _____ if the member meets the requirements of paragraph (2) and
3 gives the cooperative written demand at least five business days before the date on which the
4 member wishes to inspect and copy the records. Notwithstanding the provisions of this
5 subdivision or any provisions of section _____, no member shall have the right to
6 inspect or copy any records of the cooperative relating to the amount of equity capital in the
7 cooperative held by any person or any accounts receivable or other amounts due the cooperative
8 from any person, or any personnel records or employment records of any employee.

9 (2) To be entitled to inspect and copy permitted records, the member shall meet
10 the following requirements:

11 (A) the member has been a member for at least one year immediately
12 preceding the demand to inspect or copy or is a member holding at least five percent of all of the
13 outstanding equity interests in the cooperative as of the date the demand is made;

14 (B) the demand is made in good faith and for a proper cooperative
15 business purpose;

16 (C) the member describes with reasonable particularity the purpose and the
17 records the member desires to inspect; and

18 (D) the records are directly connected with the described purpose.

19 (3) The right of inspection granted by this subdivision shall not be abolished or
20 limited by the articles, bylaws, or any actions of the board or the members.

21 (4) This subdivision does not affect:

22 (A) the right of a member to inspect records to the same extent as any

1 other litigant if the member is in litigation with the cooperative; or

2 (B) the power of a court to compel the production of the cooperative's
3 records for examination.

4 (5) Notwithstanding any other provision in this subdivision, if the records to be
5 inspected or copied are in active use or storage and, therefore, not available at the time otherwise
6 provided for inspection or copying, the cooperative shall notify the member and shall set a date
7 and hour within three business days of the date otherwise set in this subdivision for the
8 inspection or copying.

9 (6) A member's agent or attorney has the same inspection and copying rights as
10 the member. The right to copy records under this subdivision includes, if reasonable, the right to
11 receive copies made by photographic copying, xerographic copying, or other means. The
12 cooperative may impose a reasonable charge, covering the costs of labor and material, for copies
13 of any documents provided to the member. The charge may not exceed the estimated cost of
14 production and reproduction of the records.

15 (7) If a cooperative refuses to allow a member, or the member's agent or attorney,
16 who complies with this subdivision to inspect or copy any records that the member is entitled to
17 inspect or copy within a prescribed time limit or, if none, within a reasonable time, the district
18 court of the county in this state where the cooperative's principal office is located or, if it has no
19 principal office in this state, the district court of the county in which its registered office is
20 located may, on application of the member, summarily order the inspection or copying of the
21 records demanded at the cooperative's expense.

22 (8) If a court orders inspection or copying of the records demanded, unless the

1 cooperative proves that it refused inspection or copying in good faith because it had a reasonable
2 basis for doubt about the right of the member or the member's agent or attorney to inspect or
3 copy the records demanded:

4 (A) the court may order the losing party to pay the prevailing party's
5 reasonable costs, including reasonable attorney fees;

6 (B) the court may order the losing party to pay the prevailing party for any
7 damages the prevailing party shall have incurred by reason of the subject matter of the litigation;

8 (C) if inspection or copying is ordered under this paragraph, the court may
9 order the cooperative to pay the member's inspection and copying expenses;

10 (D) the court may grant either party any other remedy provided by law;
11 and

12 (E) the court may impose reasonable restrictions on the use or distribution
13 of the records by the demanding member.

14 **COMMENT**

15 Comment to the Second Draft:

16
17 The subsections set a five day period, a three day period, and a reasonable period. Is that
18 necessary? Should the word “attorney” be changed to “attorney-in-fact” or “legal
19 representative”?

20
21 Is it necessary to give the court these remedies? Finally, should there be some warranty
22 that the use of the information is for a proper purpose?

23 The initial draft read:

24 **SECTION 502. GROUPING OF MEMBERS.**

25
26 (a) A cooperative may group members and patron members in districts, units or
27 another basis if and as authorized in its articles and bylaws which may include authorization for
28
29

1 the board to determine the groupings.

2
3 (b) The board may do things necessary to implement the use of districts or units
4 including setting the time and place and prescribing the rules of conduct for holding meetings by
5 districts or units to elect delegates to members' meetings.

6
7 **Comment to Initial Draft**
8

9 The source for this provision is Wyoming Rev. Stat. § 17-10-223. See the comparative
10 provisions of the Minnesota Act in the comments to the preceeding section.
11

12
13 **SECTION 137. MEMBER NOT LIABLE FOR COOPERATIVE DEBTS. A**

14 member is not, merely on the account of that status, personally liable for the acts, debts,
15 liabilities, or obligations of a cooperative. A member is liable for any unpaid subscription for the
16 membership interest, unpaid membership fees, or a debt for which the member has separately
17 contracted with the cooperative.

18 **COMMENT**

19 Comment to the Second Draft:
20

21 Is it advisable state that a cooperative is an entity separate and apart from its members?
22

23 The initial draft read:
24

25 **SECTION 503. MEMBER VIOLATIONS; LIABILITY FOR COOPERATIVE**
26 **DEBTS.**
27

28 (a) A member who knowingly, intentionally, or repeatedly violates a provision of
29 the articles, bylaws, member control agreement or marketing contract with the cooperative, may
30 be required by the board to surrender the financial rights of membership interest of any class
31 owned by the member.
32

33 (b) The cooperative shall refund to the member for the surrendered financial rights
34 of membership interest the lesser of the book value or market value of the financial right of the
35 membership interest payable in not more than seven (7) years from the date of surrender or the
36 board may transfer all of any patron member's financial rights to a class of financial rights held
37 by members who are not patron members, or to a certificate of interest which carries liquidation

1 rights on par with membership interests and is redeemed within seven (7) years after the transfer
2 as provided in the certificate.

3
4 (c) Membership interests required to be surrendered may be reissued or be retired
5 and cancelled by the board.

6
7 (d) A member who knowingly, intentionally or repeatedly violates a provision of
8 the articles, bylaws, member control agreement, or a marketing contract, may be required by the
9 board to surrender voting power in the cooperative.

10
11 (e) A member is not, merely on the account of that status, personally liable for the
12 acts, debts, liabilities, or obligations of a cooperative. A member is liable for any unpaid
13 subscription for the membership interest, unpaid membership fees, or a debt for which the
14 member has separately contracted with the cooperative.

15
16 **Comment to Initial Draft**

17
18 The source for this provision is Wyoming Rev. Stat. § 17-10-224.

19
20
21 **SECTION 138. REGULAR MEMBERS' MEETINGS.**

22 (a) Annual Meeting. Regular members' meetings shall be held annually at a time
23 determined by the board, unless otherwise provided for in the bylaws.

24 (b) Location. The regular members' meeting shall be held at the principal place of
25 business of the cooperative or at another conveniently located place as determined by the bylaws
26 or the board.

27 (c) Business and Fiscal Reports. The officers shall submit reports to the members at the
28 regular members' meeting covering the business of the cooperative for the previous fiscal year
29 that show the condition of the cooperative at the close of the fiscal year.

30 (d) Election of Directors. All directors shall be elected at the regular members' meeting
31 for the terms of office prescribed in the bylaws, except for directors elected at district or unit
32 meetings.

1 (e) Notice.

2 (1) The cooperative shall give notice of regular members' meetings by mailing the
3 regular members' meeting notice to each member at the members' last known post office address
4 or by other notification approved by the board and agreed to by the members. The regular
5 members' meeting notice shall be published or otherwise given by approved method at least two
6 weeks before the date of the meeting or mailed at least 15 days before the date of the meeting.

7 (2) The notice shall contain a summary of any bylaw amendments adopted by the
8 board since the last annual meeting.

9 (f) Waiver and Objections. A member may waive notice of a meeting of members. A
10 waiver of notice by a member entitled to notice is effective whether given before, at, or after the
11 meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a
12 meeting is a waiver of notice of that meeting, except where the member objects at the beginning
13 of the meeting to the transaction of business because the meeting is not lawfully called or
14 convened, or objects before a vote on an item of business because the item may not lawfully be
15 considered at that meeting and does not participate in the consideration of the item at that
16 meeting.

17 COMMENT

18 The initial draft read:

19 SECTION 504. MEMBERS REGULAR MEETINGS.

20 (a) Regular members' meetings shall be held annually at a time determined by the
21 board, unless otherwise provided for in the bylaws.

22 (b) The regular members' meeting shall be held at the principal place of business
23 of the cooperative or at another conveniently located place as determined by the bylaws or the
24
25
26

1 board.

2
3 (c) The officers shall submit reports to the members at the regular members'
4 meeting covering the business of the cooperative for the previous fiscal year that show the
5 condition of the cooperative at the close of the fiscal year.

6
7 (d) All directors shall be elected at the regular members' meeting for the terms of
8 office prescribed in the bylaws, except for directors elected at district or unit meetings.

9
10 (e) The cooperative shall give notice of regular members' meetings by mailing the
11 regular members' meeting notice to each member at the member's last known post office address
12 or by other notification approved by the board and agreed to by the members. The regular
13 members' meeting notice shall be published or otherwise given by approved method at least two
14 (2) weeks before the date of the meeting or mailed at least fifteen (15) days before the date of the
15 meeting.

16 **Comment to Initial Draft**

17
18 The source for this provision is Wyoming Rev. Stat. § 17-10-225.

19
20
21 **SECTION 139. SPECIAL MEMBERS' MEETINGS.**

22 (a) Calling Meeting. Special members' meetings of the members may be called by:

23 (1) a majority vote of the board; or

24 (2) the written petition of at least 20 percent of the patron members and, if
25 authorized, 20 percent of the nonpatron members, 20 percent of all members, or members
26 representing 20 percent of the membership interests collectively are submitted to the chair.

27 (b) Notice. The cooperative shall give notice of a special members' meeting by mailing
28 the special members' meeting notice to each member personally at the person's last known post
29 office address or an alternative method approved by the board and the member individually or the
30 members generally. For a member that is an entity, notice mailed or delivered by an alternative
31 method shall be to an officer of the entity. The special members' meeting notice shall state the
32 time, place, and purpose of the special members' meeting. The special members' meeting notice

1 shall be issued within ten days from and after the date of the presentation of a members' petition,
2 and the special members' meeting shall be held within 30 days after the date of the presentation
3 of the members' petition.

4 (c) Waiver and Objections. A member may waive notice of a meeting of members. A
5 waiver of notice by a member entitled to notice is effective whether given before, at, or after the
6 meeting, and whether given in writing, orally, or by attendance. Attendance by a member at a
7 meeting is a waiver of notice of that meeting, except where the member objects at the beginning
8 of the meeting to the transaction of business because the meeting is not lawfully called or
9 convened, or objects before a vote on an item of business because the item may not lawfully be
10 considered at that meeting and does not participate in the consideration of the item at that
11 meeting.

12 COMMENT

13 The initial draft read:

14 SECTION 505. MEMBERS SPECIAL MEETINGS.

15 (a) Special members' meetings of the members may be called by:

16 (i) A majority vote of the board; or

17 (ii) The written petition of at least twenty percent (20%) of the patron
18 members, twenty percent (20%) of the nonpatron members or twenty percent (20%) of all
19 members collectively are submitted to the chair.
20

21 (b) The cooperative shall give notice of a special members' meeting by mailing the
22 special members' meeting notice to each member personally at the person's last known post
23 office address or an alternative method approved by the board and the member individually or the
24 members generally. For a member that is an entity, notice mailed or delivered by an alternative
25 method shall be to an officer of the entity. The special members' meeting notice shall state the
26 time, place, and purpose of the special members' meeting. The special members' meeting notice
27 shall be issued within ten (10) days from and after the date of the presentation of a members'
28
29
30
31

1 petition, and the special members' meeting shall be held within thirty (30) days after the date of
2 the presentation of the members' petition.

3
4 **Comment to Initial Draft**

5
6 The source for this provision is Wyoming Rev. Stat. § 17-10-226.
7

8
9 **SECTION 140. CERTIFICATION OF MEETING NOTICE.**

10 (a) Certificate of Mailing. After mailing special or regular members' meeting notices or
11 otherwise delivering the notices, the cooperative shall execute a certificate containing the date of
12 mailing or delivery of the notice and a statement that the special or regular members' meeting
13 notices were mailed or delivered as prescribed by law.

14 (b) Matter of Record. The certificate shall be made a part of the record of the meeting.

15 (c) Failure to Receive Meeting Notice. Failure of a member to receive a special or
16 regular members' meeting notice does not invalidate an action taken by the members at a
17 members' meeting.

18 **COMMENT**

19 Comment to the Second Draft:

20 _____Section (a) may be inconsistent with previous section (b).
21

22 The initial draft read:
23

24
25 **SECTION 506. CERTIFICATION OF MEETING NOTICE.**

26
27 (a) After mailing special or regular members' meeting notices or otherwise
28 delivering the notices, the cooperative shall execute a certificate containing the date of mailing or
29 delivery of the notice and a statement that the special or regular members' meeting notices were
30 mailed or delivered as prescribed by law.

31
32 (b) The certificate shall be made a part of the record of the meeting.
33

1 **Comment to Initial Draft**

2
3 The source for this provision is Wyoming Rev. Stat. § 17-10-227.

4
5 The initial draft read:

6
7 **SECTION 507. FAILURE TO RECEIVE MEETING NOTICE.** Failure of a
8 member to receive a special or regular members' meeting notice does not invalidate an action
9 that is taken by members at a members' meeting.

10
11 **Comment to Initial Draft**

12
13 The source for this provision is Wyoming Rev. Stat. § 17-10-228.

14
15
16 **SECTION 141. QUORUM.**

17 (a) Quorum. The quorum for a members' meeting to transact business shall be:

18 (1) ten percent of the total number of members for a cooperative with 500 or
19 fewer members; or

20 (2) 50 members for cooperatives with more than 500 members.

21 (b) Quorum for Voting by Mail. In determining a quorum at a meeting, on a question
22 submitted to a vote by mail or an alternative method, members present in person or represented
23 by mail vote or the alternative voting method shall be counted. The attendance of a sufficient
24 number of members to constitute a quorum shall be established by a registration of the members
25 of the cooperative present at the meeting. The registration shall be verified by the chair or the
26 records officer of the cooperative and shall be reported in the minutes of the meeting.

27 (c) Meeting Action Invalid Without Quorum. An action by a cooperative is not valid or
28 legal in the absence of a quorum at the meeting at which the action was taken.

29 **COMMENT**

1 The initial draft read:
2

3 **SECTION 508. QUORUM.**
4

5 (a) The quorum for a members' meeting to transact business shall be:

6
7 (i) Ten percent (10%) of the total number of members for a cooperative
8 with five hundred (500) or less members; or
9

10 (ii) Fifty (50) members for cooperatives with more than five hundred (500)
11 members.
12

13 (b) In determining a quorum at a meeting, on a question submitted to a vote by
14 mail or an alternative method, members present in person or represented by mail vote or the
15 alternative voting method shall be counted. The attendance of a sufficient number of members to
16 constitute a quorum shall be established by a registration of the members of the cooperative
17 present at the meeting. The registration shall be verified by the chair or the records officer of the
18 cooperative and shall be reported in the minutes of the meeting.
19

20 (c) An action by a cooperative is not valid or legal in the absence of a quorum at
21 the meeting at which the action was taken.
22

23 **Comment to Initial Draft**
24

25 The source for this provision is Wyoming Rev. Stat. § 17-10-229.
26
27

28 **SECTION 142. REMOTE COMMUNICATIONS FOR MEMBER MEETINGS.**

29 (a) Construction and Application. This section shall be construed and applied to:

30 (1) facilitate remote communication consistent with other applicable law; and

31 (2) be consistent with reasonable practices concerning remote communication and
32 with the continued expansion of those practices.

33 (b) Member Meetings Held Solely by Means of Remote Communication. To the extent
34 authorized in the articles, a member control agreement, or the bylaws and determined by the
35 board, a regular or special meeting of members may be held solely by any combination of means

1 of remote communication through which the members may participate in the meeting, if notice of
2 the meeting is given to every owner of membership interests entitled to vote as would be required
3 by this chapter for a meeting, and if the membership interests held by the members participating
4 in the meeting would be sufficient to constitute a quorum at a meeting. Participation by a
5 member by that means constitutes presence at the meeting in person or by proxy if all the other
6 requirements of this chapter for the meeting are met.

7 (c) Participation in Member Meetings by Means of Remote Communication. To the
8 extent authorized in the articles or the bylaws and determined by the board, a member not
9 physically present in person or by proxy at a regular or special meeting of members may, by
10 means of remote communication, participate in a meeting of members held at a designated place.
11 Participation by a member by that means constitutes presence at the meeting in person or by
12 proxy if all the other requirements of this chapter for the meeting are met.

13 (d) Requirements for Meetings Held Solely by Means of Remote Communication and for
14 Participation by Means of Remote Communication. In any meeting of members held solely by
15 means of remote communication under paragraph (b) or in any meeting of members held at a
16 designated place in which one or more members participate by means of remote communication
17 under paragraph (c):

18 (1) the cooperative shall implement reasonable measures to verify that each
19 person deemed present and entitled to vote at the meeting by means of remote communication is
20 a member; and

21 (2) the cooperative shall implement reasonable measures to provide each member
22 participating by means of remote communication with a reasonable opportunity to participate in

1 the meeting, including an opportunity to:

2 (A) read or hear the proceedings of the meeting substantially concurrently
3 with those proceedings;

4 (B) if allowed by the procedures governing the meeting, have the
5 member's remarks heard or read by other participants in the meeting substantially concurrently
6 with the making of those remarks; and

7 (C) if otherwise entitled, vote on matters submitted to the members.

8 (e) Notice to Members.

9 (1) Any notice to members given by the cooperative under any provision of this
10 chapter, the articles, or the bylaws by a form of electronic communication consented to by the
11 member to whom the notice is given, is effective when given. The notice is deemed given:

12 (A) if by facsimile communication, when directed to a telephone number
13 at which the member has consented to receive notice;

14 (B) if by electronic mail, when directed to an electronic mail address at
15 which the member has consented to receive notice;

16 (C) if by a posting on an electronic network on which the member has
17 consented to receive notice, together with separate notice to the member of the specific posting,
18 upon the later of:

19 (i) the posting; and

20 (ii) the giving of the separate notice; and

21 (D) if by any other form of electronic communication by which the
22 member has consented to receive notice, when directed to the member.

1 (2) An affidavit of the secretary, other authorized officer, or authorized agent of
2 the cooperative that the notice has been given by a form of electronic communication is, in the
3 absence of fraud, prima facie evidence of the facts stated in the affidavit.

4 (3) Consent by a member to notice given by electronic communication may be
5 given in writing or by authenticated electronic communication. The cooperative is entitled to
6 rely on any consent so given until revoked by the member, provided that no revocation affects the
7 validity of any notice given before receipt by the cooperative of revocation of the consent.

8 (f) Revocation. Any ballot, vote, authorization, or consent submitted by electronic
9 communication under this chapter may be revoked by the member submitting the ballot, vote,
10 authorization, or consent so long as the revocation is received by a director or the chief executive
11 officer of the cooperative at or before the meeting or before an action without a meeting is
12 effective.

13 (g) Waiver. Waiver of notice by a member of a meeting by means of authenticated
14 electronic communication may be given in the manner provided for the regular or special
15 meeting. Participation in a meeting by means of remote communication described in paragraphs
16 (b) and (c) is a waiver of notice of that meeting, except where the member objects at the
17 beginning of the meeting to the transaction of business because the meeting is not lawfully called
18 or convened, or objects before a vote on an item of business because the item may not lawfully
19 be considered at the meeting and does not participate in the consideration of the item at that
20 meeting.

21
22 **SECTION 143. ACT OF MEMBERS.**

1 (a) Action by Affirmative Vote of Members.

2 (1) The members shall take action by the affirmative vote of the members of the
3 greater of:

4 (A) a majority of the voting power of the membership interests present and
5 entitled to vote on that item of business; or

6 (B) a majority of the voting power that would constitute a quorum for the
7 transaction of business at the meeting, except where this chapter, the articles or bylaws, or a
8 member control agreement require a larger proportion.

9 (2) If the articles, bylaws, or a member control agreement require a larger
10 proportion than is required by this chapter for a particular action, the articles, bylaws, or the
11 member control agreement shall have control over the provisions of this chapter.

12 (b) Class or Series of Membership Interests. In any case where a class or series of
13 membership interests is entitled by this chapter, the articles, bylaws, a member control
14 agreement, or the terms of the membership interests to vote as a class or series, the matter being
15 voted upon must also receive the affirmative vote of the owners of the same proportion of the
16 membership interests present of that class or series; or of the total outstanding membership
17 interests of that class or series, as the proportion required under subdivision 1, unless the articles,
18 bylaws, or the member control agreement require a larger proportion. Unless otherwise stated in
19 the articles, bylaws, or a member control agreement, in the case of voting as a class or series, the
20 minimum percentage of the total voting power of membership interests of the class or series that
21 must be present is equal to the minimum percentage of all membership interests entitled to vote
22 required to be present under section _____.

1 (c) Greater Quorum or Voting Requirements.

2 (1) The articles or bylaws adopted by the members may provide for a greater
3 quorum or voting requirement for members or voting groups than is provided for by this chapter.

4 (2) An amendment to the articles or bylaws that adds, changes, or deletes a greater
5 quorum or voting requirement shall meet the same quorum requirement and be adopted by the
6 same vote and voting groups required to take action under the quorum and voting requirements
7 then in effect or proposed to be adopted, whichever is greater.

8
9 **SECTION 144. ACTION WITHOUT A MEETING.**

10 (a) Method. An action required or permitted to be taken at a meeting of the members
11 may be taken by written action signed, or consented to by authenticated electronic
12 communication, by all of the members. If the articles, bylaws, or a member control agreement so
13 provide, any action may be taken by written action signed, or consented to by authenticated
14 electronic communication, by the members who own voting power equal to the voting power that
15 would be required to take the same action at a meeting of the members at which all members
16 were present.

17 (b) Effective Time. The written action is effective when signed or consented to by
18 authenticated electronic communication by the required members, unless a different effective
19 time is provided in the written action.

20 (c) Notice and Liability. When written action is permitted to be taken by less than all
21 members, all members must be notified immediately of its text and effective date. Failure to
22 provide the notice does not invalidate the written action. A member who does not sign or

1 consent to the written action has no liability for the action or actions taken by the written action.

2
3 **SECTION 145. MEMBER VOTING RIGHTS.**

4 (a) Member Has One Vote; or Patronage Voting. A patron member of a cooperative is
5 entitled one vote on an issue to be voted upon by members holding patron membership interests,
6 except that if authorized in the articles or bylaws a patron member may be entitled to additional
7 votes based on patronage criteria in section _____. On any matter of the cooperative,
8 the entire patron members voting power shall be voted collectively based upon the vote of the
9 majority of patron members voting on the issue and the collective vote of the patron members
10 shall be a majority of the vote cast unless otherwise provided in the bylaws. The bylaws may not
11 reduce the collective patron member vote to less than 15 percent of the total vote on matters of
12 the cooperative. A nonpatron member has the voting rights in accordance to his nonpatron
13 membership interests as granted in the bylaws, subject to the provisions of this chapter.

14 (b) Right to Vote at Meeting. A member or delegate may exercise voting rights on any
15 matter that is before the members as prescribed in the articles or bylaws at a members' meeting
16 from the time the member or delegate arrives at the members' meeting, unless the articles or
17 bylaws specify an earlier and specific time for closing the right to vote.

18 (c) Voting Method. A member's vote at a members' meeting shall be in person or by
19 mail if a mail vote is authorized by the board or by alternative method if authorized by the board
20 and not by proxy, except as provided in paragraph (d).

21 (d) Members Represented by Delegates.

22 (1) The provisions of this subdivision apply to members represented by delegates.

1 (2) A cooperative may provide in the articles or bylaws that units or districts of
2 members are entitled to be represented at members' meetings by delegates chosen by the
3 members of the unit or district. The delegates may vote on matters at the members' meeting in
4 the same manner as a member. The delegates may only exercise the voting rights on a basis and
5 with the number of votes as prescribed in the articles or bylaws.

6 (3) If the approval of a certain portion of the members is required for adoption of
7 amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates
8 shall be counted as votes by the members represented by the delegate.

9 (4) Patron members may be represented by the proxy of other patron members.

10 (5) Nonpatron members may be represented by proxy if authorized in the bylaws.

11 (e) Absentee Ballots.

12 (1) The provisions of this subdivision apply to absentee ballots.

13 (2) A member who is or will be absent from a members' meeting may vote by mail
14 or by an approved alternative method on the ballot prescribed in this subdivision on any motion,
15 resolution, or amendment that the board submits for vote by mail or alternative method to the
16 members.

17 (3) The ballot shall be in the form prescribed by the board and contain:

18 (A) the exact text of the proposed motion, resolution, or amendment to be
19 acted on at the meeting; and

20 (B) the text of the motion, resolution, or amendment for which the
21 member may indicate an affirmative or negative vote.

22 (4) The member shall express a choice by marking an appropriate choice on the

1 ballot and mail, deliver, or otherwise submit the ballot to the cooperative in a plain, sealed
2 envelope inside another envelope bearing the member's name or by an alternative method
3 approved by the board.

4 (5) A properly executed ballot shall be accepted by the board and counted as the
5 vote of the absent member at the meeting.

6 **COMMENT**

7 Comment to the Second Draft:

8
9 There was extended discussion as to the percentage of the vote that is required to be
10 patronage. The Minnesota Act states (subsection (a)) that the collective patron member vote
11 cannot be reduced fifteen percent. For purposes of further discussion this draft increases 15
12 percent to 50 percent.

13 The initial draft read:

14 **SECTION 509. MEMBER VOTING RIGHTS.**

15
16
17
18 (a) A patron member of a cooperative is only entitled to one (1) vote on an issue
19 to be voted upon by members holding patron membership interests, except that a patron member
20 of a cooperative described in Section 510 may be entitled to more than one (1) vote as provided
21 in that section. On any matter of the cooperative, the entire patron members voting power shall
22 be voted collectively based upon the vote of the majority of patron members voting on the issue.
23 A nonpatron member has the voting rights in accordance to his nonpatron membership interests
24 as granted in the bylaws, subject to the provisions of this article.

25
26 (b) A member or delegate may exercise voting rights on any matter that is before
27 the members as prescribed in the articles or bylaws at a members' meeting from the time the
28 member or delegate arrives at the members' meeting, unless the articles or bylaws specify an
29 earlier and specific time for closing the right to vote.

30
31 (c) A member's vote at a members' meeting shall be in person or by mail if a mail
32 vote is authorized by the board or by alternative method if authorized by the board, and not by
33 proxy except as provided in subsection (d) of this section.

34
35 (d) The following shall apply to members represented by delegates:

36
37 (i) A cooperative may provide in the articles or bylaws that units or

1 districts of members are entitled to be represented at members' meetings by delegates chosen by
2 the members of the unit or district. The delegates may vote on matters at the members' meeting in
3 the same manner as a member. The delegates may only exercise the voting rights on a basis and
4 with the number of votes as prescribed in the articles or bylaws;

5
6 (ii) If the approval of a certain portion of the members is required for
7 adoption of amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of
8 delegates shall be counted as votes by the members represented by the delegate;

9
10 (iii) Patron members may be represented by the proxy of other patron
11 members;

12
13 (iv) Nonpatron members may be represented by proxy if authorized in the
14 bylaws.

15
16 (e) The following shall apply to absentee ballots:

17
18 (i) A member who is or will be absent from a members' meeting may vote
19 by mail or by an approved alternative method on the ballot prescribed in this subsection on any
20 motion, resolution or amendment that the board submits for vote by mail or alternative method to
21 the members;

22
23 (ii) The ballot shall be in the form prescribed by the board and contain:

24
25 (A) The exact text of the proposed motion, resolution or
26 amendment to be acted on at the meeting; and

27
28 (B) The text of the motion, resolution or amendment for which the
29 member may indicate an affirmative or negative vote.

30
31 (iii) The member shall express a choice by marking an appropriate choice
32 on the ballot and mail, deliver or otherwise submit the ballot to the cooperative in a plain, sealed
33 envelope inside another envelope bearing the member's name or by an alternative method
34 approved by the board;

35
36 (iv) A properly executed ballot shall be accepted by the board and counted
37 as the vote of the absent member at the meeting.

38
39 **Comment to Initial Draft**

40
41 The source for this provision is Wyoming Rev. Stat. § 17-10-230.
42
43

1 **SECTION 146. PATRON MEMBER VOTING BASED ON PATRONAGE.**

2 (a) Patron Members to Have an Additional Vote. A cooperative may authorize by the
3 articles or the bylaws for patron members to have an additional vote for:

4 (1) a stipulated amount of business transacted between the patron member and
5 cooperative;

6 (2) a stipulated number of patron members in a member cooperative;

7 (3) a stipulated amount of equity allocated to or held by a patron member
8 cooperative in the cooperative's central organization; or

9 (4) a combination of methods in clauses (1) to (3).

10 (b) Delegates Elected by Patrons to Have an Additional Vote. A cooperative that is
11 organized into units or districts of patron members may, by the articles or the bylaws, authorize
12 the delegates elected by its patron members or have an additional vote for:

13 (1) a stipulated amount of business transacted between the patron members in the
14 units or districts and the cooperative;

15 (2) a stipulated amount of equity allocated to or held by the patron members of the
16 units or districts of the cooperative; or

17 (3) a combination of methods in clauses (1) and (2).
18

19 **SECTION 147. VOTING RIGHTS.**

20 (a) Determination. The board may fix a date not more than 60 days, or a shorter time
21 period provided in the articles or bylaws, before the date of a meeting of members as the date for
22 the determination of the owners of membership interests entitled to notice of and entitled to vote

1 at the meeting. When a date is so fixed, only members on that date are entitled to notice of and
2 permitted to vote at that meeting of members.

3 (b) Voting Power. Unless otherwise provided in the articles, bylaws, or a member
4 control agreement, members have voting power as provided in section _____.

5 (c) Nonmembers. The articles or bylaws may give or prescribe the manner of giving a
6 creditor, security holder, or other person a right to vote on patron membership interests under this
7 section.

8 (d) Jointly Owned Membership Interests. Membership interests owned by two or more
9 members may be voted by any one of them unless the cooperative receives written notice from
10 any one of them denying the authority of that person to vote those membership interests.

11 (e) Manner of Voting and Presumption. Except as provided in paragraph (d), an owner
12 of a nonpatron membership interest or a patron membership interest with more than one vote that
13 is entitled to vote may vote any portion of the membership interest in any way the member
14 chooses. If a member votes without designating the proportion voted in a particular way, the
15 member is considered to have voted all of the membership interest in that way.

16 **COMMENT**

17 Comment to the Second Draft:

18
19 Subsection (c) needs to be discussed in the context of the previous section.
20

21 **SECTION 148. VOTING BY ORGANIZATIONS AND LEGAL** 22 23 **REPRESENTATIVES.**

24 (a) Membership Interests Held by Another Organization. Membership interests of a

1 cooperative reflected in the required records as being owned by another domestic or foreign
2 business entity may be voted by the chair, chief executive officer, or another legal representative
3 of that organization.

4 (b) Membership Interests Held by Subsidiary. Except as provided in (c), membership
5 interests of a cooperative reflected in the required records as being owned by a subsidiary are not
6 entitled to be voted on any matter.

7 (c) Membership Interests Controlled in a Fiduciary Capacity. Membership interests of a
8 cooperative in the name of, or under the control of, the cooperative or a subsidiary in a fiduciary
9 capacity are not entitled to be voted on any matter, except to the extent that the settlor or
10 beneficiary possesses and exercises a right to vote or gives the cooperative or, with respect to
11 membership interests in the name of or under control of a subsidiary, the subsidiary, binding
12 instructions on how to vote the membership interests.

13 (d) Voting by Certain Representatives. Subject to section _____, membership
14 interests under the control of a person in a capacity as a personal representative, an administrator,
15 executor, guardian, conservator, or the like may be voted by the person, either in person or by
16 proxy, without reflecting in the required records those membership interests in the name of the
17 person.

18 (e) Voting by Trustees in Bankruptcy or Receiver. Membership interests reflected in the
19 required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee
20 or receiver either in person or by proxy. Membership interests under the control of a trustee in
21 bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required
22 records the name of the trustee or receiver, if authority to do so is contained in an appropriate

1 order of the court by which the trustee or receiver was appointed. The right to vote of trustees in
2 bankruptcy and receivers is subject to section _____.

3 (f) Membership Interests Held by Other Organizations. Membership interests reflected
4 in the required records in the name of a business entity not described in subdivisions 1 to 5 may
5 be voted either in person or by proxy by the legal representative of that business entity.

6 (g) Grant of Security Interest. The grant of a security interest in a membership interest
7 does not entitle the holders of the security interest to vote.

8 **COMMENT**

9 Comment to the Second Draft:

10
11 Subsection (g) raises the broader issue of transferable economic rights
12 and whether it is possible for a transferee of a patron member, which is not itself a patron
13 member, may vote as a patron member. Stated another way are economic and voting rights ever
14 bifurcated?

15 The initial draft read:

16 **SECTION 510. PATRON MEMBER VOTING IN COOPERATIVES** 17 **CONSTITUTED ENTIRELY OR PARTIALLY OF OTHER COOPERATIVES OR** 18 **ASSOCIATIONS.**

19
20 (a) A cooperative that is constituted entirely or partially of other cooperatives or
21 associations may authorize by the articles or the bylaws for affiliated cooperative patron
22 members to have an additional vote for:
23

24 (i) A stipulated amount of business transacted between the patron member
25 cooperative and the central cooperative organization;
26

27 (ii) A stipulated number of patron members in the member cooperative;
28

29 (iii) A certain stipulated amount of equity allocated to or held by the
30 patron member cooperative in the cooperative central organization; or
31

32 (iv) A combination of methods in paragraphs (i) through (iii) of this
33 subsection.
34
35

1 (b) A cooperative that is organized into units or districts of patron members, may,
2 by the articles or the bylaws, authorize the delegates elected by its patron members or, have an
3 additional vote for:
4

5 (i) A stipulated amount of business transacted between the patron
6 members in the units or districts and the cooperative;
7

8 (ii) A certain stipulated amount of equity allocated to or held by the patron
9 members of the units or districts of the cooperative; or
10

11 (iii) A combination of methods in paragraphs (i) and (ii) of this subsection.
12

13 **Comment to Initial Draft**

14
15 The source for this provision is Wyoming Rev. Stat. § 17-10-231.
16
17

18 **SECTION 149. PROXIES.**

19 (a) Authorization.

20 (1) A patron member may only grant a proxy to vote to another patron member.

21 (2) A member may cast or authorize the casting of a vote by:

22 (A) filing a written appointment of a proxy with the board at or before the
23 meeting at which the appointment is to be effective; or

24 (B) telephonic transmission or authenticated electronic communication,
25 whether or not accompanied by written instructions of the member, of an appointment of a proxy
26 with the cooperative or the cooperative's duly authorized agent at or before the meeting at which
27 the appointment is to be effective.

28 (3) The telephonic transmission or authenticated electronic communication must
29 set forth or be submitted with information from which it can be determined that the appointment
30 was authorized by the member. If it is reasonably concluded that the telephonic transmission or

1 authenticated electronic communication is valid, the inspectors of election or, if there are not
2 inspectors, the other persons making that determination shall specify the information upon which
3 they relied to make that determination. A proxy so appointed may vote on behalf of the member,
4 or otherwise participate, in a meeting by remote communication under section _____, to
5 the extent the member appointing the proxy would have been entitled to participate by remote
6 communication if the member did not appoint the proxy.

7 (4) A copy, facsimile, telecommunication, or other reproduction of the original
8 writing or transmission may be substituted or used in lieu of the original writing or transmission
9 for any purpose for which the original transmission could be used, if the copy, facsimile,
10 telecommunication, or other reproduction is a complete and legible reproduction of the entire
11 original writing or transmission.

12 (5) An appointment of a proxy for membership interests owned jointly by two or
13 more members is valid if signed or consented to by authenticated electronic communication, by
14 any one of them, unless the cooperative receives from any one of those members written notice
15 or an authenticated electronic communication either denying the authority of that person to
16 appoint a proxy or appointing a different proxy.

17 (b) Duration. The appointment of a proxy is valid for 11 months unless a longer period
18 is expressly provided in the appointment. No appointment is irrevocable unless the appointment
19 is coupled with an interest in the membership interests or the cooperative.

20 (c) Termination. An appointment may be terminated at will unless the appointment is
21 coupled with an interest, in which case it shall not be terminated except in accordance with the
22 terms of an agreement, if any, between the parties to the appointment. Termination may be made

1 by filing written notice of the termination of the appointment with a manager of the cooperative
2 or by filing a new written appointment of a proxy with a manager of the cooperative.

3 Termination in either manner revokes all prior proxy appointments and is effective when filed
4 with a manager of the cooperative.

5 (d) Revocation by Death or Incapacity. The death or incapacity of a person appointing a
6 proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity
7 is received by a manager of the cooperative before the proxy exercises the authority under that
8 appointment.

9 (e) Multiple Proxies. Unless the appointment specifically provides otherwise, if two or
10 more persons are appointed as proxies for a member:

11 (1) any one of them may vote the membership interests on each item of business
12 in accordance with specific instructions contained in the appointment; and

13 (2) if no specific instructions are contained in the appointment with respect to
14 voting the membership interests on a particular item of business, the membership interests must
15 be voted as a majority of the proxies determine. If the proxies are equally divided, the
16 membership interests must not be voted.

17 (f) Vote of Proxy Accepted and Liability. Unless the appointment of a proxy contains a
18 restriction, limitation, or specific reservation of authority, the cooperative may accept a vote or
19 action taken by a person named in the appointment. The vote of a proxy is final, binding, and not
20 subject to challenge, but the proxy is liable to the member for damages resulting from a failure to
21 exercise the proxy or from an exercise of the proxy in violation of the authority granted in the
22 appointment.

1 (g) Limited Authority. If a proxy is given authority by a member to vote on less than all
2 items of business considered at a meeting of members, the member is considered to be present
3 and entitled to vote by the proxy only with respect to those items of business for which the proxy
4 has authority to vote. A proxy who is given authority by a member who abstains with respect to
5 an item of business is considered to have authority to vote on the item of business for purposes of
6 this subdivision.

7 COMMENT

8 Comment to the Second Draft:

9
10 Section (a)(2)-(4) be collapsed by using the idea of record? Is subsection (f) provided for
11 by other law?
12

13 SECTION 150. SALE OF PROPERTY AND ASSETS.

14
15 (a) Member Approval Not Required. A cooperative may, by affirmative vote of a
16 majority of the board present, upon those terms and conditions and for those considerations,
17 which may be money, securities, or other instruments for the payment of money or other
18 property, as the board considers expedient and without member approval:

19 (1) sell, lease, transfer, or otherwise dispose of all or substantially all of its
20 property and assets in the usual and regular course of its business;

21 (2) sell, lease, transfer, or otherwise dispose of all or substantially all of its
22 property and assets not in the usual and regular course of its business if:

23 (A) the cooperative's accountant has given an opinion that the cooperative
24 cannot continue as an ongoing business and the cooperative is under financial duress;

25 (B) the cooperative has given notice to the members of the impending or

1 potential disposition prior to the disposition; and

2 (C) the board has determined that failure to proceed with the disposition
3 would be adverse to the interests of the members and the cooperative;

4 (3) grant a security interest in all or substantially all of its property and assets
5 whether or not in the usual and regular course of its business;

6 (4) transfer any or all of its property to an entity all the ownership interests of
7 which are owned by the cooperative; or

8 (5) for purposes of debt financing, transfer any or all of its property to a special
9 purpose entity owned or controlled by the cooperative for an asset securitization.

10 (b) Member Approval Required. Except as provided in subdivision (a), a cooperative, by
11 affirmative vote of a majority of the board present, may sell, lease, transfer, or otherwise dispose
12 of all or substantially all of its property and assets, including its good will, not in the usual and
13 regular course of its business, upon those terms and conditions and for those considerations,
14 which may be money, securities, or other instruments for the payment of money or other
15 property, as the board considers expedient, when approved at a regular or special meeting of the
16 members by the affirmative vote of the owners of a majority of the voting power of the interests
17 entitled to vote. Written notice of the meeting must be given to all members whether or not they
18 are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is
19 to consider the sale, lease, transfer, or other disposition of all or substantially all of the property
20 and assets of the cooperative.

21 (c) Confirmatory Documents. Confirmatory deeds, assignments, or similar instruments
22 to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in

1 the name of the transferor by its current chair of the board or authorized agents.

2 (d) Liability of Transferee. The transferee is liable for the debts, obligations, and
3 liabilities of the transferor only to the extent provided in the contract or agreement between the
4 transferee and the transferor or to the extent provided by law.

5 **COMMENT**

6 Comment to the Second Draft:
7

8 Subsection (c) might be unnecessary and is (d) taken care of by other law such that it is
9 confusing here?
10
11

12 **SECTION 151. VOTE OF OWNERSHIP INTERESTS HELD BY**
13 **COOPERATIVE.**

14 A cooperative that holds ownership interests of another business entity may, by direction of the
15 cooperative's board, elect or appoint a person to represent the cooperative at a meeting of the
16 business entity. The representative has authority to represent the cooperative and may cast the
17 cooperative's vote at the entity's meeting.

18 **COMMENT**

19 Comment to the Second Draft:
20

21 The individual so representing the cooperative, however, would owe its duties to the
22 other board.
23

24 The initial draft read:
25

26 **SECTION 511. VOTE OF OWNERSHIP INTERESTS HELD BY**
27 **COOPERATIVE.** A cooperative that holds ownership interests of another business entity may,
28 by direction of the cooperative's board, elect or appoint a person to represent the cooperative at a
29 meeting of the business entity. The representative has authority to represent the cooperative and
30 may cast the cooperative's vote at the business entity's meeting.
31

1 **Comment to Initial Draft**

2
3 The source for this provision is Wyoming Rev. Stat. § 17-10-232.
4
5

6 **SECTION 152. MEMBERSHIP INTERESTS.**

7 (a) Amounts and Divisions of Membership Interests. The authorized amount and
8 divisions of patron membership interests and, if authorized, nonpatron membership interests may
9 be increased, decreased, established, or altered, in accordance with the restrictions in this chapter
10 by amending the articles or bylaws at a regular members' meeting or at a special members'
11 meeting called for the purpose of the amendment.

12 (b) Issuance of Membership Interests. Authorized membership interests may be issued
13 on terms and conditions prescribed in the articles, bylaws, or if authorized in the articles or
14 bylaws as determined by the board. The cooperative shall disclose to any person or entity
15 acquiring membership interests to be issued by the cooperative, the organization, capital
16 structure, the nature of the governance and financial rights of the membership interest being
17 acquired and of other classes of membership and membership interests. The cooperative shall
18 notify all members of the membership interests being issued by the cooperative. A membership
19 interest may not be issued until the subscription price of the membership interest has been paid
20 for in money or property with the value of the property to be contributed approved by the board.

21 (c) Patron Membership Interests. The patron membership interests collectively shall
22 have not less than 60 percent of the cooperative's financial rights to profit allocations and
23 distributions. If authorized in the original articles as filed, or articles or bylaws adopted by an
24 affirmative vote of the patron members, or the articles or bylaws are amended by the affirmative

1 vote of patron members, then the cooperative's financial rights to profit allocations and
2 distributions to patron members collectively may be not less than 15 percent.

3 (d) Transferring or Selling Membership Interests. After issuance by the cooperative,
4 membership interests in a cooperative may only be sold or transferred with the approval of the
5 board. The board may adopt resolutions prescribing procedures to prospectively approve
6 transfers.

7 (e) Nonpatron Membership Interests. If authorized by the articles, the cooperative may
8 solicit and issue nonpatron membership interests on terms and conditions determined by the
9 board and disclosed in the articles, bylaws, or by separate disclosure to the members. Each
10 member acquiring nonpatron membership interests shall sign a member control agreement or
11 agree to the conditions of the bylaws, either of which shall describe the rights and obligations of
12 the member as it relates to the nonpatron membership interests, the financial and governance
13 rights, the transferability of the nonpatron membership interests, the division and allocations of
14 profits and losses among the membership interests and membership classes, and financial rights
15 upon liquidation. If the articles or bylaws do not otherwise provide for the allocation of the
16 profits and losses between patron membership interests and nonpatron membership interests,
17 then the allocation of profits and losses among nonpatron membership interests individually and
18 patron membership interests collectively shall be allocated on the basis of the value of
19 contributions to capital made according to the patron membership interests collectively and the
20 nonpatron membership interests individually to the extent the contributions have been accepted
21 by the cooperative. Distributions of cash or other assets of the cooperative shall be allocated
22 among the membership interests as provided in the articles and bylaws, subject to the provisions

1 of [this Act]. If not otherwise provided in the articles or bylaws, distributions shall be made on
2 the basis of value of the capital contributions of the patron membership interests collectively and
3 the nonpatron membership interests to the extent the contributions have been accepted by the
4 cooperative.

5 (f) Cooperative First Right to Purchase Membership Interests. The articles or bylaws
6 may provide that the cooperative or the patron members, individually or collectively, have the
7 first privilege of purchasing the membership interests of any class of membership interests
8 offered for sale. The first privilege to purchase membership interests may be satisfied by notice
9 to other members that the membership interests are for sale and a procedure by which members
10 may proceed to attempt to purchase and acquire the membership interests. A membership
11 interest acquired by the cooperative may be held to be reissued or may be retired and canceled.

12 (g) Payment for Nonpatron Membership Interests. Subject to the provisions in the
13 articles and bylaws, a member may dissent from and obtain payment for the fair value of the
14 member's nonpatron membership interests in the cooperative if the articles or bylaws are
15 amended in a manner that materially and adversely affects the rights and preferences of the
16 nonpatron membership interests of the dissenting member. The dissenting member shall file a
17 notice of intent to demand fair value of the membership interest with the records officer of the
18 cooperative within 30 days after the amendment of the bylaws and notice of the amendment to
19 members, otherwise the right of the dissenting member to demand payment of fair value for the
20 membership interest is waived. If a proposed amendment of the articles or bylaws must be
21 approved by the members, a member who is entitled to dissent and who wishes to exercise
22 dissenter's rights shall file a notice to demand fair value of the membership interest with the

1 records officer of the cooperative before the vote on the proposed action and shall not vote in
2 favor of the proposed action, otherwise the right to demand fair value for the membership interest
3 by the dissenting member is waived. After receipt of the dissenting member's demand notice and
4 approval of the amendment, the cooperative has 60 days to rescind the amendment or otherwise
5 the cooperative shall remit the fair value for the member's interest to the dissenting member by
6 180 days after receipt of the notice. Upon receipt of the fair value for the membership interest,
7 the member has no further member rights in the cooperative.

8 **COMMENT**

9 Comment to the Second Draft:

10
11 This is a slight revision of the Minnesota Act. Minnesota requires, in
12 addition to the items in subsection 151(b) that the cooperative disclose to “any person... acquiring
13 membership interests ... and known business prospects and risks of the cooperative.” The latter
14 phrase does not appear in this draft.

15
16 According to this section the co-op is required to 60 percent of the profits and losses to
17 patron members but the organic documents may drop this amount to 15 percent. This needs to be
18 discussed.

19
20 This section addresses dissenters rights and requires persons desiring to dissent to do so
21 *before* the vote. This, too, needs to be discharged.

22
23 Finally, does “contributions” mean “capital accounts” or “initial contribution”?

24 25 The initial draft read:

26 27 **SECTION 501. MEMBERSHIP INTERESTS.**

28
29 (a) The authorized amount and divisions of patron membership interests and
30 nonpatron membership interests may be increased or decreased or established or altered, in
31 accordance with the restrictions in this article by amending the articles at a regular members'
32 meeting or at a special members' meeting called for the purpose of the amendment.

33
34 (b) Authorized membership interests may be issued on terms and conditions
35 prescribed in the articles, bylaws, or as determined by the board. The cooperative shall disclose

1 to any person or entity acquiring membership interests to be issued by the cooperative, the
2 organization, capital structure and business prospects and risks of the cooperative, the nature of
3 the governance and financial rights of the membership interest being acquired and of other
4 classes of membership and membership interests. The cooperative shall notify all members of the
5 membership interests being offered by the cooperative. A membership interest may not be issued
6 until the subscription price of the membership interest has been paid for in cash or a cash
7 equivalent or property with the agreed upon value of the property to be contributed.
8

9 (c) The patron membership interests collectively shall have not less than fifteen
10 percent (15%) of the cooperative's financial rights to profit allocations and distributions.
11

12 (d) After issuance by the cooperative, membership interests in a cooperative may
13 only be sold or transferred with the approval of the board.
14

15 (e) The cooperative may solicit and issue nonpatron membership interests on
16 terms and conditions determined by the board and disclosed in the articles, bylaws or by separate
17 disclosure to the members. Each member acquiring nonpatron membership interests shall sign a
18 member control agreement which shall describe the rights and obligations of the member as it
19 relates to the nonpatron membership interests, the financial and governance rights, the
20 transferability of the nonpatron membership interests, the division and allocations of profits and
21 losses among the membership interests and membership classes, and financial rights upon
22 liquidation. If the bylaws do not otherwise provide for the allocation of the profits and losses
23 between patron membership interests and nonpatron membership interests, then the allocation of
24 profits and losses among nonpatron membership interests individually and patron membership
25 interests collectively shall be allocated on the basis of the value of contributions to capital made
26 according to the patron membership interests collectively and the nonpatron membership
27 interests individually to the extent the contributions have been accepted by the cooperative.
28 Distributions of cash or other assets of the cooperative shall be allocated among the membership
29 interests as provided in the articles and bylaws, subject to the provisions of this article. If not
30 otherwise provided, distributions shall be made on the basis of value of the capital contributions
31 of the patron membership interests collectively and the nonpatron membership interests to the
32 extent the contributions have been accepted by the cooperative.
33

34 (f) The bylaws may provide that the cooperative or the patron members,
35 individually or collectively, have the first privilege of purchasing the membership interests of any
36 class of patron member's membership interests offered for sale. The first privilege to purchase
37 patron membership interests may be satisfied by notice to other patron members that the patron
38 membership interests are for sale and a procedure by which patron members may proceed to
39 attempt to purchase and acquire the patron membership interests. A patron membership interest
40 acquired by the cooperative may be held to be reissued or may be retired and cancelled.
41

42 (g) Subject to the provisions in the bylaws, a member may dissent from and obtain
43 payment for the fair value of the member's nonpatron membership interests in the cooperative if

1 the articles or bylaws are amended in a manner that materially and adversely affects the rights
2 and preferences of the nonpatron membership interests of the dissenting member. The dissenting
3 member shall file a notice of intent to demand fair value of the membership interest with the
4 records officer of the cooperative within thirty (30) days after the amendment of the bylaws and
5 notice of the amendment to members, otherwise the right of the dissenting member to demand
6 payment of fair value for the membership interest is deemed to be waived. If a proposed
7 amendment of the articles or bylaws shall be approved by the members, a member who is entitled
8 to dissent and who wishes to exercise dissenter's rights shall file a notice to demand fair value of
9 the membership interest with the records officer of the cooperative before the vote on the
10 proposed action and shall not vote in favor of the proposed action, otherwise the right to demand
11 fair value for the membership interest by the dissenting member is deemed waived. After receipt
12 of the dissenting member's demand notice and approval of the amendment, the cooperative has
13 sixty (60) days to rescind the amendment or otherwise the cooperative shall remit the fair value
14 for the one (1) member's interest to the dissenting member by one hundred eighty (180) days after
15 receipt of the notice. Upon receipt of the fair value for the membership interest, the member has
16 no further member rights in the cooperative.

17 18 **Comment to Initial Draft**

19
20 The source for this provision is Wyoming Rev. Stat. § 17-10-222.

21 22 23 **SECTION 153. ASSIGNMENT OF FINANCIAL RIGHTS.**

24 (a) Assignment of Financial Rights Permitted. Except as provided in subdivision 3, a
25 member's financial rights are transferable in whole or in part.

26 (b) Effect of Assignment of Financial Rights. An assignment of a member's financial
27 rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses
28 and the distributions to which the assignor would otherwise be entitled. An assignment of a
29 member's financial rights does not dissolve the cooperative and does not entitle or empower the
30 assignee to become a member, to exercise any governance rights, to receive any notices from the
31 cooperative, or to cause dissolution. The assignment shall not allow the assignee to control the
32 member's exercise of governance or voting rights.

33 (c) Restrictions of Assignment of Financial Rights.

1 (1) A restriction on the assignment of financial rights may be imposed in the
2 articles, in the bylaws, in a member control agreement, by a resolution adopted by the members,
3 by an agreement among or other written action by the members, or by an agreement among or
4 other written action by the members and the cooperative. A restriction is not binding with
5 respect to financial rights reflected in the required records before the adoption of the restriction,
6 unless the owners of those financial rights are parties to the agreement or voted in favor of the
7 restriction.

8 (2) Subject to paragraph (3), a written restriction on the assignment of financial
9 rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in
10 the required records may be enforced against the owner of the restricted financial rights or a
11 successor or transferee of the owner, including a pledgee or a legal representative. Unless noted
12 conspicuously in the required records, a restriction, even though permitted by this section, is
13 ineffective against a person without knowledge of the restriction.

14 (3) With regard to restrictions on the assignment of financial rights, a would-be
15 assignee of financial rights is entitled to rely on a statement of membership interest issued by the
16 cooperative under section _____. A restriction on the assignment of financial rights, which is
17 otherwise valid and in effect at the time of the issuance of a statement of membership interest but
18 which is not reflected in that statement, is ineffective against an assignee who takes an
19 assignment in reliance on the statement.

20 (4) Notwithstanding any provision of law, articles, bylaws, member control
21 agreement, other agreement, resolution, or action to the contrary, a security interest in a member's
22 financial rights may be foreclosed and otherwise enforced, and a secured party may assign a

1 member's financial rights in accordance with chapter ____, without the consent or approval of the
2 member whose financial rights are subject to the security interest.

3 COMMENT

4 Comment to the Second Draft:

5
6 (1) Other NCCUSL products use the term “transferee” rather than “assignee.” Moreover
7 unincorporated entity law places more emphasis on transfers to bifurcate transfers that cause a
8 dissociation, possibly followed by dissolution, from allowable transfers.
9

10 (2) There may be some inconsistency between this section of the draft and the one that
11 follows.
12

13 (3) Assignees under this draft are allocated profits and losses. Should it be limited to
14 distribution to avoid tax ownership issues?
15

16 (4) As drafted this section does not deal with the problem analagous to the “vanishing
17 partner” in partnership law.
18

19 (5) Finally, unincorporated law uses the charging order solution to foreclosure and the
20 charging order remedy’s relationship to UCC creditors rights is a current issue of much interest.
21 For comparison purposes section 703 of ULP A (2001) is set forth below. *See* the following
22 section of this draft.
23

24 Section 703. Rights of Creditor of Partner or Transferee.

25
26 (a) On application to a court of competent jurisdiction by any judgment creditor of a
27 partner or transferee, the court may charge the transferable interest of the judgement debtor with
28 payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the
29 judgment creditor has only the rights of a transferee. The court may appoint a receiver of the
30 share of the distributions due or to become due to the judgment debtor in respect to the
31 partnership and make all other orders, directions, accounts, and inquiries the judgment debtor
32 might have made or which the circumstances of the case may require to give effect to the
33 charging order.
34

35 (b) A charging order constitutes a lien on the judgment debtor’s transferable interest. The
36 court may order a foreclosure upon the interest subject to the charging order at any time. The
37 purchaser at the foreclosure sale has the rights of a transferee.
38

39 (c) At any time before foreclosure, an interest charged may be redeemed:
40

1 (1) by the judgment debtor;

2
3 (2) with property other than limited partnership property, by one or more of the
4 other partners; or

5
6 (3) with limited partnership property, by the limited partnership with the consent
7 of all partners whose interests are not so charged.

8
9 (d) This [act] does not deprive any partner or transferee of the benefit of any exemption
10 laws applicable to the partner's or transferee's transferable interest.

11
12 (e) This section provides the exclusive remedy by which a judgment creditor of a partner
13 or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

14
15
16 **SECTION 154. NATURE OF A MEMBERSHIP INTEREST AND STATEMENT**
17 **OF INTEREST OWNED.**

18 (a) Generally. A membership interest is personal property. A member has no interest in
19 specific cooperative property. All property of the cooperative is property of the cooperative
20 itself.

21 (b) Statement of Membership Interest. At the request of any member, the cooperative
22 shall state in writing the particular membership interest owned by that member as of the date the
23 cooperative makes the statement. The statement must describe the member's rights to vote, if
24 any, to share in profits and losses, and to share in distributions, restrictions on assignments of
25 financial rights under section _____, paragraph (c), or voting rights under section
26 _____ then in effect, as well as any assignment of the member's rights then in effect
27 other than a security interest.

28 (c) Terms of Membership Interests. All the membership interests of a cooperative must:

29 (1) be of one class, without series, unless the articles or bylaws establish or

1 authorize the board to establish more than one class or series within classes;

2 (2) be ordinary patron membership interests and if authorized nonpatron
3 membership interest subject to this chapter entitled to vote as provided in section _____,
4 and have equal rights and preferences in all matters not otherwise provided for by the board and
5 to the extent that the articles or bylaws have fixed the relative rights and preferences of different
6 classes and series; and

7 (3) share profits and losses and are entitled to distributions as provided in sections
8 _____ and _____.

9 (d) Rights of Judgment Creditor. On application to a court of competent jurisdiction by
10 any judgment creditor of a member, the court may charge a member's or an assignee's financial
11 rights with payment of the unsatisfied amount of the judgment with interest. To the extent so
12 charged, the judgment creditor has only the rights of an assignee of a member's financial rights
13 under section _____. This chapter does not deprive any member or assignee of financial
14 rights of the benefit of any exemption laws applicable to the membership interest. This section is
15 the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's
16 membership interest.

17 (e) Procedure for Fixing Terms.

18 (1) Subject to any restrictions in the articles or bylaws, the power granted in this
19 subdivision may be exercised by a resolution or resolutions establishing a class or series, setting
20 forth the designation of the class or series, and fixing the relative rights and preferences of the
21 class or series. Any of the rights and preferences of a class or series established in the articles,
22 bylaws, or by resolution of the board:

1 (A) may be made dependent upon facts ascertainable outside the articles or
2 bylaws or outside the resolution or resolutions establishing the class or series, if the manner in
3 which the facts operate upon the rights and preferences of the class or series is clearly and
4 expressly set forth in the articles or bylaws or in the resolution or resolutions establishing the
5 class or series; and

6 (B) may include by reference some or all of the terms of any agreements,
7 contracts, or other arrangements entered into by the cooperative in connection with the
8 establishment of the class or series if the cooperative retains at its principal executive office a
9 copy of the agreements, contracts, or other arrangements or the portions will be included by
10 reference.

11 (2) A statement setting forth the name of the cooperative and the text of the
12 resolution and certifying the adoption of the resolution and the date of adoption must be given to
13 the members before the acceptance of any contributions for which the resolution creates rights or
14 preferences not set forth in the articles or bylaws. Where the members have received notice of
15 the creation of membership interests with rights or preferences not set forth in the articles or
16 bylaws before the acceptance of the contributions with respect to the membership interests, the
17 statement may be filed any time within one year after the acceptance of the contributions. The
18 resolution is effective three days after delivery to the members is deemed effective by the board,
19 or, if the statement is not required to be given to the members before the acceptance of
20 contributions, on the date of its adoption by the directors.

21 (f) Specific Terms. Without limiting the authority granted in this section, a cooperative
22 may have membership interests of a class or series:

1 (1) subject to the right of the cooperative to redeem any of those membership
2 interests at the price fixed for their redemption by the articles or bylaws or by the board;

3 (2) entitling the members to cumulative, partially cumulative, or noncumulative
4 distributions;

5 (3) having preference over any class or series of membership interests for the
6 payment of distributions of any or all kinds;

7 (4) convertible into membership interests of any other class or any series of the
8 same or another class; or

9 (5) having full, partial, or no voting rights, except as provided in section
10 _____.

11 (g) Grant of a Security Interest. For the purpose of any law relating to security interests,
12 membership interests, governance or voting rights, and financial rights are each to be
13 characterized as provided in section _____, paragraph (c).

14 (h) Powers of Estate of a Deceased or Incompetent Member.

15 (1) If a member who is an individual dies or a court of competent jurisdiction
16 adjudges the member to be incompetent to manage the member's person or property, or an order
17 for relief under the bankruptcy code is entered with respect to the member, the member's
18 executor, administrator, guardian, conservator, trustee, or other legal representative may exercise
19 all of the member's rights for the purpose of settling the estate or administering the member's
20 property. If a member is a business entity, trust, or other entity and is dissolved, terminated, or
21 placed by a court in receivership or bankruptcy, the powers of that member may be exercised by
22 its legal representative or successor.

1 (2) If an event referred to in paragraph (1) causes the termination of a member's
2 membership interest and the termination does not result in dissolution, then subject to the articles
3 and bylaws:

4 (A) as provided in section _____, the terminated member's interest
5 will be considered to be merely that of an assignee of the financial rights owned before the
6 termination of membership; and

7 (B) the rights to be exercised by the legal representative of the terminated
8 member will be limited accordingly.

9 (i) Liability of Subscribers and Members with Respect to Membership Interests. A
10 subscriber for membership interests or a member of a cooperative is under no obligation to the
11 cooperative or its creditors with respect to the membership interests subscribed for or owned,
12 except to pay to the cooperative the full consideration for which the membership interests are
13 issued or to be issued.

14 COMMENT

15 Comment to the Second Draft:

16
17 Examples of the operation of this section need to be worked through. In particular the
18 operation of subsection (h)(2)(B) seems confusing.
19
20

21 **SECTION 155. CERTIFICATED AND UNCERTIFICATED MEMBERSHIP** 22 **INTERESTS.**

23 (a) Certificated; Uncertificated. The membership interests of a cooperative shall be
24 either certificated or uncertificated. Each holder of certificated membership interests issued is
25 entitled to a certificate of membership interest.

1 (b) Signature Required. Certificates shall be signed by an agent or officer authorized in
2 the articles or bylaws to sign share certificates or, in the absence of an authorization, by the chair
3 or records officer of the cooperative.

4 (c) Signature Valid. If a person signs a certificate while the chair, an officer, transfer
5 agent, or records officer of a cooperative, the certificate may be issued by the cooperative, even if
6 the person has ceased to have that capacity before the certificate is issued, with the same effect as
7 if the person had that capacity at the date of its issue.

8 (d) Form of Certificate. A certificate representing membership interests of a cooperative
9 shall contain on its face:

10 (1) the name of the cooperative;

11 (2) a statement that the cooperative is organized under the laws of this state and
12 [this Act];

13 (3) the name of the person to whom the certificate is issued;

14 (4) the number and class of membership interests, and the designation of the
15 series, if any, that the certificate represents;

16 (5) a statement that the membership interests in the cooperative are subject to the
17 articles and bylaws of the cooperative; and

18 (6) any restrictions on transfer, including approval of the board, if applicable, first
19 rights of purchase by the cooperative, and other restrictions on transfer, which may be stated by
20 reference to the back of the certificate or to another document.

21 (e) Limitations Set Forth. A certificate representing membership interest issued by a
22 cooperative authorized to issue membership interests of more than one class or series shall set

1 forth upon the face or back of the certificate, or shall state that the cooperative will furnish to any
2 member upon request and without charge, a full statement of the designations, preferences,
3 limitations, and relative rights of the membership interests of each class or series authorized to be
4 issued, so far as they have been determined, and the authority of the board to determine the
5 relative rights and preferences of subsequent classes or series.

6 (f) Prima Facie Evidence. A certificate signed as provided in paragraph (b) is prima
7 facie evidence of the ownership of the membership interests referred to in the certificate.

8 (g) Uncertificated Membership Interests. Unless uncertificated membership interests are
9 prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority
10 of the directors present may provide that some or all of any or all classes and series of its
11 membership interests will be uncertificated membership interests. The resolution does not apply
12 to membership interests represented by a certificate until the certificate is surrendered to the
13 cooperative. Within a reasonable time after the issuance or transfer of uncertificated membership
14 interests, the cooperative shall send to the new member the information required by this section
15 to be stated on certificates. This information is not required to be sent to the new holder by a
16 publicly held cooperative that has adopted a system of issuance, recordation, and transfer of its
17 membership interests by electronic or other means not involving an issuance of certificates if the
18 system complies with section 17A of the Securities Exchange Act of 1934. Except as otherwise
19 expressly provided by statute, the rights and obligations of the holders of certificated and
20 uncertificated membership interests of the same class and series are identical.

21 **COMMENT**

22 Comment to the Second Draft:

1 Provisions concerning transfer restriction or uncertificated securities need to be
2 addressed. The reference to a specific section of federal law may be problematic.
3
4

5 **SECTION 156. LOST CERTIFICATES; REPLACEMENT.**

6 (a) Issuance. A new membership interest certificate may be issued under section
7 _____ in place of one that is alleged to have been lost, stolen, or destroyed.

8 (b) Not Overissue. The issuance of a new certificate under this section does not
9 constitute an overissue of the membership interests it represents.

10 **COMMENT**

11 Comment to the Second Draft:
12

13 Would a reference adopting the appropriate provision of UCC article 8 be sufficient?
14
15

16 **SECTION 157. RESTRICTION ON TRANSFER OR REGISTRATION OF**
17 **MEMBERSHIP INTERESTS.**

18 (a) How Imposed. A restriction on the transfer or registration of transfer of membership
19 interests of a cooperative may be imposed in the articles, in the bylaws, by a resolution adopted
20 by the members, or by an agreement among or other written action by a number of members or
21 holders of other membership interests or among them and the cooperative. A restriction is not
22 binding with respect to membership interests issued prior to the adoption of the restriction, unless
23 the holders of those membership interests are parties to the agreement or voted in favor of the
24 restriction.

25 (b) Restrictions Permitted. A written restriction on the transfer or registration of transfer
26 of membership interests of a cooperative that is not manifestly unreasonable under the

1 circumstances may be enforced against the holder of the restricted membership interests or a
2 successor or transferee of the holder, including a pledgee or a legal representative, if the
3 restriction is either:

- 4 (1) noted conspicuously on the face or back of the certificate;
- 5 (2) included in this chapter or the articles or bylaws; or
- 6 (3) included in information sent to the holders of uncertificated membership
7 interests.

8 Unless a restriction is in this chapter, the articles, bylaws, noted conspicuously on the face
9 or back of the certificate, or included in information sent to the holders of uncertificated
10 membership interests, a restriction, even though permitted by this section, is ineffective against a
11 person without knowledge of the restriction. A restriction under this section is deemed to be
12 noted conspicuously and is effective if the existence of the restriction is stated on the certificate
13 and reference is made to a separate document creating or describing the restriction.

1 **ARTICLE 2**

2 **CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS**

3
4 **SECTION 201. AUTHORIZATION, FORM, AND ACCEPTANCE OF**
5 **CONTRIBUTIONS.**

6 (a) Board of Directors May Authorize. Subject to any restrictions in this chapter
7 regarding patron and nonpatron membership interests or in the articles or bylaws, and only when
8 authorized by the board, a cooperative may accept contributions, which may be patron or
9 nonpatron membership contributions as determined by the board under paragraphs (b) and (c),
10 make contribution agreements under section _____, and make contribution allowance
11 agreements under section _____.

12 (b) Permissible Forms. A person may make a contribution to a cooperative:

13 (1) by paying money or transferring the ownership of an interest in property to the
14 cooperative or rendering services to or for the benefit of the cooperative; or

15 (2) through a written obligation signed by the person to pay money or transfer
16 ownership of an interest in property to the cooperative or to perform services to or for the benefit
17 of the cooperative.

18 (c) Acceptance of Contributions. No purported contribution is to be treated or
19 considered as a contribution, unless:

20 (1) the board accepts the contribution on behalf of the cooperative and in that
21 acceptance describes the contribution, including terms of future performance, if any, and states
22 the value being accorded to the contribution; and

1 (2) the fact of contribution and the contribution's accorded value are both reflected
2 in the required records of the cooperative.

3 (d) Valuation. The determinations of the board as to the amount or fair value or the
4 fairness to the cooperative of the contribution accepted or to be accepted by the cooperative or
5 the terms of payment or performance, including under a contribution agreement in section
6 _____, and a contribution allowance agreement in section _____, are presumed to
7 be proper if they are made in good faith and on the basis of accounting methods, or a fair
8 valuation or other method, reasonable in the circumstances. Directors who are present and
9 entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against
10 approving a consideration that is unfair to the cooperative, or overvalue property or services
11 received or to be received by the cooperative as a contribution, are jointly and severally liable to
12 the cooperative for the benefit of the then members who did not consent to and are damaged by
13 the action, to the extent of the damages of those members. A director against whom a claim is
14 asserted under this subdivision, except in case of knowing participation in a deliberate fraud, is
15 entitled to contribution on an equitable basis from other directors who are liable under this
16 subdivision.

17 COMMENT

18 Comment to the Second Draft:

19
20 Is there a difference between “good faith” and “unfair to the cooperative”? Should
21 absence from board meetings be a justifiable excuse?
22
23

24 SECTION 202. RESTATEMENT OF VALUE OF PREVIOUS 25 CONTRIBUTIONS.

1 (a) Definition. As used in this section, an "old contribution" is a contribution reflected in
2 the required records of a cooperative before the time the cooperative accepts a new contribution.

3 (b) Restatement Required. Whenever a cooperative accepts a new contribution, the
4 board shall restate, as required by this section, the value of all old contributions.

5 (c) Restatement as to Particular Series or Class to Which New Contribution Pertains.

6 (1) Unless otherwise provided in the articles or bylaws, this subdivision sets forth
7 the method of restating the value of old contributions that pertain to the same series or class to
8 which the new contribution pertains. To restate the value:

9 (A) state the value the cooperative has accorded to the new contribution
10 under section _____, paragraph (c), clause (A);

11 (B) determine what percentage the value stated under clause (A) will
12 constitute, after the restatement required by this subdivision, of the total value of all contributions
13 that pertain to the particular series or class to which the new contribution pertains;

14 (C) divide the value stated under clause (A) by the percentage determined
15 under clause (B), yielding the total value, after the restatement required by this subdivision, of all
16 contributions pertaining to the particular series or class;

17 (D) subtract the value stated under clause (A) from the value determined
18 under clause (C), yielding the total value, after the restatement required by this subdivision, of all
19 the old contributions pertaining to the particular series or class;

20 (E) subtract the value, as reflected in the required records before the
21 restatement required by this subdivision, of the old contributions from the value determined
22 under clause (D), yielding the value to be allocated among and added to the old contributions

1 pertaining to the particular series or class; and

2 (F) allocate the value determined under clause (E) proportionally among
3 the old contributions pertaining to the particular series or class, add the allocated values to those
4 old contributions, and change the required records accordingly.

5 (2) The values determined under clause (E) and allocated and added under clause
6 (F) may be positive, negative, or zero.

7 (d) Restatement Method for Other Series or Class. Unless otherwise provided in the
8 articles or bylaws, this subdivision sets forth the method of restating the value of old
9 contributions that do not pertain to the same series or class to which the new contribution
10 pertains. To restate the value:

11 (1) determine the percentage by which the restatement under (c) has changed the
12 total contribution value reflected in the required records for the series or class to which the new
13 contribution pertains; and

14 (2) as to each old contribution that does not pertain to the same series or class to
15 which the new contribution pertains, change the value reflected in the required records by the
16 percentage determined under clause (A). The percentage determined under clause (A) may be
17 positive, negative, or zero.

18 (e) New Contributions May Be Aggregated. If a cooperative accepts more than one
19 contribution pertaining to the same series or class at the same time, then for the purpose of the
20 restatement required by this section, the cooperative may consider all the new contributions a
21 single contribution.

22 **COMMENT**

1 Comment to the Second Draft:
2

3 This section seems to require a “book-up” provision for tax purposes. What if the
4 cooperative is a taxable c-corporation or elects subchapter T or § 521 tax treatment?
5

6
7 **SECTION 203. CONTRIBUTION AGREEMENTS.**

8 (a) Signed Writing. A contribution agreement, whether made before or after the
9 formation of the cooperative, is not enforceable against the would-be contributor unless it is in
10 writing record form and signed by the would-be contributor.

11 (b) Irrevocable Period. Unless otherwise provided in the contribution agreement, or
12 unless all of the would-be contributors and, if in existence, the cooperative, consent to a shorter
13 or longer period, a contribution agreement is irrevocable for a period of six months.

14 (c) Current and Deferred Payment. A contribution agreement, whether made before or
15 after the formation of a cooperative, must be paid or performed in full at the time or times, or in
16 the installments, if any, specified in the contribution agreement. In the absence of a provision in
17 the contribution agreement specifying the time at which the contribution is to be paid or
18 performed, the contribution must be paid or performed at the time or times determined by the
19 board, but a call made by the board for payment or performance on contributions must be
20 uniform for all membership interests of the same class or for all membership interests of the
21 same series.

22 (d) Remedies for Failure to Pay.

23 (1) Unless otherwise provided in the contribution agreement, in the event of
24 default in the payment or performance of an installment or call when due, the cooperative may
25 proceed to collect the amount due in the same manner as a debt due the cooperative. If a

1 defaulting contributor does not make a required contribution of property or services, the
2 cooperative shall require the defaulting contributor to contribute cash equal to that portion of the
3 value, as stated in the cooperative required records, of the contribution that has not been made.

4 (2) If the amount due under a contribution agreement remains unpaid for a period
5 of 20 days after written notice of demand for payment has been given to the delinquent defaulting
6 contributor, the membership interests that were subject to the contribution agreement may be
7 offered for sale by the cooperative for a price in money equaling or exceeding the sum of the full
8 balance owed by the delinquent defaulting contributor plus the expenses incidental to the sale.

9 If the membership interests that were subject to the contribution agreement are sold
10 according to this paragraph, the cooperative shall pay to the delinquent defaulting contributor or
11 to the delinquent would-be contributor's legal representative the lesser of:

12 (A) the excess of net proceeds realized by the cooperative over the sum of
13 the amount owed by the delinquent defaulting contributor plus the expenses incidental to the
14 sale, less any penalty stated in the contribution agreement, which may include forfeiture of the
15 partial contribution; and

16 (B) the amount actually paid by the delinquent defaulting contributor.

17 If the membership interests that were subject to the contribution agreement are not sold
18 according to this paragraph, the cooperative may collect the amount due in the same manner as a
19 debt due the cooperative or cancel the contribution agreement according to paragraph (3).

20 (3) If the amount due under a contribution agreement remains unpaid for a period
21 of 20 days after written notice of demand for payment has been given to the delinquent defaulting
22 contributor and the membership interests that were subject to the defaulted contribution

1 agreement have not been sold according to paragraph (2), the cooperative may cancel the
2 contribution agreement, the cooperative may retain any portion of the contribution agreement
3 price actually paid as provided in the contribution agreement, and the cooperative shall refund to
4 the delinquent would-be contributor or the delinquent would-be contributor's legal
5 representatives any portion of the contribution agreement price as provided in the contribution
6 agreement.

7 (e) Restrictions on Assignment. Unless otherwise provided in the articles or bylaws, a
8 defaulting contributor's rights under a contribution agreement may not be assigned, in whole or in
9 part, to a person who was not a member at the time of the assignment, unless all the members
10 approve the assignment by unanimous written consent.

11 **COMMENT**

12 Comment to the Second Draft:

13 What happens, or should happen, if the cooperative is not formed?
14
15
16

17 **SECTION 204. CONTRIBUTION RIGHTS AGREEMENTS.**

18 (a) Agreements Permitted. Subject to any restrictions in the articles or bylaws, a
19 cooperative may enter into contribution rights agreements under the terms, provisions, and
20 conditions fixed by the board.

21 (b) Writing Required and Terms to Be Stated. Any contribution rights agreement must
22 be in writing and the writing must state in full, summarize, or include by reference all the
23 agreement's terms, provisions, and conditions of the rights to make contributions.

24 (c) Restrictions on Assignment. Unless otherwise provided in the articles or bylaws, a

contributor's rights under a contribution rights agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

COMMENT

Comment to the Second Draft:

Should (b) be limited to material terms? The same observation made in the previous comment applies here.

SECTION 205. ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS.

(a) Allocation of Profits and Losses. The bylaws shall prescribe the allocation of profits and losses between patron membership interests collectively and any other membership interests. If the bylaws do not otherwise provide, the profits and losses between patron membership interests collectively and other membership interests shall be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests and accepted by the cooperative. The allocation of profits to the patron membership interests collectively shall not be less than 50 percent of the total profits in any fiscal year, except that if authorized in the original articles as filed or in articles or bylaws that are adopted by an affirmative vote of the patron members or the articles or bylaws are amended by the affirmative vote of the patron members, the allocation of profits to the patron membership interests collectively may not be less than 15 percent of the total profits in any fiscal year.

(b) Distribution of Cash or Other Assets. The bylaws shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If not otherwise provided in the bylaws, distribution shall be made to the patron membership interests

collectively and other members on the basis of the value of contributions to capital made and accepted by the cooperative, by the patron membership interests collectively, and other membership interests. The distributions to patron membership interests collectively shall not be less than 50 percent of the total distributions in any fiscal year, except that if authorized in the articles or bylaws adopted by the affirmative vote of the patron members, or the articles or bylaws are amended by the affirmative vote of the patron members, the distributions to patron membership interests collectively shall not be less than 15 percent of the total distributions in any year.

COMMENT

Comment to the Second Draft:

This section contains a 50 percent - 15 percent patronage allocation/distribution floor. A prior section entitled member rights states a 60 percent default. This seems inconsistent.

The initial draft read:

SECTION 601. ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS.

(a) The bylaws shall prescribe the allocation of profits and losses between patron membership interests collectively and other membership interests. If the bylaws do not otherwise provide, the profits and losses between patron membership interests collectively and other membership interests shall be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests and accepted by the cooperative. The allocation of profits to the patron membership interests collectively shall not be less than fifteen percent (15%) of the total profits in any fiscal year.

(b) The bylaws shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If not otherwise provided in the bylaws, distribution shall be made to the patron membership interests collectively and other members on the basis of the value of contributions to capital made and accepted by the cooperative by the patron membership interests collectively and other membership interests. The distributions to patron membership interests collectively shall not be less than fifteen percent (15%) of the total distributions in any fiscal year.

1 **Comment to Initial Draft**

2
3 The source for this provision is Wyoming Rev. Stat. § 17-10-233.

4
5 This section states that allocations and distributions are governed in the bylaws. Queries:
6 (1) Does this indicate that the bylaws operate as do agreements in other unincorporated entity
7 statutes? (2) Should adoption of the bylaws be a condition for formation?
8
9

10 **SECTION 206. ALLOCATIONS AND DISTRIBUTIONS TO PATRON**

11 **MEMBERS.**

12 (a) Distribution of Net Income. A cooperative may set aside a portion of net income
13 allocated to the patron membership interests as the board determines advisable to create or
14 maintain a capital reserve.

15 (b) Reserves. In addition to a capital reserve, the board may, for patron membership
16 interests:

17 (1) set aside an amount not to exceed five percent of the annual net income of the
18 cooperative for promoting and encouraging cooperative organization; and

19 (2) establish and accumulate reserves for new buildings, machinery and
20 equipment, depreciation, losses, and other proper purposes.

21 (c) Patronage Distributions. Net income allocated to patron members in excess of
22 distributions on equity and additions to reserves shall be distributed to patron members on the
23 basis of patronage. A cooperative may establish allocation units, whether the units are
24 functional, divisional, departmental, geographic, or otherwise and pooling arrangements and may
25 account for and distribute net income to patrons on the basis of allocation units and pooling
26 arrangements. A cooperative may offset the net loss of an allocation unit or pooling arrangement

1 against the net income of other allocation units or pooling arrangements.

2 (d) Frequency of Distribution. Distribution of net income shall be made at least
3 annually. The board shall present to the members at their annual meeting a report covering the
4 operations of the cooperative during the preceding fiscal year.

5 (e) Form of Distribution. A cooperative may distribute net income to patron members in
6 cash, capital credits, allocated patronage equities, revolving fund certificates, or its own or other
7 ownership interests.

8 (f) Eligible Nonmember Patrons. The cooperative may provide in the bylaws that
9 nonmember patrons are allowed to participate in the distribution of net income payable to patron
10 members on equal terms with patron members.

11 (g) Patronage Credits for Ineligible Members. If a nonmember patron with patronage
12 credits is not qualified or eligible for membership, a refund due may be credited to the patron's
13 individual account. The board may issue a certificate of interest to reflect the credited amount.
14 After the patron is issued a certificate of interest, the patron may participate in the distribution of
15 income on the same basis as a patron member.

16 COMMENT

17 Comment to the Second Draft:

18
19 This section is from the Minnesota Act. The word “securities” was
20 replaced with “ownership interests”. There are several terms of art including “net income”,
21 “capital reserves” and “allocation unit”.
22

23 The initial draft read:

24 25 **SECTION 602. ALLOCATIONS AND DISTRIBUTIONS TO PATRON** 26 **MEMBERS.** 27

1 (a) A cooperative may set aside a portion of net income allocated to the patron
2 membership interests as the board determines advisable to create or maintain a capital reserve.

3
4 (b) In addition to a capital reserve, the board may, for patron membership
5 interests:

6
7 (i) Set aside an amount not to exceed five percent (5%) of the annual net
8 income of the cooperative for promoting and encouraging cooperative organization; and
9

10 (ii) Establish and accumulate reserves for new buildings, machinery and
11 equipment, depreciation, losses, and other proper purposes.
12

13 (c) Net income allocated to patron members in excess of dividends on equity and
14 additions to reserves shall be distributed to patron members on the basis of patronage. A
15 cooperative may establish allocation units, whether the units are functional, divisional,
16 departmental, geographic, or otherwise and pooling arrangements and may account for and
17 distribute net income to patrons on the basis of allocation units and pooling arrangements. A
18 cooperative may offset the net loss of an allocation unit or pooling arrangement against the net
19 income of other allocation units or pooling arrangements.
20

21 (d) Distribution of net income shall be made at least annually. The board shall
22 present to the members at their annual meeting a report covering the operations of the
23 cooperative during the preceding fiscal year.
24

25 (e) A cooperative may distribute net income to patron members in cash, capital
26 credits, allocated patronage equities, revolving fund certificates, or its own or other securities.
27

28 (f) The cooperative may provide in the bylaws that nonmember patrons are
29 allowed to participate in the distribution of net income payable to patron members on equal terms
30 with patron members.
31

32 (g) If a nonmember patron with patronage credits is not qualified or eligible for
33 membership, a refund due may be credited to the patron's individual account. The board may
34 issue a certificate of interest to reflect the credited amount. After the patron is issued a certificate
35 of interest, the patron may participate in the distribution of income on the same basis as a patron
36 member.
37

38 **Comment to Initial Draft**

39

40 The source for this provision is Wyoming Rev. Stat. § 17-10-234. What is the source and
41 significance of limiting certain reserves to five percent in subsection (b)(i)?
42
43

1 **SECTION 207. MEMBER CONTROL AGREEMENTS.**

2 (a) Authorization. A written agreement among persons who are then members, including
3 a sole member, or who have signed subscription or contribution agreements, relating to the
4 control of any phase of the business and affairs of the cooperative, its liquidation, dissolution and
5 termination, or the relations among members or persons who have signed subscription or
6 contribution agreements is valid as provided in subdivision b. Wherever this chapter provides
7 that a particular result may or must be obtained through a provision in the articles or bylaws, the
8 same result can be accomplished through a member control agreement valid under this section or
9 through a procedure established by a member control agreement valid under this section.

10 (b) Valid Execution. Other than patron member voting control under section
11 _____ and patron member allocation and distribution provisions under sections _____
12 and _____, a written agreement among persons described in subdivision a that relates to the
13 control of or the liquidation, dissolution, and termination of the cooperative; the relations among
14 them; or any phase of the business and affairs of the cooperative, including, without limitation,
15 the management of its business; the declaration and payment of distributions; the sharing of
16 profits and losses; the election of directors; the employment of members by the cooperative; or
17 the arbitration of disputes, is valid, if the agreement is signed by all persons who are then the
18 members of the cooperative, whether or not the members all have voting power, and all those
19 who have signed contribution agreements, regardless of whether those signatories will, when
20 members, have voting power.

21 (c) Other Agreements Not Affected. This section does not apply to, limit, or restrict
22 agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of

1 agreement among members or between the members and the cooperative with respect to any of
2 the matters described.

3 **COMMENT**

4 Comment to the Second Draft:

5
6 This is an important section in defining a term not defined under the Wyoming Act. Note
7 that all members must be parties a member control agreement should such a member control
8 agreement be included as required records. What is the effect of adding new members who do
9 not sign a control agreement making it no long unanimous?
10

11 **SECTION 208. DISTRIBUTION OF UNCLAIMED PROPERTY.**

12
13 (a) Alternate Procedure to Disburse Property. A cooperative may, in lieu of paying or
14 delivering to the state the unclaimed property specified in its report of unclaimed property,
15 distribute the unclaimed property to a business entity or organization that is exempt from
16 taxation. A cooperative making the election to distribute unclaimed property shall file with the
17 secretary of state:

18 (1) a verified written explanation of the proof of claim of an owner establishing a
19 right to receive the abandoned property;

20 (2) any error in the presumption of abandonment;

21 (3) the name, address, and exemption number of the business entity or
22 organization to which the property was or is to be distributed; and

23 (4) the approximate date of distribution.

24 (b) Reporting and Claiming Procedure Not Affected. This subdivision does not alter the
25 procedure provided by law for cooperatives to report unclaimed property to the state and the
26 requirement that claims of owners are made to the cooperatives for a period following the

1 publication of lists of abandoned property.

2 (c) Owner's Right Extinguished on Disbursement. The right of an owner to unclaimed
3 property held by a cooperative is extinguished when the property is disbursed by the cooperative
4 to a tax exempt organization in accordance with this section.

5 **COMMENT**

6 Comment to the Second Draft:
7

8 Consideration concerning the deletion of this section might focus on its effect on (1)
9 enactability and (2) uniformity of this Act.

1 **ARTICLE 3**

2 **MERGER**

3
4 **SECTION 301. MERGER AND CONSOLIDATION.**

5 (a) Authorization. Unless otherwise prohibited, cooperatives organized under the laws of
6 this state, including cooperatives organized under this chapter or chapter ____, may merge or
7 consolidate with each other, a _____ limited liability company under the provisions of
8 section _____, or other business entities organized under the laws of another state by
9 complying with the provisions of this section and the law of the state where the surviving or new
10 business entity will exist. A cooperative may not merge or consolidate with a business entity
11 organized under the laws of this state, other than a cooperative organized under chapter _____,
12 unless the law governing the business entity expressly authorizes merger or consolidation with a
13 cooperative. This subdivision does not authorize a foreign business entity to do any act not
14 authorized by the law governing the foreign business entity.

15 (b) Plan. To initiate a merger or consolidation of a cooperative, a written plan of merger
16 or consolidation shall be prepared by the board or by a committee selected by the board to
17 prepare a plan. The plan shall state:

18 (1) the names of the constituent domestic cooperatives, the name of any domestic
19 limited liability company that is a party to the merger, and any foreign business entities;

20 (2) the name of the surviving or new domestic cooperative, _____
21 limited liability company as required by section _____, or other foreign business entity;

22 (3) the manner and basis of converting membership or ownership interests of the

1 constituent domestic cooperatives, the surviving _____ limited liability company as
2 provided in section _____, or foreign business entities into membership or ownership
3 interests in the surviving or new domestic cooperative, the surviving _____ limited
4 liability company as authorized in section _____, or foreign business entity;

5 (4) the terms of the merger or consolidation;

6 (5) the proposed effect of the consolidation or merger on the members and patron
7 members of each constituent domestic cooperative; and

8 (6) for a consolidation, the plan shall contain the articles of the entity or
9 organizational documents to be filed with the state in which the entity is organized or, if the
10 surviving organization is a _____ limited liability company, the articles of organization.

11 (c) Notice. The following shall apply to notice:

12 (1) the board shall mail or otherwise transmit or deliver notice of the merger or
13 consolidation to each member. The notice shall contain the full text of the plan, and the time and
14 place of the meeting at which the plan will be considered; and

15 (2) a cooperative with more than 200 members may provide the notice in the same
16 manner as a regular members' meeting notice.

17 (d) Adoption of Plan.

18 (1) A plan of merger or consolidation shall be adopted by a domestic cooperative
19 as provided in this subdivision.

20 (2) A plan of merger or consolidation is adopted if:

21 (A) a quorum of the members eligible to vote is registered as being present
22 or represented by mail vote or alternative ballot at the meeting; and

1 (B) the plan is approved by the patron members, or if otherwise provided
2 in the articles or bylaws is approved by a majority of the votes cast in each class of votes cast, or
3 for a domestic cooperative with articles or bylaws requiring more than a majority of the votes
4 cast or other conditions for approval, the plan is approved by a proportion of the votes cast or a
5 number of total members as required by the articles or bylaws and the conditions for approval in
6 the articles or bylaws have been satisfied.

7 (3) After the plan has been adopted, articles of merger or consolidation stating the
8 plan and that the plan was adopted according to this subdivision shall be signed by the chair, vice
9 chair, records officer, or documents officer of each cooperative merging or consolidating.

10 (4) The articles of merger or consolidation shall be filed in the office of the
11 secretary of state.

12 (5) For a merger, the articles of the surviving domestic cooperative subject to this
13 chapter are deemed amended to the extent provided in the articles of merger.

14 (6) Unless a later date is provided in the plan, the merger or consolidation is
15 effective when the articles of merger or consolidation are filed in the office of the secretary of
16 state or the appropriate office of another jurisdiction.

17 (7) The secretary of state shall issue a certificate of organization of the merged or
18 consolidated cooperative.

19 (e) Effect of Merger. For a merger that does not involve a _____ limited liability
20 company, the following shall apply to the effect of a merger:

21 (1) After the effective date, the domestic cooperative, _____ limited
22 liability company, if party to the plan, and any foreign business entity that is a party to the plan

1 become a single entity. For a merger, the surviving business entity is the business entity
2 designated in the plan. For a consolidation, the new domestic cooperative, the _____
3 limited liability company, if any, and any foreign business entity is the business entity provided
4 for in the plan. Except for the surviving or new domestic cooperative, _____ limited
5 liability company, or foreign business entity, the separate existence of each merged or
6 consolidated domestic or foreign business entity that is a party to the plan ceases on the effective
7 date of the merger or consolidation.

8 (2) The surviving or new domestic cooperative, _____ limited liability
9 company, or foreign business entity possesses all of the rights and property of each of the merged
10 or consolidated business entities and is responsible for all their obligations. The title to property
11 of the merged or consolidated domestic cooperative or foreign business entity is vested in the
12 surviving or new domestic cooperative, _____ limited liability company, or foreign
13 business entity without reversion or impairment of the title caused by the merger or
14 consolidation.

15 (3) If a merger involves a _____ limited liability company, this
16 subdivision is subject to the provisions of section _____.

17 **COMMENT**

18 Comment to the Second Draft:

19 The quantum of both quorum and vote needs to be discussed.
20

21 The initial draft read:

22 **SECTION 701. MERGER AND CONSOLIDATION.**

23
24
25 (a) Unless otherwise prohibited, cooperatives organized under the laws of this
26

1 state may merge or consolidate with each other or other business entities organized under the
2 laws of this state or another state by complying with the provisions of this section or the law of
3 the state where the surviving or new business entity will exist.
4

5 (b) To initiate a merger or consolidation of a cooperative, a written plan of merger
6 or consolidation shall be prepared by the board or by a committee selected by the board to
7 prepare a plan. The plan shall state:
8

9 (i) The names of the constituent cooperatives and other business entities;
10

11 (ii) The name of the surviving or new cooperative or other business entity;
12

13 (iii) The manner and basis of converting membership or ownership
14 interests of the constituent cooperatives or business entities into membership or ownership
15 interests in the surviving or new cooperative or business entity;
16

17 (iv) The terms of the merger or consolidation;
18

19 (v) The proposed effect of the consolidation or merger on the members
20 and patron members of the cooperative; and
21

22 (vi) For a consolidation, the plan shall contain the articles of the entity or
23 organizational documents to be filed with the state in which the entity is organized.
24

25 (c) The following shall apply to notice:
26

27 (i) The board shall mail a merger or consolidation or otherwise transmit or
28 deliver notice to each member. The notice shall contain:
29

30 (A) The full text of the plan; and
31

32 (B) The time and place of the meeting at which the plan will be
33 considered.
34

35 (ii) A cooperative with more than two hundred (200) members may
36 provide the merger or consolidation notice in the same manner as a regular members' meeting
37 notice.
38

39 (d) The following shall apply to the adoption of a plan or merger or consolidation:
40

41 (i) A plan of merger or consolidation is adopted if:
42

43 (A) A quorum of the members is registered as being present or

1 represented by mail vote at the meeting; and

2
3 (B) The plan is approved by two-thirds (2/3) of the votes cast, or
4 for a cooperative with articles or bylaws requiring more than two-thirds (2/3) of the votes cast or
5 other conditions for approval, the plan is approved by a proportion of the votes cast or a number
6 of total members as required by the articles or bylaws and the conditions for approval in the
7 articles or bylaws have been satisfied.
8

9 (ii) After the plan has been adopted, articles of merger or consolidation
10 stating the plan and that the plan was adopted according to this article shall be signed by the
11 chair, vice-chair, records officer or documents officer of each cooperative merging or
12 consolidating;
13

14 (iii) The articles of merger or consolidation shall be filed in the office of
15 the secretary of state;
16

17 (iv) For a merger, the articles of the surviving cooperative subject to this
18 article are deemed amended to the extent provided in the articles of merger;
19

20 (v) Unless a later date is provided in the plan, the merger or consolidation
21 is effective when the articles of merger or consolidation are filed in the office of the secretary of
22 state;
23

24 (vi) The secretary of state shall issue a certificate of organization of the
25 merged or consolidated cooperative.
26

27 (e) The following shall apply to the effect of a merger:
28

29 (i) After the effective date, the cooperatives or other business entities that
30 are parties to the plan become a single entity. For a merger, the surviving business entity is the
31 business entity designated in the plan. For a consolidation, the new cooperative or other business
32 entity is the business entity provided for in the plan. Except for the surviving or new business
33 entity, the separate existence of all business entities that are parties to the plan cease on the
34 effective date of the merger or consolidation;
35

36 (ii) The surviving or new business entity possesses all of the rights and
37 property of each of the merged or consolidated business entities and is responsible for all their
38 obligations. The title to property of the merged or consolidated business entity is vested in the
39 surviving or new business entity without reversion or impairment of the title caused by the
40 merger or consolidation;
41

42 (iii) The right of a creditor may not be impaired by the merger or
43 consolidation without the creditor's consent.

1
2 (f) The fee to be paid to the secretary of state for filing articles of merger or
3 consolidation shall conform with the provisions of W.S. 17-16-122.
4

5 **Comment to Initial Draft**

6
7 The source for this provision is Wyoming Rev. Stat. § 17-10-236.
8

9 This section governs merger and consolidation. Again, the quantum of the vote is two-
10 thirds which is inconsistent with the uniform unincorporated acts and raises theoretical, if not
11 practical, issues.
12

13 A broader issue about mergers and conversion and this Act's relationship with the
14 NCCUSL-ABA's current Multi-Entity Transactions Act Drafting committee is also raised by this
15 section.
16

17 Other specific issues include whether this Act should include conversions (which is might
18 in another section), divisions, and share exchanges. The effect of (e)(iii) also needs to be
19 discussed.
20

21 Finally, and most generally, the structure of this section will probably change to reflect
22 the general structure of other uniform unincorporated entity acts. One such structural change
23 might include bifurcating this section into articles on "Merger and Conversion" and
24 "Miscellaneous." Only because this is the last article: Are transitional provisions helpful or
25 necessary?
26
27

28 **SECTION 302. MERGER OF SUBSIDIARY.**

29 (a) When Authorized; Contents of Plan.

30 (1) For purposes of this section, "subsidiary" means a domestic cooperative, a
31 _____ limited liability company, or a foreign cooperative, and "cooperative" means a
32 domestic cooperative. A _____ limited liability company may only participate in a
33 merger under this section to the extent authorized under section _____. A parent domestic
34 cooperative or a subsidiary that is a domestic cooperative may complete the merger of a
35 subsidiary as provided in this section, provided however, if either the parent or the subsidiary is a

1 business entity organized under the laws of this state, the merger of the subsidiary is not
2 authorized under this section unless the law governing the business entity expressly authorizes
3 merger with a cooperative. A parent cooperative owning at least 90 percent of the outstanding
4 ownership interests of each class and series of a subsidiary directly, or indirectly through related
5 organizations, other than classes or series that, absent this section, would otherwise not be
6 entitled to vote on the merger, may merge the subsidiary into itself or into any other subsidiary at
7 least 90 percent of the outstanding ownership interests of each class and series of which is owned
8 by the parent cooperative directly, or indirectly through related organizations, other than classes
9 or series that, absent this section, would otherwise not be entitled to vote on the merger, without
10 a vote of the members of itself or any subsidiary or may merge itself, or itself and one or more of
11 the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the
12 affirmative vote of a majority of the directors of the parent cooperative present shall set forth a
13 plan of merger that contains:

14 (A) the name of the subsidiary or subsidiaries, the name of the parent, and
15 the name of the surviving cooperative;

16 (B) the manner and basis of converting the membership interests of the
17 subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another
18 cooperative or, in the whole or in part, into money or other property;

19 (C) if the parent is a constituent cooperative but is not the surviving
20 cooperative in the merger, a provision for the pro rata issuance of membership interests of the
21 surviving cooperative to the holders of membership interests of the parent on surrender of any
22 certificates for shares of the parent; and

1 (D) if the surviving cooperative is a subsidiary, a statement of any
2 amendments to the articles of the surviving cooperative that will be part of the merger.

3 (2) If the parent is a constituent cooperative and the surviving cooperative in the
4 merger, it may change its cooperative name, without a vote of its members, by the inclusion of a
5 provision to that effect in the resolution of merger setting forth the plan of merger that is
6 approved by the affirmative vote of a majority of the directors of the parent present. Upon the
7 effective date of the merger, the name of the parent shall be changed.

8 (3) If the parent is a constituent cooperative but is not the surviving cooperative in
9 the merger, the resolution is not effective unless it is also approved by the affirmative vote of the
10 holders of a majority of the voting power of all membership interests of the parent entitled to
11 vote at a regular or special meeting if the parent is a cooperative, or in accordance with the laws
12 under which it is organized if the parent is a foreign business entity or cooperative.

13 (b) Notice to Members of Subsidiary. Notice of the action, including a copy of the plan
14 of merger, shall be given to each member, other than the parent and any subsidiary of each
15 subsidiary that is a constituent cooperative in the merger before, or within ten days after, the
16 effective date of the merger.

17 (c) Articles of Merger; Contents of Articles. Articles of merger shall be prepared that
18 contain:

19 (1) the plan of merger;

20 (2) the number of outstanding membership interests of each series and class of
21 each subsidiary that is a constituent cooperative in the merger, other than the series or classes
22 that, absent this section, would otherwise not be entitled to vote on the merger, and the number of

1 membership interests of each series and class of the subsidiary or subsidiaries, other than series
2 or classes that, absent this section, would otherwise not be entitled to vote on the merger, owned
3 by the parent directly, or indirectly through related organizations; and

4 (3) a statement that the plan of merger has been approved by the parent under this
5 section.

6 (d) Articles Signed, Filed. The articles of merger shall be signed on behalf of the parent
7 and filed with the secretary of state.

8 (e) Certificate. The secretary of state shall issue a certificate of merger to the parent or
9 its legal representative or, if the parent is a constituent cooperative but is not the surviving
10 cooperative in the merger, to the surviving cooperative or its legal representative.

11 (f) Nonexclusivity. A merger among a parent and one or more subsidiaries or among
12 two or more subsidiaries of a parent may be accomplished under section _____
13 instead of this section, in which case this section does not apply.

14 COMMENT

15 Comment to the Second Draft:

16
17 This is the short-form merger from corporate law. Does the term “constituent
18 cooperative” require definition. One major policy issue is dissenters rights and how they are
19 exercised under this section. Subsection (a)(1) requires 90 percent of ownership interest. Do
20 ownership interests include assignees/transferees?
21

22 23 SECTION 303. ABANDONMENT.

24 (a) Abandonment by Members or Plan. After a plan of merger has been approved by the
25 members entitled to vote on the approval of the plan and before the effective date of the plan, the
26 plan may be abandoned by the same vote that approved the plan.

1 (b) Abandonment of Merger.

2 (1) A merger may be abandoned:

3 (A) if the members of each of the constituent domestic cooperatives
4 entitled to vote on the approval of the plan have approved the abandonment at a meeting by the
5 affirmative vote of the holders of a majority of the voting power of the membership interests
6 entitled to vote; if the merger is with a domestic cooperative and a _____ limited
7 liability company or foreign business entity, if abandonment is approved in such manner as may
8 be required by section _____ for the involvement of a _____ limited liability
9 company, or for a foreign business entity by the laws of the state under which the foreign
10 business entity is organized; and the members of a constituent domestic cooperative are not
11 entitled to vote on the approval of the plan, the board of the constituent domestic cooperative has
12 approved the abandonment by the affirmative vote of a majority of the directors present;

13 (B) if the plan itself provides for abandonment and all conditions for
14 abandonment set forth in the plan are met; or

15 (C) under paragraph (2).

16 (2) A plan of merger may be abandoned before the effective date of the plan by a
17 resolution of the board of any constituent domestic cooperative abandoning the plan of merger
18 approved by the affirmative vote of a majority of the directors present, subject to the contract
19 rights of any other person under the plan. If a plan of merger is with a domestic or foreign
20 business entity, the plan of merger may be abandoned before the effective date of the plan by a
21 resolution of the foreign business entity adopted according to the laws of the state under which
22 the foreign business entity is organized, subject to the contract rights of any other person under

1 the plan. If the plan of merger is with a _____ limited liability company, the plan of
2 merger may be abandoned by the _____ limited liability company as provided in
3 section _____, subject to the contractual rights of any other person under the plan.

4 (3) If articles of merger have been filed with the secretary of state, but have not
5 yet become effective, the constituent organizations, in the case of abandonment under paragraph
6 (1), clause (A), the constituent organizations or any one of them, in the case of abandonment
7 under paragraph (1), clause (B), or the abandoning organization in the case of abandonment
8 under paragraph (2), shall file with the secretary of state articles of abandonment that contain:

9 (A) the names of the constituent organizations;

10 (B) the provisions of this section under which the plan is abandoned; and

11 (C) if the plan is abandoned under paragraph (b), the text of the resolution
12 abandoning the plan.

13 **COMMENT**

14 Comment to the Second Draft:

15 The meaning of “subject to contract rights” might be ambiguous.
16

1 **ARTICLE 4**

2 **DISSOLUTION**

3
4 **SECTION 401. METHODS OF DISSOLUTION.** A cooperative may be dissolved by
5 the members or by order of the court.

6 **COMMENT**

7 The initial draft read:
8

9 **SECTION 703. METHODS OF DISSOLUTION.** A cooperative may be dissolved by
10 the members or by order of the court.
11

12 **Comment to Initial Draft**

13
14 The source for this provision is Wyoming Rev. Stat. § 17-10-238.
15

16 This provision is redundant and may not be necessary. If it is kept, it might be advisable
17 to provide statutory cross-references in the text or comment.
18
19

20 **SECTION 402. WINDING UP.**

21 (a) Collection and Payment of Debts. After the notice of intent to dissolve has been filed
22 with the secretary of state, the board, or the officers acting under the direction of the board shall
23 proceed as soon as possible:

24 (1) to collect or make provision for the collection of all debts due or owing to the
25 cooperative, including unpaid subscriptions for shares; and

26 (2) to pay or make provision for the payment of all debts, obligations, and
27 liabilities of the cooperative according to their priorities.

28 (b) Transfer of Assets. After the notice of intent to dissolve has been filed with the

1 secretary of state, the board may sell, lease, transfer, or otherwise dispose of all or substantially
2 all of the property and assets of the dissolving cooperative without a vote of the members.

3 (c) Distribution to Members. Tangible and intangible property, including money,
4 remaining after the discharge of the debts, obligations, and liabilities of the cooperative shall be
5 distributed to the members and former members as provided in the articles or bylaws, unless
6 otherwise provided by law. If previously authorized by the members, the tangible and intangible
7 property of the cooperative may be liquidated and disposed of at the discretion of the board.

8 **COMMENT**

9 The initial draft read:

10 **SECTION 704. WINDING UP.**

11
12 (a) After the notice of intent to dissolve has been filed with the secretary of state,
13 the board, or the officers acting under the direction of the board, shall proceed as soon as
14 possible:
15

16 (i) To collect or make provision for the collection of all debts due or owing
17 to the cooperative, including unpaid subscriptions for shares; and
18

19 (ii) To pay or make provision for the payment of all debts, obligations and
20 liabilities of the cooperative according to their priorities.
21

22 (b) After the notice of intent to dissolve has been filed with the secretary of state,
23 the board may sell, lease, transfer or otherwise dispose of all or substantially all of the property
24 and assets of the dissolving cooperative without a vote of the members.
25

26 (c) Tangible and intangible property, including money, remaining after the
27 discharge of the debts, obligations and liabilities of the cooperative may be distributed to the
28 members and former members as provided in the bylaws. If previously authorized by the
29 members, the tangible and intangible property of the cooperative may be liquidated and disposed
30 of at the discretion of the board.
31

32 **Comment to Initial Draft**

33 The source for this provision is Wyoming Rev. Stat. § 17-10-239.
34
35

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(b) Revocation by Members. The chair may call a members' meeting to consider the possibility of revoking the dissolution proceedings. The question of the proposed revocation be submitted to the members at the members' meeting called to consider the revocation. Dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the members of the cooperative or for a cooperative with articles or bylaws requiring a greater number of members, the number of members required by the articles or bylaws.

COMMENT

SECTION 705. REVOCATION OF DISSOLUTION PROCEEDINGS.

(b) The chair may call a members' meeting to consider the advisability of revoking the dissolution proceedings. The question of the proposed revocation shall be submitted to the members at the members' meeting called to consider the revocation. The dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the members of the cooperative or for a cooperative with articles or bylaws requiring a greater number of members, the number of members required by the articles or bylaws.

1 (c) Revocation of dissolution proceedings is effective when a notice of revocation
2 is filed with the secretary of state. After the notice is filed, the cooperative may resume business.

3
4 **Comment to Initial Draft**

5
6 The source for this provision is Wyoming Rev. Stat. § 17-10-240.

7
8 Subsection 705(b) uses a majority vote to revoke the dissolution but the original vote
9 which is inconsistent with the vote of two-thirds required for dissolution in section 702. If
10 dissolution and liquidation are different procedures, the distinction should be made clearer in the
11 Act.

12
13
14 **SECTION 404. STATUTE OF LIMITATIONS.** The claim of a creditor or claimant
15 against a dissolving cooperative is barred if the claim has not been enforced by initiating legal,
16 administrative, or arbitration proceedings concerning the claim by two years after the date the
17 notice of intent to dissolve is filed with the secretary of state.

18 **COMMENT**

19 Comment to the Second Draft:

20
21 There may be questions concerning when arbitration proceedings begin. Is
22 this article in general, so unique as to require special provisions or could the Multiple Entity
23 Transaction Act, a pending NCCUSL-ABA project be used? Are debt payment provisions
24 similar to those in dissolution advisable in the case of merger as well. Should divisions be
25 allowed?

26
27 The initial draft read:

28
29 **SECTION 706. STATUTE OF LIMITATIONS.** The claim of a creditor or claimant
30 against a dissolving cooperative is barred if the claim has not been enforced by initiating legal,
31 administrative or arbitration proceedings concerning the claim by two (2) years after the date the
32 notice of intent to dissolve is filed with the secretary of state.

33
34 **Comment to Initial Draft**

35
36 The source for this provision is Wyoming Rev. Stat. § 17-10-241.

37
38 The length of the statute of limitations is an important policy decision. This Act does not

1 distinguish between known and unknown claimants. Sections 707 and 708 include other creditor
2 protection.
3
4

5 **SECTION 405. ARTICLES OF DISSOLUTION.**

6 (a) Conditions to File. Articles of dissolution of a cooperative shall be filed with the
7 secretary of state after payment of the claims of all known creditors and claimants has been made
8 or provided for and the remaining property has been distributed by the board. The articles of
9 dissolution shall state:

10 (1) that all debts, obligations, and liabilities of the cooperative have been paid or
11 discharged or adequate provisions have been made for them or time periods allowing claims have
12 run and other claims are not outstanding;

13 (2) that the remaining property, assets, and claims of the cooperative have been
14 distributed among the members or under a liquidation authorized by the members; and

15 (3) that legal, administrative, or arbitration proceedings by or against the
16 cooperative are not pending or adequate provision has been made for the satisfaction of a
17 judgment, order, or decree that may be entered against the cooperative in a pending proceeding.

18 (b) Dissolution Effective on Filing. The cooperative is dissolved when the articles of
19 dissolution have been filed with the secretary of state.

20 (c) Certificate. The secretary of state shall issue to the dissolved cooperative or its legal
21 representative a certificate of dissolution that contains:

22 (1) the name of the dissolved cooperative;

23 (2) the date the articles of dissolution were filed with the secretary of state; and

24 (3) a statement that the cooperative is dissolved.

1 **COMMENT**

2 The initial draft read:

3
4 **SECTION 707. ARTICLES OF DISSOLUTION.**

5
6 (a) Articles of dissolution of a cooperative shall be filed with the secretary of state
7 after payment of the claims of all known creditors and claimants has been made or provided for
8 and the remaining property has been distributed by the board. The articles of dissolution shall
9 state:

10
11 (i) That all debts, obligations, and liabilities of the cooperative have been
12 paid or discharged or adequate provisions have been made for them or time periods allowing
13 claims have run and other claims are not outstanding;

14
15 (ii) That the remaining property, assets, and claims of the cooperative have
16 been distributed among the members or pursuant to a liquidation authorized by the members; and

17
18 (iii) That legal, administrative, or arbitration proceedings by or against the
19 cooperative are not pending or adequate provision has been made for the satisfaction of a
20 judgment, order or decree that may be entered against the cooperative in a pending proceeding.

21
22 (b) The cooperative is dissolved when the articles of dissolution have been filed
23 with the secretary of state.

24
25 (c) The secretary of state shall issue to the dissolved cooperative or its legal
26 representative a certificate of dissolution that contains:

27
28 (i) The name of the dissolved cooperative;

29
30 (ii) The date the articles of dissolution were filed with the secretary of
31 state; and

32
33 (iii) A statement that the cooperative is dissolved.

34
35 **Comment to Initial Draft**

36
37 The source for this provision is Wyoming Rev. Stat. § 17-10-242.

38
39 This Act requires two filings upon dissolution. Section 704 contemplates a notice of
40 intent to dissolve and this section requires the filing of articles of dissolution.

1 **SECTION 406. APPLICATION FOR COURT-SUPERVISED VOLUNTARY**

2 **DISSOLUTION.** After a notice of intent to dissolve has been filed with the secretary of state
3 and before a certificate of dissolution has been issued, the cooperative or, for good cause shown,
4 a member or creditor may apply to a court within the county where the registered address is
5 located to have the dissolution conducted or continued under the supervision of the court.

6 **COMMENT**

7 Comment to the Second Draft:

8
9 What is “good cause”? Is this section intended to be governed by the section on court
10 ordered dissolutions?

11
12 The initial draft read:

13
14 **SECTION 708. APPLICATION FOR COURT-SUPERVISED VOLUNTARY**
15 **DISSOLUTION.** After a notice of intent to dissolve has been filed with the secretary of state
16 and before a certificate of dissolution has been issued, the cooperative or, for good cause shown,
17 a member or creditor may apply to a court within the county where the registered address is
18 located to have the dissolution conducted or continued under the supervision of the court as
19 provided.

20
21 **Comment to Initial Draft**

22
23 The source for this provision is Wyoming Rev. Stat. § 17-10-243.

24
25
26 **SECTION 407. COURT-ORDERED REMEDIES OR DISSOLUTION.**

27 (a) Conditions for Relief. A court may grant equitable relief that it deems just and
28 reasonable in the circumstances or may dissolve a cooperative and liquidate its assets and
29 business:

30 (1) in a supervised voluntary dissolution that is applied for by the cooperative;

31 (2) in an action by a member when it is established that:

1 (A) the directors or the persons having the authority otherwise vested in
2 the board are deadlocked in the management of the cooperative's affairs and the members are
3 unable to break the deadlock;

4 (B) the directors or those in control of the cooperative have acted
5 fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their
6 capacities as members, directors, or officers;

7 (C) the members of the cooperative are so divided in voting power that, for
8 a period that includes the time when two consecutive regular members' meetings were held, they
9 have failed to elect successors to directors whose terms have expired or would have expired upon
10 the election and qualification of their successors;

11 (D) the cooperative assets are being misapplied or wasted; or

12 (E) the period of duration as provided in the articles has expired and has
13 not been extended as provided in this chapter; and

14 (3) in an action by a creditor when:

15 (A) the claim of the creditor against the cooperative has been reduced to
16 judgment and an execution on the judgment has been returned unsatisfied;

17 (B) the cooperative has admitted in writing that the claim of the creditor
18 against the cooperative is due and owing and it is established that the cooperative is unable to pay
19 its debts in the ordinary course of business; or

20 (C) in an action by the attorney general to dissolve the cooperative in
21 accordance with this chapter when it is established that a decree of dissolution is appropriate.

22 (b) Condition of Cooperative or Association. In determining whether to order equitable

1 relief or dissolution, the court shall take into consideration the financial condition of the
2 cooperative but may not refuse to order equitable relief or dissolution solely on the grounds that
3 the cooperative has accumulated operating net income or current operating net income.

4 (c) Dissolution as Remedy. In deciding whether to order dissolution of the cooperative,
5 the court shall consider whether lesser relief suggested by one or more parties, such as a form of
6 equitable relief or a partial liquidation, would be adequate to permanently relieve the
7 circumstances established under paragraph (a) clause (2), item (B) or (C). Lesser relief may be
8 ordered if it would be appropriate under the facts and circumstances of the case.

9 (d) Expenses. If the court finds that a party to a proceeding brought under this section
10 has acted arbitrarily, vexatiously, or otherwise not in good faith, the court may in its discretion
11 award reasonable expenses, including attorney fees and disbursements to any of the other parties.

12 (e) Venue. Proceedings under this section shall be brought in a court within the county
13 where the registered address of the cooperative is located.

14 (f) Parties. It is not necessary to make members parties to the action or proceeding
15 unless relief is sought against them personally.

16 COMMENT

17 Comment to the Second Draft:

18
19 As a general matter this grants broad authority and subsection (e) is
20 probably governed by other law. Subsection (f) might be best put in a separate section. This
21 draft contains no provisions for derivative litigation.

22 The initial draft read:

23 **SECTION 709. COURT-ORDERED REMEDIES OR DISSOLUTION.**

24
25 (a) A court may grant equitable relief that it deems just and reasonable in the
26
27

1 circumstances or may dissolve a cooperative and liquidate its assets and business:

2
3 (i) In a supervised voluntary dissolution that is applied for by the
4 cooperative;

5
6 (ii) In an action by a member when it is established that:

7
8 (A) The directors or the persons having the authority otherwise
9 vested in the board are deadlocked in the management of the cooperative's affairs and the
10 members are unable to break the deadlock;

11
12 (B) The directors or those in control of the cooperative have acted
13 fraudulently, illegally or in a manner unfairly prejudicial toward one (1) or more members in
14 their capacities as members, directors or officers;

15
16 (C) The members of the cooperative are so divided in voting power
17 that, for a period that includes the time when two (2) consecutive regular members' meetings
18 were held, they have failed to elect successors to directors whose terms have expired or would
19 have expired upon the election and qualification of their successors;

20
21 (D) The cooperative assets are being misapplied or wasted; or

22
23 (E) The period of duration as provided in the articles has expired
24 and has not been extended as provided in this article.

25
26 (iii) In an action by a creditor when:

27
28 (A) The claim of the creditor against the cooperative has been
29 reduced to judgment and an execution on the judgment has been returned unsatisfied; or

30
31 (B) The cooperative has admitted in writing that the claim of the
32 creditor against the cooperative is due and owing and it is established that the cooperative is
33 unable to pay its debts in the ordinary course of business; or

34
35 (iv) In an action by the attorney general to dissolve the cooperative in
36 accordance with this article when it is established that a decree of dissolution is appropriate.

37
38 (b) In determining whether to order equitable relief or dissolution, the court shall
39 take into consideration the financial condition of the cooperative but may not refuse to order
40 equitable relief or dissolution solely on the ground that the cooperative has accumulated
41 operating net income or current operating net income.

42
43 (c) In deciding whether to order dissolution of the cooperative, the court shall

1 consider whether lesser relief suggested by one (1) or more parties, such as a form of equitable
2 relief or a partial liquidation, would be adequate to permanently relieve the circumstances
3 established under subparagraph (a)(ii)(B) or (C) of this section. Lesser relief may be ordered if it
4 would be appropriate under the facts and circumstances of the case.

5
6 (d) If the court finds that a party to a proceeding brought under this section has
7 acted arbitrarily, vexatiously, or otherwise not in good faith, the court may in its discretion award
8 reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

9
10 (e) Proceedings under this section shall be brought in a court within the county
11 where the registered address of the cooperative is located.

12
13 (f) It is not necessary to make members parties to the action or proceeding unless
14 relief is sought against them personally.

15
16 **Comment to Initial Draft**

17
18 The source for this provision is Wyoming Rev. Stat. § 17-10-244.

19
20 Section 709 provides important minority rights and expressly adopts equitable principles.
21 One cause for ordering dissolution is deadlock which comes from corporate acts. First, is the
22 deadlock provision necessary? Second, are the powers broad enough to contemplate such
23 remedies as provisional directors?

24
25
26 **SECTION 408. PROCEDURE IN INVOLUNTARY OR COURT-SUPERVISED**
27 **VOLUNTARY DISSOLUTION.**

28 (a) Action Before Hearing. In dissolution proceedings before a hearing can be completed
29 the court may:

30 (1) issue injunctions;

31 (2) appoint receivers with all powers and duties that the court directs;

32 (3) take actions required to preserve the cooperative's assets wherever located; and

33 (4) carry on the operations of the cooperative.

34 (b) Action after Hearing. After a hearing is completed, upon notice to parties to the

1 proceedings and to other parties in interest designated by the court, the court may appoint a
2 receiver to collect the cooperative's assets, including amounts owing to the cooperative by
3 subscribers on account of an unpaid portion of the consideration for the issuance of shares. A
4 receiver has authority, subject to the order of the court, to continue the business of the
5 cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the
6 cooperative either at public or private sale.

7 (c) Discharge of Obligations. The assets of the cooperative or the proceeds resulting
8 from a sale, lease, transfer, or other disposition shall be applied in the following order of priority:

9 (1) the costs and expense of the proceedings, including attorney fees and
10 disbursements;

11 (2) debts, taxes, and assessments due the United States, this state, and other states
12 in that order;

13 (3) claims duly proved and allowed to employees under the provisions of the
14 Workers' Compensation Act except that claims under this clause may not be allowed if the
15 cooperative carried workers' compensation insurance, as provided by law, at the time the injury
16 was sustained;

17 (4) claims, including the value of all compensation paid in a medium other than
18 money, proved and allowed to employees for services performed within three months preceding
19 the appointment of the receiver, if any; and

20 (5) other claims proved and allowed.

21 (d) Remainder to Members. After payment of the expenses of receivership and claims of
22 creditors are proved, the remaining assets, if any, may be distributed to the members or

distributed under an approved liquidation plan.

COMMENT

Comment to the Second Draft:

The term “business” was changed to operations. Is all of subsection (a)(1) covered by other law, e.g., TRO law? Are subsections (c)(3) and (4) more detailed than necessary, i.e., would subsection (c)(5) suffice?

The initial draft read:

SECTION 710. PROCEDURE IN INVOLUNTARY OR COURT-SUPERVISED VOLUNTARY DISSOLUTION.

(a) In dissolution proceedings before a hearing can be completed the court may:

(i) Issue injunctions;

(ii) Appoint receivers with all powers and duties that the court directs;

(iii) Take actions required to preserve the cooperative's assets wherever located; and

(iv) Carry on the business of the cooperative.

(b) After a hearing is completed, on notice the court directs to be given to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative's assets, including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative either at public or private sale.

(c) The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority:

(i) The costs and expenses of the proceedings, including attorneys' fees and disbursements;

(ii) Debts, taxes and assessments due the United States, this state and other states in that order;

1 (iii) Claims duly proved and allowed to employees under the provisions of
2 the workers' compensation act except that claims under this clause may not be allowed if the
3 cooperative has carried workers' compensation insurance, as provided by law, at the time the
4 injury was sustained;

5
6 (iv) Claims, including the value of all compensation paid in a medium
7 other than money, proved and allowed to employees for services performed within three (3)
8 months preceding the appointment of the receiver, if any; and
9

10 (v) Other claims proved and allowed.
11

12 (d) After payment of the expenses of receivership and claims of creditors are
13 proved, the remaining assets, if any, may be distributed to the members or distributed pursuant to
14 an approved liquidation plan.
15

16 **Comment to Initial Draft** 17

18 The source for this provision is Wyoming Rev. Stat. § 17-10-245.
19

20 Section 710 confirms the court has broad powers. Subsection 710(a)(iii) is similar to
21 statutory language concerning charging orders in unincorporated entity statutes. An argument
22 exists that the language in subsection 710(a)(iii) causes mischief. Should the two year statute of
23 limitations for claims be reduced, as it is here, to three months?
24
25

26 **SECTION 409. RECEIVER QUALIFICATIONS AND POWERS.**

27 (a) Qualifications. A receiver shall be a natural person or a domestic business entity or a
28 foreign business entity authorized to transact business in this state. A receiver shall give a bond
29 as directed by the court with the sureties required by the court.

30 (b) Powers. A receiver may sue and defend in all courts as receiver of the cooperative.
31 The court appointing the receiver has exclusive jurisdiction of the cooperative and its property.
32

32 **COMMENT**

33 Comment to the Second Draft:
34

35 If the receiver is an entity does it need to be a *business* entity or could
36 it be a not-for-profit corporation?

1
2 The initial draft read:
3

4 **SECTION 711. RECEIVER QUALIFICATIONS AND POWERS.**
5

6 (a) A receiver shall be a natural person or a domestic corporation or a foreign
7 corporation authorized to transact business in this state. A receiver shall give a bond as directed
8 by the court with the sureties required by the court.
9

10 (b) A receiver may sue and defend in all courts as receiver of the cooperative. The
11 court appointing the receiver has exclusive jurisdiction of the cooperative and its property.
12

13 **Comment to Initial Draft**
14

15 The source for this provision is Wyoming Rev. Stat. § 17-10-246.
16
17

18 **SECTION 410. DISSOLUTION ACTION BY ATTORNEY GENERAL;**
19 **ADMINISTRATIVE DISSOLUTION.**

20 (a) Conditions to Begin Action. A cooperative may be dissolved involuntarily by a
21 decree of a court in this state in an action filed by the attorney general if it is established that:

22 (1) the articles and certificate of organization were procured through fraud;

23 (2) the cooperative was organized for a purpose not permitted by this chapter or
24 prohibited by state law;

25 (3) the cooperative has flagrantly violated a provision of this chapter, has violated
26 a provision of this chapter more than once, or has violated more than one provision of this
27 chapter; or

28 (4) the cooperative has acted, or failed to act, in a manner that constitutes
29 surrender or abandonment of the cooperative's franchise, privileges, or enterprise.

30 (b) Notice to Cooperative. An action may not be commenced under subdivision 1 until

1 30 days after notice to the cooperative by the attorney general of the reason for the filing of the
2 action. If the reason for filing the action is an act that the cooperative has done, or omitted to do,
3 and the act or omission may be corrected by an amendment of the articles or bylaws or by
4 performance of or abstention from the act, the attorney general shall give the cooperative 30
5 additional days to make the correction before filing the action.

6 **COMMENT**

7 Comment to the Second Draft:

8
9 The language in (a)(3) “more than once” is very broad and without time
10 parameters.

11 The initial draft read:

12 **SECTION 712. DISSOLUTION ACTION BY ATTORNEY GENERAL;** 13 **ADMINISTRATIVE DISSOLUTION.**

14
15 (a) A cooperative may be dissolved involuntarily by a decree of a court in this
16 state in an action filed by the attorney general if it is established that:

17 (i) The articles and certificate of organization were procured through
18 fraud;

19 (ii) The cooperative was organized for a purpose not permitted by this
20 article or prohibited by state law;

21 (iii) The cooperative has flagrantly violated a provision of this article, has
22 violated a provision of this article more than once or has violated more than one (1) provision of
23 this article; or

24 (iv) The cooperative has acted, or failed to act, in a manner that constitutes
25 surrender or abandonment of the cooperative's franchise, privileges, or enterprise.

26 (b) An action may not be commenced under subsection (a) of this section until
27 thirty (30) days after notice to the cooperative by the attorney general of the reason for the filing
28 of the action. If the reason for filing the action is an act that the cooperative has done, or omitted
29 to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by
30 performance of or abstention from the act, the attorney general shall give the cooperative thirty

1 (30) additional days to make the correction before filing the action.
2

3 (c) The provisions of [the business corporation law of this state] shall apply to the
4 administrative dissolution of any domestic cooperative and the provisions of [the business
5 corporation law of this state] shall apply to the administrative dissolution of any foreign
6 cooperative.
7

8 **Comment to Initial Draft** 9

10 The source for this provision is Wyoming Rev. Stat. § 17-10-247.
11
12

13 **SECTION 411. FILING CLAIMS IN COURT-SUPERVISED DISSOLUTION** 14 **PROCEEDINGS.**

15 (a) Filing under Oath. In proceedings to dissolve a cooperative, the court may require all
16 creditors and claimants of the cooperative to file their claims under oath with the court
17 administrator or with the receiver in a form prescribed by the court.

18 (b) Date to File a Claim. If the court requires the filing of claims, the court shall:

19 (1) set a date, by order, at least 120 days after the date the order is filed as the last
20 day for the filing of claims; and

21 (2) prescribe the notice of the fixed date that shall be given to creditors and
22 claimants.

23 (c) Fixed Date or Extension for Filing. Before the fixed date, the court may extend the
24 time for filing claims. Creditors and claimants failing to file claims on or before the fixed date
25 may be barred, by order of court, from claiming an interest in or receiving payment out of the
26 property or assets of the cooperative.

27 **COMMENT**

28 Comment to the Second Draft:

1 Is filing under oath redundant because it is a court proceeding? Should
2 the claim procedure be the same for voluntary and involuntary?
3

4 The initial draft read:
5

6 **SECTION 713. FILING CLAIMS IN COURT-SUPERVISED DISSOLUTION**
7 **PROCEEDINGS.**
8

9 (a) In proceedings to dissolve a cooperative, the court may require all creditors
10 and claimants of the cooperative to file their claims under oath with the court administrator or
11 with the receiver in a form prescribed by the court.
12

13 (b) If the court requires the filing of claims, the court shall:
14

15 (i) Set a date, by order, at least one hundred twenty (120) days after the
16 date the order is filed, as the last day for the filing of claims; and
17

18 (ii) Prescribe the notice of the fixed date that shall be given to creditors
19 and claimants.
20

21 (c) Before the fixed date, the court may extend the time for filing claims.
22 Creditors and claimants failing to file claims on or before the fixed date may be barred, by order
23 of court, from claiming an interest in or receiving payment out of the property or assets of the
24 cooperative.
25

26 **Comment to Initial Draft**
27

28 The source for this provision is Wyoming Rev. Stat. § 17-10-248.
29
30

31 **SECTION 412. DISCONTINUANCE OF COURT-SUPERVISED DISSOLUTION**
32 **PROCEEDINGS.** The involuntary or supervised voluntary dissolution of a cooperative may be
33 discontinued at any time during the dissolution proceedings if it is established that cause for
34 dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any,
35 to redeliver to the cooperative its remaining property and assets.
36

37 **COMMENT**

The initial draft read:

1 **SECTION 714. DISCONTINUANCE OF COURT-SUPERVISED DISSOLUTION**
2 **PROCEEDINGS.** The involuntary or supervised voluntary dissolution of a cooperative may be
3 discontinued at any time during the dissolution proceedings if it is established that cause for
4 dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any,
5 to redeliver to the cooperative its remaining property and assets.

6
7 **Comment to Initial Draft**
8

9 The source for this provision is Wyoming Rev. Stat. § 17-10-249.

10
11 Does Section 714 lead to inefficient liquidation by “churning” motions or does it simply
12 restate the obvious?
13

14
15 **SECTION 413. COURT-SUPERVISED DISSOLUTION ORDER.**

16 (a) Conditions for Dissolution Order. In an involuntary or supervised voluntary
17 dissolution after the costs and expenses of the proceedings and all debts, obligations, and
18 liabilities of the cooperative have been paid or discharged and the remaining property and assets
19 have been distributed to its members or, if its property and assets are not sufficient to satisfy and
20 discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets
21 have been applied so far as they will go to their payment according to their priorities, the court
22 shall enter an order dissolving the cooperative.

23 (b) Dissolution Effective on Filing Order. When the order dissolving the cooperative or
24 association has been entered, the cooperative or association is dissolved.

25 **COMMENT**

26 Comment to the Second Draft:
27

28 Should there be a distinction between dissolution and termination? Could
29 the order of payments be stated once for both voluntary and involuntary dissolution?
30

31 The initial draft read:
32

1 **SECTION 715. COURT-SUPERVISED DISSOLUTION ORDER.**
2

3 (a) In an involuntary or supervised voluntary dissolution after the costs and
4 expenses of the proceedings and all debts, obligations and liabilities of the cooperative have been
5 paid or discharged and the remaining property and assets have been distributed to its members or,
6 if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts,
7 obligations and liabilities, when all the property and assets have been applied so far as they will
8 go to their payment according to their priorities, the court shall enter an order dissolving the
9 cooperative.

10
11 (b) When the order dissolving the cooperative or association has been entered, the
12 cooperative or association is dissolved.

13 **Comment to Initial Draft**

14
15 The source for this provision is Wyoming Rev. Stat. § 17-10-250.
16
17

18
19 **SECTION 414. FILING COURT'S DISSOLUTION ORDER.** After the court enters

20 an order dissolving a cooperative, the court administrator shall cause a certified copy of the
21 dissolution order to be filed with the secretary of state. The secretary of state may not charge a
22 fee for filing the dissolution order.

23 **COMMENT**

24 The initial draft read:
25

26 **SECTION 716. FILING COURT'S DISSOLUTION ORDER.** After the court enters
27 an order dissolving a cooperative, the court administrator shall cause a certified copy of the
28 dissolution order to be filed with the secretary of state. The secretary of state may not charge a
29 fee for filing the dissolution order.
30

31 **Comment to Initial Draft**

32
33 The source for this provision is Wyoming Rev. Stat. § 17-10-251.
34

35 Will the reference to “court administrator” and the “no fees” provision be an enactability
36 issue?
37
38

1 **SECTION 415. BARRING OF CLAIMS.**

2 (a) Claims Barred. A person who is or becomes a creditor or claimant before, during, or
3 following the conclusion of dissolution proceedings, who does not file a claim or pursue a
4 remedy in a legal, administrative, or arbitration proceeding during the pendency of the
5 dissolution proceeding or has not initiated a legal, administrative, or arbitration proceeding
6 before the commencement of the dissolution proceedings and all those claiming through or under
7 the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon
8 or enforcing it, except as provided in this section.

9 (b) Certain Unfiled Claims Allowed. Within one year after articles of dissolution have
10 been filed with the secretary of state under this chapter or a dissolution order has been entered, a
11 creditor or claimant who shows good cause for not having previously filed the claim may apply
12 to a court in this state to allow a claim:

13 (1) against the cooperative to the extent of undistributed assets; or

14 (2) if the undistributed assets are not sufficient to satisfy the claim, the claim may
15 be allowed against a member to the extent of the distributions to members in dissolution received
16 by the member.

17 (c) Omitted Claims Allowed. Debts, obligations, and liabilities incurred during
18 dissolution proceedings shall be paid or provided for by the cooperative before the distribution of
19 assets to a member. A person to whom this kind of debt, obligation, or liability is owed but is
20 not paid may pursue any remedy against the offenders, directors, or members of the cooperative
21 before the expiration of the applicable statute of limitations. This subdivision does not apply to
22 dissolution under the supervision or order of a court.

1 **COMMENT**

2 Comment to the Second Draft:

3
4 Should there be a known/unknown creditor notice provision in this section? Is there a
5 distinction between tort and contract claims?

6
7 The initial draft read:

8
9 **SECTION 717. BARRING OF CLAIMS.**

10
11 (a) A person who is or becomes a creditor or claimant before, during, or following
12 the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a
13 legal, administrative or arbitration proceeding during the pendency of the dissolution proceeding
14 or has not initiated a legal, administrative, or arbitration proceeding before the commencement of
15 the dissolution proceedings and all those claiming through or under the creditor or claimant, are
16 forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as
17 provided in this section.

18
19 (b) Within one (1) year after articles of dissolution have been filed with the
20 secretary of state pursuant to this article or a dissolution order has been entered, a creditor or
21 claimant who shows good cause for not having previously filed the claim may apply to a court in
22 this state to allow a claim:

23
24 (i) Against the cooperative to the extent of undistributed assets; or

25
26 (ii) If the undistributed assets are not sufficient to satisfy the claim, the
27 claim may be allowed against a member to the extent of the distributions to members in
28 dissolution received by the member.

29
30 (c) Debts, obligations, and liabilities incurred during dissolution proceedings shall
31 be paid or provided for by the cooperative before the distribution of assets to a member. A person
32 to whom this kind of debt, obligation, or liability is owed but is not paid may pursue any remedy
33 against the officers, directors or members of the cooperative before the expiration of the
34 applicable statute of limitations. This subsection does not apply to dissolution under the
35 supervision or order of a court.

36
37 **Comment to Initial Draft**

38
39 The source for this provision is Wyoming Rev. Stat. § 17-10-252.

40
41
42 **SECTION 416. RIGHT TO SUE OR DEFEND AFTER DISSOLUTION.** After a

1 cooperative has been dissolved, any of its former officers, directors, or members may assert or
2 defend, in the name of the cooperative, a claim by or against the cooperative.

3 **COMMENT**

4 Comment to the Second Draft:

5
6 Is there any indemnification or contribution? Are the directors and
7 officers personally liable?

8
9 The initial draft read:

10
11 **SECTION 718. RIGHT TO SUE OR DEFEND AFTER DISSOLUTION.** After a
12 cooperative has been dissolved, any of its former officers, directors or members may assert or
13 defend, in the name of the cooperative, a claim by or against the cooperative.

14
15 **Comment to Initial Draft**

16
17 The source for this provision is Wyoming Rev. Stat. § 17-10-253. Will such defense
18 somehow be indemnified? Is there an obligation to do so?

1 **ARTICLE 5**
2 **SECURITIES**

3
4 **COMMENT**

5 Comment to the Second Draft:
6

7 The Minnesota Act contains two sections directly relating to state securities laws. This
8 draft includes those section in footnote form because they may well be beyond the scope of this
9 NCCUSL project.⁴⁴

⁴⁴ **SECTION 501. SALE, SELL.**

(a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(d) A purported gift of assessable stock is considered to involve an offer and sale.

(e) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(f) The terms defined in this subdivision do not include (i) any bona fide pledge or loans; (ii) any stock dividend, whether the corporation or other entity distributing the dividend is the issuer of the stock or not; or (iii) a dividend on equity distributed by a cooperative organized under chapter ____.

SECTION 502. TRANSACTIONS EXEMPTED. The following transactions are exempted from sections _____ and _____:

(a) Any sales, whether or not effected through a broker-dealer, provided that:

(1) no person shall make more than ten sales of securities in _____ of the same issuer pursuant to this exemption, exclusive of sales according to clause (2), during any period of 12 consecutive months; provided further, that in the case of sales by an issuer, except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, (i) the seller reasonably believes that all buyers are purchasing for investment, and (ii) the securities are not advertised for sale to the general public in newspapers or other publications

of general circulation or otherwise, or by radio, television, electronic means or similar communications media, or through a program of general solicitation by means of mail or telephone; or

(2) no issuer shall make more than 25 sales of its securities in _____ according to this exemption, exclusive of sales pursuant to clause (1), during any period of 12 consecutive months; provided further, that the issuer meets the conditions in clause (1) and, in addition meets the following additional conditions: (i) files with the commissioner, ten days before a sale according to this clause, a statement of issuer on a form prescribed by the commissioner; and (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyers in this state in connection with a sale according to this clause except reasonable and customary commissions paid by the issuer to a broker-dealer licensed under this chapter.

(b) Any nonissuer distribution of an outstanding security if (1) either Moody's, Fitch's, or Standard & Poor's Securities Manuals, or other recognized manuals approved by the commissioner contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than 18 months prior to the date of the sale, and a profit and loss statement for the fiscal year preceding the date of the balance sheet, and (2) the issuer or its predecessor has been in active, continuous business operation for the five-year period next preceding the date of sale, and (3) if the security has a fixed maturity or fixed interest or dividend provision, the issuer has not, within the three preceding fiscal years, defaulted in payment of principal, interest, or dividends on the securities.

(c) The execution of any orders by a licensed broker-dealer for the purchase or sale of any security, pursuant to an unsolicited offer to purchase or sell; provided that the broker-dealer acts as agent for the purchaser or seller, and has no direct material interest in the sale or distribution of the security, receives no commission, profit, or other compensation from any source other than the purchaser and seller and delivers to the purchaser and seller written confirmation of the transaction which clearly itemizes the commission, or other compensation.

(d) Any nonissuer sale of notes or bonds secured by a mortgage lien if the entire mortgage, together with all notes or bonds secured thereby, is sold to a single purchaser at a single sale.

(e) Any judicial sale, exchange, or issuance of securities made pursuant to an order of a court of competent jurisdiction.

(f) The sale, by a pledge holder, of a security pledged in good faith as collateral for a bona fide debt.

(g) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(h) An offer or sale of securities by an issuer made in reliance on the exemptions provided by Rule 505 or 506 of Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, subject to the conditions and definitions provided by Rules 501 to 503 of Regulation D, if the offer and sale also satisfies the conditions and limitations in clauses (1) to (10).

(1) The exemption under this paragraph is not available for the securities of an issuer if any of the

persons described in Rule 252(c) to (f) of Regulation A promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.251 to 230.263:

(i) has filed a registration statement that is the subject of a currently effective order entered against the issuer, its officers, directors, general partners, controlling persons, or affiliates, according to any state's law within five years before the filing of the notice required under clause (5), denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement;

(ii) has been convicted, within five years before the filing of the notice required under clause (5), of a felony or misdemeanor in connection with the offer, sale, or purchase of a security or franchise, or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) is subject to an effective administrative order or judgment entered by a state securities administrator within five years before the filing of the notice required under clause (5), that prohibits, denies, or revokes the use of an exemption from securities registration, that prohibits the transaction of business by the person as a broker-dealer or agent, that is based on fraud, deceit, an untrue statement of a material fact, or an omission to state a material fact; or

(iv) is subject to an order, judgment, or decree of a court entered within five years before the filing of the notice required under clause (5), temporarily, preliminarily, or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale, or purchase of a security, or the making of a false filing with a state.

A disqualification under paragraph (h) involving a broker-dealer or agent is waived if the broker-dealer or agent is or continues to be licensed in the state in which the administrative order or judgment was entered against the person or if the broker-dealer or agent is or continues to be licensed in this state as a broker-dealer or agent after notifying the commissioner of the act or event causing disqualification.

The commissioner may waive a disqualification under paragraph (h) upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

A disqualification under paragraph (h) may be waived if the state securities administrator or agency of the state that created the basis for disqualification has determined, upon a showing of good cause, that it is not necessary under the circumstances that an exemption from registration of securities under the state's laws be denied.

It is a defense to a violation of paragraph (h) based upon a disqualification if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that a disqualification under paragraph (h) existed.

(2) This exemption must not be available to an issuer with respect to a transaction that, although in technical compliance with this exemption, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in paragraph (h).

(3) No commission, finder's fee, or other remuneration shall be paid or given, directly or indirectly, for soliciting a prospective purchaser, unless the recipient is appropriately licensed, or exempt from licensure, in this state as a broker-dealer.

(4) Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the securities law of _____.

(5) The issuer shall file with the commissioner a notice on form D as adopted by the Securities and Exchange Commission according to Regulation D, Code of Federal Regulations, title 17, section 230.502. The notice must be filed not later than 15 days after the first sale in this state of securities in an offering under this exemption. Every notice on form D must be manually signed by a person duly authorized by the issuer and must be accompanied by a consent to service of process on a form prescribed by the commissioner.

(6) A failure to comply with a term, condition, or requirement of paragraph (h) will not result in loss of the exemption for an offer or sale to a particular individual or entity if the person relying on the exemption shows that: (i) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity, and the failure to comply was insignificant with respect to the offering as a whole; and (ii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of paragraph (h), except that, where an exemption is established only through reliance upon this provision, the failure to comply shall nonetheless constitute a violation of section _____ and be actionable by the commissioner.

(7) The issuer, upon request by the commissioner, shall, within ten days of the request, furnish to the commissioner a copy of any and all information, documents, or materials furnished to investors or offerees in connection with the offer and sale according to paragraph(h).

(8) Neither compliance nor attempted compliance with the exemption provided by paragraph (h), nor the absence of an objection or order by the commissioner with respect to an offer or sale of securities undertaken according to this exemption, shall be considered to be a waiver of a condition of the exemption or considered to be a confirmation by the commissioner of the availability of this exemption.

(9) The commissioner may, by rule or order, increase the number of purchasers or waive any other condition of this exemption.

(10) The determination whether offers and sales made in reliance on the exemption set forth in paragraph (h) shall be integrated with offers and sales according to other paragraphs of this subdivision shall be made according to the integration standard set forth in Rule 502 of Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.502. If not subject to integration according to that rule, offers and sales according to paragraph (h) shall not otherwise be integrated with offers and sales according to other exemptions set forth in this subdivision.

(A) Any offer (but not a sale) of a security for which a registration statement has been filed under sections _____ to _____, if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending; and any offer of a security if the sale of the security is or would be exempt under this section. The commissioner may by rule exempt offers (but not sales) of securities for which a registration statement has been filed as the commissioner deems appropriate, consistent with the purposes of sections _____ to _____.

(j) The offer and sale by a cooperative organized under chapter _____ or under the laws of another state, of its securities when the securities are offered and sold only to its members, or when the purchase of the securities is necessary or incidental to establishing membership in the cooperative, or when such securities are issued as patronage dividends. This paragraph applies to a cooperative organized under the laws of another state only if the cooperative has filed with the commissioner a consent to service of process under section _____, paragraph (g), and has, not less than ten days prior to the issuance or delivery, furnished the commissioner with a written general description of the transaction and any other information that the commissioner requires by rule or otherwise.

(k) The issuance and delivery of any securities of one corporation to another corporation or its security holders in connection with a merger, exchange of shares, or transfer of assets whereby the approval of stockholders of the other corporation is required to be obtained, provided, that the commissioner has been furnished with a general description of the transaction and with other information as the commissioner by rule prescribes not less than ten days prior to the issuance and delivery. For purposes of this paragraph, a corporation includes a cooperative organized under chapter _____, and the approval of stockholders applies to members of such a cooperative.

(l) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters.

(m) The distribution by a corporation of its or other securities to its own security holders as a stock dividend or as a dividend from earnings or surplus or as a liquidating distribution; or upon conversion of an outstanding convertible security; or pursuant to a stock split or reverse stock split. For purposes of this paragraph, a corporation includes a cooperative organized under chapter _____, and the term "stock" applies to interests in such a cooperative.

(n) Any offer or sale of securities by an affiliate of the issuer thereof if: (1) a registration statement is in effect with respect to securities of the same class of the issuer and (2) the offer or sale has been exempted from registration by rule or order of the commissioner.

(o) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if: (1) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; and (2) the commissioner has been furnished with a general description of the transaction and with other information as the

commissioner may by rule prescribe no less than ten days prior to the transaction.

(p) Any nonissuer sales of any security, including a revenue obligation, issued by the state of _____ or any of its political or governmental subdivisions, municipalities, governmental agencies, or instrumentalities.

(q) Any transaction as to which the commissioner by rule or order finds that registration is not necessary in the public interest and for the protection of investors.

(r) An offer or sale of a security issued in connection with an employee's stock purchase, savings, option, profit sharing, pension, or similar employee benefit plan, if the following conditions are met:

(1) the issuer, its parent corporation or any of its majority-owned subsidiaries offers or sells the security according to a written benefit plan or written contract relating to the compensation of the purchaser; and

(2) the class of securities offered according to the plan or contract, or if an option or right to purchase a security, the class of securities to be issued upon the exercise of the option or right, is registered under section 12 of the Securities Exchange Act of 1934, or is a class of securities with respect to which the issuer files reports according to section 15(d) of the Securities Exchange Act of 1934; or

(3) the issuer fully complies with the provisions of Rule 701 as adopted by the Securities and Exchange Commission, Code of Federal Regulations, title 12, section 230.701.

The issuer shall file not less than ten days before the transaction, a general description of the transaction and any other information that the commissioner requires by rule or otherwise or, if applicable, a Securities and Exchange Form S-8. Annually, within 90 days after the end of the issuer's fiscal year, the issuer shall file a notice as provided with the commissioner.

(s) Any sale of a security of an issuer that is a pooled income fund, a charitable remainder trust, or a charitable lead trust that has a qualified charity as the only charitable beneficiary.

(t) Any sale by a qualified charity of a security that is a charitable gift annuity if the issuer has a net worth, otherwise defined as unrestricted fund balance, of not less than \$300,000 and either: (1) has been in continuous operation for not less than three years; or (2) is a successor or affiliate of a qualified charity that has been in continuous operation for not less than three years.

(u) The offer and sale by a cooperative organized under chapter _____ of its securities when the securities are offered and sold only to its existing members or when the purchase of the securities is necessary or incidental to establishing patron membership in the cooperative, or when such securities are issued as patronage dividends. This paragraph applies when securities are issued as patronage dividends or otherwise only when:

(1) the issuer, prior to the completion of the sale of such securities, provides each offeree or purchaser disclosure materials, which to the extent material to an understanding of the issuer, its business, and the securities being offered substantially meet the disclosure conditions and limitations found in rule 502(b) of regulation d promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section

1 **SECTION 503. MERGER.** With or without a business purpose, a limited liability
2 company may merge:

3 (a) with another limited liability company pursuant to a plan of merger approved in the
4 manner provided in sections _____ to _____;

5 (a) with a domestic corporation under a plan of merger approved in the manner provided
6 in sections _____ to _____, and in chapter _____; and

7 (c) with any foreign corporation or foreign limited liability company pursuant to a plan of
8 merger approved in the manner provided in section _____; and

9 (d) with one or more cooperatives organized under chapter _____ or _____, in the manner
10 provided by and subject to the limitations in section _____.

11
12 **SECTION 504. MERGER OF DOMESTIC COOPERATIVE INTO A DOMESTIC**
13 **LIMITED LIABILITY COMPANY.**

230.502; and

(2) within 15 days after the completion of the first sale in each offering completed in reliance upon this exemption, the cooperative has filed with the commissioner a consent to service of process under section _____, (g), and has furnished the commissioner with a written general description of the transaction and any other information that the commissioner requires by rule or otherwise.

A cooperative may, at or about the same time as offers or sales are being completed in reliance upon this exemption from registration and as part of a common plan of financing, offer or sell its securities in reliance upon any other exemption from registration available under this chapter. The offer or sale of securities in reliance upon this paragraph shall not be considered or deemed a part of or be integrated with any offer or sale of securities conducted by the cooperative in reliance upon any other exemption from registration available under this chapter, nor shall offers or sales of securities by the cooperative in reliance upon any other exemption from registration available under this chapter be considered or deemed a part of or be integrated with any offer or sale conducted by the cooperative in reliance upon this paragraph.

1 (a) Definition. As used in this section, "domestic cooperative" means a cooperative
2 organized under chapter ____ or ____.

3 (b) Authorization; Limitations.

4 (1) A limited liability company may merge with a domestic cooperative only as
5 provided by this section. A limited liability company may merge with one or more domestic
6 cooperatives if:

7 (A) only one limited liability company and only one or more domestic
8 cooperatives are parties to the merger;

9 (B) when the merger becomes effective, the separate existence of each
10 domestic cooperative ceases and the limited liability company is the surviving organization;

11 (C) as to each domestic cooperative, the plan of merger is initiated and
12 adopted, and the merger is effectuated, as provided in section _____; and

13 (D) as to the limited liability company, the plan of merger complies with
14 section _____, the plan of merger is approved as provided in section _____, and the
15 articles of merger are prepared, signed, and filed as provided in section _____.

16 (2) For purposes of a merger authorized by this section:

17 (1) the term "constituent organization" as used in sections _____, paragraph (a), clause
18 (1); _____, paragraph (a), clause (3), item (A); _____; and _____,
19 includes a domestic cooperative;

20 (b) the term "constituent organization" as used in section _____ does not include
21 a domestic cooperative;

22 (c) the term "ownership interests" as used in section _____, paragraph (a), clause

1 (3), item (A), includes membership interests in a domestic cooperative;

2 (d) notwithstanding sections _____, paragraph (a), clause (1), item (A);
3 _____, paragraph (a), clause (4); _____, paragraph (b), clause (1); _____,
4 paragraph (b), clause (4), item (A); and _____, paragraph (b), clause (5), the surviving
5 organization must be the limited liability company;

6 (e) section _____, paragraph (b), clause (3), does not apply;

7 (f) the term "ownership interests" includes membership interests in a domestic
8 cooperative and the term "owners" includes members of a domestic cooperative; and

9 (g) "dissenters rights" includes dissenters rights under the law governing the domestic
10 cooperative.
11

12 **SECTION 505. ABANDONMENT.** Section _____ governs the abandonment
13 by a domestic cooperative of a merger authorized by this section. Section _____ governs
14 the abandonment by a limited liability company of a merger authorized by this section, except
15 that for the purposes of a merger authorized by this section:

16 (a) the term "constituent organization" as used in section _____, paragraph (a),
17 clause (1), does not include a domestic cooperative;

18 (b) the requirement stated in section _____, paragraph (a), clause (1), as to a
19 domestic corporation does not apply and instead the abandonment must have been approved by
20 the domestic cooperative in the manner provided in chapter ____;

21 (c) the reference in section _____, paragraph (b), to a domestic corporation does not
22 apply and instead the abandonment by the domestic cooperative may be accomplished as

- 1 provided in chapter ____; and
- 2 (d) the term "constituent organization" as used in section _____, paragraph (c),
- 3 includes a domestic cooperative.
- 4