

SUBCHAPTER V. MARKETING ASSOCIATIONS.

Article 19.

Purpose and Organization.

§ 54-129. Declaration of policy.

In order to promote, foster, and encourage the intelligent and orderly producing and marketing of agricultural products through cooperation, and to eliminate speculation and waste, and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer, and to stabilize the marketing problems of agricultural products, this Subchapter is enacted. (1921, c. 87, s. 1; C.S., s. 5259(a); 1935, c. 230, s. 1.)

§ 54-130. Definitions and nature.

As used in this Subchapter—

- (1) Agricultural Products. – The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.
- (2) Association. – The term "association" means
 - a. Any corporation organized under this Subchapter; or
 - b. Any foreign corporation which
 1. Is organized under any general or special act of another state or the District of Columbia as a cooperative association for the mutual benefit of its members and other patrons,
 2. Confines its operations in this State to the purposes specified in, and restricts the return on the stock or membership capital and the amount of its business with nonmembers to the limits placed thereon by, this Subchapter for corporations organized hereunder, and
 3. Is authorized to transact business in this State pursuant to G.S. 54-139.
- (3) Charter. – The term "charter" includes the original articles of incorporation, together with all amendments thereto and articles of merger or consolidation.
- (4) Member. – The term "member" shall include actual members of associations without capital stock and holders of stock in associations organized with capital stock.
- (5) Person. – The term "person" shall include individuals, firms, partnerships, corporations, and associations.

Associations organized or domesticated hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

This Subchapter shall be referred to as the "Cooperative Marketing Act." (1921, c. 87, s. 2; C.S., s. 5259(b); 1935, c. 436, s. 1; 1963, c. 1168, ss. 1-3.)

§ 54-131. Who may organize.

Three or more persons engaged in the production of agricultural products may form a nonprofit, cooperative association, with or without capital stock, under the provisions of this Subchapter. (1921, c. 87, s. 3; C.S., s. 5259(c); 1979, c. 908, s. 1.)

§ 54-132. Purposes.

An association may be organized to engage in any activity in connection with the producing, marketing or selling of the agricultural products of its members and other farmers, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, of the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or in the financing of the above-enumerated activities; or in any one or more of the activities specified herein. (1921, c. 87, s. 4; C.S., s. 5259(d); 1933, c. 350, s. 2; 1935, c. 230, s. 2.)

§ 54-133. Preliminary investigation.

Every group of persons contemplating the organization of an association under this Subchapter is urged to communicate with the Chief of the Division of Markets, who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success. (1921, c. 87, s. 5; C.S., s. 5259(e).)

§ 54-134. Articles of incorporation.

Each association formed under this Subchapter must prepare and file articles of incorporation, setting forth:

- (1) The name of the association.
- (2) The purposes for which it is formed.
- (3) The place where its principal business will be transacted.
- (4) The period of duration, which may be perpetual. When the articles of incorporation fail to state the period of duration, it shall be considered perpetual. Any association heretofore or hereafter organized for a period less than perpetual, may by amendment to its articles of incorporation, extend the period of its duration for a specified period or perpetually.
- (5) The names and addresses of those who are to serve as directors for the first term or until the election of their successors.
- (6) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the article shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and this association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or the vote of three-fourths of the members.
- (7) If organized with capital stock, the amount of such stock and the number of such shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to

which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each.

In addition to the foregoing, the petition for articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate with respect to its members, officers, or directors, and any other provisions relating to its affairs; provided that nothing set forth in this paragraph shall be construed as limiting any of the rights or powers otherwise given to such associations.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances; and shall be filed as provided in G.S. 55A-4; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this State, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the Chief of the Division of Markets. (1921, c. 87, s. 8; C.S., s. 5259(f); 1935, c. 230, ss. 3, 4; 1963, c. 1168, ss. 4, 5; 1979, c. 908, s. 2.)

§ 54-135. Amendments to articles of incorporation.

(a) An association may amend its charter from time to time in any and as many respects as may be desired, so long as its charter as amended contains only such provisions as are lawful under this Subchapter.

(b) Amendments to the charter shall be made as follows: The board of directors shall by a vote of not less than two-thirds of all of the members of the board, adopt a resolution approving the proposed amendment or amendments and directing that the proposed amendment or amendments be submitted to a vote at a meeting of members, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or amendments, or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Subchapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least a majority of the votes entitled to be cast by members present or represented by proxy at such meeting.

(c) The articles of amendment shall set forth:

- (1) The name of the association;
- (2) The amendment or amendments so adopted;
- (3) A statement setting forth the date of the meeting of the board of directors at which the amendment or amendments were approved by the board, that a quorum was present at such meeting, and that such approval received a vote of not less than two-thirds of all the members of the board;
- (4) A statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least a majority of the votes entitled to be cast by members present or represented by proxy at such meeting;

- (5) The articles of amendment shall be executed by the association and shall be filed all as provided in G.S. 55A-4;
- (6) A certified copy of the articles of amendment shall be filed with the Chief of the Division of Markets. (1921, c. 87, s. 9; C.S., s. 5259(g); 1935, c. 230, s. 5; 1963, c. 1168, s. 6.)

§ 54-136. Bylaws.

Each association incorporated under this Subchapter must, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this Subchapter. A majority vote of a quorum of the members or stockholders attending a meeting, of which notice of the proposed bylaw or bylaws shall have been given, is sufficient to adopt or amend the bylaws. Each association under its bylaws may also provide for any or all of the following matters:

- (1) The time, place, and manner of calling and conducting its meetings.
- (2) The number of stockholders or members constituting a quorum.
- (3) The right of members or stockholders to vote by proxy or by mail, or by both, and the conditions, manner, form, and effects of such votes.
- (4) The number of directors constituting a quorum.
- (5) The qualifications, compensations, and duties and terms of office of directors and officers; time of their election, and the mode and manner of giving notice thereof.
- (6) Penalties for violations of the bylaws.
- (7) The amount of entrance, organization, and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.
- (8) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him, and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.
- (9) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and the time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner, and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, by conclusive appraisal by the board of directors.

Upon the death, withdrawal or expulsion of a member, the board of directors of the association shall, within one year, cause to be paid to such member or his estate one hundred percent (100%) of all amounts due him for any and all raw products which have been delivered by him to the association. All other amounts which might be due for capital stock, certificates of interest, reserves or on account of any other equity credits shall be payable in accordance with the charter or bylaws of the association.

Notwithstanding the foregoing provisions of this section, any association may amend its articles of incorporation to provide that thereafter any bylaw or bylaws of the association may be amended or repealed, or any new bylaw may be adopted, either by the members or by the board of directors, but if the members amend any bylaw or bylaws or adopt any new bylaw or bylaws, such bylaw or bylaws shall not thereafter be amended or repealed by the board of directors, and if the members repeal any bylaw or bylaws, such bylaw or bylaws shall not be readopted by the board of directors; provided, however, that no bylaw shall be adopted by the board of directors which shall require a higher number or percentage of members to be present or represented at a members' meeting for the purpose of constituting a quorum, or a higher number or percentage of such quorum to take action, than was the case before the power to alter, amend, or repeal the bylaws was conferred upon the board of directors. (1921, c. 87, s. 10; C.S., s. 5259(h); 1935, c. 230, s. 6; 1963, c. 1168, s. 7; 1979, c. 543.)

§ 54-137. General and special meetings; how called.

In its bylaws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten percent (10%) of the members or stockholders may file a petition stating the specific business to be brought before the association, and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least 10 days prior to the meeting; Provided, however, that the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association. (1921, c. 87, s. 11; C.S., s. 5259(i).)

§ 54-138. Conflicting laws not to apply.

Any provisions of law which are in conflict with this Subchapter shall not be construed as applying to the associations herein provided for. (1921, c. 87, s. 20; C.S., s. 5259(j).)

§ 54-139. Foreign cooperative corporations; limitation on use of word "cooperative."

(a) A foreign corporation (with or without capital stock) that can qualify as an association, as defined in G.S. 54-130(2)b1 and 2, may be authorized to transact business in this State under the provisions of Chapter 55A of the General Statutes.

(b) No person other than an association organized under this Subchapter, or a foreign corporation authorized to transact business in this State pursuant to subsection (a) of this section, or an electric or telephone membership corporation domesticated pursuant to G.S. 117-28, or an organization created under or governed by Subchapter IV of Chapter 54 of the General Statutes, shall be entitled to organize, domesticate, or transact business in this State if the corporate or other business name or title of such person contains the word "cooperative." (1921, c. 87, s. 21; C.S., s. 5259(k); 1963, c. 1168, s. 8; 1985, c. 542, s. 8; 1993, c. 552, s. 20.)

§ 54-140. Association heretofore organized may adopt the provisions of this Subchapter.

Any corporation or association organized under previously existing statutes may, by a majority vote of its stockholders or members, be brought under the provisions of this Subchapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the Secretary of State, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this Subchapter. Articles of incorporation shall be filed as required in G.S. 54-134, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation. (1921, c. 87, s. 24; C.S., s. 5259(l).)

§ 54-141. Associations not in restraint of trade.

No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between the association and its members, or any agreements authorized in this Subchapter be considered illegal or in restraint of trade. (1921, c. 87, s. 26; C.S., s. 5259(m).)

§ 54-142. Application of North Carolina Business Corporation Act to cooperative associations with capital stock.

The provisions of the North Carolina Business Corporation Act (Chapter 55 of the General Statutes) shall apply, so far as appropriate, to every cooperative association with capital stock heretofore or hereafter organized or domesticated under this Subchapter, except where the provisions of that act are in conflict with or inconsistent with the express provisions of this Subchapter. (1921, c. 87, s. 28; C.S., s. 5259(o); 1963, c. 1168, s. 9; 1989 (Reg. Sess., 1990), c. 1024, s. 3.)

§ 54-142.1. Application of Nonprofit Corporation Act to cooperative associations without capital stock.

The provisions of the Nonprofit Corporation Act (Chapter 55A of the General Statutes) shall apply, so far as appropriate, to every cooperative association without capital stock heretofore or hereafter organized or domesticated under this Subchapter, except where the provisions of that act are in conflict with or inconsistent with the express provisions of this Subchapter. (1963, c. 1168, s. 9.)

§ 54-143. License taxes.

On and after June 1, 1955, the provisions of Article 2, Subchapter I of Chapter 105 of the General Statutes of North Carolina shall apply to an association or corporation organized under the provisions of this Subchapter. (1921, c. 87, s. 29; C.S., s. 5259(p); 1955, c. 1313, s. 1.)

§ 54-143.1. Franchise taxes.

On and after July 1, 1955, the provisions of Article 3, Subchapter I of Chapter 105 of the General Statutes of North Carolina shall apply to an association or corporation organized under the provisions of this Subchapter. (1955, c. 1313, s. 1.)

§ 54-144. Filing fees.

For filing articles of incorporation, an association organized hereunder shall pay ten dollars (\$10.00); and for filing an amendment to the articles, two and one-half dollars (\$2.50). (1921, c. 87, s. 30; C.S., s. 5259(q).)