

**Chapter 54.**

**Cooperative Organizations.**

**SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS, BUILDING  
ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.**

Article 1.

Organization.

**§§ 54-1 through 54-12.1. Repealed by Session Laws 1981, c. 282, s. 1.**

Article 2.

Shares and Shareholders.

**§§ 54-13 through 54-18.2. Repealed by Session Laws 1981, c. 282, s. 1.**

Article 2A.

Savings Accounts.

**§§ 54-18.3 through 54-18.6. Repealed by Session Laws 1981, c. 282, s. 1.**

Article 3.

Loans.

**§§ 54-19 through 54-23. Repealed by Session Laws 1981, c. 282, s. 1.**

Article 4.

Under Control of Administrator of the Savings and Loan Division.

**§§ 54-24 through 54-33.3. Repealed by Session Laws 1981, c. 282, s. 1.**

Article 5.

Foreign Associations.

**§§ 54-34 through 54-41. Repealed by Session Laws 1981, c. 282, s. 1.**

Article 5A.

Reserves.

**§ 54-41.1. Repealed by Session Laws 1981, c. 282, s. 1.**

Article 6.

Withdrawals.

**§§ 54-42 through 54-43: Repealed by Session Laws 1981, c. 282, s. 1.**

Article 7.

Statements of Financial Condition of Associations.

**§ 54-44. Repealed by Session Laws 1981, c. 282, s. 1.**

Article 7A.

Mutual Deposit Guaranty Associations.

**§§ 54-44.1 through 54-44.14. Repealed by Session Laws 1981, c. 282, s. 1.**

## **SUBCHAPTER II. LAND AND LOAN ASSOCIATIONS.**

Article 8.

Organization and Powers.

### **§ 54-45. Application of term.**

The term "land and loan associations" shall apply to and include all corporations, companies, societies or associations organized for the purpose of making loans to their members only, and of enabling their members to acquire real estate, make improvements thereon, and remove encumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes, where the principles of building and loan associations and their work are adapted to the use of the farmers and the rural population.

It shall be unlawful for any corporation, company, society, or association doing business in this State not so conducted to use in its corporate name the term "land and loan association," or in any manner or device to hold itself out to the public as a land and loan association. (1915, c. 172, s. 1; C.S., s. 5204.)

### **§ 54-46. Incorporation and powers.**

Land and loan associations shall be incorporated, supervised, and be subject to such regulations and have such privileges as are prescribed for building and loan associations under the laws of this State as they now are or may be hereafter enacted, except as prescribed in this Article. (1915, c. 172, s. 2; C.S., s. 5205.)

### **§ 54-47. Loans.**

The board of directors of land and loan associations may contract for loans to the amount of seventy-five percent (75%) of the securities used by them as collateral, where the loans are on long time (three or more years), and for at least one percent (1%) less than is charged by such associations on their loans to shareholders; and they may make short loans to their shareholders on their shares and personal endorsement or personal property. (1915, c. 172, s. 3; C.S., s. 5206.)

### **§ 54-48. Reserve associations.**

Associations to be known as "reserve land and loan associations" may be chartered and licensed as provided in this Article, when they are organized and the stock therein is held by local land and loan associations, and shall have such powers, rights, and privileges as are accorded to other domestic associations, and they may conform to such laws, rules, and regulations as may be prescribed by the laws of the United States, or of this State, to enable them to receive moneys, bonds, or securities to be used in loans and to secure the same. Such reserve associations shall be under the supervision of the Commissioner of Banks as are building and loan associations. (1915, c. 172, s. 4; C.S., s. 5207; 1971, c. 864, s. 17; 1989, c. 76, s. 14; 2001-193, s. 16.)

**§ 54-49. Land Conservation and Development Bureau; land mortgage associations.**

Recognizing that agriculture is the most fundamental wealth-producing occupation of the State and that land is the basis of agriculture, the General Assembly of North Carolina does hereby authorize and direct the State Department of Agriculture and Consumer Services to establish as a major division of its organization a Land Conservation and Land Development Bureau. The function of this Bureau shall be to promote conservation, rural home ownership, and the development of the land resources of the State through land mortgage associations under the following provisions. (1925, c. 223, s. 1; 1997-261, s. 109.)

**§ 54-50. Number of incorporators; capital stock.**

Any number of persons, resident freeholders of the State, not less than 15, may associate to establish an association on the terms and conditions and subject to the liabilities hereinafter prescribed. The aggregate amount of the capital stock of any such association shall not be less than twenty thousand dollars (\$20,000). Such association shall mean a corporation organized under the laws of the State for the purpose of making loans upon agricultural lands, forest lands and dwelling houses within this State and known as a land mortgage association. (1925, c. 223, s. 2.)

**§ 54-51. Incorporation.**

The articles of incorporation shall be in writing, signed and acknowledged by the incorporators and shall contain the following:

- (1) The declaration that they are associating for the purpose of forming a land mortgage association under the provisions of this Article.
- (2) The name of such association, which shall be in no material respect similar to any other association in the same county.
- (3) The name of the village, town or city, and the county where such association is to be located.
- (4) The amount of capital stock, which shall be divided into shares of one hundred dollars (\$100.00) each.
- (5) The period for which such association is organized. (1925, c. 223, s. 3.)

**§ 54-52. Organization.**

The incorporators at their first annual meeting shall elect by ballot from their number a board of trustees of not less than six members who shall adopt a code of bylaws and a plan of organization approved by the Commissioner of Agriculture and the Commissioner of Banks. (1925, c. 223, s. 4; 1931, c. 243, s. 5.)

**§ 54-53. Corporate powers.**

Said land mortgage association shall have power:

- (1) To make loans, the conditions of which shall be approved by the Commissioner of Banks if the security taken therefor is to be used as the basis for a bond issue under subdivision (3) hereof, and to accept as security for any such loan a first mortgage upon improved or partially improved agricultural lands within this State. Such loan shall not exceed, however, sixty-five percent (65%) of the value of such real estate so conveyed, according to the appraisal made as herein provided.

- (2) To purchase first mortgages, heretofore or hereafter issued against North Carolina agricultural lands, either improved or partially improved, from persons or firms resident of this State or corporations organized under the laws of this State engaged in the colonization or settlement of North Carolina lands and to whom such mortgages were issued, if, after investigation, the plan of settlement or colonization followed by such person, firm or corporation is approved by the Commissioner of Agriculture as beneficial to the settler or colonist, and if the lands against which such mortgages are issued are found by the said Commissioner to be in fact agricultural lands suitable for agricultural purposes and the terms and conditions of the loans made by such person, firm or corporation are just and reasonable, or from banks or trust companies organized under the laws of this State, or of the United States, to do business in this State, to which such mortgages were issued direct by the borrowers. Each such mortgage shall be payable on the amortization plan maturing in not less than 20 years. The request for an investigation leading to such a purchase of mortgages from persons, firms or corporations engaged in the settlement or colonization of North Carolina lands shall be accompanied by a deposit, the amount of such deposit to be determined by the Commissioner of Agriculture. Upon completion of the investigation the Commissioner of Agriculture shall render a statement of expense accompanied by a remittance of any unused balance of such deposit, but no mortgage shall be purchased until the lands against which the same is issued have been appraised as hereinafter provided for the appraisal of land for a loan by the land mortgage association and such mortgage is approved by all members of the loan committee.
- (3) To issue bonds secured by the pledge of the mortgage so taken or purchased.
- (4) To pledge the note and mortgages so taken or purchased under the provisions of subdivisions (1) and (2) hereof as security for the bonds of the land mortgage association referred to in subdivision (3) hereof. (1925, c. 223, s. 5; 1931, c. 243, s. 5.)

**§ 54-54. Restrictions.**

All mortgage obligations acquired by the company shall be subject to the following restrictions:

- (1) Each such mortgage shall be a first and valid lien upon improved or partially improved agricultural lands within the State of North Carolina;
- (2) Each such mortgage shall be a first and valid lien upon the whole and undivided fee and upon no lesser estate;
- (3) Each such mortgage shall be given to secure a principal indebtedness not exceeding in amount fifteen percent (15%) of the capital and surplus of the company;
- (4) All such mortgages shall contain provisions for soil conservation;
- (5) All such mortgages shall contain provisions for the time of commencing payments for annual or semiannual reduction of the indebtedness secured thereby, subject to the requirements as to repayment of loans and interest hereinafter provided;

- (6) The company shall make no loan secured by mortgage of any real estate in which any officer or trustee of the company is interested either directly or indirectly, except upon the approval of two thirds of all the trustees;
- (7) A sufficient amount of the proceeds of any loan made upon lands upon which are buildings in course of construction or upon which land clearing or other improvements are being made shall be retained by the association and paid out only upon construction or improvement vouchers, countersigned by a duly authorized agent of the association. (1925, c. 223, s. 6.)

**§ 54-55. Mortgage forms; approval.**

The mortgages to be given to the association, the bonds to be issued and the trust deed executed to secure the bonds shall be in such form and shall contain such conditions as will adequately protect all parties thereto. The trustees shall provide the forms subject to the joint approval of the Commissioner of Banks and the Attorney General. (1925, c. 223, s. 7; 1931, c. 243, s. 5.)

**§ 54-56. Repayment of loan and interest.**

The prospective borrower may be required to pay all expenses incidental to the examination of title and appraisal of the property. The total amount shall include (i) the rate of interest agreed upon; and (ii) a payment. (1925, c. 223, s. 8.)

**§ 54-57. Terms of payment.**

A borrower may repay his loan by installments of such frequency and amounts as may be agreed upon: Provided, that not less than one percent (1%) of the original amount of the mortgage shall be paid upon the principal thereof annually, and commencing not later than the sixth year succeeding the year in which the loan was made the borrower may pay a larger installment upon the principal, or the whole of it, at any interest date, such payments to be in amounts equal to additions of one or more principal amortization payments. Such payment may be made in cash, or by tendering at par bonds of the association. For failure to pay the interest or any installment required by the terms of the loan, the borrower may be fined as the bylaws may prescribe. But the borrower shall never be required to pay more than the specified installment, nor to pay the principal before it is due except as prescribed herein for partial repayment on account of depreciation and for foreclosure by the association. The borrower may on 60 days' notice repay the association his total indebtedness, or, without such notice, upon payment of 60 days' interest upon the principal unpaid. The borrower shall be entitled to a receipt for all installments as paid, and where the repayment is complete to a satisfaction of his note and mortgage. (1925, c. 223, s. 9.)

**§ 54-58. Transfer of mortgaged lands.**

The acquirer of any lands mortgaged to a land mortgage association shall enter at once, on the acquisition of the land, into a written agreement with the association, attested by a notary, or a justice, and assume the personal responsibility for the indebtedness to the association attaching to such lands. This document must be presented to the trustees within 14 days after demand. (1925, c. 223, s. 10.)

**§ 54-59. Calling in loans before due.**

Every land mortgage association shall have the power to call in loans upon 60 days' notice:

- (1) When the person acquiring the lands upon which money has been loaned does not comply with the provisions of G.S. 54-58 and fulfill the obligations incumbent upon him;
- (2) When the debtor does not meet the obligation imposed upon him by his contract and the bylaws of the land mortgage association;
- (3) When the mortgaged premises become subject to forced sale;
- (4) When the mortgaged premises are depreciating in value because of lack of care, of failure to maintain and conserve or from other cause.

The trustees of the association, whenever necessary, shall provide for an inspection of the mortgaged premises by the State Department of Agriculture and Consumer Services for an investigation of the care which is being given said premises, and may employ an expert to inspect the soil with a view of determining whether or not the same is being depleted. (1925, c. 223, s. 11; 1997-261, s. 109.)

#### **§ 54-60. Partial recall of debt.**

The association may require a suitable partial repayment of the debt if the mortgaged premises may have at any time become depreciated in value from any cause whatsoever. (1925, c. 223, s. 12.)

#### **§ 54-61. Foreclosure.**

Whenever any loan is called in and the borrower shall fail to pay the principal and interest due to the association as required by law and the notices given him, the land mortgage association may then foreclose upon the mortgaged premises as for a past-due loan. But in no case shall a borrower be liable for a sum greater than the amount of the unpaid portion of the loan with any accretions of interest thereon and expenses incidental to the collection thereof. (1925, c. 223, s. 13.)

#### **§ 54-62. Appraisal of lands.**

Upon application for a loan the land mortgage association shall cause the lands which it is proposed to mortgage to the association to be appraised by a competent appraiser furnished it by the State Department of Agriculture and Consumer Services. (1925, c. 223, s. 14; 1997-261, s. 109.)

#### **§ 54-63. Preference prohibited; association borrowing money.**

No land mortgage association, and no officer or agent thereof, shall give any preference to any creditor by pledging any of the assets of such association as collateral security, except that any such association may borrow money for temporary purposes, and may pledge assets of the association as collateral security therefor. Whenever it shall appear that any land mortgage association has borrowed habitually for the purpose of reloaning, the Commissioner of Banks may require such association to pay off such amount so borrowed. (1925, c. 223, s. 15; 1931, c. 243, s. 5.)

#### **§ 54-64. Bond issues.**

(a) The bonds to be issued by any land mortgage association may be issued for such amounts, bearing such serial number, and date or dates, and be payable at such time and times, bear such rate of interest, and be redeemable at maturity or upon notice at such times and in such manner, as the land mortgage association may, subject to the approval of the Banking Commission, deem advisable.

(b) Each land mortgage association shall keep a register for the registration and transfer of bonds issued by it in which it shall register, or cause to be registered, all bonds upon presentation thereof for such purpose; and such register shall contain the post-office address of all registered holders of bonds and shall, at all reasonable times, be open to the inspection of the Banking Commission, or any of its deputies, and to the State Treasurer. (1925, c. 223, s. 16.)

#### **§ 54-65. Deed of trust.**

(a) To secure the payment of such bonds, the land mortgage association shall issue a collateral deed of trust to the State Treasurer, pledging as security for such bonds the notes and mortgages taken or purchased, as provided herein, in an amount equal to or exceeding the aggregate amount of bonds issued or to be issued.

(b) The total amount of bonds actually outstanding shall not at any time exceed the total amount unpaid upon the notes secured by the mortgages belonging to the association and pledged for the payment of the bonds, plus such securities and moneys as may be on deposit with the State Treasurer under the provisions hereof.

(c) The aggregate amount of the principal of all bonds issued by land mortgage associations and outstanding at any one time shall not exceed 20 times the amount of the capital and surplus of the company. (1925, c. 223, s. 17.)

#### **§ 54-66. Collaterals deposited with State Treasurer.**

All mortgages pledged to secure the payment of the bonds issued hereunder shall be deposited and left with the State Treasurer. The land mortgage association may, with the approval of the State Treasurer, remove such mortgages from the custody of the State Treasurer, substituting in place thereof other of its mortgages, or money or State of North Carolina bonds or certificates of deposit, endorsed in blank, issued by State or national banks located in North Carolina, farm mortgage bonds issued under the provisions of the Federal Farm Loan Act approved July 17, 1916, or obligations of the United States government, in an amount equal to or greater than the amount unpaid upon the notes secured by the mortgages withdrawn. (1925, c. 223, s. 18.)

#### **§ 54-67. Redemption of bonds.**

(a) Notice of redemption of bonds may on no account be given on the part of the holder thereof, but may be given by the association only for the purpose of effecting redemption in accordance with the conditions of the bonds and as provided by law and the bylaws.

(b) If the land mortgage association shall elect to redeem any bond prior to maturity, six months' notice of redemption shall be given and shall be effected by personal service upon the owner and holder of the bond, by notice mailed to his address as registered or by advertising the same three times in a newspaper selected by the State Treasurer.

(c) The numbers of the bonds of which notice of redemption is to be given shall be determined by lot, to be drawn by the president or the vice-president at a meeting of the trustees. (1925, c. 223, s. 19; 1993, c. 553, s. 15.)

#### **§ 54-68. Validity of bonds after maturity.**

In case the holder of any bond outstanding shall not have presented the same for payment within the period of two years after its maturity or within two years after the date fixed for the redemption, as the case may be, then such bonds shall cease to be a lien upon the mortgages, moneys, and securities pledged to the State Treasurer and deposited with him as security therefor,

but such bond shall still constitute, until the statute of limitation running against such bonds shall have expired, a single legal money claim or demand against the land mortgage association issuing the same, and be recoverable from it in a suit at law, and in no event shall any interest be collectible upon such bond after the maturity thereof or after the date fixed for its redemption. (1925, c. 223, s. 20.)

**§ 54-69. Bonds as payment.**

If the association gives notice to a debtor for repayment of the mortgage loan the latter must pay to the association in cash or in its bonds at par the face of the same so far as it has not yet been covered by his assets in the amortization and payments. (1925, c. 223, s. 21.)

**§ 54-70. Bonds as investments.**

The bonds of a land mortgage association shall be a legal investment for savings associations, trust companies, or other financial institutions chartered under the laws of this State and shall also be a legal investment for trustees, executors, administrators, or custodians of public or private funds, or corporations, partnerships or associations. (1925, c. 223, s. 22.)

**§ 54-71. Application of earnings; reserve fund.**

The gross earnings of the association shall be ascertained annually, and there shall first be deducted therefrom the expenses incurred by the association for the preceding year and the balance thereof shall be set aside as a reserve fund for the payment of contingent losses, to an amount equal to two percent (2%) of the capital stock outstanding, and until such reserve fund equals twenty percent (20%) of the capital stock of such association. (1925, c. 223, s. 23.)

**§ 54-72. Restriction on holding real estate.**

No land mortgage association shall acquire real estate (other than for the occupation of its offices) except to protect its interest in case any of the mortgages owned by it are foreclosed and the property therein described sold to pay the indebtedness secured thereby. All real estate so acquired shall be promptly sold. (1925, c. 223, s. 24.)

**§ 54-73. Banking laws applicable.**

The banking laws as defined in G.S. 53C-1-4(5), insofar as applicable and not in conflict with the provisions hereof shall apply to land mortgage associations. (1925, c. 223, s. 25; 2012-56, s. 35.)

**SUBCHAPTER III. CREDIT UNIONS.**

Article 9.

Credit Union Division; Administrator of Credit Unions.

**§§ 54-74 through 54-75.1. Repealed by Session Laws 1975, c. 538, s. 1.**

Article 10.

Incorporation of Credit Unions.

**§§ 54-76 through 54-81. Repealed by Session Laws 1975, c. 538, s. 1.**

Article 11.



Powers of Credit Unions.

**§§ 54-82 through 54-93. Repealed by Session Laws 1975, c. 538, s. 1.**

Article 12.

Shares in the Corporation.

**§§ 54-94 through 54-97. Repealed by Session Laws 1975, c. 538, s. 1.**

Article 13.

Members and Officers.

**§§ 54-98 through 54-104. Repealed by Session Laws 1975, c. 538, s. 1.**

Article 14.

Supervision and Control.

**§§ 54-105 through 54-109. Repealed by Session Laws 1975, c. 538, s. 1.**

Article 14A.

Formation of Credit Union.

**§ 54-109.1. Definition and purposes.**

A credit union is a cooperative, nonprofit association, incorporated under Articles 14A to 14L of this Chapter, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition. (1975, c. 538, s. 1.)

**§ 54-109.2. Organization procedure.**

(a) Any 12 or more residents of this State, of legal age, who have a common bond referred to in G.S. 54-109.26 may make application to organize a credit union and become charter members thereof by complying with this section.

(b) The subscribers shall execute in duplicate articles of incorporation and agree to the terms thereof, which articles shall state:

- (1) The name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this State, and the location where the proposed credit union is to have its principal place of business;
- (2) That the existence of the credit union shall be perpetual;
- (3) The initial par value of the shares of the credit union.
- (4) The names and addresses of the subscribers to the articles of incorporation, and the value of shares subscribed to by each, which shall be not less than five dollars (\$5.00); and
- (5) That the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated, and those powers which are inherent in the credit union as a legal entity.

(c) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with Articles 14A to 14L of this Chapter, and execute the same in duplicate.

(d) They shall select at least five qualified persons who agree to serve on the board of directors, and at least three qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree. This agreement shall be submitted to the administrator of credit unions.

(e) The subscribers shall forward the required charter fee and an investigation fee, as prescribed by the Credit Union Commission, and the articles of incorporation and the bylaws to the Administrator of the Credit Union Division. The Administrator may issue a certificate of approval if the articles and the bylaws are in conformity with Articles 14A to 14L of this Chapter and he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall issue to the corporation a certificate of approval, annexed to a duplicate certificate of incorporation and of the bylaws, which certificate of approval, together with the attached duplicate certificate of incorporation, shall be recorded in the office of the register of deeds of the county in which the office of such credit union is situated, and upon recordation of the incorporators shall become and be a corporation for the purposes set forth in this Article. The register of deeds of the county in which such recordation is made shall charge the same fee for such recordation as he is now allowed to charge for handling and recording a certificate of incorporation of a corporation organized under the business corporation laws of this State. The application shall be acted upon within 30 days. (1915, c. 115, ss. 2, 9; C.S., ss. 5210, 5211, 5233; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 4, 19; 1973, c. 199, s. 8; 1975, c. 538, s. 1; 1983, c. 568, s. 1.)

### **§ 54-109.3. Form of articles and bylaws.**

In order to simplify the organization of credit unions, the Administrator of Credit Unions shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with Articles 14A to 14L of this Chapter, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall provide:

- (1) The name of corporation.
- (2) The purposes for which it is formed.
- (3) Qualifications for membership.
- (4) The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which constitute a quorum at the meetings, and the regulations as to voting.
- (5) The number of members of the board of directors, their powers and duties, and the compensation and duties of officers elected by the board of directors, and frequency of meetings.
- (6) The number of members of the credit committee, if any, their powers and duties.
- (7) The number of members of the supervisory committee, if any, their powers and duties.
- (8) The par value of shares of capital stock.
- (9) The conditions upon which shares may be issued, paid in, transferred, and withdrawn.

- (10) The fines, if any, which shall be charged for failure to meet obligations to the corporation punctually.
- (11) The conditions upon which deposits may be received and withdrawn. Whether the proposed corporation shall, in addition, have power to borrow funds.
- (12) The manner in which the funds of the corporation shall be invested.
- (13) The conditions upon which loans may be made and repaid.
- (14) The maximum rate of interest that may be charged upon loans, not to exceed, however, the legal rate.
- (15) The method of receipting for money paid on account of shares, deposits, or loans.
- (16) The manner in which the reserve fund shall be accumulated.
- (17) The manner in which dividends shall be determined and paid to members.
- (18) The manner in which a voluntary dissolution of the corporation shall be effected.
- (19) The manner in which the bylaws and articles of incorporation may be amended. (1915, c. 115, s. 2; C.S., s. 5211; 1975, c. 538, s. 1.)

#### **§ 54-109.4. Amendments.**

(a) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the Administrator of Credit Unions who shall approve or disapprove the amendments within 60 days.

(b) Amendments shall become effective upon approval in writing by the Administrator and no fee shall be charged for such approval. (1915, c. 115, s. 3; C.S., s. 5213; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 6; 1973, c. 1331, s. 3; 1975, c. 538, s. 1.)

#### **§ 54-109.5. Use of name exclusive.**

With the exception of a credit union organized under the provisions of Articles 14A to 14L of this Chapter or of any other credit union act, or an association of credit unions or a recognized chapter thereof, any person, corporation, copartnership or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be guilty of a Class 1 misdemeanor, and may be permanently enjoined from using such words in its name. (1915, c. 115, s. 4; C.S., s. 5214; 1925, c. 73, s. 3; 1935, c. 87; 1941, c. 236; 1975, c. 538, s. 1; 1993, c. 539, s. 428; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 54-109.6. Office facilities.**

(a) A credit union may maintain service facilities at locations other than its main office if the maintenance of such offices is reasonably necessary to furnish service to its members, subject to the approval of the Administrator of Credit Unions.

(b) A credit union may change its place of business within this State upon written notice to the Credit Union Division. Such a change shall be recorded in the office of the register of deeds where its office was located, and a second duplicate in the office of the register of deeds of the county in which the new office is to be located, if same is changed to another county. If the change is from one location to another in the same county, then only the Administrator of Credit Unions need be notified.

(c) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel. (1915, c. 115, ss. 9, 25; C.S., ss. 5215, 5233; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 7, 19; 1967, c. 823, s. 10; 1973, c. 199, s. 8; c. 1331, s. 3; 1975, c. 538, s. 1.)

**§ 54-109.7. Conducting business outside this State.**

A credit union incorporated under this Subchapter may conduct business outside of this State in any state where it is permitted to conduct business as a credit union. (1991, c. 651, s. 1.)

**§ 54-109.8. Reserved for future codification purposes.**

**§ 54-109.9. Reserved for future codification purposes.**

Article 14B.

Supervision and Regulation.

**§ 54-109.10. Creation and supervision of Division.**

There shall be established in the North Carolina Department of Commerce a Credit Union Division which shall be under the supervision of the Administrator of Credit Unions appointed by the Secretary of Commerce. The Credit Union Division and the Administrator of Credit Unions shall be under the general direction and supervision of the Secretary of Commerce, and there shall be such assistants to the Administrator of Credit Unions as may be necessary and the salaries of the Administrator and assistants shall be fixed by the State Personnel Council. (1915, c. 115, s. 1; C.S., s. 5208; 1925, c. 73, s. 4; 1935, c. 87; 1965, c. 956, s. 1; 1971, c. 864, s. 17; 1975, c. 538, s. 1; 1989, c. 751, s. 9(c); 1991 (Reg. Sess., 1992), c. 959, s. 3.)

**§ 54-109.11. Duties of Administrator.**

The duties of the Administrator of Credit Unions shall be as follows:

- (1) To organize and conduct in the State Department of Commerce, a bureau of information in regard to cooperative associations and rural and industrial credits.
- (2) Upon request, to furnish, without cost, such printed information and blank forms as, in his discretion, may be necessary for the formation and establishment of any local credit union in the State.
- (3) To maintain an educational campaign in the State looking to the promotion and organization of credit unions. Upon the written request of 12 bona fide residents of any particular locality in this State expressing a desire to form a local credit union at or in such locality, the Administrator of Credit Unions, or one of his assistants, shall proceed as promptly as may be convenient to such locality and make an investigation in order that the Administrator may determine whether or not a local credit union should be established according to the standards set forth and provided in this Article. The Administrator shall notify the applicants of his decision within 30 days after receipt of the written request. Before refusing the establishment of a credit union, the Administrator shall afford the applicants an opportunity to be heard therewith in person or by counsel and at least 60 days prior to the date set for a hearing on any such matter shall notify in writing the applicants of the date of said hearing and assign therein the grounds

for the action contemplated to be taken and as to which inquiry shall be made on the date of such hearing. The determination of the Administrator shall be subject to judicial review in all respects according to the provisions and procedures set forth in Chapter 150B of the General Statutes of North Carolina, as amended.

- (4) To examine at least once every 18 months, or more often if an examination is deemed necessary by the Administrator or the Administrator's assistant, the credit unions formed under Article 14A of this Chapter. A report of the examination shall be filed with the State Department of Commerce, and a copy mailed to the credit union at its proper address.
- (5) The Administrator of Credit Unions is authorized, empowered, and directed to fix the amount of a blanket surety bond which shall be required of each credit union official, committee member and employee, irrespective of whether such official, committee member and employee receives, pays or has custody of money or other personal property owned by a credit union or in the custody or control of the credit union as collateral or otherwise. The surety on the bond shall be a surety company authorized to do business in North Carolina. Any such bond or bonds shall be in a form approved by the Administrator of Credit Unions with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Administrator of Credit Unions may determine to be reasonably appropriate or as elsewhere required by the Chapter. Any such bond or bonds shall be in an amount in relation to the money or other personal property involved or in relation to the assets of the credit union as the Administrator may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. The Administrator may also approve the use of a form of excess coverage bond whereby a credit union may obtain an amount of coverage in excess of the basic surety coverage. No agreement, compromise or settlement of any claim or claims filed by a credit union with any surety or any surety company for less than the full amount of said claim or claims shall be entered into or made by the board of directors of any credit union unless and until the said claim or claims shall have been submitted to the Administrator of Credit Unions and his advice thereon given or transmitted to the board of directors of said credit union. The following schedule shall be deemed as the minimum fidelity and faithful performance bond requirements only:

Assets		Minimum Coverage	
\$	0,000 to	\$	1,000
	5,001 to		2,000
	10,001 to		4,000
	20,001 to		6,000
	30,001 to		8,000
	40,001 to		10,000
	50,001 to		15,000

75,001 to	100,000	20,000
100,001 to	200,000	30,000
200,001 to	300,000	40,000
300,001 to	400,000	50,000
400,001 to	500,000	70,000
500,001 to	750,000	85,000
750,001 to	1,000,000	100,000
1,000,001 to	50,000,000	\$100,000 plus \$50,000 for each million or fraction thereof of assets over \$1,000,000
\$50,000,001 to	\$150,000,000	\$2,500,000 plus \$25,000 for each million or fraction thereof of assets over \$50,000,000
Over	\$150,000,000	\$5,000,000

It shall be the duty of the board of directors of each credit union to provide proper protection to meet any circumstances by obtaining adequate bond (an insurance) coverage in excess of the above minimum schedule. The treasurer and all other persons handling credit union funds or records before entering upon his or their duties shall give a proper bond with good and sufficient surety, in an amount and character to be determined by the board in compliance with regulations conditioned upon the faithful performance of his or their trust.

The Administrator may require additional coverage for any credit union when, in his opinion, the surety bonds in force are insufficient to provide adequate surety coverage, and it shall be the duty of the board of directors of any credit union to obtain such additional coverage within 60 days after the date of written notice by the Administrator to such board of directors. For good cause shown, the Administrator may extend the time to obtain additional coverage. (1915, c. 115, s. 1; C.S., s. 5209; 1925, c. 73, ss. 2, 3, 5, 6; 1935, c. 87; 1957, c. 989, s. 1; 1965, c. 956, ss. 1-3; 1971, c. 864, s. 17; 1973, c. 199, ss. 1-3; c. 1331, s. 3; 1975, c. 538, s. 1; 1977, c. 559, s. 1; 1987, c. 827, s. 1; 1989, c. 751, s. 7(2); 1991 (Reg. Sess., 1992), c. 959, ss. 4, 4.1; 2017-25, s. 4(a).)

**§ 54-109.12. Corporations organized hereunder subject to Administrator of Credit Unions; rules and regulations.**

In addition to any and all other powers, duties and functions vested in the Administrator of Credit Unions under the provisions of this Article, the Administrator of Credit Unions shall have general control, management and supervision over all corporations organized under the provisions of Article 14A. All corporations organized under the provisions of Article 14A shall be subject to the management, control and supervision of the Administrator of Credit Unions as to their conduct, organization, management, business practices and their financial and fiscal matters. The Administrator of Credit Unions may prescribe rules and regulations for the administration of this Article, as well as rules and regulations relating to financial records, business practices and the conduct and management of credit unions, and it shall be the duty of the board of directors and of the various officers of the credit union to put into effect and to carry out such regulations. (1915, c. 115, s. 7; C.S., s. 5237; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 6; 1965, c. 956, ss. 1, 22; 1975, c. 538, s. 1; 1979, c. 198.)

**§ 54-109.13. Revocation of certificate; liquidation.**

If any such corporation shall neglect to make its annual report, as provided in this Article, or any other report required by the Administrator of Credit Unions for more than 15 days, or shall fail to pay the charges required, including the fines for delay in filing reports, the Administrator of Credit Unions shall give notice to such corporation of his intention to revoke the certificate of approval of the corporation for such neglect or failure, and if such neglect or failure continues for 15 days after such notice, the said Administrator shall, at his discretion, personally or by an agent appointed by him, take possession of the property and business of the corporation and retain possession until such time as he may permit it to resume business, or until its affairs be finally liquidated as provided for in G.S. 54-109.93. (1915, c. 115, s. 7; C.S., s. 5240; 1925, c. 73, ss. 3, 8; 1935, c. 87; 1957, c. 989, s. 8; 1965, c. 956, s. 1; 1975, c. 538, s. 1.)

**§ 54-109.14. Fees.**

(a) Each credit union subject to supervision and examination by the Administrator of Credit Unions, including credit unions in process of voluntary liquidation, shall pay into the office of the Administrator of Credit Unions twice each year, in the months of January and July, supervision fees, except those credit unions which liquidate or convert its charter shall pay into the office of the Administrator of Credit Unions, to the date of dissolution, pro rata supervision fees. Examination fees shall be paid promptly upon receipt of the examination report and invoice.

The Administrator of Credit Unions, subject to the advice and consent of the Credit Union Commission, shall, on or before December 1 of each year, determine and fix the scale of supervisory and examination fees to be assessed during the next calendar year.

No credit union shall be required to pay any supervisory fee until the expiration of 12 months from the date of the issuance of a certificate of incorporation to such credit union.

(b) Moneys collected under this section shall be deposited with the State Treasurer of North Carolina and expended, under the terms of the Executive Budget Act, to defray expenses incurred by the office of the Administrator of Credit Unions in carrying out its supervisory and auditing functions.

(c) All revenue derived from fees will be placed into a special account to be administered solely for the operation of the Credit Union Division. (1915, c. 115, s. 7; C.S., s. 5238; 1925, c. 73, ss. 3, 7; 1935, c. 87; 1941, c. 235; 1955, c. 1135, ss. 3, 4; 1957, c. 989, s. 7; 1965, c. 956, ss. 1, 23, 24; 1969, c. 69, s. 6; 1971, c. 864, s. 17; 1973, c. 199, s. 12; 1975, c. 538, s. 1; 1977, c. 559, ss. 2, 3.)

**§ 54-109.15. Reports.**

(a) Credit unions organized under Articles 14A to 14L of this Chapter shall, in January and in July of each year, make a report of condition to the Administrator of Credit Unions on forms supplied for that purpose. Additional reports may be required.

(b) Any credit union that neglects to make semiannual reports as provided in subsection (a) of this section, or any of the other reports required by the Administrator of Credit Unions at the time fixed by the Administrator, shall pay a late penalty to the Administrator of Credit Unions of seventy-five dollars (\$75.00) for each day the neglect continues. The Administrator of Credit Unions may revoke the certificate of incorporation and take possession of the assets and business of any credit union failing to pay a penalty imposed under this section after serving notice of at least 15 days upon the credit union of the proposed action. The clear proceeds of penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance

with G.S. 115C-457.2. (1915, c. 115, s. 7; C.S., ss. 5238, 5240; 1925, c. 73, ss. 3, 7, 8; 1935, c. 87; 1941, c. 235; 1955, c. 1135, ss. 3, 4; 1957, c. 989, ss. 7, 8; 1965, c. 956, ss. 1, 23, 24; 1969, c. 69, s. 6; 1971, c. 864, s. 17; 1973, c. 199, s. 12; 1975, c. 538, s. 1; 1991, c. 651, s. 2; 2005-276, s. 6.37(u).)

**§ 54-109.16. Examinations required; payment of cost.**

The Administrator of Credit Unions shall cause every credit union formed under Article 14A of this Chapter to be examined once every 18 months or whenever the Administrator deems it necessary. The examiners appointed by the Administrator shall be given free access to all books, papers, securities, and other sources of information in respect to the credit union; for the purpose of the examination, the Administrator may subpoena and examine personally, or by one of the Administrator's deputies or examiners, witnesses on oath and documents, whether the witnesses are members of the credit union or not, and whether the documents are documents of the credit union or not. The Administrator may designate an independent auditing firm to do the work under the Administrator's direction and supervision, with the cost to be paid by the credit union involved. (1915, c. 115, s. 7; C.S., s. 5239; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 25; 1969, c. 69, ss. 7, 8; 1975, c. 538, s. 1; 1977, c. 559, s. 4; 2017-25, s. 4(b).)

**§ 54-109.17. Records.**

(a) A credit union shall maintain all books, records, accounting systems and procedures in accordance with such rules as the Administrator from time to time prescribes. In prescribing such rules, the Administrator shall consider the relative size of a credit union and its reasonable capability of compliance.

(b) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the Administrator.

(c) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union. (1973, c. 98, s. 1; 1975, c. 538, s. 1.)

**§ 54-109.18. Selection of attorneys to handle loan-closing proceedings.**

The Administrator of Credit Unions shall establish rules and regulations relating to selection of attorneys-at-law to handle credit union loan closing proceedings. (1977, c. 559, s. 10.)

**§ 54-109.19. Removal of officers.**

(a) The Administrator of Credit Unions shall have the right and is hereby empowered to serve a written notice of his intention to remove from office any officer, director, committeeman or employee of any credit union doing business under Articles 14A through 15A of this Chapter who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the credit union, or who persistently violates the laws of this State or the lawful orders, instructions and regulations issued by the Administrator and/or the State Credit Union Commission.

(b) A notice of intention to remove a director, officer, committee member or employee from office shall contain a statement of the alleged facts constituting the grounds therefor and shall fix a time and place at which a hearing before the Credit Union Commission will be held thereon. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice unless an earlier or a later date is set by the Commission at the request of such director, officer, committee member or employee and for good cause shown. Pending this hearing, the Administrator may remove the alleged violator if he finds that it is essential to the continued well-being of the credit union or the public to do so. Unless, of course, such director,



officer, committee member or employee shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal. In the event of such consent, or if upon the record made at any such hearing the Credit Union Commission shall find that any of the grounds specified in such notice has been determined by the greater weight of the evidence, the Commission may issue such orders of removal from office as it may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such credit union and the director, officer, committee member or employee concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated or set aside by action of the Credit Union Commission or a reviewing court. (1979, c. 197, s. 1.)

**§ 54-109.20. Reserved for future codification purposes.**

Article 14C.

Powers of Credit Union.

**§ 54-109.21. General powers.**

A credit union may:

- (1) Make contracts;
- (2) Sue and be sued;
- (3) Adopt and use a common seal and alter the seal;
- (4) Acquire, lease, hold and dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) At the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
- (6) Receive savings from its members in the form of shares, deposits, or special-purpose thrift accounts;
- (7) Lend its funds to its members as provided in Articles 14A to 14L of this Chapter;
- (8) Borrow from any source in accordance with policy established by the board of directors;
- (9) Discount and sell any eligible obligations, subject to rules adopted by the Administrator;
- (10) Sell all or substantially all of its assets or purchase all or substantially all of the assets of another financial institution, subject to the approval of the Administrator of Credit Unions;
- (11) Invest surplus funds as provided in Articles 14A to 14L of this Chapter;
- (12) Make deposits in legally chartered banks, savings institutions, trust companies and central-type credit union organizations;
- (13) Assess charges to members in accordance with the bylaws for failure to meet properly their obligations to the credit union;
- (14) Hold membership in other credit unions organized under Articles 14A to 14L of this Chapter or other acts, and in other associations and organizations composed of credit unions;
- (15) Declare dividends; pay interest on deposits and pay interest refunds to borrowers as provided in Articles 14A to 14L of this Chapter;

- (16) Sell travelers checks and money orders and charge a reasonable fee for such services, provided the travelers checks are payable at institutions other than a credit union;
- (17) Perform tasks and missions requested by the federal government or this State or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with Articles 14A to 14L of this Chapter;
- (18) Act as fiscal agent for and receive deposits from the federal government, this State, or any agency or political subdivision thereof;
- (19) Contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership subject to rules adopted by the Administrator;
- (20) Make donations or contributions to any civic, charitable or community organization as authorized by the board of directors, subject to such regulations as are prescribed by the Administrator;
- (21) Act as a custodian of qualified pension funds if permitted by federal law;
- (22) Purchase or make available insurance for its directors, officers, agents, employees, and members; insurance may be provided through any insurance company or through any subsidiary insurance company owned by the credit union; and
- (23) Facilitate its members' purchase of goods and services in a manner which promotes the purposes of the credit union.
- (24) The board of directors may expel from the corporation any member who has not carried out the engagement the member made with the corporation, has been convicted of a felony or crime involving moral turpitude, or neglects or refuses to comply with the provisions of this Article or of the bylaws. The Board may, after notice and hearing as provided in this subdivision, expel from the corporation any member who because of the member's intemperance disrupts the activities of the credit union or who because of the member's habitual neglect of financial obligations reflects discredit upon the credit union. No member shall be expelled until informed in writing of the charges made and given an opportunity, after reasonable notice, to be heard.
- (25) Engage in activity permitted under this subdivision. Notwithstanding any other provision of this Chapter, the Administrator of Credit Unions, subject to the advice and consent of the Credit Union Commission, and upon a finding that action is necessary to preserve and protect the welfare of credit unions and to promote the general economy of the State, may adopt rules allowing State-chartered credit unions to engage in any activity in which they could engage if they were federally chartered credit unions.
- (26) Subject to rules adopted by the Administrator, act as trustee or custodian, and receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized and forming a part of a deferred compensation plan for its members or groups or organizations of its members, provided the funds of the plans are invested in savings or deposits of the credit union. All funds held may be commingled for the purpose of investment, but individual records shall be kept by the credit union for each

participant and shall show in proper detail all transactions engaged in under authority of this subdivision.

A member may withdraw from a credit union by filing a written notice of intent to withdraw.

The amounts paid in on shares or deposits by an expelled or withdrawing member, with any dividends credited to the shares and any interest accrued on the deposits to the date of expulsion or withdrawal shall be paid to the member, but in the order of expulsion or withdrawal, and only as funds therefor become available, after deducting any amounts due to the credit union by the member. The member shall have no other or further right in the credit union or to any of its benefits, but the expulsion or withdrawal shall not operate to relieve the member from any remaining liability to the credit union. (1915, c. 115, ss. 5, 16, 17, 23; C.S., ss. 5216-5218, 5231; 1925, c. 73, ss. 3, 10; 1935, c. 87; 1965, c. 956, s. 8; 1975, c. 538, s. 1; 1977, c. 559, s. 5; 1983, c. 568, s. 2; 1991, c. 651, s. 3; 2011-221, s. 1.)

#### **§ 54-109.22. Incidental powers.**

A credit union may exercise such incidental powers such as are necessary or requisite to enable it to promote and carry on most effectively its purposes. (1975, c. 538, s. 1.)

#### **§§ 54-109.23 through 54-109.25. Reserved for future codification purposes.**

Article 14D.

Membership.

#### **§ 54-109.26. "Membership" defined.**

(a) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid any required entrance fee or membership fee, or both, have subscribed for one or more shares, and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(b) Credit union membership may include groups having a common bond of similar occupation, association or interest, or groups who reside within an identifiable neighborhood, community, or rural district, or employees of a common employer, and members of the immediate family of such persons. (1915, c. 115, s. 6; C.S., s. 5230; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 18; 1975, c. 538, s. 1.)

#### **§ 54-109.27. Societies and other associations.**

Societies, and copartnerships composed primarily of individuals who are eligible to membership, and corporations whose stockholders are composed primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals, but may not borrow in excess of their shareholdings. Provided, however, secured loans in excess of shareholdings may be made to nonprofit societies, copartnerships, and corporations who are members. (1975, c. 538, s. 1; 1979, c. 809, s. 1.)

#### **§ 54-109.28. Other credit unions.**

Any credit union organized under Articles 14A to 14L of this Chapter may permit membership of any other credit union organized under Articles 14A to 14L of this Chapter or other acts. (1975, c. 538, s. 1.)

**§ 54-109.29. Members who leave field.**

Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors. (1975, c. 538, s. 1.)

**§ 54-109.30. Liability of shareholders.**

A shareholder of any such corporation, unless the bylaws so provide, shall not be individually liable for the payment of its debts for an amount in excess of the par value of the shares which he owns or for which he has subscribed. (1975, c. 538, s. 1.)

**§ 54-109.31. Meetings of members.**

(a) The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws.

(b) At all such meetings, a member shall have but one vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot if the bylaws of the credit union so provide.

(c) A society, association, copartnership or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided such person has been fully authorized by the organization's governing body.

(d) The board of directors may establish a minimum age of 16 years of age as a qualification to vote at meetings of the members.

(e) The board of directors may establish a minimum age of 18 years of age as a qualification to hold office. (1975, c. 538, s. 1.)

**§§ 54-109.32 through 54-109.34. Reserved for future codification purposes.**

Article 14E.

Direction of Affairs.

**§ 54-109.35. Election or appointment of officials.**

(a) The credit union shall be directed by a board of directors, at least five in number, to be elected at the annual members' meeting by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

(b) The board of directors at its first meeting after its election shall appoint a supervisory committee from the membership (no more than one of whom may be a member of the board of directors and none a member of the credit committee) of not less than three members who shall serve for such terms as may be fixed by the bylaws; or in lieu thereof, the bylaws may authorize the board of directors to employ and use such clerical and auditing assistants as may be required to perform the duties required by G.S. 54-109.49. The board of directors may remove or suspend any member of the supervisory committee for neglect of duty, misfeasance, malfeasance, official misconduct, or for other good cause shown.

(c) The board of directors shall appoint a credit committee from the membership consisting of an odd number, not less than three, for such terms as the bylaws provide or, in lieu of a credit committee, appoint one or more loan officers from the membership and, in such instances, duties and responsibilities of the credit committee shall be carried out by such loan officer or officers. (1975, c. 538, s. 1.)

**§ 54-109.36. Record of board and committee members.**

Within 15 days following the board of directors' initial or annual organization meeting, a record of the names and addresses of the members of the board, committees and all other officers of the credit union shall be filed with the Credit Union Division on forms provided by that Division. (1975, c. 538, s. 1.)

**§ 54-109.37. Vacancies.**

The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees. (1975, c. 538, s. 1.)

**§ 54-109.38. Compensation of officials.**

No member of the board of directors or of the credit committee or supervisory committee shall be compensated for his service in this position, but providing reasonable life, health, accident and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary and reasonable expenses incidental to the performance of the business. Such reimbursement may include the payment of expenses for one guest. (1975, c. 538, s. 1; 2015-93, s. 5.)

**§ 54-109.39. Conflicts of interest.**

No director, committee member, officer, agent or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested. (1975, c. 538, s. 1.)

**§ 54-109.40. Executive officers.**

(a) At their organization meeting and within 30 days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice-chairman of the board or one or more vice-presidents; a treasurer; and a secretary. The treasurer and the secretary may be the same individual. The persons so elected shall be the executive officers of the corporation.

(b) The terms of the officers shall be one year, or until their successors are chosen and have duly qualified.

(c) The duties of the officers shall be prescribed in the bylaws.

(d) The board of directors may employ an officer in charge of operations whose title shall be either president and/or general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union. (1975, c. 538, s. 1.)

**§ 54-109.41. Authority of directors.**

The board of directors shall have the general direction of the business affairs, funds, and records of the credit union. (1975, c. 538, s. 1.)

**§ 54-109.42. Executive committee.**

From the persons elected to the board, the board may appoint an executive committee of not less than three directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board. (1975, c. 538, s. 1.)

**§ 54-109.43. Meetings of directors.**

The board of directors and the executive committee shall meet as often as the bylaws prescribe. (1915, c. 115, s. 8; C.S., s. 5232; 1975, c. 538, s. 1.)

**§ 54-109.44. Duties of directors.**

It shall be the duty of the directors to:

- (1) Act upon applications for membership or to appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board;
- (2) Purchase a blanket fidelity bond, in accordance with any rules and regulations of the Administrator, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, embezzlement, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, attorney-at-law or other agent;
- (3) Determine from time to time the interest rate or rates consistent with Articles 14A to 14L of this Chapter, which shall be charged on loans and to authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;
- (4) Fix from time to time the maximum amount which may be loaned to any one member;
- (5) Declare dividends on shares in the manner and form as provided in the bylaws; and determine the interest rate or rates which will be paid on deposits;
- (6) Set the number of shares and the amount of deposits which may be owned by a member, such limitations to apply alike to all members;
- (7) Have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;
- (8) Authorize the employment of such persons necessary to carry on the business of the credit union;
- (9) Authorize the conveyance of property;
- (10) Borrow or lend money to carry on the functions of the credit union;
- (11) Designate a depository or depositories for the funds of the credit union;
- (12) Suspend any or all members of the credit or supervisory committee for failure to perform their duties;
- (13) Appoint any special committees deemed necessary; and
- (14) Perform such other duties as the members from time to time direct, and perform or authorize any action not inconsistent with Articles 14A to 14L of this Chapter

and not specifically reserved by the bylaws for the members. (1915, c. 115, s. 10; C.S., s. 5234; 1957, c. 989, s. 5; 1965, c. 956, s. 20; 1973, c. 199, s. 9; 1975, c. 538, s. 1.)

**§ 54-109.45. Authority of credit committee.**

The credit committee shall have the general supervision of all loans to members. (1915, c. 115, s. 11; C.S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

**§ 54-109.46. Meetings of credit committee.**

The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for loans. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered. (1915, c. 115, s. 11; C.S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

**§ 54-109.47. Loan officers.**

(a) The credit committee may appoint one or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.

(b) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee. (1915, c. 115, s. 11; C.S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

**§ 54-109.48. When credit committee dispensed with.**

The credit committee may be dispensed with, and loan officer(s) empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the event the credit committee is dispensed with, the procedures prescribed in G.S. 54-109.45, 54-109.46 and 54-109.47 do not apply, and no loans shall be made unless approved by the loan officer(s). (1915, c. 115, s. 11; C.S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

**§ 54-109.49. Duties of supervisory committee.**

The supervisory committee shall make or cause to be made an annual audit, in accordance with rules and regulations promulgated by the Administrator of Credit Unions, and shall submit a report of that audit to the board of directors and a summary of the report to the members at the next annual meeting of the credit union. The supervisory committee shall make or cause to be made such supplemental audits as deemed necessary by it or as may be ordered by the Administrator of Credit Unions. Any violation of this Article or of the bylaws or of any practice of the corporation which in the opinion of the supervisory committee is unsafe, unsound, or unauthorized, shall be reported to the board of directors and the Administrator of Credit Unions within seven days after its discovery. (1915, c. 115, s. 12; C.S., s. 5236; 1965, c. 956, s. 21; 1973, c. 199, s. 11; 1975, c. 538, s. 1.)

**§§ 54-109.50 through 54-109.52. Reserved for future codification purposes.**

Article 14F.

Savings Accounts.

**§ 54-109.53. Shares.**

(a) The capital of a credit union consists of the payments made by members on shares, undivided surplus, and reserves.

(b) Shares may be subscribed to, paid for and transferred in such manner as the bylaws prescribe.

(c) A certificate need not be issued to denote ownership of a share in a credit union. (1915, c. 115, s. 13; C.S., s. 5226; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 16, 17; 1975, c. 538, s. 1.)

**§ 54-109.54. Dividends.**

The board of directors of any credit union may declare dividends as its bylaws provide. (1915, c. 115, s. 22; C.S., s. 5223; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 3; 1965, c. 956, s. 15; 1969, c. 69, ss. 3, 4; 1973, c. 199, s. 7; 1975, c. 538, s. 1; 1983, c. 568, s. 3.)

**§ 54-109.55. Deposits.**

A credit union may receive on deposit the savings of its members and also nonmembers in such amounts and upon such terms as the board of directors may determine and the bylaws shall provide. (1915, c. 115, s. 16; C.S., s. 5217; 1925, c. 73, s. 3; 1935, c. 87; 1975, c. 538, s. 1.)

**§ 54-109.56. Thrift accounts.**

Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors. (1975, c. 538, s. 1.)

**§ 54-109.57: Repealed by Session Laws 2011-236, s. 4, effective October 1, 2011.**

**§ 54-109.57A. Payable on Death (POD) accounts.**

(a) Shares may be issued to and deposits received from any natural person or natural persons establishing an account who shall execute a written agreement with the credit union containing a statement that it is executed pursuant to the provisions of this section and providing for the account to be held in the name of the natural person or natural persons as owner or owners for one or more beneficiaries. Such account and any balance thereof shall be held as a Payable on Death account. The account shall have the following incidents:

- (1) Any owner during the owner's lifetime may change any designated beneficiary by a written direction to the credit union.
- (2) If there are two or more owners of a Payable on Death account, the owners shall own the account as joint tenants with right of survivorship and, except as otherwise provided in this section, the account shall have the incidents set forth in G.S. 54-109.58.
- (3) Any owner may withdraw funds by writing checks or otherwise, as set forth in the account contract, and receive payment in cash or check payable to the owner's personal order.
- (4) If the beneficiary or beneficiaries are natural persons, there may be one or more beneficiaries and the following shall apply:
  - a. If only one beneficiary is living and of legal age at the death of the last surviving owner, the beneficiary shall be the owner of the account, and payment by the credit union to such owner shall be a total discharge of the credit union's obligation as to the amount paid. If two or more



beneficiaries are living at the death of the last surviving owner, they shall be owners of the account as joint tenants with right of survivorship as provided in G.S. 54-109.58, and payment by the credit union to the owners or any of the owners shall be a total discharge of the credit union's obligation as to the amount paid.

- b. If only one beneficiary is living and that beneficiary is not of legal age at the death of the last surviving owner, the credit union shall transfer the funds in the account to the general guardian or guardian of the estate, if any, of the minor beneficiary. If no guardian of the minor beneficiary has been appointed, the credit union shall hold the funds in a similar interest bearing account in the name of the minor until the minor reaches the age of majority or until a duly appointed guardian withdraws the funds.
- (5) If the beneficiary is an entity other than a natural person, there shall be only one beneficiary.
- (6) If one or more owners survive the last surviving beneficiary who was a natural person, or if a beneficiary who is an entity other than a natural person should cease to exist before the death of the owner, the account shall become an individual account of the owner, or a joint account with right of survivorship of the owners, and shall have the legal incidents of an individual account in a case of a single owner or a joint account with right of survivorship, as provided in G.S. 54-109.58, in the case of multiple owners.
- (7) Prior to the death of the last surviving owner, no beneficiary shall have any ownership interest in a Payable on Death account. Funds in a Payable on Death account established pursuant to this subsection shall belong to the beneficiary or beneficiaries upon the death of the last surviving owner, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(1). Payment by the credit union of funds in the Payable on Death account to the beneficiary or beneficiaries shall terminate the personal representative's authority under G.S. 28A-15-10(a)(1) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the beneficiary or beneficiaries is not terminated.
- (8) A pledge of a Payable on Death account by any owner, unless otherwise specifically agreed between the credit union and all owners in writing, is a valid pledge and transfer of the account or of the pledged amount, is binding upon all owners and beneficiaries, does not operate to sever or terminate the joint ownership of all or any part of the account, and survives the death of any owner or any beneficiary.

The natural person or natural persons establishing an account under this subsection shall sign a statement containing language set forth in a conspicuous manner and substantially similar to the language set out below; the language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account:

"CREDIT UNION (or name of institution)  
PAYABLE ON DEATH ACCOUNT  
G.S. 54-109.57A

I (or we) understand that by establishing a Payable on Death account under the provisions of North Carolina General Statute 54-109.57A that:

1. During my (or our) lifetime I (or we), individually or jointly, may withdraw the money in the account.
2. By written direction to the credit union (or name of institution) I (or we), individually or jointly, may change the beneficiary or beneficiaries.
3. Upon my (or our) death the money remaining in the account will belong to the beneficiary or beneficiaries, and the money will not be inherited by my (or our) heirs or be controlled by will.

\_\_\_\_\_ "

(b) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law, as appropriate.

(c) No addition to such accounts, nor any withdrawal, payment, or change of beneficiary, shall affect the nature of such accounts as Payable on Death accounts or affect the right of any owner to terminate the account.

(d) This section does not repeal or modify any provisions of laws relating to estate taxes.

(e) Any payable on death account created under the provisions of G.S. 54-109.57, as it existed prior to October 1, 2011, shall for all purposes be governed by the provisions of this section on and after October 1, 2011, and any reference to G.S. 54-109.57 in any document concerning the account shall be deemed a reference to this section. (1915, c. 115, s. 14; C.S., s. 5227; 1975, c. 538, s. 1; 1987 (Reg. Sess., 1988), c. 1078, s. 2; 1989, c. 164, s. 6; 1989 (Reg. Sess., 1990), c. 866, s. 8; 2001-267, s. 2; 2001-487, s. 61(a); 2011-236, s. 4; 2012-168, s. 4; 2012-194, s. 63; 2013-132, s. 1; 2017-165, s. 14.)

#### **§ 54-109.58. Joint accounts.**

(a) Shares may be issued to and deposits received from any two or more persons opening or holding an account or accounts, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. The account and any balance thereof shall be held by them as joint tenants, with or without right of survivorship, as the contract shall provide; the account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact as well.

(b) Unless the persons establishing the account have agreed with the credit union that withdrawals require more than one signature, payment by the credit union to, or on the order of, any persons holding an account authorized by this section shall be a total discharge of the credit union's obligations as to the amount so paid.

(c) Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the credit union of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated.

(d) A pledge of a joint account by any one or more of the joint tenants, unless otherwise specifically agreed between the credit union and all joint tenants in writing, shall be a valid pledge and transfer of the account or of the amount so pledged, shall be binding upon all joint tenants, shall not operate to sever or terminate the joint ownership of all or any part of the account, and shall survive the death of any joint tenant.

(e) A credit union is not liable to joint tenants for complying in good faith with a writ of execution, garnishment, attachment, levy, or other legal process that appears to have been issued by a court or other authority of competent jurisdiction and seeks funds held in the name of any one or more of the joint tenants.

(f) Persons establishing an account under this section shall sign a statement showing their election of the right of survivorship in the account, and containing language set forth in a conspicuous manner and substantially similar to the following:

"CREDIT UNION (or name of institution)  
JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP  
G.S. 54-109.58

We understand that by establishing a joint account under the provisions of North Carolina General Statute 54-109.58 that:

1. The credit union (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have agreed with the credit union that withdrawals require more than one signature; and
2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We DO elect to create the right of survivorship in this account.

\_\_\_\_\_  
"

The language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account.

(g) Any joint tenant may terminate a joint account.

(h) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the credit union shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was a named joint tenant.

(i) This section shall not be deemed exclusive. Deposit accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law as appropriate.

(j) This section does not repeal or modify any provisions of laws relating to estate taxes. This section regulates and protects the credit union in its relationship with joint owners of accounts.

(k) No addition to such account, nor any withdrawal or payment shall affect the nature of the account as a joint account, or affect the right of any tenant to terminate the account. (1975, c. 538, s. 1; 1987 (Reg. Sess., 1988), c. 1078, s. 3; 1989, c. 164, s. 3; 1989 (Reg. Sess., 1990), c. 866, s. 7; 1998-69, s. 15; 2013-132, s. 2; 2014-61, s. 1.)

**§ 54-109.59. Liens.**

The credit union shall have a lien on the shares, deposits and accumulated dividends or interest of a member in his individual, joint or trust account, for any sum past due the credit union from said member or for any loan endorsed by him. (1915, c. 115, s. 13; C.S., s. 5226; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 16, 17; 1975, c. 538, s. 1.)

**§ 54-109.60. Repealed by Session Laws 1977, c. 559, s. 6.**

**§ 54-109.60A. Minors.**

(a) A credit union may issue and operate a share or deposit account in the name of (i) a minor or (ii) the names of two or more individuals, one or more of which are minors. A minor who obtains a share or deposit account from a credit union under this subsection, whether individually or together with others, is bound by the terms of the account agreement to the same extent as if the minor were of full age and legal capacity.

(b) If a minor with a share account, other than a joint account with right of survivorship or a payable on death account, dies, a parent or legal guardian of the minor may access and withdraw the funds on deposit, and the credit union is discharged to the extent of any withdrawal.

(c) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to a minor. (2013-132, s. 3.)

**§ 54-109.60B. Accounts opened by adults for minors.**

(a) One or more adults may open and maintain a custodial share account for or in the name of a minor and using the minor's taxpayer identification number. Unless otherwise provided in the agreement governing the account, the following terms apply:

- (1) Beneficial ownership of the account vests exclusively in the minor. All interest credited to the account shall belong to the minor and shall be reported to the appropriate taxing authorities in the name of the minor using the minor's taxpayer identification number.
- (2) Except as otherwise provided, control of the account vests exclusively in the custodian whose name appears on the credit union's records for the account. If there is more than one custodian named on the credit union's account records, each may act independently. Any one or more of the custodians named on the credit union's records may turn over control of the account to the minor at any time, either before or after the minor reaches the age of majority.
- (3) If the custodian has not already transferred control, then after the minor beneficiary reaches the age of majority, the beneficiary may instruct the credit union to transfer control to the beneficiary and remove the named custodian.
- (4) If the custodian or, if more than one custodian is on the account, the last of the custodians to survive dies before the minor reaches the age of majority, the minor's parent or the minor's legal guardian may act as custodian or name another custodian on the account.

(b) This section shall not be deemed exclusive. Accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes, including Chapter 33A, the North Carolina Uniform Transfers to Minors Act, or the common law, as appropriate. (2013-132, s. 3.)

**§ 54-109.61. Reduction in shares.**

(a) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the members present at a special meeting called for that purpose order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(b) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction. (1975, c. 538, s. 1.)

**§ 54-109.62. Payment of balance of deceased person or person under disability to personal representative or guardian.**

(a) A credit union may pay any balance on deposit to the credit of any deceased individual to the duly qualified personal representative, collector, or public administrator of the decedent who is qualified as such under the laws of any state.

(b) A credit union may pay any balance on deposit to the credit of any individual judicially declared incompetent or otherwise under a legal disability to the duly qualified personal representative, guardian, curator, conservator, or committee of the person declared incompetent or under disability who is qualified as such under the laws of any state.

(c) The presentation of a letter of qualification as personal representative, collector, public administrator, guardian, curator, conservator, or committee of the person issued or certified by the appointing court shall be conclusive proof of the jurisdiction of the court issuing the same and sufficient authority for the payment.

(d) Payment by a credit union in good faith under the authority of this section discharges the liability of the bank to the extent of the payment. (2013-132, s. 3.)

**§ 54-109.62A. Powers of attorney; notice of revocation; payment after notice.**

(a) Any credit union may continue to recognize any act of an attorney-in-fact or other agent until the credit union receives actual notice of the principal's death or a written notice of revocation signed by the principal who granted the authority or, in the case of a company, evidence satisfactory to the credit union of the revocation. Payment by the credit union to or at the direction of an attorney-in-fact or other agent before receipt of the notice is a total discharge of the credit union's obligation as to the amount so paid.

(b) Notwithstanding that a credit union has received written notice of revocation of the authority of an attorney-in-fact or other designated agent, a credit union may, until 10 days after receipt of notice, pay any item made, drawn, accepted, or endorsed by the attorney-in-fact or agent prior to the revocation, provided that the item is otherwise properly payable. (2013-132, s. 3.)

**§ 54-109.63. Personal agency accounts.**

(a) A person may open a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. A personal agency account may be a checking account, savings account, time deposit, or any other type of withdrawable account or certificate. The written contract shall name an agent who shall have authority to act on

behalf of the depositor in regard to the account as set out in this subsection. The agent shall have the authority to:

- (1) Make, sign or execute checks drawn on the account or otherwise make withdrawals from the account;
- (2) Endorse checks made payable to the principal for deposit only into the account; and
- (3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing language substantially similar to the following in a conspicuous manner:

"CREDIT UNION (or name of institution)  
PERSONAL AGENCY ACCOUNT  
G.S. 54-109.63

I understand that by establishing a personal agency account under the provisions of North Carolina General Statute 54-109.63 that the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

"

The language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account.

(b) An account created under the provisions of this section grants no ownership right or interest in the agent. Upon the death of the principal there is no right of survivorship to the account and the authority set out in subsection (a) terminates.

(c) The written contract referred to in subsection (a) shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) to act on behalf of the principal in regard to the account notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal so elects to extend such authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise such authority, without the requirement of bond or of accounting to any court, until such time as the agent shall receive actual knowledge that such authority has been terminated by a duly qualified guardian of the estate of the incapacitated or incompetent principal or by the duly appointed attorney-in-fact for the incapacitated or incompetent principal, acting pursuant to a durable power of attorney (as defined in G.S. 32A-8 [now G.S. 32C-1-102]) which grants to the attorney-in-fact that authority in regard to the account which is granted to the agent by the written contract executed pursuant to the provisions of this section, at which time the agent shall account to such guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal does not so elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority or the agent set out in subsection (a) terminates.

(d) When an account under this section has been established all or part of the account or any interest or dividend thereon may be paid by the credit union on a check made, signed or executed by the agent. In the absence of actual knowledge that the principal has died or that the

agency created by the account has been terminated, such payment shall be a valid and sufficient discharge to the credit union for payment so made.

(e) An account established under the provisions of this section does not grant to the agent the authority to vote, obtain loans, or hold office and the agent shall not be required to pay an entrance or membership fee. (1987 (Reg. Sess., 1988), c. 1078, s. 4; 1989, c. 164, s. 9; 1989 (Reg. Sess., 1990), c. 866, s. 9; 2013-132, s. 4.)

#### **§ 54-109.64. Savings promotion raffles.**

A credit union may offer a savings promotion raffle in which the sole consideration required for a chance of winning designated prizes is the deposit of a minimum specified amount of money in a savings account or other savings program offered by the credit union. A credit union shall maintain records sufficient to facilitate an audit of the savings promotion raffle, shall conduct the savings promotion raffle in a safe and sound manner, and shall fully disclose the terms and conditions of the promotion to account holders and prospective account holders of the credit union. (2011-146, s. 2.)

### **Article 14G.**

#### **Loans.**

#### **§ 54-109.65. Purposes, terms and interest rate.**

A credit union may loan to its members for such purpose and upon such security and terms as the board of directors prescribes at rates of interest not exceeding eighteen percent (18%) annual percentage rate, unless a greater rate not to exceed the annual percentage rate permitted to be charged by federally chartered credit unions, is otherwise approved by the Credit Union Commission. Such action by the Commission will be uniform and apply to all credit unions.

The term "interest," as used in this section, shall not be deemed to include charges made by a credit union for appraisals of real or personal property; attorneys' fees for searching title to real property, preparing notes, deeds of trust, mortgages and closing loans; and recording fees. Rate of interest and terms of repayment shall appear on each note but the corporation may, for the purpose of making loans, discount and negotiate promissory notes and deduct in advance, from the proceeds of such loan, interest at a rate not to exceed the rate herein fixed, which shall be the legal rate for corporations organized under this Article, and such deductions shall be made upon the amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in such installments. (1915, c. 115, ss. 19, 20; 1917, c. 232, s. 4; C.S., ss. 5220, 5221; 1925, c. 73, s. 3; 1935, c. 87; 1955, c. 1135, s. 2; 1957, c. 989, s. 2; 1961, c. 1187, s. 1; 1965, c. 956, ss. 1, 12, 13; 1969, c. 69, s. 9; 1973, c. 199, ss. 5, 6; 1975, c. 538, s. 1; 1983, c. 568, s. 4.)

#### **§ 54-109.66. Application.**

Every application for a loan shall be made in writing upon a form, which the board of directors prescribe. The application shall state the purpose for which the loan is desired, and the security, if any, offered. Each loan shall be evidenced by a written document. (1975, c. 538, s. 1.)

#### **§ 54-109.67. Loan limit.**

No loan shall be made to any member in an aggregate amount in excess of ten percent (10%) of the credit union's unimpaired capital and surplus. In accordance with the bylaws and subject to such rules and regulations as the Administrator may prescribe, the board of directors shall determine and set the maximum unsecured loan limits subject to the limitation contained in the

preceding sentence. (1915, c. 115, s. 19; 1917, c. 232, s. 4; C.S., s. 5220; 1925, c. 73, s. 3; 1935, c. 87; 1955, c. 1135, s. 2; 1961, c. 1187, s. 1; 1965, c. 956, ss. 1, 12, 13; 1969, c. 69, s. 9; 1973, c. 199, s. 5; 1975, c. 538, s. 1; 1983, c. 568, s. 5.)

#### **§ 54-109.68. Security.**

In addition to generally accepted types of security, the endorsement of a note by a surety, comaker or guarantor, or assignment of shares, in a manner consistent with the laws of this State, shall be deemed security within the meaning of Articles 14A to 14L of this Chapter. The adequacy of any security shall be determined by the board of directors subject to Articles 14A to 14L of this Chapter and the bylaws. (1975, c. 538, s. 1.)

#### **§ 54-109.69. Installments.**

A member may receive a loan in installments, or in one sum, and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business. (1975, c. 538, s. 1.)

#### **§ 54-109.70. Line of credit.**

A line of credit and advances may be granted to each member within guidelines established by the board of directors. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such line of credit. (1975, c. 538, s. 1.)

#### **§ 54-109.71. Other loan programs.**

(a) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(b) A credit union may participate in guaranteed loan programs of the federal and State government.

(c) A credit union may purchase the conditional sales contracts, notes and similar instruments of its members. (1975, c. 538, s. 1.)

#### **§§ 54-109.72 through 54-109.74. Reserved for future codification purposes.**

### **Article 14H.**

#### **Insurance and Group Purchasing.**

#### **§ 54-109.75. Insurance for members.**

(a) A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, deposits or loan balances or to any combination of them.

(b) A credit union may enter into cooperative marketing arrangements to facilitate its members' voluntary purchase of insurance including, but not by way of limitation, life insurance, disability insurance, accident and health insurance, property insurance, liability insurance, and legal expense insurance.

(c) Insurance may be provided through any insurance company or through any subsidiary insurance company owned by the credit union. (1975, c. 538, s. 1; 2011-221, s. 2.)

#### **§ 54-109.76. Liability insurance for officers.**



A credit union may purchase and maintain liability insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability. (1975, c. 538, s. 1.)

**§ 54-109.77. Group purchasing.**

A credit union may enter into cooperative marketing arrangements to facilitate its members' voluntary purchase of such goods and services as are in the interest of improving economic and social conditions of the members. (1975, c. 538, s. 1.)

**§ 54-109.78. Share and deposit insurance.**

(a) All credit unions established under this Chapter shall, no later than July 1, 1976, apply for insurance of member share and deposit accounts from any mutual deposit guaranty association which qualifies under Article 7A of Chapter 54 of the General Statutes (Mutual Deposit Guaranty Associations), or from the National Credit Union Administration under the Federal Credit Union Act. All such credit unions shall, on or before January 1, 1977, obtain and thereafter maintain the above-mentioned insurance. A credit union which is unable to obtain a commitment for insurance of the share and deposit accounts within the time limit specified above shall be dissolved by action of the Administrator of Credit Unions or permitted to merge with another credit union. Provided, the Administrator may grant additional time to obtain the insurance commitment, upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Granting of additional time or times to obtain the insurance commitment shall not extend later than January 1, 1978.

(b) All credit unions chartered under Articles 14A to 14L of this Chapter after ratification shall apply for and obtain insurance as a condition to granting the charter. (1975, c. 538, s. 1.)

**§§ 54-109.79 through 54-109.81. Reserved for future codification purposes.**

Article 14I.

Investments.

**§ 54-109.82. Investment of funds.**

The capital, deposits, undivided profits and reserve fund of the corporation may be invested only in any of the following ways:

- (1) They may be lent to the members of the corporation in accordance with the provisions of this Chapter.
- (2) In capital shares, obligations, or preferred stock issues of any agency, company, or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the case may be, of the agency, company, or association are confined or restricted to credit unions or organizations of credit unions, or provided the purpose for which the agency, company, or association is organized or designed is to service or otherwise assist credit union operations.
- (3) In obligations of the State of North Carolina or any subdivision thereof.

- (4) In obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States.
- (5) They may be deposited to the credit of the corporation in savings institutions, credit unions, or State banks or trust companies incorporated under the laws of the State, or in national banks located in the State.
- (6) In loans to other credit unions in any amount not to exceed twenty-five percent (25%) of the shares and unimpaired surplus of the lending credit union.
- (7) In an aggregate amount not to exceed twenty-five percent (25%) of the allocations to the reserve fund in any agency, company, or association of the type described in subdivision (2) of this section provided the purposes of the agency, company, or association are designed to assist in establishing and maintaining liquidity, solvency, and security in credit union operations.
- (8) In the North Carolina Savings Guaranty Corporation.
- (9) In any form of investment allowed by law to the State Treasurer under G.S. 147-69.1. In addition, investment in corporate bonds that bear a minimum rating of A+ by at least one nationally recognized rating service is permissible. Credit unions shall monitor overall credit exposure by setting corporate bond investment limits as a percentage of assets.
- (10) Debentures issued by an agency of the United States government.
- (11) In the College Foundation in any amount not to exceed ten percent (10%) of the shares and unimpaired surplus of the investing credit union.
- (12) They may be deposited in any bank or savings institution insured by the federal government or any of its agencies.
- (13) In higher education bonds permissible under G.S. 116D-2, provided that such bonds pledge the faith, credit, and taxing power of the State for the payment of the principal of and interest on bonds and notes. (1915, c. 115, s. 18; 1917, c. 232, ss. 2, 3; C.S., s. 5219; 1925, c. 73, ss. 12, 13, 14; 1935, c. 87; 1939, c. 400, s. 1; 1947, c. 781; 1965, c. 956, ss. 10, 11; 1969, c. 69, s. 1; 1973, c. 199, s. 4; c. 1255, s. 1; 1975, c. 538, s. 1; 1977, c. 559, s. 7; 1979, c. 467, s. 23; c. 809, s. 2; 1991, c. 651, s. 4; 1991 (Reg. Sess., 1992), c. 1030, s. 51.11; 2011-221, s. 3; 2013-132, s. 5; 2015-93, s. 4.)

**§§ 54-109.83 through 54-109.85. Reserved for future codification purposes.**

#### Article 14J.

#### Reserve Allocations.

**§ 54-109.86. Transfers to regular reserve.**

(a) At the end of each accounting period the gross income shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed pursuant to law, sums in accordance with the following schedule:

- (1) A credit union in operation for more than four years and having assets of five hundred thousand dollars (\$500,000) or more shall set aside
  - a. Ten per centum (10%) of gross income until the regular reserve shall equal four per centum (4%) of the total of outstanding loans and risk assets, then

- b. Five per centum (5%) of gross income until the regular reserve shall equal six per centum (6%) of the total of outstanding loans and risk assets.
- (2) A credit union in operation less than four years or having assets of less than five hundred thousand dollars (\$500,000) shall set aside
  - a. Ten per centum (10%) of gross income until the regular reserve shall equal seven and one-half per centum (7 1/2%) of the total of outstanding loans and risk assets, then
  - b. Five per centum (5%) of gross income until the regular reserve shall equal ten per centum (10%) of the total outstanding loans and risk assets.
- (3) Whenever the regular reserve falls below the stated per centum of the total of outstanding loans and risk assets, it shall be replenished by regular contributions in such amounts as may be determined by the Administrator to maintain the stated reserve goals.
  - (b) The Administrator, with the advice and consent of the Credit Union Commission, may increase or decrease the reserve requirement set forth in subsection (a) of this section when such an increase or decrease is deemed necessary or desirable in order to conform to the reserve requirements of federally chartered credit unions.
  - (c) In addition to such regular reserve, special reserves to protect the interests of members shall be established:
    - (1) When required by regulation; or
    - (2) When found by the Administrator, in any special case, to be necessary for that purpose.
  - (d) Nothing in this section shall be construed as limiting the amount that a credit union may set apart to its reserve fund. (1915, c. 115, s. 21; C.S., s. 5222; 1939, c. 400, s. 2; 1955, c. 1135, s. 1; 1969, c. 69, ss. 2, 10; 1975, c. 538, s. 1; 1979, c. 293; 1997-456, s. 27.)

**§ 54-109.87. Use of regular reserve.**

The regular reserve shall belong to the credit union and shall be used to meet losses except those resulting from an excess of expenses over income and shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the Administrator of Credit Unions. (1975, c. 538, s. 1.)

**§ 54-109.88. "Risk assets" defined.**

For the purpose of establishing the reserves required by G.S. 54-109.86, all assets except the following shall be considered risk assets:

- (1) Cash on hand.
- (2) Deposits and shares in federal or State banks, savings and loan associations, and credit unions.
- (3) Assets which are issued by, fully guaranteed as to principal and interest by, or due from the U.S. government, its agencies, Fannie Mae, or the Government National Mortgage Association.
- (4) Loans to other credit unions.

- (5) Loans to students insured under the provision of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs.
- (6) Loans insured under Title I of the National Housing Act (12 U.S.C. 1703) by the Federal Housing Administration.
- (7) Shares or deposits in central credit unions organized under Article 14I of this Chapter or any other State act or of the Federal Credit Union Act.
- (8) Common trust investments which deal in investments authorized by Articles 14A to 14L of this Chapter.
- (9) Prepaid expenses.
- (10) Accrued interest on nonrisk investments.
- (11) Furniture and equipment.
- (12) Land and buildings.
- (13) Loans secured by shares.
- (14) Deposits in mutual savings guaranty associations which qualify under Article 7A of Chapter 54 of the General Statutes.
- (15) Investments in the College Foundation. (1975, c. 538, s. 1; 1977, c. 559, s. 8; 2001-487, s. 14(c).)

**§§ 54-109.89 through 54-109.91. Reserved for future codification purposes.**

Article 14K.

Change in Corporate Status.

**§ 54-109.92. Suspension and conservation.**

(a) The Administrator of Credit Unions may determine in the performance of his duties under this Subchapter that a credit union is insolvent or in imminent danger of insolvency, or that an officer, director, or employee of a credit union, or the credit union itself, acting by and through an officer, director, or employee, has:

- (1) Affected or is likely to affect the safety or soundness of the credit union by a violation of:
  - a. This Subchapter,
  - b. A rule adopted under this Subchapter, or
  - c. Any federal law or regulation applicable to credit unions;
- (2) Violated, neglected, or refused to comply with a duly issued final order of the Administrator of Credit Unions or the Credit Union Commission;
- (3) Refused to submit to examination under oath, or to permit examination of the credit union's books, papers, records, accounts, and affairs by the Administrator of Credit Unions or his duly authorized representative;
- (4) Failed or refused to authorize and direct any other person to permit the inspection and examination of the credit union's books, papers, records, or accounts in the other person's care, possession, custody, or control by the Administrator of Credit Unions or a duly authorized representative of the Administrator, after the Administrator has requested the granting of that authority and direction to the other person; or
- (5) Affected or is likely to affect the safety or soundness of the credit union by conducting the credit union's business in an unauthorized or unlawful manner.

(b) If the Administrator of Credit Unions makes any of these findings, he may issue an order temporarily suspending the credit union's operations for not more than 90 days or, if the Administrator determines that the findings are of such severity that immediate affirmative action is needed to prevent further dissipation of the assets of the credit union, the Administrator may immediately issue an order of conservation and appoint a conservator to manage the affairs of the credit union. Service of the order of suspension or the order of conservation must be by certified or registered mail, addressed to the credit union at the last known address of its principal office, or by delivery to an officer or director of the credit union. Service by mail is complete upon the deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. The order must clearly state the grounds for suspension or conservation.

(c) After a conservation order has been served on the credit union, the Administrator of Credit Unions shall take possession and control of the books, records, property, assets, and business of the credit union. Upon the service of the suspension order, the credit union shall cease all operations, except those authorized by the Administrator and conducted under his supervision. Not later than 15 days after the date an order of suspension or conservation is served, the board of directors shall file a written reply to the order. They may file a written request for a hearing to present to the Administrator a plan to continue operations under the control of the board of directors setting out proposed corrective actions. Under an order of suspension, the board of directors may request that a conservator be appointed for the credit union or that the credit union be closed or merged or that a liquidating agent be appointed, and may waive rights to further appeal. In that event, the Administrator may immediately appoint a conservator, or order that the credit union be liquidated and appoint a liquidating agent. Under an order of conservation, the board of directors may consent to the conservatorship and waive rights to further appeals.

(d) If the board of directors files its reply and requests a hearing as provided by subsection (c), the Administrator of Credit Unions shall set and hold the hearing not less than 10 nor more than 30 days after the date of receipt of such a request. Not later than 10 days before the hearing, the Administrator shall give notice to the credit union of the date, time, and place of the hearing. Not later than 10 days after the earlier of the date of conclusion of the hearing or the date on which the suspension expires, the Administrator shall (i) adopt the plan to continue operations under the control of the board of directors presented by the credit union, (ii) agree with the credit union on an alternative plan to continue operations under the control of the board of directors or other appropriate measures, (iii) reject the plan to continue operations under the control of the board of directors and issue an order of conservation appointing a conservator, (iv) continue a previous order of conservation, or (v) issue an order of liquidation ordering that the credit union be closed, ordering that its affairs and business be liquidated, and appointing a liquidating agent.

(e) If the Administrator of Credit Unions rejects the credit union's plan to continue operations and determines that it is in the public interest and in the best interest of the members, depositors, and creditors of the credit union to rehabilitate the credit union, he may permit the credit union to operate under his direction and control, and shall issue an order of conservation appointing a conservator to manage the affairs of the credit union. The Administrator shall serve the order of conservation in the same manner as provided for service of an order of suspension.

(f) The conservator, on behalf and under the supervision and direction of the Administrator of Credit Unions, shall take charge of the books, records, property, assets, and business of the credit union and shall conduct the business and affairs of the credit union under the direction and supervision of the Administrator. The conservator shall take steps toward the removal of the

causes and conditions that have necessitated the order that the Administrator directs. During the conservatorship, the conservator shall make reports to the Administrator from time to time as the Administrator requires. The conservator shall take all necessary measures to preserve, protect, and recover the assets or property of the credit union, including claims or causes of action belonging to or that may be asserted by the credit union. In addition, the conservator may deal with that property in his own name as conservator and may file, prosecute, or defend against a suit by or against the credit union if the conservator considers this action necessary to protect the interested parties or property affected by the suit.

(g) The Administrator of Credit Unions shall determine the cost incident to the conservatorship. The cost is a charge against the assets and funds of the credit union, and shall be paid as the Administrator directs.

(h) A suit filed against a credit union or its conservator while a conservatorship order is in effect must be brought in a court of proper jurisdiction in Wake County. The conservator may file suit in a court of proper jurisdiction in Wake County against any person for the purpose of preserving, protecting, or recovering assets or property of the credit union, including a claim or cause of action belonging to or that may be asserted by the credit union.

(i) The conservator shall serve for the period necessary to accomplish the purposes of conservatorship consistent with the intent of this section. If the credit union is rehabilitated, it shall be returned to the management of the board of directors under the terms that are reasonable and necessary to prevent recurrence of the conditions that occasioned the conservatorship.

(j) If the Administrator of Credit Unions determines that the credit union in conservatorship is not in a condition to continue business and cannot be rehabilitated as provided by this section, he shall issue, as he deems appropriate, either an order of merger or an order of liquidation, appointing a liquidating agent.

(k) If, after a hearing under this section, the board of directors of the credit union is dissatisfied with the decision of the Administrator of Credit Unions, the board may appeal to the Credit Union Commission by filing with the Administrator a written appeal, including a duly certified resolution of the board, not later than 10 days after the day that the Administrator's order is served. If the appeal is duly filed, the Administrator shall set a date for a hearing on the appeal not more than 30 days after the date on which the appeal is filed. The Administrator shall promptly give notice of the date, time, and place of the hearing to the credit union and any other interested party. The filing of an appeal does not suspend the effect of the order of the conservation and this order remains in force pending final disposition of the appeal by the Commission. At the conclusion of the hearing, the Commission may reverse the order of the Administrator and adopt and approve the credit union's plan to continue operations, affirm the Administrator's order of conservation, or order that other appropriate action be taken.

(l) If the board of directors of the credit union does not file a reply to the order of suspension or an order of conservation as required by this section or fails to request and appear at the hearing provided for by this section, the Administrator of Credit Unions may dispose of the matter as he considers appropriate. The credit union is presumed to have consented to the action and may not contest it.

(m) The period of suspension and the date and time of the hearings provided for by this section may be extended by agreement of the parties and the Administrator of Credit Unions.

(n) The Administrator of Credit Unions shall notify the members of the Credit Union Commission of any suspension. (1975, c. 538, s. 1; 1977, c. 559, s. 9; 1989, c. 72.)

### **§ 54-109.93. Liquidation.**

(a) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(b) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily, and directing that the question of liquidation be submitted to the members.

(c) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the Administrator of Credit Unions thereof in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the Administrator in writing as to whether or not the members approved the proposed liquidation.

(d) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(e) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. Where authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least 10 days prior to such meeting.

(f) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(g) The board of directors or the liquidating agent shall use the assets of the credit union to pay: first, expenses incidental to liquidating including any surety bond that may be required; second, any liability due nonmembers; third, deposits and special purpose thrift accounts as provided in Articles 14A to 14L of this Chapter. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(h) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the Administrator of Credit Unions shall issue to such corporation, in duplicate, a certificate of dissolution which shall be filed by the corporation in the office of the register of deeds of the county in which the corporation has its place of business. The corporation shall then be dissolved and its certificate of incorporation revoked. All pertinent books and records of the liquidating credit union shall be retained by the liquidating agent and/or filed with the Credit Union Division and kept for a minimum period not to exceed five years. The liquidating agent's fee, if any, shall be set by the Administrator of Credit Unions. (1915, c. 115, s. 24; C.S., s. 5224; 1925, c. 73, ss. 3, 15; 1935, c. 87; 1957, c. 989, s. 4; 1965, c. 956, s. 1; 1967, c. 823, s. 11; 1975, c. 538, s. 1.)

### **§ 54-109.94. Merger.**

Any credit union may, with the approval of the Administrator of Credit Unions, merge with another credit union subject to the rules and regulations set forth by the Administrator of Credit Unions. (1975, c. 538, s. 1.)

**§ 54-109.95. Conversion of charter.**

(a) A credit union chartered under the laws of this State may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the Administrator of the Credit Union Division.

(b) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this State. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the Administrator of Credit Unions and file proof of such compliance with said Administrator. (1965, c. 956, s. 9; 1975, c. 538, s. 1.)

**§§ 54-109.96 through 54-109.98. Reserved for future codification purposes.**

Article 14L.

Taxation.

**§ 54-109.99. Restriction of taxation.**

The corporation shall be deemed an institution for savings, and together with all accumulations therein shall not be taxable under any law which shall exempt building and loan associations or institutions for savings from taxation; nor shall any law passed taxing corporations in any form, or the shares thereof, or the accumulations therein, be deemed to include corporations doing business in pursuance of the provisions of this Article, unless they are specifically named in such law. The shares of credit unions, being hereby regarded as a system for saving, shall not be subject to any stock-transfer tax either when issued by the corporation or transferred from one member to another. (1915, c. 115, s. 26; C.S., s. 5225; 1925, c. 73, ss. 3, 16; 1935, c. 87; 1975, c. 538, s. 1.)

**§§ 54-109.100 through 54-109.104. Reserved for future codification purposes.**

Article 14M.

Confidential Information.

**§ 54-109.105. What information deemed confidential; disclosure; certain information deemed public; exchange of information.**

(a) The following records of information of the credit union division, the Administrator or the agent(s) of either shall be confidential and shall not be disclosed:

- (1) Information obtained or compiled in preparation of, during, or as a result of an examination, audit or investigation of any credit union;
- (2) Information reflecting the specific collateral given by a named borrower, or specific withdrawable accounts held by a named member;
- (3) Information obtained, prepared or compiled during or as a result of an examination, audit or investigation of any credit union by an agency of the United States, if the records would be confidential under federal law or regulation;



- (4) Information and reports submitted by credit unions to federal regulatory agencies, if the records or information would be confidential under federal law or regulation;
  - (5) Information and records regarding complaints from the members received by the division which concern credit unions when the complaint would or could result in an investigation, except to the management of those credit unions;
  - (6) Any other letters, reports, memoranda, recordings, charts or other documents or records which would disclose any information of which disclosure is prohibited in this subsection.
- (b) A court of competent jurisdiction may order the disclosure of specific information.
  - (c) The information contained in an application for a new credit union shall be deemed to be public information.
  - (d) Nothing in this Article shall prevent the exchange of information relating to credit unions and the business thereof with the representatives of the agencies of this State, other states, or of the United States, or with reserve or insuring agencies for credit unions. Nothing in this Article shall prevent the Administrator, in his discretion, from disclosing pertinent information relating to a credit union and the business thereof with directors, officers, or members of the credit union. The private business and affairs of an individual or company shall not be disclosed by any person employed by the credit union division, or by any person with whom information is exchanged under the authority of this subsection.
  - (e) Any official or employee violating this section shall be liable to any person injured by disclosure of such confidential information for all damages sustained thereby. Penalties provided shall not be exclusive of other penalties.
  - (f) The willful or knowing violation of the provisions of this Article by any employee of the credit union division shall be a Class 1 misdemeanor. (1981, c. 512; 1993, c. 539, s. 429; 1994, Ex. Sess., c. 24, s. 14(c).)

#### Article 14N.

#### Foreign Credit Unions.

#### **§ 54-109.106. Foreign Credit Unions.**

- (a) A credit union organized under the laws of another state or territory of the United States may conduct business as a credit union in this State with the approval of the Administrator, provided credit unions incorporated under Articles 14A through 14M of this Chapter are allowed to do business in the other state under conditions similar to these provisions. Before granting the approval, the Administrator must find that the foreign credit union:
  - (1) Is a credit union organized under laws similar to Articles 14A through 14M of this Chapter;
  - (2) Is financially solvent;
  - (3) Has account insurance through the federal government or any agency thereof;
  - (4) Is examined and supervised by a regulatory agency of the state in which it is organized;
  - (5) Will serve a field of membership not being served in this State or to adequately serve its members in this State;
  - (6) Operation by the credit union will not have adverse impact on the financial, economic or other interests of residents of this State.
- (b) No foreign credit union may conduct business in this State unless it:

- (1) Makes loans at such terms allowed under the provisions of Article 14G of this Chapter;
  - (2) Complies with the rules and regulations applicable to credit unions incorporated under Articles 14A through 14M of this Chapter;
  - (3) Agrees to furnish the Administrator a copy of the report of examination of its regulatory agency and such other documents or reports as may be requested or to submit to an examination as the Administrator deems necessary;
  - (4) Designates and maintains an agent for the service of process in this State.
- (c) The Administrator may deny or revoke approval of a credit union to conduct business in this State if the Administrator finds that:
- (1) The credit union fails to meet the requirements of subsection (a);
  - (2) The credit union fails to comply with the laws of this State or lawful rules or orders issued by the Administrator;
  - (3) The credit union has engaged in a pattern of unsafe or unsound credit union practices. (1991, c. 271.)

#### Article 15.

##### Central Associations.

#### **§ 54-110: Recodified as §§ 54-110.1 through 54-110.10.**

#### Article 15A.

##### Corporate Credit Union.

#### **§ 54-110.1. Definition and purposes.**

- (a) A corporate credit union may be incorporated under this Article and shall be subject to all parts of this Chapter not inconsistent with this Article.
- (b) A corporate credit union is a cooperative nonprofit association whose members consist primarily of other credit unions and whose purposes are:
  - (1) To accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;
  - (2) To act as an intermediary for credit union funds between members and other corporate credit unions;
  - (3) To obtain liquid funds from other credit union organizations, financial intermediaries, and other sources;
  - (4) To foster and promote in cooperation with other state, regional, and national corporate credit unions and credit union organizations or associations the economic security, growth and development of member credit unions; and
  - (5) To perform such other financial services of benefit to its members which are authorized by the Administrator of Credit Unions. (1983, c. 470.)

#### **§ 54-110.2. Membership.**

- (a) Membership in the corporate credit union shall be institutional and be limited to the subscribers to the articles of incorporation, credit unions organized under Chapter 54 of the General Statutes, the Federal Credit Union Act or any other credit union act, organizations or associations of credit unions, and such other persons or organizations provided for in the articles of incorporation unless the bylaws otherwise prescribe.

(b) The board of directors of each credit union, organization or association becoming a member of the corporate credit union shall designate one person to be a voting representative in the corporate credit union. Such voting representatives shall be eligible to hold office in the corporate credit union as if such person were himself a member of the corporate credit union. (1983, c. 470.)

**§ 54-110.3. Charter and name exclusive.**

Only one corporate credit union shall be incorporated under this Article; and no other credit union may use the term "corporate credit union" as a part of its name. (1983, c. 470.)

**§ 54-110.4. Organization.**

(a) Application to form a corporate credit union shall be made in writing to the Administrator of Credit Unions. The application shall contain the names of at least 15 credit unions which have agreed to subscribe to shares in the corporate credit union at the time the application is made.

(b) The application shall be accompanied by articles of incorporation, bylaws, and articles of association or other appropriate documents.

(c) The bylaws shall provide for the selection of a board of directors of a least five members and shall require credit unions applying for membership to subscribe to shares in a minimum amount as specified in the bylaws. (1983, c. 470.)

**§ 54-110.5. Powers and privileges.**

(a) A corporate credit union shall enjoy the powers and privileges of any other credit union incorporated under Chapter 54 of the General Statutes in addition to those powers enumerated in this Article, notwithstanding any limitations or restrictions found elsewhere in this Article.

(b) A corporate credit union may:

- (1) Accept shares or deposits in any form from its members, other state, regional or national corporate credit unions, and credit union organizations or associations;
- (2) Make loans to its members and other credit unions and other State, regional or national corporate credit unions, organizations and associations of credit unions;
- (3) Establish lines of credit for members and participate with other credit unions in making loans to its members under the terms and conditions determined by the board of directors;
- (4) Invest in the shares of or make deposits in credit unions;
- (5) Buy and sell any form of marketable debt obligations of domestic or foreign corporations or of federal, state or local government units;
- (6) Borrow from any source without limitation, accept demand deposits from any source and issue notes or debentures;
- (7) Acquire or sell the assets and assume the liabilities of a member; and
- (8) Enter into agreements with credit unions to discount or purchase loans made pursuant to government-guaranteed loan programs, real estate loans made by members or any obligations of the United States or any agency thereof held by members.

(c) A corporate credit union shall not be taxable under any law which shall exempt any other credit union.

(d) The board of directors shall meet at least quarterly and shall have the general direction and control of the affairs of the corporation.

(e) The corporate credit union may exercise such incidental powers or privileges conferred upon a federal corporate credit union. (1983, c. 470.)

#### **§ 54-110.6. Participation in central system.**

The corporate credit union may enter into agreements for the purpose of participation in any state or federal central liquidity facility or central financial system for credit unions, and for the purpose of aiding credit unions in establishing concentrated lines of credit with other financial institutions and act as a depositor and transmitter of funds to carry out such agreements. (1983, c. 470.)

#### **§ 54-110.7. Right of set-off; security interest.**

(a) The corporate credit union shall have a right of immediate set-off against the balances of the share and deposit accounts of each member for any amounts due from the member to the corporate credit union.

(b) The corporate credit union shall have a lien on all share and deposit accounts of each member in the amount of the total indebtedness of the member to the corporate credit union. The lien created herein shall attach to such accounts and be effective whenever the member is indebted to the corporate credit union. The lien shall have priority over any interests of all members and unsecured creditors of the member credit unions of the corporate credit union.

(c) The board of directors or credit committee may require and accept additional security for loans to a member in the form of a pledge, assignment, hypothecation or mortgage of any assets of the member or a guarantor. (1983, c. 470.)

#### **§ 54-110.8. Fees.**

The operating fees established by the Administrator of Credit Unions shall make allowances for the special purposes and operations of a corporate credit union. (1983, c. 470.)

#### **§ 54-110.9. Reserves.**

A corporate credit union shall be exempt from the regular reserve requirements of Article 14J, but shall be required to establish and maintain an equity reserve to meet losses, in accordance with regulations prescribed by the Administrator of Credit Unions. (1983, c. 470.)

#### **§ 54-110.10. Applicability of Article.**

Nothing in this Article shall be construed as affecting the status of a central association formed prior to the enactment of this Article pursuant to former G.S. 54-110. For the purposes of this Article, the corporate credit union authorized by G.S. 54-110.3 shall be the central association in existence on June 8, 1983. (1983, c. 470.)

### **SUBCHAPTER IV. COOPERATIVE ASSOCIATIONS.**

#### **Article 16.**

##### **Organization of Associations.**

#### **§ 54-111. Nature of the association.**

Any number of persons, not less than five, may associate themselves as a mutual association, society, company, or exchange, for the purpose of conducting any agricultural, housing (including

apartment housing), horticultural, forestry, dairy, mercantile, mining, manufacturing, telephone, electric light, power, storage, refrigeration, flume, irrigation, water, sewerage, or mechanical business, or purchase, maintain and use fire-fighting equipment, or for any other lawful purpose, on the mutual plan. For the purposes of this Subchapter, the words association, company, corporation, exchange, society, or union shall be construed to mean the same; provided that the membership of agricultural organizations incorporated under this Subchapter shall consist of producers of agricultural products, handled by such organizations or by organizations owned and controlled by such producers. (1915, c. 144, s. 1; C.S., s. 5242; 1925, c. 179, ss. 1, 2; 1931, c. 447; 1949, c. 1042, ss. 1, 2(a); 1955, c. 746, s. 1; 1959, c. 991; 1985, c. 542, s. 1.)

**§ 54-111.1. Repealed by Session Laws 1959, c. 991.**

**§ 54-112. Use of term restricted.**

No corporation or association hereafter organized or doing business for profit in this State shall be entitled to use the term "mutual" as part of its corporate or other business name or title, unless it has complied with the provisions of this Subchapter; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any shareholder of any association legally organized under this Subchapter. (1915, c. 144, s. 18; C.S., s. 5243; 1925, c. 179, s. 1; 1945, c. 635.)

**§ 54-113. Articles of agreement.**

The persons desiring to organize such association shall sign and acknowledge written articles which shall contain the name of the association and the names and residences of the persons forming the same. Such articles shall also contain a statement of the purposes of the association and shall designate the city, town, or village where its principal place of business shall be located. The articles shall also state the amount of authorized capital stock, the number of shares authorized, and the par value of each. No shareholder in any corporation organized under this Subchapter shall be personally liable for any debt of the corporation. (1915, c. 144, s. 2; C.S., s. 5244; 1985, c. 542, s. 2.)

**§ 54-114. Certificate of incorporation.**

The original articles of incorporation of corporations organized under this Subchapter, or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be filed with the Secretary of State. A like verified copy of such articles and certificate of the Secretary of State, showing the date when such articles were filed with and accepted by the Secretary of State, within 30 days of such filing and acceptance, shall be filed with and recorded by the register of deeds of the county in which the principal place of business of the corporation is to be located, and no corporation shall, until such articles be left for record, have legal existence. The register of deeds shall forthwith transmit to the Secretary of State a certificate stating the time when such copy was recorded. Upon a receipt of such certificate, the Secretary of State shall issue a certificate of incorporation. (1915, c. 144, s. 3; C.S., s. 5245; 1967, c. 823, s. 12.)

**§ 54-115. Fees for incorporation.**

For filing the articles of incorporation of corporations organized under this Subchapter, there shall be paid the Secretary of State ten dollars (\$10.00) and his fees allowed by law, and for the filing of an amendment to such articles, five dollars (\$5.00) and his fees allowed by law: Provided,

that when the authorized capital stock of such corporations shall be less than one thousand dollars (\$1,000), such fee for filing either the articles of incorporation or amendments thereto shall be two dollars (\$2.00). (1915, c. 144, s. 4; C.S., s. 5246; 1967, c. 823, s. 13.)

**§ 54-116. Bylaws adopted.**

At the time of making the articles of incorporation the incorporators shall make bylaws which shall provide:

- (1) The name of the corporation.
- (2) The purposes for which it is formed.
- (3) Qualifications for membership.
- (4) The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which shall constitute a quorum at the meetings, and regulations as to voting.
- (5) The number of members of the board of directors; powers and duties; the compensation and duties of officers elected by the board of directors.
- (6) In the case of selling agencies or productive societies, regulations for grading.
- (7) In the case of selling agencies or productive societies, regulations governing the sale of products by the members through the organization.
- (8) The par value of the shares of capital stock.
- (9) The conditions upon which shares may be issued, paid in, transferred, and withdrawn.
- (10) The manner in which the reserve fund shall be accumulated.
- (11) The manner in which the dividends shall be determined and paid to members.
- (12) Associations, societies, companies or exchanges, organized hereunder to engage in the telephone or electric light business upon a mutual basis, shall adopt a bylaw limiting the patrons and subscribers to members of the association.
- (13) In the case of apartment housing, regulations governing the rental of apartments. (1915, c. 144, s. 5; C.S., s. 5247; 1925, c. 179, s. 4; 1959, c. 991.)

**§ 54-117. General corporation law or general nonprofit corporation law applied; dealing in products of, or renting to, nonmembers.**

All mutual associations shall be maintained in accordance with the general corporation law or general nonprofit corporation law, except as otherwise provided for in this Subchapter. And no corporation or association hereafter organized under this Subchapter for doing business in this State shall be permitted to deal in the products of nonmembers to an amount greater in value than such as are handled by it for members: Provided, no housing corporation or association hereafter organized under this Subchapter shall be permitted to rent to nonmembers for a period longer than 90 days. (1915, c. 144, s. 17; C.S., s. 5248; 1925, c. 179, s. 1; 1931, c. 447, s. 2; 1949, c. 1042, s. 2(b); 1985, c. 542, s. 3.)

**§ 54-118. Other corporations admitted.**

All mutual corporations, companies, or associations heretofore organized and doing business under other incorporation statutes, or which have attempted to so organize and do business, shall have the benefit of all of the provisions of this Subchapter, and be bound thereby on filing with the Secretary of State a written declaration, signed and sworn to by the president and secretary, to the

effect that the mutual company or association has by a majority vote of its shareholders decided to accept the benefits of and to be bound by the provisions of this Subchapter. No association organized under this Subchapter shall be required to do or perform anything not specifically required herein, in order to become a corporation. (1915, c. 144, s. 16; C.S., s. 5249; 1925, c. 179, s. 1; 1985, c. 542, s. 4.)

**§ 54-118.1. 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. (1955, c. 1313, s. 1.)

**§ 54-118.2. 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.)

Article 17.

Stockholders and Officers.

**§ 54-119. Certificate for stock fully paid.**

Certificates of stock shall not be issued to any subscriber until fully paid, but the bylaws of the association may allow subscribers to vote as shareholders: Provided, part of the stock subscribed for has been paid in cash. (1915, c. 144, s. 11; C.S., s. 5250.)

**§ 54-120. Ownership of shares limited.**

No shareholder in any such association shall own shares of a greater aggregate par value than twenty percent (20%) of the paid-in capital stock, except as hereinafter provided, or be entitled to more than one vote. A mutual association shall reserve the right of purchasing the stock of any member whose stock is for sale, and may restrict the transfer of stock to such persons as are made eligible to membership in the bylaws. (1915, c. 144, s. 9; C.S., s. 5251; 1925, c. 179, s. 1.)

**§ 54-121. Shares issued on purchase of business.**

Whenever an association, created under this Subchapter, shall purchase the business of another association or person, it may pay for the same in whole or in part by issuing to the selling association or persons shares of its capital stock to an amount which at par value would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued. (1915, c. 144, s. 10; C.S., s. 5252.)

**§ 54-122. Absent members voting.**

At any regularly called general or special meeting of the shareholders a written vote received by mail from any absent shareholder, and signed by him, may be read in such meeting, and shall be equivalent to a vote of such of the shareholders so signing: Provided, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by him. In case of sickness or other unavoidable absence of a member, he shall be allowed to vote by proxy in writing; but no member shall vote more than one such proxy. (1915, c. 144, s. 12; C.S., s. 5253.)

**§ 54-123. Directors and other officers.**

Every such association shall be managed by a board of not less than five directors. The directors shall be elected by and from the stockholders of the association at such time and for such term of office as the bylaws may prescribe, and shall hold office for the time for which elected and until their successors are elected and shall enter upon the discharge of such duties as are prescribed in the bylaws; but a majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed shall cease to be a director or officer of the association. The officers of every such association shall be a president, one or more vice-presidents, a secretary and treasurer, who shall be elected annually by the directors, and each of the officers must be a director of the association. The office of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer. (1915, c. 144, s. 6; C.S., s. 5254.)

Article 18.

Powers and Duties.

**§ 54-124. Nature of business authorized.**

An association created under this Subchapter shall have power to conduct any agricultural, housing, horticultural, forestry, dairy, mercantile, mining, manufacturing, telephone, electric light, power, storage, refrigeration, flume, irrigation, water, sewerage, or mechanical business, or purchase, maintain and use fire-fighting equipment, or conduct any other lawful business, on the mutual plan. (1915, c. 144, s. 8; C.S., s. 5255; 1925, c. 179, ss. 1, 3; 1949, c. 1042, s. 2; 1955, c. 746, s. 2; 1985, c. 542, s. 5.)

**§ 54-125. Amendment of articles.**

The association may amend its articles of incorporation by a majority vote of its shareholders at any regular shareholders' meeting, or any special shareholders' meeting called for that purpose, on 10 days' notice to the shareholders. The power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: Provided, the amount of the capital stock shall not be diminished below the amount of the paid-up capital at the time the amendment is adopted. Within 30 days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be recorded in the office of the Secretary of State and of the register of deeds of the county where the principal place of business is located. (1915, c. 144, s. 7; C.S., s. 5256; 1967, c. 823, s. 14.)

**§ 54-126. Apportionment of earnings.**

The net earnings or losses shall be apportioned among the members in accordance with the ratio which each member's patronage during the period involved bears to total patronage by all members during the period. "Patronage" means amount of purchases, sales, business, labor, wages or other similar criteria. (1915, c. 144, s. 13; C.S., s. 5257; 1925, c. 179, s. 5; 1985, c. 542, s. 6.)

**§ 54-127. Time of allocation.**

The profits or net earnings of such association shall be allocated to those entitled thereto, at such times as the bylaws shall prescribe, which shall be as often as once in 12 months. (1915, c. 144, s. 14; C.S., s. 5258; 1985, c. 542, s. 7.)



**§ 54-128. Annual reports.**

Every association organized under the provisions of this Subchapter shall annually, on or before the first day of March of each year, make a report to the Secretary of State; such report shall contain the name of the company, its principal place of business in this State, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number of shareholders, total expenses of operation, amount of indebtedness or liabilities, and its profits and losses. A copy of such report shall also be filed with the division of markets in the Department of Agriculture and Consumer Services. (1915, c. 144, s. 15; C.S., s. 5259; 1997-261, s. 109.)

**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).)

Article 20.

Members and Officers.

**§ 54-145. Members.**

(a) Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock, only to persons engaged in the production of agricultural products, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(b) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof, duly authorized in writing.

(c) One association organized hereunder may become a member or stockholder of any other association or associations, organized hereunder. (1921, c. 87, s. 7; C.S., s. 5259(r); 1963, c. 1168, s. 10.)

**§ 54-146. Directors; election.**

(a) The affairs of the association shall be managed by a board of not less than three directors, elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members shall be divided into districts, and that the directors shall be elected according to such districts. In such case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such districts, and the result of all such primary elections must be ratified by the next regular meeting of the association.

(b) The bylaws may provide that one or more directors may be appointed either by the Director of the Agricultural Extension Service or by such public official or public board or commission as may be designated by the bylaws. The directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors.

(c) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district.

(d) When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the bylaws provide for an election of directors by districts. In such case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy: Provided, that this subsection shall not apply to the director or directors appointed under

the provisions of subsection (b) of this section: Provided further, that any vacancy occurring in the office of a director appointed under subsection (b) of this section shall be filled in the same manner as the original appointment was made. (1921, c. 87, s. 12; C.S., s. 5259(s); 1963, c. 1168, s. 11; 1979, c. 908, s. 3.)

**§ 54-147. Election of officers.**

The directors shall elect a president, one or more vice-presidents, a secretary and treasurer who need not be directors, and they may combine the offices of secretary and treasurer designating the combined office as secretary-treasurer. They shall elect from their number a chairman and vice-chairman unless the president and vice-presidents are members of the board. The board may elect or appoint such additional officers as are necessary and appropriate. The treasurer may be a bank or any depository, and as such shall not be considered an officer, but as a function of the board of directors. In such a case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors. (1921, c. 87, s. 13; C.S., s. 5259(t); 1971, c. 925.)

**§ 54-148. Stock; membership certificates; when issued; voting; liability; limitation on transfer of ownership.**

(a) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

(b) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote.

(c) Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

(d) A cooperative association, incorporated under this Subchapter, may fix or limit in its bylaws the amount of stock which one member might own in said association.

(e) No member or stockholder shall be entitled to more than one vote; provided, however, that any association organized hereunder, all of whose members are other associations organized hereunder shall have power to determine by its bylaws the number of votes to which each member association shall be entitled and to provide for the appointment or election of delegates to cast such votes and to represent the member associations at all members' meetings.

(f) Any association organized with stock under this Subchapter may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

(g) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of agricultural products, and such restrictions must be printed upon every certificate of stock subject thereto.

(h) The association may at any time, except when the debts of the association exceed fifty percent (50%) of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors, and pay for it in cash within one year thereafter. (1921, c. 87, s. 14; C.S., s. 5259(u); 1935, c. 436, s. 2; 1955, c. 596; 1963, c. 1168, s. 12.)



#### **§ 54-149. Removal of officer or director.**

Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten percent (10%) of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting, and shall have an opportunity at the meeting to be heard in person or by counsel, and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the bylaws provide for election of directors by districts, with primary elections in each district, then the petition for removal of a director must be signed by twenty percent (20%) of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of that district, the director in question shall be removed from office: Provided, that this section shall not apply to directors appointed under subsection (b) of G.S. 54-146. (1921, c. 87, s. 15; C.S., s. 5259(v).)

#### **§ 54-150. Referendum.**

Upon demand of one third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership of the stockholders for decision at the next special or regular meeting: Provided, however, that a special meeting may be called for the purpose. (1921, c. 87, s. 16; C.S., s. 5259(w).)

### **Article 21.**

#### **Powers, Duties, and Liabilities.**

#### **§ 54-151. Powers.**

Each association incorporated under this Subchapter shall have the following powers:

- (1) To engage in any activity in connection with the producing, marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members and other farmers; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No such association, during any fiscal year thereof, shall deal in or handle products, machinery, equipment, supplies, and/or perform services for and on behalf of nonmembers to an amount greater in value than such as are dealt in, handled, and/or performed by it for and on behalf of members during the same period.
- (2) To borrow money and to make advances to members and other farmers who deliver agricultural products to the association.
- (3) To act as the agent or representative of any member or members in any of the above-mentioned activities.
- (4) To purchase or otherwise acquire, and to hold, own, and exercise all rights or ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds

of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association, or engaged in the financing of the association.

- (5) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws.
- (6) To buy, hold, and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association, or incidental thereto.
- (7) To do each and everything necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition, to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights and powers, and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this Subchapter; and to do any such thing anywhere. (1921, c. 87, s. 6; C.S., s. 5259(x); 1933, c. 350, ss. 3, 4; 1935, c. 230, ss. 7-9.)

#### **§ 54-152. Marketing contract.**

(a) The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, including dividends on preferred stock, not exceeding ten percent (10%) per annum, and reserve for retiring the stock, if any; and other proper reserves; and dividends not exceeding ten percent (10%) per annum upon common stock.

(b) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this State.

(c) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action, and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

(d) In the event that a member of an association incorporated under this chapter shall have died; and that, at a time more than six months after his death, such cooperative corporation has in its hands moneys not in excess of one hundred dollars (\$100.00) which would have been distributable and payable to such member except for his death; and that there has been appointed no

administrator of his estate or that the administration of his estate has been closed at such time; then such corporation, without making any publication of notice, may disburse such moneys (not in excess of one hundred dollars (\$100.00)) in the following order:

- (1) To the widow of the deceased if there is a widow,
- (2) To pay any unsatisfied claims for funeral expenses or reimburse any person for the payment thereof, and
- (3) To any adult person of the class of those nearest of kin to the deceased, for the benefit of all members of such class.

In making such disbursements the said corporation shall be responsible and liable only for the exercise of good faith and reasonable care and shall have no further responsibility or liability with respect to such moneys or their application or disbursement. (1921, c. 87, s. 17; C.S., s. 5259(y); 1959, c. 1174; 1979, 2nd Sess., c. 1302, ss. 1, 2.)

**§ 54-153. Purchasing business of other associations, persons, firms, or corporations; payment; stock issued.**

Whenever an association organized hereunder with preferred capital stock shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may by agreement with the other party or parties to the transaction discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for shares of stock issued. (1921, c. 87, s. 18; C.S., s. 5259(z).)

**§ 54-154. Annual reports.**

Each association formed under this Subchapter shall prepare and make out an annual report on forms furnished by the Division of Markets, containing the name of the association, its principal place of business, and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up, and the number of stockholders of a stock association or the number of members and the amount of membership fees received, if a nonstock association; the total expenses of the operations; the amount of its indebtedness, or liability, and its balance sheets. (1921, c. 87, s. 19; C.S., s. 5259(aa).)

**§ 54-155. Interest in other corporations or associations.**

An association may organize, form, operate, own, control, have interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association, or to any other person, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this State or the United States, its warehouse receipt shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. (1921, c. 87, s. 22; C.S., s. 5259(bb).)

**§ 54-156. Contracts and agreements with other associations.**

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements, and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association, or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses. (1921, c. 87, s. 23; C.S., s. 5259(cc).)

**§ 54-157. Breach of marketing contract of cooperative association; spreading false reports about the finances or management thereof; misdemeanor.**

Any person or persons, or any corporation whose officers or employees knowingly induces or attempts to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be guilty of a Class 2 misdemeanor and subject only to a fine of not less than one hundred dollars (\$100.00), and not more than one thousand dollars (\$1,000), for such offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars (\$500.00) for each such offense: Provided, that this section shall not apply to a bona fide creditor of any member or stockholder of such association, or the agents or attorney of any such bona fide creditor, endeavoring to make collection of the indebtedness, or to any communication, written or oral, between a business company or concern and persons with whom it has an existing contractual relationship which communication relates to the performance of that contractual relationship and duties and responsibilities arising therefrom. (1921, c. 87, s. 25; C.S., s. 5259(dd); 1963, c. 1168, s. 14; 1993, c. 539, s. 430; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 54-158. Cooperative associations may form subsidiaries.**

Nothing in this Subchapter shall prevent an association organizing, forming, operating, owning, controlling, having an interest in, owning stock of, or being a member of any other corporation (hereinafter referred to as a subsidiary corporation) from including or having included in the charter or bylaws of such subsidiary corporation provisions for the control or management of said subsidiary corporation by such association to such extent as shall by votes of the board of directors of such association, and the majority of the stockholders of such subsidiary corporation, be declared to be for the best interests of said association and said subsidiary corporation respectively. Such provisions may be so included in any such charter or bylaws and may by way of illustration, but not of limitation, include the following:

- (1) Representation of said association on the board of directors or other governing body of said subsidiary corporation, upon such terms as may be deemed advisable.
- (2) Ownership by an association of an interest or interests in a subsidiary corporation represented by stock of any class thereof, or otherwise, to such extent and upon such terms, and with such voting power, as may be deemed advisable.

- (3) Participation by said association in the profits of such subsidiary corporation to such extent and upon such terms as shall be deemed advisable. (1933, c. 350, s. 1.)

## Article 22.

### Merger, Consolidation and Other Fundamental Changes.

#### **§ 54-159. Procedure for merger.**

(a) Any two or more domestic associations organized under this Subchapter, either with or without capital stock, may merge into any one of such associations pursuant to a plan of merger approved in the manner provided in this Article.

(b) The board of directors of each association shall, by resolution adopted by each such board, approve a plan of merger setting forth:

- (1) The names of the association proposing to merge, and the name of the association into which they propose to merge, which is hereinafter designated as the surviving association.
- (2) The name which the surviving association is to have, which name may be that of any of the associations involved in the merger or any other available name, subject, however, to the limitations of G.S. 54-139 and 55A-10.
- (3) The terms and conditions of the proposed merger.
- (4) A statement of any changes in the charter of the surviving association to be effected by such merger.
- (5) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1963, c. 1168, s. 13.)

#### **§ 54-160. Procedure for consolidation.**

(a) Any two or more domestic associations organized under this Subchapter, either with or without capital stock, may consolidate into a new association pursuant to a plan of consolidation approved in the manner provided in this Article.

(b) The board of directors of each association shall, by resolution adopted by each such board, approve a plan of consolidation setting forth:

- (1) The names of the associations proposing to consolidate, and the name of the new association into which they proposed to consolidate, which is hereinafter designated as the new association. The name of the new association may be that of any of the associations involved in the consolidation or any other available name, subject, however, to the limitations of G.S. 54-139 and 55A-10.
- (2) The terms and conditions of the proposed consolidation.
- (3) With respect to the new association, all of the appropriate statements required to be set forth in articles of incorporation for associations organized under this Subchapter.
- (4) Such other provisions not inconsistent with law as are deemed necessary or desirable. (1963, c. 1168, s. 13.)

#### **§ 54-161. Approval of merger or consolidation; abandonment.**

(a) A plan of merger or consolidation shall be adopted in the following manner: The board of directors of each merging or consolidating association shall adopt a resolution approving the proposed plan, and directing that it be submitted to a vote at a meeting of members having voting

rights, which may be either an annual or a special meeting. Written or printed notice of the meeting shall be given to each member entitled to vote at such meeting. The notice shall state that the proposed plan of merger or consolidation will be considered and acted upon at the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice. Such notice shall contain a statement, displayed with reasonable prominence, to the effect that objecting members are entitled, upon compliance with G.S. 54-166, including the 20-day demand requirement, to be paid the fair market value of their stock or other property rights or interest in the association, but failure of the notice to contain such a statement shall not invalidate the merger or consolidation. Each such notice shall be mailed by first-class mail at such a time that not less than 10 full days shall elapse between the date of mailing the notice and the date of the meeting, and shall be mailed to the member at his last address as it appears on the records of the association. The proposed plan shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present at each such meeting where a quorum is present.

(b) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. (1963, c. 1168, s. 13.)

#### **§ 54-162. Articles of merger or consolidation.**

(a) Upon such approval, articles of merger or articles of consolidation shall be executed by each association and filed as provided in G.S. 55A-4, except that a copy thereof certified by the Secretary of State shall also be recorded in the office of the register of deeds of each county wherein the constituent associations have their principal places of business or their registered offices.

(b) The articles of merger or consolidation shall set forth:

- (1) The plan of merger or the plan of consolidation; and
- (2) A statement setting forth the date of the meeting of the members of each association at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes entitled to be cast by members present at each such meeting where a quorum was present.

(c) The time when the merger or consolidation is effected is determined by the provisions of G.S. 55A-4. (1963, c. 1168, s. 13; 1967, c. 823, s. 15.)

#### **§ 54-163. Effect of merger or consolidation.**

When such merger or consolidation has been effected:

- (1) The several associations, parties to the plan of merger or consolidation, shall be a single association which, in the case of a merger, shall be that association designated in the plan of merger as the surviving association, and, in the case of a consolidation, shall be the new association provided for in the plan of consolidation.
- (2) The separate existence of all associations which are parties to the plan of merger or consolidation, except the surviving or new association, shall cease.
- (3) Such surviving or new association shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of an association organized under this Subchapter.

- (4) Such surviving or new association shall thereupon and thereafter, to the extent consistent with its charter as established or changed by the merger or consolidation, possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating associations; and all property, real and personal, and all debts due on any account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the associations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single association without further act or deed; and the title to any real estate, or any interest therein, vested in any of such associations shall not revert or be in any way impaired by reason of such merger or consolidation.
- (5) Such surviving or new association shall thenceforth be responsible and liable for all the liabilities, contracts or other obligations, and penalties of each of the associations so merged or consolidated; and any claim existing or action or proceeding, civil or criminal, pending by or against any of such associations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new association may be substituted in its place; and any judgments rendered against any of the merged or consolidated associations may be enforced against the surviving or new association. Neither the rights of creditors nor any liens upon the property of any merged or consolidated association shall be impaired by such merger or consolidation.
- (6) In the case of a merger, the charter of the surviving association shall be deemed to be amended to the extent, if any, that changes in its charter are stated in the plan of merger. In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new association. (1963, c. 1168, s. 13.)

**§ 54-164. Merger or consolidation of domestic and foreign associations.**

(a) One or more domestic associations organized under this Subchapter and one or more foreign corporations engaging in any activity such as is described in G.S. 54-132, and which is a nonprofit cooperative in the sense that the term "nonprofit" is used in G.S. 54-130, may be merged or consolidated into an association of this State or an association or corporation of another state if such merger or consolidation is permitted by the laws of the state under which each such foreign association or corporation is organized.

(b) Each domestic association shall comply with the provisions of this Article with respect to the merger or consolidation, as the case may be, of domestic associations, and each foreign association or corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(c) If the surviving or new association or corporation, as the case may be, is an association or corporation of any state other than this State, it shall comply with the provisions of this Subchapter with respect to foreign corporations if it is to transact business in this State; and if after the merger or consolidation it transacts no business in this State, the courts of this State shall have jurisdiction in actions to enforce any obligation of any constituent association of this State and process therein may be served as provided in G.S. 55-145.

(d) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic associations, if the surviving or new corporation is to be an

association of this State. If the surviving or new association or corporation is to be an association or corporation of any state other than this State, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic associations except insofar as the laws of such other state provide otherwise.

(e) If the new or surviving association or corporation is not an association of this State, then notwithstanding anything in the foregoing provisions of this section:

- (1) The rights of any member of any constituent association that is an association of this State to receive notice of objectors' rights, to file his objection, upon such objection to demand and receive payment of the fair market value of his stock or other property rights or interests in the association, or to avail himself of any equitable relief to which he would be entitled if the surviving or new association or corporation were an association of this State, shall not be impaired; and
- (2) The courts of this State shall have jurisdiction in actions to enforce the aforesaid rights against the surviving or new association or corporation regardless of whether or not said association or corporation is otherwise subject to the jurisdiction of the courts of this State and in any such action service of process may be made in the manner provided in G.S. 55-145 that would be applicable if said association or corporation were transacting business in this State. (1963, c. 1168, s. 13.)

#### **§ 54-165. Sale, lease or exchange of assets; mortgage or pledge of assets.**

(a) A sale, lease, or exchange of all, or substantially all, the property and assets of an association organized under the provisions of this Subchapter may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner: The board of directors shall adopt a resolution recommending such sale, lease, or exchange and directing that it be submitted to a vote at a meeting of members, which may be either an annual or a special meeting. Written or printed notice of the meeting shall be given to each member entitled to vote at such meeting. The notice shall state that the proposed sale, lease, or exchange will be considered and acted upon at such meeting, and a statement of the terms of the proposed sale, lease, or exchange, as the case may be, shall be included in or enclosed with such notice. Each such notice shall be mailed by first-class mail at such a time that not less than 10 full days shall elapse between the date of mailing the notice and the date of the meeting, and shall be mailed to the member at his last address as it appears on the records of the association. The proposed sale, lease, or exchange, as the case may be, shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present at the meeting, if a quorum is present.

(b) A mortgage or pledge of, or any other security interest in, all or any part or parts of the property of the association may be made by authority of the board of directors of the association without authorization of the members, unless otherwise provided in the charter or bylaws adopted by the members. (1963, c. 1168, s. 13.)

#### **§ 54-166. Rights of objecting members.**

(a) Any member of an association effecting a merger or consolidation may give to the association prior to or at the meeting of the members to which the proposal of merger or consolidation is submitted to a vote, written notice that he objects to such proposal. Within 20 days after the date on which the vote was taken, such member may, unless he votes in favor of the



proposal, make written demand on the association for payment of the fair market value of his stock or other property rights or interest in the association. Such demand shall state the number and class of shares of stock owned by him or the nature and amount of other property rights or interest owned by him in the association. In addition to any other right he may have in law or equity, a member giving such notice shall be entitled, if and when the merger or consolidation is effected, to be paid by the surviving or new association, the fair market value of such stock, or other property rights or interests, as of the day prior to the date on which the vote was taken, subject only to the surrender by him of the certificate or certificates or other evidence of ownership of such stock or other property rights or interests.

(b) If within 30 days after the date upon which the objecting member becomes entitled to payment for such stock or other property rights or interest, the fair market value of such stock or other property rights or interests is agreed upon between the member and the surviving or new association, as the case may be, payment therefor shall be made within 60 days after the agreement, upon surrender of the certificate or other evidence of such property rights or interests, whereupon the member shall cease to have any interest in such stock or other property rights or interests in the association.

(c) If within the 30-day period mentioned in subsection (b) of this section the member and the association do not agree as to the fair market value of the stock or other property rights or interests, the member may, within 60 days after the expiration of the 30-day period, file a petition in the superior court of the county in which the association has its registered office or principal place of business asking for the appointment by the clerk of the superior court of that county of three qualified and disinterested appraisers to appraise the fair market value of the stock or other property rights or interests. A summons as in other cases of special proceedings, together with a copy of the petition, shall be served on the association at least 10 days prior to the hearing of the petition by the court. The award of the appraisers, or a majority of them, if no exceptions are filed thereto within 10 days after the award is filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive. The member, upon depositing with the court the proper stock certificates or other evidence of property rights or interests, shall be entitled to judgment against the association for the appraised value thereof as of the day prior to the date on which the vote was taken, together with interest thereon to the date of the confirmation. If either party files exceptions to the award within 10 days after the award is filed in court, the case shall be transferred to the civil issue docket of the superior court for trial during term and shall be there tried in the same manner, as near as may be practicable, as is provided in Chapter 40A of the General Statutes for the trial of cases under the eminent domain law of this State, and with the same right of appeal to the appellate division as is permitted in that Chapter. The court shall assess the cost of the proceedings as it shall deem equitable. Upon payment of the judgment, the owner of the stock or other property rights or interests shall cease to have any interest in the association and the association shall be entitled to have the stock certificates or other evidence of the property rights or interests surrendered to the association by the clerk of court. Unless the member files a petition within the time herein prescribed, the member and all persons claiming under the member shall have no right of payment hereunder, but in that event nothing herein shall impair the member's status as a member.

(d) If in the notices sent to members in connection with the meeting to vote upon a proposed merger or consolidation no reference is made as required by this Article to the provisions of this section, any member entitled to but who did not avail himself of the provisions of this section, unless he voted for the proposal, is entitled, if he so demands in writing within one year

after the effective date of the merger or consolidation, to recover from the surviving or new association, as the case may be, any damage which he suffered from failure of the association of which he was a member to make the aforesaid reference.

(e) The liability to pay for shares or to pay damages imposed by this section on an association extends to the successor association which acquires the assets of the predecessor, whether by merger or consolidation.

(f) Shares of stock acquired by an association pursuant to payment of the agreed fair market value thereof or to payment of the judgment entered therefor as in this section provided, may be held and disposed of by the association as in the case of other treasury shares.

(g) The provisions of this section shall not apply to a merger if on the date of the filing of the articles of merger the surviving association is the owner of all the outstanding shares of the other association, domestic or foreign, participating in the merger and if such merger makes no changes in the relative rights of the members of the surviving association.

(h) Notwithstanding any of the foregoing provisions of this section, no member of an association effecting a merger or consolidation, who objects thereto and makes written demand for payment of the fair market value of his stock or other property rights or interests in the association, as hereinbefore provided in this section, shall be entitled to such payment at any time prior to the time that he would otherwise be entitled to payment pursuant to valid provisions of such stock, or valid provisions of the charter or the bylaws of the association, in effect on the date of the vote for such merger or consolidation. However, in any case where the owner of such stock or other property rights or interests in the association is not entitled, because of valid provisions of his stock, or because of valid provisions of the charter or bylaws of the association, to payment at the time hereinbefore provided in this section, the fair market value of such stock or other property rights or interests in the association, as of the day prior to the date on which the vote was taken, may be determined in any manner hereinbefore provided in this section, and the amount so determined, without interest, shall be an obligation of the surviving or new association, as the case may be, and shall be due and payable at the time that the owner thereof would be entitled to payment pursuant to valid provisions of such stock, or valid provisions of the charter or the bylaws of the association. (1963, c. 1168, s. 13; 1973, c. 108, s. 19; 2001-487, s. 38(c).)