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CHAPTER 47.

 MARKETING COOPERATIVE ASSOCIATIONS

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 33‑47‑10.** Short title.

This chapter shall be referred to as the “Cooperative Marketing Act.”

**SECTION 33‑47‑20.** Definitions.

As used in this chapter:

(1) The term “agricultural products” shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any other farm products;

(2) The term “member” shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock; and

(3) The term “association” means any corporation organized under this chapter.

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

**SECTION 33‑47‑30.** Declaration of purpose.

In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through cooperating, to eliminate speculation and waste, 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 chapter is enacted.

**SECTION 33‑47‑40.** Applicability of general corporation laws.

The provisions of the general corporation laws of this State, and all powers and rights thereunder, shall apply to and be conferred upon the associations organized hereunder, except when such provisions are in conflict with, or inconsistent with, the express provisions of this chapter.

**SECTION 33‑47‑50.** Associations not deemed illegal combinations 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 agreement authorized in this chapter be considered illegal or in restraint of trade.

**SECTION 33‑47‑60.** Marketing information available from Clemson University.

Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the director of the extension service of Clemson University who will inform it of whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

**SECTION 33‑47‑70.** Organization of association.

Five 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 chapter.

**SECTION 33‑47‑80.** Purposes for which associations may be formed.

An association may be organized to engage in any activity in connection with:

(1) The producing, marketing or selling of the agricultural products of its members;

(2) The harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping or utilization thereof;

(3) The manufacturing or marketing of the by‑products thereof;

(4) The manufacturing, selling or supplying to its members of machinery, equipment or supplies;

(5) The financing of the above‑enumerated activities; or

(6) More than one of the activities specified herein.

**SECTION 33‑47‑90.** Adoption of chapter by corporations or associations already formed.

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 chapter 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 chapter. Articles of incorporation shall be filed as required in Sections 33‑47‑210 and 33‑47‑220, except that they shall be signed by the members of the board of directors. The filing fee shall be two and one‑half dollars.

**SECTION 33‑47‑100.** Participation of associations in other associations.

An association may organize, form, operate, own, control, have an interest in, own stock of or be a member of any other corporation with or without capital stock and engaged in preserving, drying, processing, canning, storing, handling, shipping, utilizing, manufacturing, marketing or selling the agricultural products handled by the association, or the by‑products thereof.

**SECTION 33‑47‑110.** Annual reports.

Each association formed under this chapter shall prepare and make out an annual report on forms furnished by the director of the State extension service of Clemson University containing:

(1) The name of the association;

(2) Its principal place of business; and

(3) A general statement of its business operations during the fiscal year, showing

(a) the amount of capital stock paid up and the number of stockholders, if a stock association, or the number of members and amount of membership fees received, if a nonstock association,

(b) the total expenses of operations,

(c) the amount of its indebtedness or liability and

(d) its balance sheets.

**SECTION 33‑47‑120.** Annual license fee; exemption from franchise and license tax.

Each association organized hereunder and all production credit associations organized under the act of Congress known as the Farm Credit Act of 1933 shall pay an annual license fee of ten dollars but shall be exempt from all franchise or license taxes.

ARTICLE 3.

 ARTICLES OF INCORPORATION AND AMENDMENTS; POWERS

**SECTION 33‑47‑210.**

 Articles of incorporation.

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

(1) The name of the association;

(2) The purpose for which it is formed;

(3) The place where its principal business will be transacted;

(4) The term for which it is to exist, not exceeding fifty years;

(5) The names and addresses of those (not less than five) 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 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

(7) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. If the capital stock be divided into preferred and common stock 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 privileges granted to each.

In addition to the foregoing the articles of incorporation may contain any provisions consistent with law with respect to the corporation’s management, regulation, government, financing, indebtedness, membership, establishment of voting districts and election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, the way or manner in which the association shall operate with respect to its members, officers or directors or any other provisions relating to its affairs.

**SECTION 33‑47‑220.** Execution and filing of articles; effect thereof.

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 in accordance with the provisions of the general corporation law of this State. When so filed they shall be received in all of 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 director of the State extension service of Clemson University.

**SECTION 33‑47‑230.** Powers of association.

Each association incorporated under this chapter shall, in addition to the powers conferred on all private corporations by Section 33‑3‑102, have the following powers:

(1) To engage in any activity in connection with

(a) 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,

(b) the manufacturing or marketing of the by‑products thereof,

(c) the purchase, hiring or use by its members of supplies, machinery or equipment,

(d) the financing of any such activities or

(e) more than one of the activities specified in this section;

(2) To borrow money and to make advances to members;

(3) To act as agent or representative of any member in any of the above‑mentioned activities;

(4) To purchase or otherwise acquire and to hold, own and exercise all rights of 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;

(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 conduct and operation of any of the business of the association or incidental thereto; and

(7) To do each and everything necessary, suitable or proper for the accomplishment of any of the purposes or the attainment of any of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association and to contract accordingly; 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 any other rights, powers and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this chapter; and to do any such thing anywhere.

**SECTION 33‑47‑240.** Amendment of articles of incorporation.

The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two thirds of the directors and then adopted by a vote representing a majority of a quorum of the members attending a meeting prior to which notice of the proposed amendment shall have been given. Amendments to the articles of incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this State.

**SECTION 33‑47‑250.** Amendments requiring approval of three fourths of members.

The provisions of the articles of incorporation inserted therein pursuant to item (6) of Section 33‑47‑210 shall not be altered, amended or repealed except by the written consent or vote of three fourths of the members.

**SECTION 33‑47‑260.** Fees.

For filing articles of incorporation an association organized hereunder shall pay ten dollars, and for filing an amendment to such articles, two dollars and fifty cents.

ARTICLE 5.

 MEMBERS

**SECTION 33‑47‑410.** Membership.

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 the agricultural products to be handled by or through the association, 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.

**SECTION 33‑47‑420.** Associations as members.

One association organized hereunder may become a member or stockholder of any other association or associations organized hereunder.

**SECTION 33‑47‑430.** Certificate of membership.

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

**SECTION 33‑47‑440.** Admission of new members.

The association may 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 as may be prescribed in the articles of incorporation.

**SECTION 33‑47‑450.** Representation of members other than natural persons.

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

**SECTION 33‑47‑460.** Limitation on business with nonmembers.

No association organized under this chapter shall, during any fiscal year thereof, deal in or handle products, machinery, equipment and supplies and perform services for and on behalf of nonmembers to an amount greater in value than such as are dealt in, handled and performed by it for and on behalf of members during the same period.

**SECTION 33‑47‑470.** Payment upon death, withdrawal or expulsion of member.

Upon the death, withdrawal or expulsion of a member, the board of directors of the association shall, within one year, cause to be paid such member of his estate one hundred percent 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.

ARTICLE 7.

 STOCK AND STOCKHOLDERS

**SECTION 33‑47‑610.** Issuance of stock.

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.

**SECTION 33‑47‑620.** Preferred stock.

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

**SECTION 33‑47‑630.** Issuance of preferred stock for property purchased.

Whenever an association organized hereunder with preferred stock shall purchase any stock or any property, or any interest in any property, it may 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 the fair market value of the stock, property or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock, property or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

**SECTION 33‑47‑640.** Limitation on amount of stock held.

No stockholder of a cooperative association shall own more than one half of the issued common stock of the association. And an association, in its bylaws, may limit the amount of common stock which one member may own to any amount less than one twentieth of the issued common stock.

**SECTION 33‑47‑650.** Limitation on transfer of common stock.

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

**SECTION 33‑47‑660.** Purchase of its common stock by association.

The association may, at any time, except when the debts of the association exceed fifty per cent of the assets thereof, buy in or purchase its common stock at the book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter.

**SECTION 33‑47‑670.** Stockholder’s liability.

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.

ARTICLE 9.

 BYLAWS AND MEETINGS

**SECTION 33‑47‑810.** Bylaws.

Each association incorporated under this chapter must, within thirty days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of a quorum of the members or stockholders attending a meeting, prior to 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 rights of members or stockholders to vote by proxy or by mail or both and the conditions, manner, form and effects of such votes;

(4) The number of directors constituting a quorum;

(5) The qualifications, compensation, duties and terms of office of directors and officers, the time of their election and the mode and manner of giving notice thereof;

(6) Penalties for violation 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;

(9) The charge, if any, to be paid by each member or stockholder for services rendered by the association to him, the time of payment and the manner of collection;

(10) The marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

(11) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock;

(12) The method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock;

(13) The manner of assignment and transfer of the interest of members and of the shares of common stock and the conditions upon which and time when membership of any member shall cease;

(14) The automatic suspension of the rights of a member when he ceases to be eligible for membership in the association and the mode, manner and effect of the expulsion of a member; and

(15) The 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.

**SECTION 33‑47‑820.** Meetings of association.

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 per cent 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 ten days prior to the meeting. But 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.

**SECTION 33‑47‑830.** Matters which must be referred to members.

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 or the stockholders for decision at the next special or regular meeting. A special meeting may be called for this purpose.

**SECTION 33‑47‑840.** Voting.

There shall be three methods of voting, each organization determining and stating in its bylaws which one of the methods of voting outlined herein shall be used. First, each owner of common stock may be allowed to vote his holdings of common stock, provided, however, that he shall not have a vote exceeding that which corresponds to twenty per cent of the total stock issued and outstanding by the organization; or second, any cooperative association may allow its members to vote according to their volume of business in proportion to the total volume transacted by each member through or with the organization during the fiscal year immediately preceding the annual or special meeting at which the vote shall be taken and each organization may determine the unit of volume which shall be used as a basis of computing the votes, such volume to be calculated as a basis of voting by units or value which each organization may determine in its bylaws; or, third, each member or common stockholder may be entitled to one vote.

ARTICLE 11.

 DIRECTORS AND OFFICERS

**SECTION 33‑47‑910.** Directors.

The affairs of the association shall be managed by a board of not less than five 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 a case the bylaws shall specify the number of directors to be elected by each district and 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 that the result of all such primary elections must be ratified by the next meeting of the association. The bylaws may provide that one or more directors may be appointed by the director of the extension service of Clemson University. The director or directors so appointed need not be members or stockholders of the association but shall have the same powers and rights as other directors.

**SECTION 33‑47‑920.** Vacancies on board of directors.

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 a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

**SECTION 33‑47‑930.** Remuneration; contracts with association.

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.

**SECTION 33‑47‑940.** Officers.

The directors shall elect from their number a president and one or more vice‑presidents. They shall also elect a secretary and treasurer who need not be directors and they may combine the two latter officers and designate the combined office as secretary‑treasurer. The treasurer, who shall be a bonded official, may be a bank or any depository and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer except that the funds shall be deposited only as authorized by the board of directors.

**SECTION 33‑47‑950.** Removal of officers or directors.

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 per cent 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 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 bringing the charges against him shall have the same opportunity.

In case the bylaws provide for the election of directors by districts with primary elections in each district then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The board of directors shall 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 the members of that district the director in question may be removed from office.

ARTICLE 13.

 CONTRACTS

**SECTION 33‑47‑1110.** Contracts for marketing products.

The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over ten 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 eight per cent per annum, reserves for retiring the stock, if any, other proper reserves and dividends not exceeding eight per cent per annum upon common stock.

**SECTION 33‑47‑1120.** Damages for breach.

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. Any such provisions shall be valid and enforceable in the courts of this State.

**SECTION 33‑47‑1130.** Injunction and specific performance.

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 a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

**SECTION 33‑47‑1140.** Contracts entered into 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, contracts and arrangements with any other cooperative corporation or association formed in this or in any other state for the cooperative and more economical carrying on of its business or any part 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.

**SECTION 33‑47‑1150.** Inducing members to violate contract or spreading false reports.

Any person who knowingly induces or attempts to induce, or any corporation whose officers or employees knowingly induce or attempt 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 misdemeanor and subject to a fine of not less than one hundred dollars and not more than one thousand dollars for such offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars for each such offense.