

CHAPTER 115

[H. B. 255.]

ASSOCIATIONS FOR MARKETING AGRICULTURAL
PRODUCTS.

AN ACT to promote the marketing of agricultural products through cooperation; and the distribution thereof from the producer to the consumer; prescribing the duties of the director of agriculture and the director of taxation and examination in relation thereto; and providing penalties for the violation thereof.

Be it enacted by the Legislature of the State of Washington:

SECTION 1 (a) The term "agricultural products" whenever used in this act shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and farm products.

Terms
defined.

(b) The term "members" wherever used in this act shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(c) The term "association" wherever used in this act means any corporation organized under this act.

(d) The term "person" wherever used in this act shall include individuals, firms, partnerships, corporations and associations.

Associations organized hereunder shall be deemed non-profit, 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 act shall be referred to as the "Co-operative Marketing Act."

SEC. 2. Five (5) or more persons engaged in the production of agricultural products may form a non-profit, co-operative association, with or without capital stock, under the provisions of this act.

Co-operative
associations.

Purpose of organization.

SEC. 3 An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or 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.

Director of agriculture to assist in organization.

SEC. 4. Every group of persons contemplating the organization of an association or corporation under this act shall communicate with the director of agriculture, whose duty it will be to advise with and assist them regarding the manner of organization and the preparation of the marketing contract between the corporation formed or to be formed and the members thereof: *Provided*, That such corporation shall not commence business or solicit members thereof until the form of said marketing contract shall have been approved by the director of agriculture.

Powers of association.

SEC. 5. Each association incorporated under this act shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling or utilization of any agricultural products produced or delivered to it by its members; 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 association, however, shall handle the agricultural products of any non-member.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) 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.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws.

(f) 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.

(g) 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 associations; 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, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this act; and to do any such thing anywhere.

SEC. 6. (a) Under the terms and conditions prescribed in its by-laws, any association may admit as members, or issue common stock only to

Membership
and stock of
association.

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.

(b) If a member of a non-stock 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) Any association organized hereunder may become a member or stockholder of any other association or associations organized hereunder.

SEC. 7. Each association formed under this act must prepare and file articles of incorporation, setting forth:

(a) The name of the association.

(b) The purpose for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, not exceeding fifty (50) years.

(e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors, which term shall not exceed two years.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles 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 the 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 two-thirds of the members.

(g) 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. 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 privileges granted to each.

(h) The articles must be subscribed by the incorporators and acknowledged by three or more of such incorporators before an officer authorized by the law of this state to take and certify acknowledgements of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this state; 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.

SEC. 8. 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 a majority of the directors and then adopted by a vote representing a majority of all the members of the association. 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.

Amendments
of articles
of incorpora-
tion.

SEC. 9. Each association incorporated under this act must, within thirty (30) days after its in-

By-laws.

corporation, adopt, for its government and management a code of by-laws not inconsistent with the powers granted by this act. A majority vote of the members or stockholders, or their written assent, is necessary to adopt, alter or amend such by-laws.

Meetings.

SEC. 10. In its by-laws 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.

Board of directors.

SEC. 11. The affairs of the association shall be managed by a board of not less than five directors, who shall be residents of the State of Washington and who shall be elected by the members or stockholders from their own number. The by-laws 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 by-laws 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 by-laws shall provide that primary elections shall be held in each district to select 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. The by-laws shall provide that one or more directors shall be appointed by the director of ag-

riculture. 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, and shall be regarded as representing the interests of the public. 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. 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 by-laws provide for an election of directors by district. 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.

SEC. 12. 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 offices and designate the combined office as secretary-treasurer. The treasurer 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, excepting that the funds shall be deposited only as authorized by the board of directors.

Officers.

SEC. 13. When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. Except for

Membership,
liability of.Stock, issue,
redemption,
transfer.

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. No stockholder of a co-operative association shall own more than 1/10 of the issued common stock of the association; and an association in its by-laws may limit the amount of common stock which one member may own to any amount less than one-tenth of the issued common stock. Any association organized with stock under this act may issue preferred stock, with or without the right to vote. No member or stockholder shall be entitled to more than one 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. The by-laws 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. The by-laws and the marketing agreement, of the association, may provide for the retiring of the common or preferred stock of the association.

Charges
against
officers.

SEC. 14. 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 a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or of-

ficer 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 by-laws 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 per cent 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 the members of that district, the director in question shall be removed from office.

SEC. 15. 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 re-sell the products of its members, with or without taking title thereto; and pay over on a proportional basis or otherwise to its members the re-sale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding eight per cent per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight per cent per annum upon common stock: *Provided*, That the form of such contract shall be approved by the director of agriculture, and shall state the maximum amount of any such reserves to be deducted from the sale price of the products of the members of

Marketing
contracts.

such association: *Provided further*, That said contract shall contain a date upon which settlement will be made between the association and each of its members for the crop or product marketed by said association during the preceding marketing season, which date shall not be later than July 1st following the year in which any such crop or product has been produced. The by-laws 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 legally maintained under the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state. 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.

Payment in
stock.

SEC. 16. 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 discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest, shares of its preferred 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 the shares of stock issued.

SEC. 17. Each association formed under this act shall prepare and file in the office of the director of agriculture an annual report on forms furnished by the director of agriculture, 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 amount of membership fees received, if a non-stock association; the total expenses of operations; the amount of indebtedness or liability, and its balance sheets. An examination and audit of the affairs of all associations incorporated under this act and doing a gross business of at least two hundred thousand dollars (\$200,000) per year, shall be made annually by the department of taxation and examination and at such other times as the director of agriculture may require. The director of taxation and examination is hereby authorized, empowered and directed to cause such examination and audit to be made. One copy of such audit shall be filed with the director of agriculture, one shall be sent to the secretary of the association, one to the president of the association, and another shall be kept in the files of the office of the department. A charge of not more than ten dollars (\$10) per day and expenses for each examiner shall be made to the association to pay the actual expense of making such audit. Associations doing a gross business of less than two hundred thousand dollars (\$200,000) annually shall provide in their by-laws or otherwise for the making and filing of annual audits of their

Annual
report.

books; provided that upon demand of one tenth of the members of such association said audit shall be made by the department of taxation and examination in the manner provided herein for larger associations.

Violations
and in-
solvency.

SEC. 18. If the director of agriculture shall find that any association is operating in violation of law or is insolvent, and after ten days notice has failed or refused to comply with the law, he may by proper proceeding in the superior court of the county where the principal place of business of said association is located, cause a receiver for such association to be appointed, and the affairs of such association immediately liquidated under the direction of said superior court.

Membership
of associa-
tion in
another
corporation.

SEC. 19. An association may organize, form, operate, own, control, have an 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 customary percentage 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.

Contracts
with other
associations.

SEC. 20. 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 co-operative corporation, association or associations, formed in this or in any other state, for the co-operative 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. A duplicate copy of each of the contracts mentioned in this section shall be filed in the office of the director of agriculture immediately after the execution and delivery thereof.

SEC. 21. 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 act 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, 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 act. Amendments to articles of incorporation shall be filed as required in sections 4 and 7, 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: *Provided*, That any such corporation or association organized prior to the approval of this act shall be admitted to the benefits hereof, subject to all of the requirements of this act except that the marketing contract between such association and its members need not be approved by the director of agriculture.

Associations
heretofore
organized
may come
under act.

Voluntary
dissolution.

SEC. 22. The members of any association may by two-thirds vote of all such members, at any regular meeting or at a meeting regularly called for that purpose, vote to dissolve said association, and thereupon such proceedings shall be had for the dissolution of said association as is provided by law for the dissolution and disincorporation of corporations organized under the general law.

General cor-
poration
laws ap-
plicable.

SEC. 23. The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this act.

Limitations
on benefits
of members.

SEC. 23-a. Other than the usual salary or director's fees paid to any officer, director or employee of any association organized, incorporated or re-incorporated and transacting business under this act, and other than a reasonable fee paid by such association to such officer, director or employee for services rendered to such association, no officer, director or employee shall be a beneficiary of or receive, directly or indirectly, any fee, commission, or other consideration for or in connection with any transaction or business of such association: *Provided, however,* That nothing in this act contained shall be construed to prohibit a director, officer or employee who may also be a member of such association from receiving all the ordinary and usual benefits which other members receive. Any officer, director or employee of any such association who violates any of the provisions of this section shall be guilty of a felony.

Penalty for
false state-
ments and
entries.

SEC. 24. Any person who shall knowingly subscribe to, or make any false statement or entry in the books of any association, or who shall knowingly make any false statement in any report required to

be filed with the director of agriculture, or who shall knowingly with intent to deceive, misrepresent the affairs of the association to any person authorized and directed by the department of taxation and examination to examine such associations, shall be guilty of a felony.

SEC. 25. Every officer, director, employee or agent, of any association, who for the purpose of concealing any fact or suppressing any evidence against himself or against any person, shall abstract, remove, mutilate, destroy, or secrete any paper, book, or record of any association, or of the department of agriculture, shall be guilty of a felony.

Penalty for removal or destruction of papers or records.

SEC. 26. The director of agriculture may maintain an action in his own name for the use of any association upon any unpaid contract of subscription to the capital stock of such association, or upon any promissory note given to such association in payment thereof, or to cancel any stock issued by it in violation of law.

Action for unpaid stock subscription.

SEC. 27. It shall be the duty of the attorney general to appear and act for the director of agriculture in all actions or proceedings involving any question under this act.

Duties of attorney general.

SEC. 28. Every order, decision or other official act of the Director of Agriculture shall be subject to review, and any party aggrieved by such order, decision or act of the Director of Agriculture may appeal therefrom to the superior court of the county of Thurston by serving upon the Director of Agriculture a notice of such appeal, specifying the order, decision or act appealed from, and filing the same with the clerk of the superior court of the county of Thurston within sixty days after the date of such order, decision or official act. Whereupon the Director of Agriculture shall, within ten days after filing of such notice of appeal, make

Appeals from action of director of agriculture.

and certify a transcript of all the records and papers on file in his office affecting or relating to the order, decision or act appealed from, and upon the payment of the fee therefor by the appellant, the Director of Agriculture shall file the same in the office of the clerk of said superior court. Upon the hearing of such appeal the burden of proof shall be upon the appellant, and the court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the action of the Director of Agriculture from which appeal is taken. Any party to such appeal to the superior court who is aggrieved by the judgment of said court rendered upon such appeal may prosecute an appeal to the supreme court of the State of Washington. The general laws relating to bills of exception, statements of fact and appeals to the supreme court, shall apply to all appeals taken to the supreme court under this act: *Provided*, That no supersedeas of the judgment of the superior court shall be allowed, except at the discretion of said superior court. If supersedeas is allowed, it shall be upon such bond and with such condition as the superior court may require by its order.

Annual
license fee.

SEC. 29. Each association organized hereunder shall pay an annual license fee of fifteen dollars (\$15), but shall be exempt from all franchise or license taxes.

Fees for filing
articles
of incorporation.

SEC. 30. For filing articles of incorporation an association organized hereunder shall pay twenty-five dollars (\$25), and for filing an amendment to the articles ten dollars (\$10).

Partial
validity.

SEC. 31. If any section of this act shall be declared unconstitutional for any reason, the remainder of the act shall not be affected thereby.

Passed the House March 2, 1921.

Passed the Senate March 8, 1921.

Approved by the Governor March 18, 1921.