

MAINE STATE LEGISLATURE

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N I N E T Y - F I R S T L E G I S L A T U R E

Legislative Document

No. 591

H. P. 1126

House of Representatives, February 17, 1943.

Referred to Committee on Judiciary, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Usher of Gorham.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-THREE

AN ACT Enacting the Consumer's Cooperative Act.

Be it enacted by the People of the State of Maine, as follows:

ARTICLE I

Definitions

Sec. 1. Definitions. In this act unless the subject matter requires otherwise:

(1) "Association" means a group enterprise legally incorporated under this act, and shall be deemed to be a non-profit corporation.

(2) "Member" means not only a member in a nonshare association but also a member in a share association.

(3) "Net savings" means the total income of an association minus the costs of operation.

(4) "Savings returns" means the amount returned to the patrons in proportion to their patronage or otherwise in accordance with the provisions of this act.

(5) "Cooperative basis" as applied to any incorporated or unincorporated group referred to in subsequent sections of this act means—

(a) that each member has one vote and only one vote, except as may

be altered in the articles or by-laws by provisions for voting by member organizations;

(b) that the maximum rate at which any return is paid on share or membership capital is limited to not more than 6% ;

(c) that the net savings after payment, if any, of said limited return on capital and after making provision for such separate funds as may be required or specifically permitted by statute, articles, or by-laws shall be allocated or distributed to member patrons, or to all patrons, in proportion to their patronage; or retained by the enterprise, for the actual or potential expansion of its services or the reductions of its charges to the patrons, or for other purposes not inconsistent with its nonprofit character.

ARTICLE II

Who May Incorporate; Purposes and Powers of Associations

Sec. 1. Who may incorporate. Any 3 or more natural persons or 2 or more associations may incorporate in the state of Maine under this act.

Sec. 2. Purposes. An association may be incorporated under this act to engage in any one or more lawful mode or modes of acquiring, production, building, operating, manufacturing, furnishing, exchanging, or distributing any type or types of property, commodities, goods, or services for the primary and mutual benefit of the patrons of the association (or their patrons, if any) as ultimate consumers.

Sec. 3. Powers. An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted by this act and also—

- (1) To continue as a corporation for the time specified in its articles;
- (2) To have a corporate seal and to alter the same at pleasure;
- (3) To sue and be sued in its corporate name;
- (4) To make by-laws for the government and regulation of its affairs;
- (5) To acquire, own hold, sell lease, pledge, mortgage, or otherwise dispose of any property incident to its purposes and activities;
- (6) To own and hold membership in and share capital of other associations and any other corporations and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;
- (7) To borrow money, contract debts, and make contracts, including agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;
- (8) To conduct its affairs within or without the state of Maine;

(9) To exercise in addition any power granted to ordinary business corporations, save those powers inconsistent with this act;

(10) To exercise all powers not inconsistent with this act which may be necessary, convenient, or expedient for the accomplishment of its purposes, and, to that end, the foregoing enumeration of powers shall not be deemed exclusive.

Article III

By-laws

Sec. 1. Adoption, amendment, or repeal of by-laws. By-laws shall be adopted, amended or repealed by at least a majority vote of the members voting.

Article IV

Meetings

Sec. 1. Regular and special meetings. Regular meetings shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least 1/10 of the membership, in which case it shall be the duty of the secretary to call such meeting to take place within 30 days after such demand.

Article V

Voting

Sec. 1. One member—one vote. Each member of an association shall have 1 and only 1 vote, except that where an association includes among its members any number of other associations or groups organized on a cooperative basis the voting rights of such member associations or groups may be as prescribed in the articles or by-laws.

No voting agreement or other device to evade the one-member-one-vote rule shall be enforceable at law or in equity.

Sec. 2. No proxy. No member shall be permitted to vote by proxy.

Sec. 3. Application of voting provisions in this act to voting by delegates. If an association has provided for voting by delegates any provision of this act referring to votes cast by the members shall apply to votes cast by delegates; but this shall not permit delegates to vote by mail.

Article VI

Sec. 1. Limitations upon the return on capital. The return upon capital

shall not exceed 6% per annum upon the paid-up capital and shall be non-cumulative.

Total return upon capital distributed for any single period shall not exceed 50% of the net savings for that period.

Sec. 2. Eligibility and admission to membership. Any natural person, association incorporated or unincorporated group organized on a cooperative basis, or any non-profit group, shall be eligible for membership in an association if it has met the qualifications for eligibility, if any, stated in the articles or by-laws and shall be deemed a member upon payment in full for the par value of the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership.

Sec. 3. Subscribers. Any natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether, and the conditions under which, any voting rights or other rights of membership shall be granted to subscribers.

Sec. 4. Share and membership certificates; issuance and contents. No certificate for share or membership capital shall be issued until the par value thereof has been paid for in full. There shall be printed upon each certificate issued by an association a full or condensed statement of the requirements of sections herein, pertaining to one member one vote, no proxy, and transfer of shares and membership.

Sec. 5. Transfer of shares and membership; withdrawal. If a member desires to withdraw from the association or dispose of any or all of his holdings therein, the directors shall have the power to purchase such holdings by paying him the par value of any or all of the holdings offered. The directors shall then re-issue or cancel the same. A vote of the majority of the members voting at a regular or special meeting, may order the directors to exercise this power to purchase.

If the association fails, with 60 days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors shall exercise their power to purchase, if and when such purchase can be made without jeopardizing the solvency of the association.

Sec. 6. Liability of members. Members shall not be jointly or severally liable for any debts of the association, nor shall a subscriber be so liable except to the extent of the unpaid amount on the shares or membership certificates subscribed by him. No subscriber shall be released from such liability by reason of any assignment of his interest in the shares or membership certificate, but shall remain jointly and severally liable with the assignee until the shares or certificates are fully paid up.

Sec. 7. Expulsion. A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed thereof in writing at least 10 days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at said meeting. On decision of the association to expel a member, the board of directors shall purchase the member's holdings at par value, if and when there are sufficient reserve funds.

ARTICLE VII

Apportionment of Net Savings

Sec. 1. Allocation and distribution of net savings. At least once a year the members, or the directors, or both, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) Not less than 10% shall be placed in a reserve fund until such time as the fund shall equal at least 50% of the paid-up capital; and such fund may be used in the general conduct of the business. The amounts apportioned to the reserve fund shall be allocated on the books of the association on a patronage basis, or in lieu thereof, the books and records of the association shall afford a means for doing so, in order that upon dissolution or earlier, if deemed advisable, such reserves may be returned to the patrons who have contributed the same, subject to the limitations of the section on dissolution herein;

(2) A return upon capital, within the limitations of Article I may be paid upon share capital; but such return upon capital may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities (including in the latter the amount of the capital stock) after deducting from such aggregate of the assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;

(3) A portion of the remainder, as determined by the articles or by-laws, shall be allocated to an educational fund to be used in teaching coop-

eration, and a portion may also be allocated to funds for the general welfare of the members of the association;

(4) The remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage; provided that—

(a) in the case of a member patron, his proportionate amount of savings returns shall be distributed to him unless he agrees that the association should credit the amount to his account toward the purchase of an additional share or shares, or additional membership capital;

(b) in the case of a subscriber patron, his proportionate amount of savings returns, may, as the articles or by-laws provide, be distributed to him, or credited to his account until the amount of capital subscribed for has been fully paid;

(c) in the case of a non-member patron, his proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual non-member patrons only upon request and presentation of evidence of the amount of their patronage. Any savings return so allocated shall be credited to such patron toward payment of the minimum amount of share or membership capital necessary for membership, or may be paid to such patron. When a sum equal to this amount has been accumulated and so credited at any time within a period of time specified in the by-laws, such patron shall be deemed and become a member of the association if he so agrees or requests, and complies with any provisions in the by-laws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him;

(d) if within any periods of time specified in the articles or by-laws, (1) any subscriber has not accumulated and paid in the amount of capital subscribed for; or (2) any non-member patron has not accumulated in his individual account the sum necessary for membership; or (3) any non-member patron has accumulated the sum necessary for membership, but neither requests nor agrees to become a member, or fails to comply with the provisions of the by-laws, if any, for admission to membership, then the amounts so accumulated or paid in, shall go to the **educational fund**, and thereafter no member or other patron shall have any rights in said paid-in capital or accumulated savings returns as such; provided further, that nothing in this section shall prevent an association under this act which is engaged in rendering services, from disposing of the net savings from the rendering of such services in such manner as to lower the fees charged for services or otherwise to further the common benefit of the members; and provided further, that nothing in this section shall prevent

an association from adopting a system whereby the payment of savings returns which would otherwise be distributed, shall be deferred for a fixed period of months or years; nor from adopting a system, whereby the savings returns distributed shall be partly in cash, partly in shares, such shares to be retired at a fixed future date, in the order of the serial number or date of issue.

ARTICLE VIII

Relation to Other Laws

Sec. 7. Existing cooperative groups. Any group incorporated under the law of the state of Maine and operating on a cooperative basis or any unincorporated group operating on such a basis in the state of Maine may elect by a vote of $\frac{2}{3}$ of the members voting to secure the benefits of and be bound by this act, and shall thereupon amend such of its articles and by-laws as are not in conformity with this act. A certified copy of the amended articles shall be filed and recorded with the secretary of state and a fee of \$5 shall be paid.

Sec. 2. Foreign corporation entitled to do business in this state. A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state or District of Columbia where it is organized shall be entitled to do business in the state of Maine as a foreign cooperative corporation or association upon complying with law for foreign corporations doing business in this state.

Sec. 3. Laws not applicable. No law of the state of Maine conflicting or inconsistent with any part of this act shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed hereunder; nor shall any law of the state of Maine inappropriate to the purposes of such associations be so construed.

Sec. 4. Taxation. Associations formed hereunder, and foreign corporations and associations admitted to do business in the state of Maine and entitled to the benefits of this act shall pay the annual license fee required of other business corporations and foreign corporations.

ARTICLE IX

Sec. 1. Associations not subject to certain laws. Associations organized under this act shall not be subject to the law of Maine providing for registration of dealers in securities, nor shall such associations be deemed to be dealers in securities in the issue and sale of certificates of membership in such associations, or shares therein.

ARTICLE X

Sec. 1. Manner of drawing up articles of incorporation. Articles of incorporation for the formation of an association under this act shall be drawn up and filed in the same manner and under the provisions for organizing business corporations under the general law, except where such procedure would be inconsistent with this act; the same provision shall apply under said general law to associations organized under this act in respect to first meeting of corporation, and as to fees payable to the state.

Sec. 2. Separability; constitutionality. If any provision of this act or the application thereof to any person or circumstance shall be held unconstitutional or otherwise invalid for any reason, the validity of the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 3. Dissolution. An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of $\frac{2}{3}$ of the entire membership. By a vote of a majority of the members voting, 3 of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets, and shall distribute them in the manner set forth in this section. In case of any dissolution of an association, its assets shall be distributed in the following manner and order: (1) By paying its debts and expenses; (2) by returning to the members the par value of their shares or of their membership certificates, returning to the subscribers the amounts paid on their subscriptions, and returning to the patrons the amount of savings returns credited to their accounts toward the purchase of shares or membership certificates; and (3) by distributing any surplus in either or both of the following ways as the articles may provide—

(a) Among those patrons who have been members or subscribers at any time during the past 6 years, on the basis of their patronage during that period:

(b) As a gift to any consumers' cooperative association or other non-profit enterprise which may be designated in the articles.