

# MAINE STATE LEGISLATURE

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EIGHTH REVISION

THE  
REVISED STATUTES

OF THE  
STATE OF MAINE

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VOLUME I



By the Authority of the Legislature

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erty, the number of pupils, if any, who are residing on said property and attending the public schools of said town or plantation and the cost of transporting them to and from such schools, which amount to be paid shall not in any one year exceed the revenue derived by said town or plantation from its tax on said property during the year preceding acquisition of title thereto by the state. All expenses incidental to or connected with the carrying out of the provisions of this chapter shall be paid from the reserved land fund.

**Sec. 9. Commissioners, attorney-general, and assistant to receive no additional compensation.** R. S. c. 58, § 10. The officers constituting the farm lands loan commissioners shall receive no additional compensation on account of said services, but shall be paid their actual and reasonable expenses necessarily incurred in the performance of their duties under the provisions of this chapter. The attorney-general and his assistant shall serve said board without additional compensation.

**Sec. 10. Commissioners to pay to plantations accrued interest due.** R. S. c. 58, § 11. The farm lands loan commissioners are authorized and directed to pay to plantations all accrued interest due such plantations so far as may be possible under existing provisions of law from the reserved land fund.

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## CHAPTER 31.

### THE COOPERATIVE MARKETING ACT.

**Sec. 1. Declaration of policy.** R. S. c. 59, § 1. The purposes of this chapter are to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation; and to eliminate speculation and waste; and to make the distribution of agricultural products between producer and consumer as direct as can be efficiently done; to stabilize the marketing of agricultural products; and to provide for the organization and incorporation of cooperative marketing associations for the marketing of such products.

**Sec. 2. Definitions.** R. S. c. 59, § 2. As used in this chapter, the following words and phrases, unless the context clearly indicates otherwise, shall have the following meaning:

I. "Agricultural products" includes horticultural, viticultural, forestry, dairy, live stock, poultry, bee, and any farm products.

II. "Member" includes actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

III. "Association" means any corporation organized under the provisions of this chapter; and shall include all similar associations, foreign or domestic, operating within this state, either de jure or de facto.

IV. "Person" includes individuals, firms, partnerships, corporations, and associations.

V. Associations organized hereunder shall be deemed "non-profit," 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.

VI. "Liens" shall include all liens on, security interests in, or claims upon crops or other farm products arising at law or in equity, by statute or otherwise, and including the following in so far as they attach to crops or other farm products; crop liens, vendors' liens, labor, money, material, and supply liens, landlord and owners' liens, pledges, chattel mortgages, attachments, judgment liens, and trustee process. It shall also include the lien attaching to proceeds arising from such commodities, under the provisions of this chapter.

VII. "Lienholder" shall include all persons, firms, partnerships, corporations, and associations in whom an above described lien is vested, or who have contracted for such a lien.

VIII. "Marketing agreement" shall include any proper contracts for the sale or delivery of farm commodities to such associations.

IX. "Crop" shall signify any or all commodities which an association may legally contract for in a marketing agreement.

X. For the purpose of brevity and convenience this chapter may be indexed, referred to, and cited as "The Cooperative Marketing Act."

Sec. 3. Who may organize under the provisions of this chapter. R. S. c. 59, § 3. Eleven or more persons, a majority of whom are residents of this state, engaged in the production of agricultural products, may form a non-profit, cooperative association, with or without capital stock, under the provisions of this chapter.

Sec. 4. Purposes for which an association may be formed. R. S. c. 59, § 4. 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, grading, 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.

Provided, however, that nothing herein contained shall be construed to authorize a corporation organized hereunder to transact business in any other state, territory, or foreign country, contrary to the provisions of the laws of such state, territory, or foreign country, and the following corporate purposes shall be exercised only in states and jurisdictions other than Maine, namely, the construction and operation of railroads, or aiding in the construction thereof, telegraph or telephone companies, and gas or electrical companies, and such businesses are to be carried on only in states and jurisdictions when and where permissible under the laws thereof.

Sec. 5. Powers granted to associations. R. S. c. 59, § 5. It is recognized that agriculture is characterized by individual production in contrast to the group or factory system that characterizes other forms of industrial production; that the public has an interest in permitting farmers to bring their industry to the high degree of efficiency and merchandising skill evidenced in the manufacturing industries; that it is for the public interest to prevent migration from the farm to the city in order to maintain farm production and to preserve the agricultural supply of the nation; that the public interest demands that the farmer be encouraged to attain a superior and more direct system of marketing, in the substi-

tution of merchandising for the blind, unscientific, and speculative selling of crops.

Each association incorporated under the provisions of this chapter shall have the following powers:

I. To engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, 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 any activity 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, except for storage.

II. To borrow money without limitation as to amount of corporate indebtedness or liability; and to make advance payments and advances to members.

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

IV. To purchase or otherwise acquire; and to hold, own, and exercise all rights of ownership in; and to sell, transfer, or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing of any of the products handled by the association.

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

VI. 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 business incidental thereto.

VII. To establish, secure, own, and develop patents, trade-marks, trade names, and copyrights.

VIII. 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; 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 corporations organized under the general laws of this state, except such as are inconsistent with the express provisions of this chapter; and do any such thing anywhere.

#### Sec. 6. Members and stockholders. R. S. c. 59, § 6.

I. Under the terms and conditions prescribed in the by-laws adopted by it, an association may admit as members, or issue common stock to, only cooperative marketing associations or 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 all or any part of the crop raised on the leased premises.

II. 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 manager or member thereof, duly authorized in writing.

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

**Sec. 7. Certificate of organization to be filed; contents. R. S. c. 59, § 7.** Before commencing business, the president, treasurer, and a majority of the directors shall prepare and file a certificate of organization setting forth:

I. The name of the association.

II. The purposes for which it is formed.

III. The place where its principal business will be transacted.

IV. The term for which it is to exist, not exceeding 50 years.

V. The number, names, and addresses of the directors thereof, which shall be not less than 5 and may be any number in excess thereof, and the term of office of such directors.

VI. The name of the clerk and his residence.

VII. If organized without capital stock, whether the property rights and interest of the members 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 provision for the admission of new members who shall be entitled to share in the property of the association in accordance with such general rule or rules. This provision or subsection of the certificate of organization shall not be altered, amended, or replaced except by the written consent or vote of  $\frac{3}{4}$  of the members.

VIII. If organized with capital stock, the amount of such stock, 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 certificate of organization shall contain a statement of the number of shares of stock to which preference is granted, the number of shares of stock to which no preference is granted, and the nature and definite extent of the preference and privileges granted to each.

The certificate shall be subscribed by the president and a majority of the directors and acknowledged by one of them before an officer authorized by law to take and certify acknowledgments of deeds; and shall be filed in accordance with the provisions of the general corporation law; and when so filed the said certificate of organization, or certified copy thereof, shall be received in all the courts of this state as prima facie evidence of the facts contained therein and of the due incorporation of such association. A certified copy shall also be filed with the commissioner of agriculture.

See § 25.

**Sec. 8. Amendments and alterations to certificate of organization, how made. R. S. c. 59, § 8.** The certificate of organization may be altered or amended at any regular meeting or any special meeting called for that purpose. An amendment must first be approved by  $\frac{2}{3}$  of the directors and adopted by a vote representing a majority of all the members of the association. Amendments to the certificate of organization, when so adopted, shall be filed in accordance with the provisions of the general corporation law.

**Sec. 9. By-laws to be adopted; provisions of.** R. S. c. 59, § 9. Each association incorporated under the provisions of this chapter shall, within 30 days after its organization, adopt for its government and management a code of by-laws, not inconsistent with the powers granted by the provisions of this chapter. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such by-laws. Each association, under its by-laws, may provide for any or all of the following matters:

- I. The time, place, and manner of calling and conducting its meetings.
- II. The number of stockholders or members constituting a quorum.
- III. The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form, and effect of such votes.
- IV. The number of directors constituting a quorum.
- V. The qualifications, compensation, duties, and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof.
- VI. Reasonable penalties for violations of the by-laws.
- VII. 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.
- VIII. 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 charges, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and 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.
- IX. 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 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; the mode, manner, and effect of the expulsion of a member; the manner 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, the purchase at a price fixed by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and fix the amount thereof in money, which shall be paid to him within 1 year after such expulsion or withdrawal.

**Sec. 10. Meetings; regular and special, how called.** R. S. c. 59, § 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 not less than 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 shall thereupon be called by the directors.

Notice of each meeting, 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 by-laws 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.

**Sec. 11. Directors; salaries; vacancies.** R. S. c. 59, § 11. The business of the association shall be managed by a board of not less than 5 directors, 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, either directly or by district delegates elected by the members in that district, and in such case the by-laws 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 by-laws may provide that primary elections shall be held in each district, to elect the directors apportioned to such districts, and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be deemed the act of the association. The by-laws may provide that one or more directors may be appointed by any public official or commission or by the other directors selected by the members or their delegates; such directors shall represent primarily the interest of the general public in such associations and need not be members or stockholders of the association; but shall have the same powers and rights as other directors. Such directors shall not number more than  $\frac{1}{5}$  of the entire number of directors.

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee. 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 each member or holder of common stock of the association or others, or upon terms differing from those generally current in that district.

The by-laws may provide that no director shall occupy any position in the association, on regular salary or substantially full-time pay, except in the cases of president and secretary.

The by-laws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of that board.

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 districts, and in such a case the board of directors shall immediately call a special meeting of the members or stockholders, to fill the vacancy, in the district where it exists.

**Sec. 12. Officers; eligibility.** R. S. c. 59, § 12. The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary, who shall be the clerk of the corporation, and a treasurer, who need not be directors or members of the association; and they may combine the 2 offices and designate the combined office as that of secretary-treasurer; or unite both functions and titles in 1 person. 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, and in such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only



as and where authorized by the board of directors, and whenever there is a change in the office of clerk, the clerk shall file a certificate of his election as provided by section 35 of chapter 49, and an attested copy of such certificate shall be sufficient evidence that he is clerk, for service of process upon the corporation, until another certificate has been filed.

**Sec. 13. Officers, employees, and agents handling funds to be bonded. R. S. c. 59, § 13.** Each officer, employee, and agent handling funds or negotiable instruments or property of or for any association created hereunder shall be required to execute and deliver to the association a bond, satisfactory to the board of directors, for the faithful performance of his duties and obligations.

**Sec. 14. Certificate of membership; stock, when issued; liability of stockholders; limitation of ownership; voting rights; preferred stock; limitation on transfer of common stock. R. S. c. 59, § 14.** 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. 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 member's right to vote.

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 note given in payment therefor.

No stockholder of a cooperative association shall own more than  $1/20$  of the common stock of the association; and an association, in its by-laws, may limit the amount of common stock which 1 member may own to any amount less than  $1/20$  of the common stock.

No member or stockholder shall be entitled to more than 1 vote, regardless of the number of shares of common stock owned by him.

Any association organized with stock under the provisions of this chapter may issue preferred stock, with or without the right to vote. Such stock may be sold to any person, member, or non-member, and may be redeemable or retireable by the association on such terms and conditions as may be provided in the certificate of organization and printed on the face of the stock 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 shall be printed upon every certificate of stock subject thereto.

The association may, at any time, as specified in the by-laws, except when the debts of the association exceed 50% 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 1 year thereafter.

**Sec. 15. Removal of officers and directors. R. S. c. 59, § 15.** 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 not less than 5% of the members, requesting the removal of that officer or director. 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 such officer or director and fill the vacancy created by such removal. The director or

officer against whom such charges have been brought shall, previous to the meeting for action on charges preferred against him, be informed in writing of such charges and have opportunity at such meeting to be heard in person, or by counsel, and to present witnesses; and the person or persons bringing the charges 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 not less than 20% 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; and by a vote of a majority of the members of that district, the director in question may be removed from office.

**Sec. 16. Referendum. R. S. c. 59, § 16.** Upon demand of  $\frac{1}{3}$  of the entire board of directors made immediately and so recorded, at the same meeting at which the original motion was passed, any matter of policy that has been approved or passed by the board shall be referred to the entire membership or the stockholders for decision at the next special or regular meeting, and a special meeting may be called for the purpose.

**Sec. 17. Marketing contracts. R. S. c. 59, § 17.** An 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. If they contract a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly to the association upon delivery, except for legally recorded chattel mortgages given for value and prior to the 1st day of July in any season on such products or commodities whether such mortgages are given before or after the making of such contract of sale. The contract may provide, among other things, that the association may sell or resell the products delivered by 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 interest or dividends on stock, not exceeding 8% per year, and reserves for retiring the stock, if any; and other proper reserves; and for any other deductions.

**Sec. 18. Remedies for breach of contracts; by-laws may fix liquidated damages; injunctions to restrain breaches of contract. R. S. c. 59, § 18.**

I. The by-laws or the marketing contract may fix, as liquidated damages, a specific sum to be paid by a 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 shall 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; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

II. In the event of any such breach or threatened breach of such marketing contract by a member, the supreme judicial court or the superior court may restrain by injunction further breach of the contract and may decree 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, either of said courts may grant a temporary restraining order and preliminary injunction against the member.

III. In any action upon such marketing agreement, it shall be conclusively presumed that a landowner or landlord or lessor is able to control the delivery of products produced on his land by tenants or others, whose tenancy or possession or work on such land, or the terms of whose tenancy or possession or labor thereon, were created or changed after execution by the landowner, or landlord, or lessor of such a marketing agreement; and in such action, the foregoing remedies for non-delivery or breach shall lie and be enforceable against such landowner, landlord, or lessor.

**Sec. 19. Acquiring stock or property of other corporations, persons, or firms, how effected. R. S. c. 59, § 19.** 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, corporation, or association, 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 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. 20. Annual report. R. S. c. 59, § 20.** Each association formed under the provisions of this chapter shall prepare and submit to its annual meeting an annual report containing the name of the association, its principal place of business; a general statement of its business operations during the fiscal year, showing the amount of capital stock paid for and the number of stockholders, if a stock association; or the number of members and amount of membership fees received, if a non-stock association; the total expenses of operation; the amount of its indebtedness or liabilities, and its balance sheets.

**Sec. 21. Use of word "cooperative," limited. R. S. c. 59, § 21.** No person, firm, corporation, or association, hereafter organized or hereafter undertaking to do business in this state as a farmers' marketing association for the sale of farm products, shall be entitled to use the word "cooperative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter.

**Sec. 22. May have interests in other corporations or associations. R. S. c. 59, § 22.** 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 the agricultural products handled by the association, or by-products thereof.

If such corporations are warehousing corporations, they may issue legal warehouse receipts of the association against the commodities delivered, and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed, or licensed and bonded, under the laws of this or any other state or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

**Sec. 23. May have contracts and agreements with other associations. R. S. c. 59, § 23.** 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, 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, unite in employing and using or may separately employ and use the same personnel, methods, means, and agencies for carrying on and conducting their respective businesses.

**Sec. 24. Rights and remedies apply to similar associations of other states. R. S. c. 59, § 24.** Any corporation or association heretofore or hereafter organized under generally similar laws of another state shall be allowed to carry on any proper activities, operations, and functions in this state upon compliance with the general regulations applicable to foreign corporations desiring to do business in this state, and all contracts which could be made by any association incorporated hereunder, made by or with such association, shall be legal and valid and enforceable in this state with all of the remedies set forth in this chapter.

**Sec. 25. Existing corporations and associations may adopt provisions of this chapter. R. S. c. 59, § 25.** 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 to the effect that the corporation or association has, by a majority vote of the stockholders or members, decided to accept the benefits and be bound by the provisions of this chapter and has authorized all changes accordingly. Articles of incorporation shall be filed as required in section 7 hereof, except that they shall be signed by the members of the then board of directors. The filing fee shall be the same as for filing an amendment to certificate of organization.

**Sec. 26. Penalty for inducing member to break contract; and for spreading false reports regarding association. R. S. c. 59, § 26.** Any person or persons or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association organized hereunder, or organized under similar statutes of other states with similar restrictions and rights and operating in this state under due authority, to breach his marketing contract with the association, or who maliciously and knowingly spread false reports about the finances or management or activity thereof, shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$100, nor more than \$1,000, for each such offense; and shall be liable to the association aggrieved in a civil suit in the penal sum of \$500 for each such offense.

**Sec. 27. Warehousemen receiving member's products in violation of member's contract prohibited; penalty. R. S. c. 59, § 27.** Any person, firm, or corporation conducting a warehouse within this state who solicits or persuades or knowingly permits any member of any association organized hereunder to breach his marketing contract with the association by accepting or receiving such member's products for sale or for auction or for display for sale, contrary to the terms of any marketing agreement of which said person or any member of the said firm or any active officer or manager of the said corporation has knowledge or notice, shall be liable to the association aggrieved in a civil suit in the penal sum of \$500

for each such offense; and such association may apply to the supreme judicial court or to the superior court for an injunction against such warehouseman to prevent further breaches and a multiplicity of actions thereon. In addition said warehouseman shall pay to the association a reasonable attorney's fee and all costs involved in any such litigation or proceeding at law.

**Sec. 28. Organization under this chapter not deemed to be in restraint of trade, conspiracies, or illegal monopolies.** R. S. c. 59, § 28. No association organized hereunder and complying with the terms hereof shall be deemed to be a conspiracy or a combination in restraint of trade or an illegal monopoly or an attempt to lessen competition or to fix prices arbitrarily; and the marketing contracts and agreements between the association and its members and any agreements authorized in this chapter shall not be deemed illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

**Sec. 29. Provisions of general corporation laws applicable.** R. S. c. 59, § 29. 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 chapter.

See c. 49, § 8, re general corporation laws.

**Sec. 30. Filing and recording of marketing agreements.** R. S. c. 59, § 30. The association may file for record an original or an authenticated copy of an executed marketing agreement in the office of the register of deeds in the county where the property is produced, or if there be several registry districts in a county, then in the registry district where the property is produced. The register shall record such agreement in a book kept for that purpose, noting therein and on the agreement, the time when it was received; and it shall be considered as recorded when received. After the filing of such agreement, the association may, in lieu of filing all other agreements obtained from its members, cause to be filed an affidavit prepared and signed by its secretary or other officer reciting that the association has executed other marketing agreements similar thereto giving the names and addresses of the members party thereto, the date on which the contracts were executed by the members, and the date of expiration if different from those of the recorded agreement; and such affidavit, when filed by the association with the register shall be recorded along with the marketing agreement. Such association may from time to time file for record supplemental affidavits covering additional marketing agreements.

**Sec. 31. Effect of filing and recording to convey notice.** R. S. c. 59, § 31. The filing and recording of such agreements or affidavits shall convey full notice of the existence of the various agreements and of the rights, claims, and interest of such association in the crops covered thereby.

**Sec. 32. Liens on crops before delivery; rights of lienholders; duties of members in relation to delivery to association.** R. S. c. 59, § 32. Whenever a crop has not yet been delivered by the members to such association under the terms of such recorded marketing agreement, and a decree of court has not been issued requiring delivery of the crop to the association, a lien shall attach to such crop in favor of any person, firm, partnership, or association who under the laws of this state would be entitled to such a lien in case no such marketing agreement concerning such crop existed. Such a lien shall be subject to the limitation that

it shall not entitle such lienholder to possession, use, enjoyment, or disposition of such crop as against such member, or association, or one holding under them; nor shall it entitle such lienholder to the incidents and remedies of such lien whereby the member would be deprived of full possession, use, enjoyment, and disposition of such crop so far as is necessary to the further production and delivery of such crop in prospective fulfilment or in performance of his marketing agreement; nor shall it deprive such association of its rights under the marketing agreements to demand possession and enforce by appropriate legal procedure its right to possession of such crop.

Provided, however, that whenever such crop shall not be so far produced as to entitle such association to delivery by the member under the terms of the marketing agreement, and on failure of such member to continue producing after reasonable opportunity and written notice given by the lienholder to such member, such lienholder may exercise any right or remedy against such crop under its lien in the same manner and with the same force and effect as if such marketing agreement did not exist. When such crop thereafter is produced, it must be delivered to the association for marketing, regardless of the rights accrued thereto.

Provided further, whenever such crop shall be so far produced as to entitle such association to delivery under its marketing agreement, and whenever such member in violation fails to deliver such crop under the terms thereof, such association must within a reasonable time take steps to commence an appropriate action for delivery of the crop in specie; else, after written demand on such association at its main office by such lienholder, if the association fails to act, such lienholder may exercise any right or remedy under its lien in the same manner and with the same force and effect as if such marketing agreement did not exist.

Provided further, that if said association is united with other associations organized under a similar agreement for similar purposes and the business of said association is transacted through a central agency, such written demand shall be made on said central agency at its main office instead of on said association.

**Sec. 33. Lien attaches to members claim against association after delivery of crop. R. S. c. 59, § 33.** Whenever such crop shall be delivered to the association under its marketing agreement, or a decree of court shall be issued requiring delivery of the crop to the association, then and thereafter a lienholder, who has acquired a lien subsequent to the filing and recording of the marketing agreement or affidavit covering such crop and prior to the date of the expiration thereof, shall be no longer entitled to any lien, interest in, or claim against such crop, but he shall instead acquire a lien on the claim of the member against the association for the net proceeds of sales by the association, whether specific proceeds or prorated proceeds of graded or other pools, or against the member's net interest in the association through his delivery of the commodity under the marketing agreement. The rights of the lienholder shall be subject to all the limitations and restrictions as to the sale, disposal, or use of such crop or the net proceeds thereof as are imposed on the member by the recorded marketing agreement.

**Sec. 34. Filing of statement of lien claim. R. S. c. 59, § 34.** Any person entitled to a lien under the provisions of this chapter shall, so far as is consistent with the provisions of this chapter, within the time and in the manner prescribed elsewhere by the law of this state, file a verified statement or other evidence and perform all acts such as are required by law for perfecting and enforcing the

respective lien which would arise under similar facts in the absence of this statute.

See c. 164, re liens.

**Sec. 35. Lienholder must give notice to association of existence of lien claim.** R. S. c. 59, § 35. When a lien or contract for a lien arises by the will or mutual agreement of the member and the lienholder, the lienholder, in order to effect a lien under the provisions of this chapter, must give written notice to the association at its main office of the agreement at the time of entering into it and of the lien at the time of its arising. When a lien arises other than by the will of the parties or by mutual agreement, the lienholder must give notice to the association at its main office of the lien at the time of the default of the member giving rise thereto. Provided, however, that if the affairs of said association are being conducted through such central agency as set forth in section 32, all notices hereunder shall be given to said central agency at its main office.

**Sec. 36. Association must sell and deliver proceeds within 10 months; advance payments must be paid to lienholder.** R. S. c. 59, § 36. The association must within 10 months of the delivery of a crop, sell such crop or a similar crop, and make payment to the lienholders out of the proceeds of such sale after deductions therefrom as provided by the marketing agreement. During such period and up to the time of such sale, advance payments due the member must be paid to the lienholder up to the amount of his lien. If such advance payments exceed the final net distribution, the association may recover from such member the amount of the excess. Nothing herein shall cause an association to be liable to any person in case a crop is not delivered to it, or obligate it to sell any greater amount of any crop than is required to pay off such lien; nor shall any association in any case be liable for a greater amount than the net proceeds of the sale of any crop less deductions as provided by the marketing agreement.

**Sec. 37. Enforcement of lienholder's claim; procedure; defenses available to association; limitation of action.** R. S. c. 59, § 37. In case of refusal of such association to pay over the proceeds of the sale of such crop under the conditions prescribed above, such lienholder may by appropriate civil action joining the member and association bring suit for the recovery of the value of his lien. Any judgment in such action shall run solely against the association, and satisfaction thereof by the association shall acquit and discharge it from any claims of or liability to the member up to the amount of the judgment. In such action the association may interpose any defense available to itself or to the member. Provided, however, that nothing in the provisions of this chapter shall operate so as to deprive such lienholder of any action allowed him by law against such member for recovery of the debt secured by the lien; and provided further, that any right of action arising under the provisions of this chapter or otherwise shall be limited by statutes of limitation prescribed by law for the enforcement of liens which would arise under similar facts in the absence of the provisions of this chapter.

**Sec. 38. Association to file bond with secretary of state in order to come under provisions of chapter; amounts of bonds, how fixed.** R. S. c. 59, § 38. No association shall come under the provisions of this chapter unless and until the association shall have deposited with the secretary of state annually, to be payable to and approved by him and subject to increase on his demand in case of depletion thereof, a good and sufficient bond with sureties or a surety company authorized to do business in the state, in the following amounts: when the total gross value

of business done by the association in the next previous calendar year shall have been less than \$1,000,000, the bond shall be \$50,000; when greater than \$1,000,000 but less than \$2,500,000, the bond shall be \$75,000; when \$2,500,000 or over, the bond shall be \$100,000. Such bond shall be conditioned that the association will fulfil all of its obligations as provided for by this chapter, and it shall serve as security for the payment of judgments obtained by lienholders against the association under the provisions of this chapter. The bond for the first year in which any cooperative shall conduct any business shall be in the amount of \$50,000. Provided, however, that if the affairs of the association are being conducted through such central agency as set forth in section 32, the bond provided for by this section shall be given by said central agency for and in behalf of itself and all associations whose affairs are conducted through such central agency so that said central agency shall annually be required to furnish but one bond for itself and all such associations. Such bond so given by said central agency shall be binding on all such associations and contain the same conditions, serve as security for the same payments, and the amounts of said bond shall be in the same amounts, as above set forth, as determined by the total gross value of business done through said central agency in the next previous calendar year.

**Sec. 39. Penalty for enforcing lien in violation of this chapter; lienholder liable in civil damages. R. S. c. 59, § 39.** Any lienholder who, in violation of the provisions of this chapter, shall knowingly and wilfully seize or receive or cause to be seized or received any crop, or who shall knowingly and wilfully enforce or attempt to enforce except by appropriate civil process a lien against such crop contrary to the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$100, nor more than \$1,000, for each offense; and shall be liable to the association aggrieved in a civil suit in the penal sum of \$500 for each offense.

**Sec. 40. Applicable provisions of law relating to liens to apply. R. S. c. 59, § 41.** All provisions of law relating to liens shall apply to crops covered by marketing agreements, except where such provisions are inconsistent with the provisions of this chapter, in which case any such provisions shall be construed as not applying to the liens herein provided for.

See c. 164, re liens.