

CHAPTER 421C
CONSUMER COOPERATIVE ASSOCIATIONS

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Cross Reference

Electric cooperatives; exemption by public utilities commission from certain requirements, see §269-31.

"PART I. GENERAL PROVISIONS

§421C-1 Definitions. Except where the context requires otherwise, wherever used in this chapter:

"Articles" means the articles of incorporation.

"Association" means a consumer cooperative association.

"Consumer cooperative association" means a group enterprise, organized on a cooperative basis and incorporated under this chapter such that:

- (1) Each member has one vote and only one vote, except as may be altered in the articles or bylaws of a secondary cooperative by provision for voting by member organizations;
- (2) The maximum rate at which any return is paid on share or membership capital is limited; and
- (3) The allocation or distribution of net savings after making provision for such separate funds as may be required or specially permitted by statute, articles, or bylaws, is made to member patrons or to all patrons, in proportion to their patronage; or is allocated in a manner which benefits the general welfare of all of the members of the association.

"Directors" means the board of directors of an association.

"Electric utility cooperative association" means a consumer cooperative association that provides electric utility service as a public utility.

"Interest-dividends" means the return on share, membership fee, or membership capital of the association which is limited in accordance with section 421C-19.

"Member" means a member of either a stock or a nonstock association in accordance with section 421C-3.

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

"Patronage refund" means the amount returned to the patrons in proportion to their patronage in accordance with section 421C-25.

"Non-escheat patronage refunds" means patronage refunds from an electric utility cooperative association for which a five-year period has elapsed since the patronage refunds were made and for which no claims have been made by the patrons to whom the refunds were allocated.

"Share or membership capital" refers to the capital paid into an association by a member in accordance with section 421C-3.

"Surplus funds" means funds of an association which may be utilized for capital improvements, emergencies, or other expenditures of the association upon the authorization of the directors as specified in section 421C-25 or as otherwise specified in this chapter.

"Unclaimed property" includes moneys, checks, drafts, interest, dividends, income, credit balances, overpayments, deposits, refunds, and non-escheat patronage refunds. [L 1982, c 97, pt of §2; am L 1984, c 217, §2; am L 1988, c 373, §21; am L 2005, c 52, §2]

" **[§421C-2] Purpose.** An association may be incorporated under this chapter only for the purpose of transacting any lawful business for its membership, the general public, or both. [L 1982, c 97, pt of §2]

" **§421C-3 Stock and nonstock associations; general corporation laws, when applicable.** (a) An association may either be organized with stock or without stock. Subject to section 421C-20, if organized with stock, the association shall require a certain amount of common stock to be purchased from the association in order to permit a stockholder voting and membership privileges, and no class of stock except common stock may grant voting and membership privileges in a stock association. Subject to section 421C-20, if organized without stock, the association shall require a membership fee or amount of membership capital to be paid in, in order to permit the member voting and membership privileges by means of issuance of a membership certificate.

(b) Except where otherwise provided, statutes and fees which apply to domestic profit corporations shall apply to stock associations, and statutes and fees which apply to domestic nonprofit corporations shall apply to nonstock associations.

(c) Associations may amend their articles upon approval by the director of commerce and consumer affairs of articles of amendment to convert from a stock association to a nonstock association or vice versa. This subsection may be employed by an association only once every two calendar years. [L 1982, c 97, pt of §2 and c 204, §8; am L 1983, c 124, §17; am L 1984, c 217, §3; am L 1988, c 373, §22]

"PART II. SPECIAL PROVISIONS

§421C-11 Forms. The department of commerce and consumer affairs may prescribe and furnish on request forms for documents required or permitted to be filed by this chapter. The director of commerce and consumer affairs may require that the use of these forms be mandatory. [L 1982, c 97, pt of §2 and c 204, §8; am L 2003, c 124, §45]

" **§421C-11.5 Articles.** (a) Articles shall be certified and executed by each of the incorporators, if natural persons, and by the president and secretary of the association, before any officer authorized to take acknowledgments, and shall contain the following:

- (1) The name of the association which shall contain the term "cooperative" or some abbreviation thereof notwithstanding section 421-5;
- (2) The mailing address and zip code of its principal office, which shall be in the State, the street address of the association's initial registered office, and the name of its initial registered agent at its initial registered office;
- (3) The purposes and powers of the association;
- (4) The duration of the association;
- (5) The number, names, and titles of the initial officers and directors, or similar officers;
- (6) The names and addresses of the incorporators, and if organized with stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (7) If organized with stock, the total authorized number of shares and the par value of each share, if any; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the interest-dividends to which each class shall be entitled; and
- (8) If organized without stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the rule by which the rights and interest shall be determined.

(b) The articles may also contain any other provisions, consistent with law for regulating the association's business or the conduct of its affairs. [L 1984, c 217, §4; am L 1988, c 373, §23; am L 2003, c 124, §46]

" **§421C-12 Bylaws; contents.** The bylaws shall contain:

- (1) The maximum amount or percentage of capital which may be owned or controlled by one member;
- (2) A provision that in all decisions to amend the articles or bylaws, as the case may be, the members shall be informed of those decisions at least thirty days in advance through a mailing or a prominent notice at all association locations;
- (3) The method and terms of admission to membership and the disposal of members' interests on termination of membership for any reason;
- (4) A provision stating that a majority of the directors, or five per cent of the members or two hundred fifty members, whichever is less, may submit a petition in writing and demand a special membership meeting, which shall be called by the secretary within thirty days of that demand;
- (5) A provision that notice for all meetings shall be made through posting prominent signs at all association locations or by mailing to the last known address of each member or director. Notices for special meetings shall specify the purpose of the meeting;
- (6) A provision that associations shall not discriminate on their acceptance of members on a basis of race, gender, religion, income, marital status, or nationality; and
- (7) A provision stating that within a specified period of time, any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition by at least five per cent of the members or two hundred fifty members, whichever is less, or by majority vote of the directors; provided that rights of third parties which have vested between the time of action by the directors and approval or disapproval by the members shall not be impaired. [L 1982, c 97, pt of §2; am L 1984, c 217, §5; am L 2001, c 129, §65]

" **[§421C-13] Meetings, etc.** The articles or bylaws may provide for the holding of meetings by units or portions of the total membership and may provide for a method of transmitting the votes cast to the central meeting, or for a method of representation of members by the election of delegates to attend the central meeting, or for a combination of these methods. If delegates are provided for, all references in this chapter to votes cast by members shall apply to votes cast by delegates. Directors may be apportioned among the units or portions of the total membership and may be elected by the units or portions of

the total membership to which they are apportioned. [L 1982, c 97, pt of §2]

" **§421C-14 One member, one vote.** (a) Each member of an association shall have one and only one vote; provided that secondary associations, which are associations solely comprised of other associations or groups organized on a cooperative basis, may allow exceptions to the one vote per member rule, by allocating votes on the basis of the following:

(1) The number of individual members in each organization;
or

(2) Size of dollar volume of direct transactions between the member organizations and the secondary association.

(b) Being "organized on a cooperative basis" means being organized such that:

(1) Each member has one vote and only one vote, except as may be altered in the articles or bylaws of a secondary cooperative by provision for voting by member organizations;

(2) The maximum rate at which any return is paid on share or membership capital is limited; and

(3) The allocation or distribution of net savings after making provision for such separate funds as may be required or specially permitted by statute, articles, or bylaws, is made to member patrons or to all patrons, in proportion to their patronage; or is allocated in a manner which benefits the general welfare of all of the members of the association.

(c) No voting agreement or other device to evade the one member, one vote rule shall be enforceable. [L 1982, c 97, pt of §2; am L 1984, c 217, §6]

" **[§421C-15] No proxy.** No member of an association shall be permitted to vote by proxy, subject to section 421C-16. [L 1982, c 97, pt of §2]

" **[§421C-16] Absentee voting.** The articles or bylaws may allow votes on specific preannounced items by mail or otherwise by members absent from meetings. [L 1982, c 97, pt of §2]

" **[§421C-17] Removal of directors.** Section 421-14, relating to the removal of a director of an agricultural association, shall apply to associations formed under this chapter. [L 1982, c 97, pt of §2]

" **[\$421C-18] Removal of officers.** Section 421-16, relating to the removal of an officer of an agricultural association, shall apply to associations formed under this chapter. [L 1982, c 97, pt of §2]

" **[\$421C-19] Limitations on interest-dividends.** (a) Interest-dividend interest on share or membership capital shall not exceed the current annual Consumer Price Index percentage increase, or eight per cent, whichever is greater. Interest on loans by members to the association shall not be limited by this section.

(b) Total interest-dividends distributed for any single period shall not exceed thirty per cent of the net savings for that period. Interest-dividends are noncumulative and the association shall have the right to confiscate all interest-dividends not claimed within six months after the notice of the distribution has been made by either mail or by prominent sign in all the association's locations. [L 1982, c 97, pt of §2]

" **[\$421C-20] Admission to membership.** The bylaws may provide that a subscriber may vote and hold office prior to payment in full of share or membership capital. [L 1982, c 97, pt of §2]

" **[\$421C-21] Issuance of stock and membership certificates.** (a) No certificate for membership or any class of stock shall be issued until paid for in full.

(b) The amount required to be paid in on share or membership capital by members shall not exceed twenty-five per cent of the average monthly wage in this State, as defined by the department of labor and industrial relations.

(c) Associations shall make available to all members a statement listing all rights and privileges of membership. [L 1982, c 97, pt of §2]

" **§421C-22 Transfer of shares and membership; withdrawal.**

(a) If a member desires to withdraw from the association or dispose of any or all of the member's holdings therein, the directors shall have the power to purchase those holdings by paying the member out of surplus funds the par value or book value, whichever is less, of any or all of the holdings offered. The directors shall then reissue or cancel the holdings.

(b) If the association fails, within ninety 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 prospective 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 there are sufficient surplus funds.

(c) Members who withdraw from an association under this section may not rejoin that association for six months except with the majority approval of the directors. [L 1982, c 97, pt of §2; am L 1984, c 217, §7]

" **[§421C-23] Recall of member's holdings.** (a) The bylaws may give the directors the authority to use surplus funds to recall, at par value or book value, whichever is less, the holdings of any member in excess of the amount requisite for membership.

(b) The directors may purchase the amount requisite for membership in cases of inactivity, expulsion, death of the member, or otherwise, as provided in the bylaws of the association. When so recalled, such stock or membership certificate shall be either reissued or canceled. [L 1982, c 97, pt of §2]

" **[§421C-24] Expulsion.** Pursuant to section 421C-23(b), associations may provide for expulsion of members. Unless otherwise provided, a member may be expelled and lose all rights and privileges in the association, by the vote of a majority of the directors voting at any validly held meeting of directors. The member against whom the charges are to be proffered shall be informed thereof in writing at least ten days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at such meeting. On decision of the association to expel a member, the directors shall purchase the member's holdings at par or book value, whichever is less, if and when there are sufficient surplus funds. [L 1982, c 97, pt of §2]

" **§421C-25 Allocation and distribution of net savings.** (a) At least once a year the members, the directors, or both, as the articles or bylaws provide, shall apportion the net savings of the association to one or more of the following categories; except that not less than ten per cent shall be placed in a surplus fund until such time as the fund shall equal at least fifty per cent of the paid-up share or membership capital:

- (1) Interest-dividends, within the limitations of section 421C-19 may be paid upon share or membership capital;
- (2) A portion of the net savings as determined by the articles or bylaws, may be allocated to an educational

fund to be used to further the understanding of the practices and principles of cooperation;

- (3) The association may also choose to pay a patronage refund from net savings and this shall be allocated at the same uniform rate to either the members or to all patrons of the association in proportion to their individual patronage, and according to the federal Internal Revenue Code of 1954, as amended; provided that:

(A) In the case of a member patron, the patron's proportionate amount of patronage refund shall be distributed to the patron;

(B) In the case of nonmember patrons, their proportionate amount of patronage refund, as the articles or bylaws may provide, may be distributed to them or, if requested by them, credited to their account until the amount of share or membership capital subscribed for has been fully paid.

- (4) The association may also choose to retain some or all its net savings and allocate it in the manner in which it will benefit the general welfare of all the members of the association.

(b) The surplus fund established in subsection (a) may be expended for capital improvements or emergencies upon a two-thirds majority vote of the directors, or may be expended under section 421C-22, 421C-23, or 421C-24, by majority vote of the directors. [L 1982, c 97, pt of §2; am L 2001, c 129, §66]

" **[\$421C-26] Cooperative agreements.** (a) Any association may enter into contracts, agreements, or arrangements with other associations, individuals, joint-ventures, partnerships, or corporations, for the cooperative and economical carrying on of its business.

(b) Any two or more associations by agreement may unite in employing and using or separately employ and use the same personnel, methods, means, and agencies for carrying on and conducting their respective business. [L 1982, c 97, pt of §2]

" **[\$421C-27] Bonding.** Any individual acting as manager of an association and handling funds or securities amounting to \$5,000 or more, in any one year, shall be covered by an adequate bond as determined by the directors and at the expense of the association. The bylaws may also provide for the bonding of other employees or officers. [L 1982, c 97, pt of §2]

" **§421C-28 Books; review.** (a) Subject to subsection (b), every association shall keep a set of books of the association's business operations, which shall be reviewed at the end of each fiscal year by a certified public accountant who shall not be an officer, director, or employee of the association.

(b) Where the annual gross business income of an association amounts to less than \$1,000,000 (which amount shall be adjusted for changes in the Consumer Price Index since May 15, 1982), the review need not be done by a certified public accountant but may be performed by a review committee of two individuals who shall not be employees, plus the association's treasurer.

(c) A written report of the review, which may include a statement of the amount of business transacted with members and the amount transacted with nonmembers, and which shall include a balance sheet of the association's income and expenses, shall be submitted to the annual meeting of the association. [L 1982, c 97, pt of §2; am L 1984, c 217, §8]

" **§421C-29 Annual report.** (a) Every association shall file with the director of commerce and consumer affairs an annual report as prescribed by the director. A copy of the report shall be submitted to the members at their annual meeting, mailed to each member of the association, or printed in an official publication of the association.

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for every association whose date of registration in this State falls between:

- (1) January 1 and March 31, the annual report shall be filed on or before March 31 of each year and shall reflect the state of the association's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, the annual report shall be filed on or before June 30 of each year and shall reflect the state of the association's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, the annual report shall be filed on or before September 30 of each year and shall reflect the state of the association's affairs as of July 1 of the year when filed; and

(4) October 1 and December 31, the annual report shall be filed on or before December 31 of each year and shall reflect the state of the association's affairs as of October 1 of the year when filed;

provided that if an association is formed in the same year in which the annual report is due, the association shall not be required to file an annual report for that year. Thereafter, the association shall comply with the requirements of this section. [L 1982, c 97, pt of §2 and c 204, §8; am L 1983, c 124, §17; am L 2002, c 130, §80]

" **[\$421C-30] Voluntary dissolution, etc.** Section 421-21 shall apply to associations formed under this chapter. For the purposes of this chapter, the term "voting power voting thereon" means those members present. [L 1982, c 97, pt of §2]

" **§421C-31 Merger.** The general corporation laws relating to the merger of domestic corporations shall apply to associations formed under this chapter. [L 1982, c 97, pt of §2; am L 1986, c 339, §73; am L 2004, c 121, §27]

" **[\$421C-32] Associations and agreements are not in restraint of trade.** No association, or method or act thereof which complies with this chapter, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily, or the creation of a combination or pool, or to accomplish any improper or illegal purpose. Any agreements authorized under this chapter shall not be considered as illegal, in restraint of trade, or as part of a conspiracy or combination to accomplish an illegal purpose or act. [L 1982, c 97, pt of §2]

Cross References

Restraint of trade exemption, see §480-11.

" **[\$421C-33] Volunteers exempted.** (a) For the purposes of this section, "volunteer" means an individual who:

- (1) Is a member of an association;
 - (2) Is not an employee of the association; and
 - (3) Who volunteers and donates up to twenty-five hours of labor and services per month to the association.
- (b) Associations may accept labor and services from volunteers.

(c) In addition to any exemptions granted to nonpaid labor, volunteers who acknowledge in writing that they are volunteers shall be construed not to be in the employ of the

association, their labor and services shall be construed to not be employment, and they shall not be construed to be employees of the association, under title 21 or any other labor law. [L 1982, c 97, pt of §2]

" **§421C-34 Use of name "cooperative"; penalty.** (a) Only (1) associations organized hereunder, (2) groups organized on a cooperative basis under this or any other law of this State, and (3) foreign corporations authorized to do business in this State on a cooperative basis under this or any other law of this State, shall be entitled to use the term "cooperative" or any abbreviation or derivation thereof, as part of their business name, or to represent themselves, in their advertising or otherwise, as conducting business on a cooperative basis as defined in this chapter, notwithstanding section 421-5.

(b) Any person, firm, or corporation violating this section shall be punished by a fine of not more than \$1,000, and the attorney general or any aggrieved individual, association, or group organized on a cooperative basis under this or any other law of this State may sue to enjoin an alleged violation of this section. [L 1982, c 97, pt of §2]

" **§421C-35 Construction of chapter.** If there is any conflict between this chapter and any other law, the provisions of this chapter shall control. [L 1982, c 97, pt of §2]

" **§421C-36 Exemption of voting stock from registration.** Membership stock or membership certificates under section 421C-3(a), or share or membership capital of any association organized under or existing prior to passage of this chapter shall be included as exempt securities under section 485A-201. [L 1982, c 97, pt of §2; am L 2006, c 229, §13]

Note

Effective date of L 1982, c 97 is May 15, 1982.

" **§421C-37 Existing cooperatives.** Any domestic corporation or group operating on a cooperative basis as defined in section 421C-1 may elect by a vote of two-thirds of the members present and voting to secure the benefits of and be bound by this chapter, and shall thereupon file such papers or amend such of its articles and bylaws as are not in conformity with these provisions. A certified copy of any amended articles shall be filed with the director of commerce and consumer affairs and a fee of \$25 shall be paid. [L 1982, c 97, pt of §2 and c 204, §8; am L 1983, c 124, §17; am L 1984, c 217, §9]

"[PART III. UNCLAIMED PROPERTY]

Revision Note

Part heading added by revisor.

[\$421C-41] Annual report of unclaimed property. Chapter 523A shall not apply to an electric utility cooperative association; provided that each association within one hundred twenty days after the close of the association's fiscal year, shall file with the director of finance an annual report of unclaimed property in its possession in a form prescribed by the director of finance; provided further that the electric utility cooperative association shall remain responsible for the payment of all claims relating to unclaimed property reported by it to the director of finance. [L 2005, c 52, pt of §1]

" **[\$421C-42] Disposition of non-escheat patronage refunds.**

(a) An electric utility cooperative association shall transfer all non-escheat patronage refunds to a nonprofit corporation incorporated pursuant to chapter 414D.

(b) The nonprofit corporation to which non-escheat patronage refunds are transferred pursuant to subsection (a) shall use the non-escheat patronage refunds to:

- (1) Fund electric energy assistance programs for low-income persons who reside in the service area of the electric utility cooperative association;
- (2) Make donations to other nonprofit charitable and community organizations, as authorized by its board of directors;
- (3) Grant educational scholarships to individuals who reside in the service area of the electric utility cooperative association; or
- (4) Support other appropriate uses for the benefit of the general membership of the electric utility cooperative association, as may be authorized by its board of directors. [L 2005, c 52, pt of §1]