

New Mexico State Statues

ARTICLE 4

COOPERATIVE ASSOCIATIONS

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53-4-1. Definitions. (1939)

Unless the subject matter or context requires otherwise, wherever used herein [Chapter 53, Article 4 NMSA 1978]:

A. "association" means a group enterprise legally incorporated hereunder, and shall be deemed to be a nonprofit corporation;

B. "member" means not only a member in a nonshare association but also a member in a share association;

C. "net savings" means the total income of an association minus the costs of operation;

D. "interest-dividends" means the return on share or membership capital which is limited in accordance with the provisions of Section 22 [53-4-22 NMSA 1978] herein;

E. "savings returns" means the amount returned to the patrons in proportion to their patronage in accordance with the provisions of Section 31 [53-4-31 NMSA 1978] herein;

F. "cooperative basis" as applied to any incorporated or unincorporated group not organized hereunder means:

(1) that each member has one vote and only one vote except as may be altered in the articles or by-laws [bylaws] by provision for voting by member organizations;

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

(3) that the allocation or distribution of 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 specially permitted by statute, articles or by-laws [bylaws], is made to member patrons, or to all patrons, in proportion to their partonage [patronage].

History: Laws 1939, ch. 164, § 1; 1941 Comp., § 54-1401; 1953 Comp., § 51-15-1.

53-4-1.1. Short title. (2001)

Chapter 53, Article 4 NMSA 1978 may be cited as the "Cooperative Association Act"

53-4-2. Who may incorporate. (1939)

Any five or more natural persons or two or more associations may incorporate hereunder.

History: Laws 1939, ch. 164, § 2; 1941 Comp., § 54-1402; 1953 Comp., § 51-15-2.

53-4-3. Purposes. (1939)

An association may be incorporated hereunder to engage in any one or more lawful mode or modes of acquiring, selling, producing, building, operating, manufacturing, furnishing, exchanging or distributing any type or types of property, commodities, goods or services, and for the transaction of any lawful business.

History: Laws 1939, ch. 164, § 3; 1941 Comp., § 54-1403; 1953 Comp., § 51-15-3.

53-4-4. Powers. (1939)

An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted herein and also:

- A. to continue as a corporation for the time specified in its articles;
- B. to have a corporate seal and to alter the same at pleasure;
- C. to sue and be sued in its corporate name;
- D. to make by-laws [bylaws] for the government and regulation of its affairs;
- E. to acquire, own, hold, sell, lease, pledge or mortgage any property incident to its purposes;

F. to own and hold membership in and share capital of other associations and corporations, and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;

G. to borrow money, contract debts and make contracts, including agreements of mutual aid or federation with other associations and other groups organized on a cooperative basis;

H. to conduct its affairs without as well as within this state;

I. to exercise in addition any power granted to ordinary business corporations, save those powers inconsistent herewith;

J. to exercise all powers not inconsistent herewith 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.

History: Laws 1939, ch. 164, § 4; 1941 Comp., § 54-1404; 1953 Comp., § 51-15-4.

53-4-5. Articles of incorporation; contents. (2003)

Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the presidents and the secretaries, if associations, before an officer authorized to take acknowledgments. Within the limitations set forth in the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978], the articles shall contain:

A. a statement as to the purpose for which the association is formed;

B. the name of the association, which shall include the word "cooperative";

C. the term of existence of the association, which may be perpetual;

D. the location and address of the principal office of the association;

E. the names and addresses of the incorporators of the association;

F. the names and addresses of the directors who will manage the affairs of the association for the first year, unless sooner changed by the members;

G. a statement of whether the association is organized with or without shares and the number of shares or memberships subscribed for;

H. if the association is organized with shares, the amount of authorized capital, the number and types of shares and the par value thereof, which may be placed at any figure, and the rights, preferences and restrictions of each type of share;

I. the minimum number of shares of the association that shall be owned in order to qualify for membership;

J. the maximum amount or percentage of capital of the association that may be owned or controlled by any member;

K. the method by which any surplus, upon dissolution of the association, shall be distributed in conformity with the requirements of the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978] for division of such surplus;

L. the address of the initial registered office of the association and the name of the initial registered agent at that address; and

M. a statement executed by the registered agent in which the agent acknowledges acceptance of the appointment by the filing association, if the agent is an individual, or a statement executed by an authorized officer of a corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent, if the agent is a corporation.

The articles may also contain other provisions not inconsistent with the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978].

History: Laws 1939, ch. 164, § 5; 1941 Comp., § 54-1405; 1953 Comp., § 51-15-5; 1978 Comp., § 53-4-5; Laws 1991, ch. 170, § 2; 1993, ch. 311, § 3; 1993, ch. 318, § 1; 2001, ch. 200, § 15; 2003, ch. 318, § 3.

53-4-6. Articles of incorporation; filing; recordation; fees. (2001)

The articles of incorporation of the association shall be filed with the public regulation commission together with a fee of fifty dollars (\$50.00) and shall be recorded with the county clerk of the county where the principal office of the association is located for a fee of one dollar (\$1.00).

History: Laws 1939, ch. 164, § 6; 1941 Comp., § 54-1406; 1953 Comp., § 51-15-6; Laws 1993, ch. 311, § 4; 2001, ch. 200, § 16.

53-4-6.1. Registered office and registered agent. (2001)

An association shall have and continuously maintain in New Mexico:

A. a registered office, which may be the same as its principal office; and

B. a registered agent that may be:

(1) an individual resident in the state whose business office is identical with the registered office of the association;

(2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or

(3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation.

History: Laws 2001, ch. 200, § 23.

53-4-6.2. Change of registered office or registered agent. (2003)

A. An association may change its registered office or its registered agent, or both, by filing in the office of the public regulation commission a statement that includes:

(1) the name of the association;

(2) the address of its registered office;

(3) if the address of the association's registered office is changed, the address to which the registered office is changed;

(4) the name of its registered agent;

(5) if the association's registered agent is changed:

(a) the name of its successor registered agent; and

(b) if the successor registered agent is an individual, a statement executed by the successor registered agent acknowledging acceptance of the appointment by the filing association as its registered agent; or

(c) if the successor registered agent is a corporation, a statement executed by an authorized officer of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent; and

(6) a statement that the address of the association's registered office and the address of the office of its registered agent, as changed, will be identical.

B. The statement made pursuant to the provisions of Subsection A of this section shall be executed by the association by any two members and delivered to the public regulation commission. If the commission finds that the statement conforms to the provisions of the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978], it shall file the statement in the office of the commission. The change of address of the registered office, or the appointment of a new registered agent, or both, shall become effective upon filing of the statement required by this section.

C. A registered agent of an association may resign as agent upon filing a written notice thereof, executed in duplicate, with the public regulation commission. The commission shall mail a copy immediately to the association in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the association. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission.

History: Laws 2001, ch. 200, § 24; 2003, ch. 318, § 4.

53-4-6.3. Service of process on association. (2001)

The registered agent appointed by an association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects the right for process, notice or demand to be served upon an association in any other manner permitted by law.

History: Laws 2001, ch. 200, § 25.

53-4-7. Articles of incorporation; amendments; fee. (2001)

A. Amendments to the articles of incorporation may be proposed by a two-thirds' vote of the board of directors or by petition of one-tenth of the association's members. Notice of the meeting to consider the amendment shall be sent by the secretary at least thirty days in advance to each member at his last known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt the amendment and, when verified by the president and the secretary, it shall be filed with the public regulation commission within thirty days of its adoption, and a fee of twenty-five dollars (\$25.00) shall be paid.

B. If the amendment is to alter the preferences of outstanding shares of any type or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning the outstanding shares affected by the change shall also be required for the adoption of the amendment.

C. The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment.

History: Laws 1939, ch. 164, § 7; 1941 Comp., § 54-1407; 1953 Comp., § 51-15-7; Laws 1993, ch. 311, § 5; 2001, ch. 200, § 17.

53-4-8. Adoption, amendment, or repeal of by-laws [bylaws] (1939)

By-laws [Bylaws] shall be adopted, amended, or repealed by a majority vote of the members voting.

History: Laws 1939, ch. 164, § 8; 1941 Comp., § 54-1408; 1953 Comp., § 51-15-8.

53-4-9. Contents of by-laws [bylaws] (1939)

The by-laws [bylaws] may, within the limitations set forth herein provide for:

- A. the method and terms of admission to membership and the disposal of members' interests on cessation of membership for any reason;
- B. the time, place and manner of calling and conducting meetings;
- C. the number or percentage of the members constituting a quorum;
- D. the number, qualifications, powers, duties, term of office, and manner, time and vote for election, of directors and officers; and the classification, if any, of directors;
- E. the compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;
- F. the method of distributing the net savings;
- G. the various discretionary provisions herein as well as other provisions incident to the purposes and activities of the association.

History: Laws 1939, ch. 164, § 9; 1941 Comp., § 54-1409; 1953 Comp., § 51-15-9.

53-4-9.1. Indemnification of officers and directors. (1987)

Each association shall have the power to indemnify any director or officer or former director or officer of the association against reasonable expenses, costs and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a director or officer. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director or officer shall not be indemnified if he shall be adjudged to be liable on the basis that he has breached or failed to perform the duties of his office and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a director or officer for reasonable expenses to be incurred in connection with the defense of the action, suit or

proceeding, provided that the director or officer shall reimburse the association if it is subsequently determined that the director or officer was not entitled to indemnification. Each association may make any other indemnification as authorized by the articles of incorporation or bylaws or by a resolution adopted after notice by the members entitled to vote. As used in this section, "director" means any person who is or was a director of the association and any person who, while a director of the association, is or was serving at the request of the association as a director, officer, partner, trustee, employee or agent of any foreign or domestic corporation or nonprofit corporation, cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust.

History: 1978 Comp., § 53-4-9.1, enacted by Laws 1987, ch. 238, § 1.

53-4-10. Regular and special meetings. (1939)

Regular meetings of members shall be held as prescribed in the by-laws [bylaws], 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 one-tenth of the members, in which case it shall be the duty of the secretary to call such meeting to take place within 30 days after such demand. Regular or special meetings, including meetings by units as hereinafter provided, may be held within or without this state as the articles or by-laws [bylaws] may prescribe.

History: Laws 1939, ch. 164, § 10; 1941 Comp., § 54-1410; 1953 Comp., § 51-15-10.

53-4-11. Notice of meeting. (1939)

The secretary shall give notice of the time and place of meetings by sending a notice thereof to each member at his last-known address not less than the number of days in advance of the meeting specified in the by-laws [bylaws]. In case of a special meeting the notice shall specify the purpose for which such meeting is called.

History: Laws 1939, ch. 164, § 11; 1941 Comp., § 54-1411; 1953 Comp., § 51-15-11.

53-4-12. Meetings by units of the membership. (1939)

The articles or by-laws [bylaws] may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes there cast to the central meeting, or for a method of representation by the election of delegates to the central meeting; or for a combination of both such methods.

History: Laws 1939, ch. 164, § 12; 1941 Comp., § 54-1412; 1953 Comp., § 51-15-12

53-4-13. One member - one vote. (1939)

Each member of an association shall have one and only one vote, except that, where an association has, as members, other associations, or groups organized on a cooperative basis, the voting rights of such member associations or groups may be prescribed in the article or by-laws [bylaws].

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

History: Laws 1939, ch. 164, § 13; 1941 Comp., § 54-1413; 1953 Comp., § 51-15-13.

53-4-14. No proxy. (1939)

No member shall be permitted to vote by proxy.

History: Laws 1939, ch. 164, § 14; 1941 Comp., § 54-1414; 1953 Comp., § 51-15-14.

53-4-15. Voting by mail. (1939)

The articles or by-laws [bylaws] may provide for either or both of the following types of voting by mail:

A. that the secretary shall send to the members a copy of any proposed schedule to be offered at a meeting, together with the notice of said meeting, and that the mail votes cast by the members shall be counted together with those cast at the meeting if such mail votes are returned to the association within a specified number of days;

B. that the secretary shall send to any member absent from a meeting an exact copy of the proposal acted upon at the meeting, and that the mail vote of the member upon such proposal, if returned within a specified number of days, shall be counted together with the votes cast at said meeting.

The articles or by-laws [bylaws] may also determine whether and to what extent mail votes shall be counted in computing a quorum.

History: Laws 1939, ch. 164, § 15; 1941 Comp., § 54-1415; 1953 Comp., § 51-15-15.

53-4-16. Application of voting provisions herein to voting by mail. (1939)

If an association has provided for voting by mail, any provision herein referring to votes cast by the members shall be construed to include the votes cast by mail.

History: Laws 1939, ch. 164, § 16; 1941 Comp., § 54-1416; 1953 Comp., § 51-15-16.

53-4-17. Application of voting provisions herein to voting by delegates. (1939)

If an association has provided for voting by delegates, any provision herein referring to votes cast by the members shall apply to votes cast by delegates; but this shall not permit delegates to vote by mail.

History: Laws 1939, ch. 164, § 17; 1941 Comp., § 54-1417; 1953 Comp., § 51-15-17.

53-4-18. Directors. (1939)

An association shall be managed by a board of not less than five directors, who shall be elected by and from the members of the association, and shall hold office until their successors are elected, or until removed. Vacancies in the board of directors, otherwise than by removal or expiration of term, shall be filled in such manner as the by-laws [bylaws] may provide.

The by-laws [bylaws] may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

An executive committee of the board of directors may be elected in such a manner and with such powers and duties as the articles or by-laws [bylaws] may prescribe.

Meetings of directors or of the executive committee may be held within or without the state.

History: Laws 1939, ch. 164, § 18; 1941 Comp., § 54-1418; 1953 Comp., § 51-15-18.

53-4-18.1. Duties of directors. (1987)

A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director believes to be in or not opposed to the best interests of the association and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a director shall be entitled to rely on factual information, opinions, reports or statements including financial statements and other financial data in each case prepared or presented by:

A. one or more officers or employees of the association whom the director reasonably believes to be reliable and competent in the matters presented;

B. counsel, public accountants or other persons as to matters which the director reasonably believes to be within such persons' professional or expert competence;
or

C. a committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but the director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

History: 1978 Comp., § 53-4-18.1, enacted by Laws 1987, ch. 238, § 2.

53-4-18.2. Liability of directors. (1987)

No director of the association shall be personally liable to the association or its members for monetary damages for breach of fiduciary duty as a director unless:

A. the director has breached or failed to perform the duties of the director's office in compliance with Section 53-4-18.1 NMSA 1978; and

B. the breach or failure to perform constitutes willful misconduct or recklessness.

The provisions of this section shall, however, only eliminate the liability of a director for action taken as a director or any failure to take action as a director at meetings of the board of directors or of a committee of the board of directors on or after the date when the provisions of this section become effective.

History: 1978 Comp., § 53-4-18.2, enacted by Laws 1987, ch. 238, § 3.

53-4-19. Officers. (1939)

The officers of an association shall include a president, one or more vice presidents, a secretary and a treasurer or a secretary-treasurer. The officers shall be elected annually by the directors unless the by-laws [bylaws] otherwise provide. The president and at least one vice president must be directors, but no other officer need be a director.

History: Laws 1939, ch. 164, § 19; 1941 Comp., § 54-1419; 1953 Comp., § 51-15-19.

53-4-20. Removal of directors and officers. (1939)

A director or officer may be removed with or without cause, by a vote of two-thirds of the members voting at a regular or special meeting. The director or officer involved shall have an opportunity to be heard at said meeting. A vacancy caused by any such removal shall be filled by the vote provided in the by-laws [bylaws] for election of directors.

History: Laws 1939, ch. 164, § 20; 1941 Comp., § 54-1420; 1953 Comp., § 51-15-20.

53-4-21. Referendum. (1939)

The articles or by-laws [bylaws] may provide 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 of at least ten percent (10%) of all the members or by vote of at least a majority of the directors. However, the rights of third parties which have vested between the time of such action and such referendum shall not be impaired thereby.

History: Laws 1939, ch. 164, § 21; 1941 Comp., § 54-1421; 1953 Comp., § 51-15-21.

53-4-21.1. Disposition of property. (1987)

An association may not sell, convey, lease, exchange, transfer or otherwise dispose of all or any substantial portion of its property unless such sale, conveyance, lease, exchange, transfer or other disposition is authorized at a duly held meeting of the members thereof by the affirmative vote of not less than two-thirds of all of the members of the association and unless the notice of such proposed sale, lease or other disposition shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained or any other provisions of law, the board of directors of an association, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon, or the pledging, assignment for security purposes or encumbering of any or all of the property, assets, rights, privileges, licenses, franchises and permits of the association, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of directors shall determine, to secure any indebtedness of the association.

History: 1978 Comp., § 53-4-21.1, enacted by Laws 1987, ch. 238, § 4.

53-4-22. Limitations on interest-dividends. (1983)

Interest-dividends shall not exceed fifteen percent per year and shall be noncumulative. Total interest-dividends distributed for any single period shall not exceed fifty percent of the net savings for that period.

History: Laws 1939, ch. 164, § 22; 1941 Comp., § 54-1422; 1953 Comp., § 51-15-22; Laws 1983, ch. 14, § 1

53-4-23. Eligibility and admission to membership. (1939)

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

History

History: Laws 1939, ch. 164, § 23; 1941 Comp., § 54-1423; 1953 Comp., § 51-15-23.

53-4-24. Subscribers. (1939)

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 [bylaws] may determine whether, and the conditions under which, any rights of membership shall be granted to subscribers.

History: Laws 1939, ch. 164, § 24; 1941 Comp., § 54-1424; 1953 Comp., § 51-15-24.

53-4-25. Share and membership certificates; issuance and contents. (1939)

No certificate for shares or for membership shall be issued until paid for in full. There shall be printed upon each certificate issued by an association a statement embodying the requirements of Sections 13, 14 and 26 [53-4-13, 53-4-14 and 53-4-26 NMSA 1978] herein and of any provisions in its articles which limit the right of the certificate holder to assign or transfer such certificate.

History: Laws 1939, ch. 164, § 25; 1941 Comp., § 54-1425; 1953 Comp., § 51-15-25.

53-4-25. Share and membership certificates; issuance and contents. (1939)

No certificate for shares or for membership shall be issued until paid for in full. There shall be printed upon each certificate issued by an association a statement embodying the requirements of Sections 13, 14 and 26 [53-4-13, 53-4-14 and 53-4-26 NMSA 1978] herein and of any provisions in its articles which limit the right of the certificate holder to assign or transfer such certificate.

History

History: Laws 1939, ch. 164, § 25; 1941 Comp., § 54-1425; 1953 Comp., § 51-15-25.

53-4-26. Transfer of shares and membership; withdrawal. (1939)

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 out of surplus funds the par value of any or all of the holdings offered. The directors shall then reissue 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, within 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 are under a duty to exercise their power to purchase, if and when there are sufficient surplus funds.

History: Laws 1939, ch. 164, § 26; 1941 Comp., § 54-1426; 1953 Comp., § 51-15-26.

53-4-27. Share and membership certificates; recall. (1939)

The by-laws [bylaws] may give the directors the power to use the surplus funds to recall, at par value, the holdings of any member in excess of the amount requisite for membership; and may also provide that if any member has failed to patronize the association during a period of time specified in the by-laws [bylaws], the directors may use the surplus funds to recall all his holdings and thereupon he shall cease to be a member of the association. When so recalled, such share or membership certificates shall be either reissued or canceled.

History: Laws 1939, ch. 164, § 27; 1941 Comp., § 54-1427; 1953 Comp., § 51-15-27.

53-4-28. Share and membership certificates,[,] attachment. (1939)

The holdings of any member of an association, to the extent of the minimum amount necessary for membership, shall be exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subject to such liability, the directors of the association may either admit the

purchaser thereof to membership, or may, if and when there are sufficient surplus funds, purchase from him such holdings at par value.

History: Laws 1939, ch. 164, § 28; 1941 Comp., § 54-1428; 1953 Comp., § 51-15-28.

53-4-29. Liability of members. (1939)

Members shall not be jointly or severally liable for any debts of the association, nor shall subscribers be so liable except to the extent of the unpaid amount on the shares or membership certificates subscribed by them. 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.

History: Laws 1939, ch. 164, § 29; 1941 Comp., § 54-1429; 1953 Comp., § 51-15-29.

53-4-30. Expulsion. (1939)

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 surplus funds.

History: Laws 1939, ch. 164, § 30; 1941 Comp., § 54-1430; 1953 Comp., § 51-15-30.

53-4-31. Allocation and distribution of net savings. (1939)

At least once a year the members and/or the directors, as the articles or by-laws [bylaws] may provide, shall apportion the net savings of the association in the following order:

A. not less than ten percent (10%) shall be placed in a surplus fund until such time as the fund shall equal at least fifty percent (50%) of the paid-up capital;

B. interest-dividends, within the limitations of Section 22 [53-4-22 NMSA 1978] may be paid upon share capital, or, if the by-laws [bylaws] so provide, upon the membership certificates of a nonshare association;

C. a portion of the remainder, as determined by the articles or by-laws [bylaws], shall be allocated to an educational fund to be used in teaching cooperation, and a

portion may also be allocated to funds for the general welfare of the members of the association;

D. the remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage, provided that:

(1) in the case of a member patron, his proportionate amount of savings return shall be distributed to him;

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

(3) in the case of nonmember patrons their proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember 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 towards payment of the minimum amount of share or membership capital necessary for membership. When a sum equal to this amount has been accumulated at any time within a period of time specified in the by-laws [bylaws], 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 bylaws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him;

(4) if within any periods of time specified in the articles or by-laws [bylaws], (a) any subscriber has not accumulated and paid in the amount of capital subscribed for; or (b) any nonmember patron has not accumulated in his individual account the sum necessary for membership; or (c) any nonmember patron has accumulated the sum necessary for membership but does not request or agree to become a member or fails to comply with the provisions of the bylaws, if any, for admission to membership, then: the amounts so accumulated or paid in and any part of the general fund for nonmember patrons, which has not been allocated to individual nonmember patrons, shall go to the educational fund and thereafter no member or other patron shall have any rights in said paid in [paid-in] capital or accumulated savings returns as such.

History

History: Laws 1939, ch. 164, § 31; 1941 Comp., § 54-1431; 1953 Comp., § 51-15-31.

53-4-32. Bonding. (1939)

Every individual acting as officer or employee of an association and handling funds or securities amounting to one thousand dollars (\$1,000.00) or more, in any one

year, shall be covered by an adequate bond as determined by the board of directors, and at the expense of the association; and the by-laws [bylaws] may also provide for the bonding of other employees or officers.

History

History: Laws 1939, ch. 164, § 32; 1941 Comp., § 54-1432; 1953 Comp., § 51-15-32.

53-4-33. Books; auditing. (1939)

To record its business operation, every association shall keep a set of books, which shall be audited at the end of each fiscal year by an experienced bookkeeper or accountant who shall not be an officer or director. Where the annual business amounts to less than ten thousand dollars [(\$10,000)], the audit may be performed by an auditing committee of three, who shall not be directors, officers, or employees. A written report of the audit, including a statement of the amount of business transacted with members, and the amount transacted with nonmembers, the balance sheet, and the income and expenses, shall be submitted to the annual meeting of the association.

History: Laws 1939, ch. 164, § 33; 1941 Comp., § 54-1433; 1953 Comp., § 51-15-33.

53-4-34. Annual report. (2001)

A. An association shall, annually within sixty days of the close of its operations for that year, make a report of its condition sworn to by the president and the secretary, which report shall be filed with the public regulation commission. The report shall state:

- (1) the name and principal address of the association;
- (2) the names and addresses of the officers and directors and the name and address of the initial registered agent and registered office of the association;
- (3) the amount and nature of the association's authorized, subscribed and paid-in capital, the number of its shareholders, the par value of its shares and the rate at which any interest-dividends have been paid. For nonshare associations, the annual report shall state the total number of members, the number admitted or withdrawn during the year and the amount of membership fees received; and
- (4) the receipts, expenditures, assets and liabilities of the association.

B. A copy of the report required pursuant to Subsection A of this section shall be kept on file at the principal office of the association.

C. A person who signs or verifies a report required pursuant to Subsection A of this section that contains a false statement, known to that person to be false, shall upon conviction be fined not exceeding five hundred dollars (\$500) or imprisoned not exceeding one year, or both.

D. Every association shall pay an annual fee of ten dollars (\$10.00) upon filing the report.

E. A supplemental report shall be filed with the public regulation commission within thirty days if, after filing of the annual report, a change is made in:

(1) the mailing address, street address, rural route number, box number, or the geographical location of its registered office in this state;

(2) the name of the agent at the address of the registered office upon whom process against the association may be served; or

(3) the name or address of any of the directors or officers of the association or the date when term of office expires.

History: Laws 1939, ch. 164, § 34; 1941 Comp., § 54-1434; 1953 Comp., § 51-15-34; Laws 1993, ch. 311, § 6; 2001, ch. 200, § 18.

53-4-35. Notice of delinquent reports; forfeitures; reinstatement. (2001)

If an association fails to make a report within the required period of sixty days, the public regulation commission shall, within sixty days from the expiration of the period, send the association a registered letter, directed to its principal office, stating the delinquency and its consequences. If the association fails to file the report within sixty days from the mailing of such notice, the commission shall notify it by registered letter that its corporate rights stand forfeited, shall remove its name from its list of live corporations and notify the attorney general, who shall cause its affairs to be wound up. If, within sixty days from such forfeiture, the association files the report and pays a penalty of ten dollars (\$10.00) and all actual expenses of any suit begun to wind it up, the commission shall set aside the forfeiture, the suit shall be dismissed and the association shall be reinstated to its former rights and legal status.

History: Laws 1939, ch. 164, § 35; 1941 Comp., § 54-1435; 1953 Comp., § 51-15-35; 2001, ch. 200, § 19.

53-4-36. Voluntary dissolution. (1939)

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. By a vote of a majority of

the members voting three 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, pay its debts and expenses; return to the members the par value of their shares or of their membership certificates; return to subscribers the amount paid on their subscriptions, to patrons the amount of savings returns credited to their accounts toward purchase of shares or membership certificates; and distribute 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 six years, on the basis of their patronage during that period;

B. as a gift to any consumers' cooperative association or other nonprofit enterprise which may be designated in the articles.

History: Laws 1939, ch. 164, § 36; 1941 Comp., § 54-1436; 1953 Comp., § 51-15-36. 53-4-37. Use of name "cooperative"; penalty. (2001)

A. Only the following entities are entitled to use the term "cooperative" or an abbreviation or derivation of that term as part of their business names or to represent themselves as conducting business on a cooperative basis:

(1) associations organized pursuant to the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978];

(2) groups organized on a cooperative basis pursuant to any other law of this state; and

(3) foreign corporations authorized to do business in this state on a cooperative basis pursuant to the Cooperative Association Act or any other law of this state.

B. Any person, firm or corporation violating the provisions of Subsection A of this section shall be guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars (\$200), and the attorney general or any aggrieved individual or association or group organized on a cooperative basis may sue to enjoin an alleged violation of this section.

C. Should the courts or the attorney general or the public regulation commission decide that any person, firm or corporation, using the name "cooperative" prior to these provisions and not organized on a cooperative basis, is entitled to continue in such use, any such business shall always place immediately after its name, the words "does not comply with the cooperative laws of New Mexico" in the same kind of type and in letters not less than two-thirds as large as those used in the term "cooperative".

History: Laws 1939, ch. 164, § 37; 1941 Comp., § 54-1437; 1953 Comp., § 51-15-37; 2001, ch. 200, § 20.

53-4-38. Promotion expenses; limitations; penalty. (1939)

An association shall not, directly or indirectly, use any of its funds, nor issue shares nor incur any indebtedness, for the payment of any promotion expenses or compensation for the organization of the association in excess of 5% of the amount paid in for the shares or membership certificates involved in the promotion transaction. Any association giving, or any person, firm, corporation or association receiving, such promotion commission in violation of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

History: Laws 1939, ch. 164, § 38; 1941 Comp., § 54-1438; 1953 Comp., § 51-15-38.

53-4-39. Spreading false reports; penalty. (1939)

Any person, firm, corporation or association which maliciously and knowingly spreads false reports about the management or finances of any association shall be guilty of a misdemeanor and be subject to a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) for each such offense.

History: Laws 1939, ch. 164, § 39; 1941 Comp., § 54-1439; 1953 Comp., § 51-15-39.

53-4-40. Existing cooperative corporations. (2001)

A group incorporated under another law of this state and operating on a cooperative basis may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by the provisions of the Cooperative Association Act [Chapter 53, Article 4 NMSA 1978] and shall amend its articles and bylaws not in conformity with those provisions. A certified copy of the amended articles shall be filed with the public regulation commission and a fee of twenty-five dollars (\$25.00) shall be paid.

History: Laws 1939, ch. 164, § 40; 1941 Comp., § 54-1440; 1953 Comp., § 51-15-40; 2001, ch. 200, § 21.

53-4-41. Foreign corporations. (2001)

A foreign corporation operating on a cooperative basis and complying with the applicable laws of the state in which it is organized is entitled to receive from the

public regulation commission a certificate authorizing it to do business in this state as a foreign cooperative corporation.

History: Laws 1939, ch. 164, § 41; 1941 Comp., § 54-1441; 1953 Comp., § 51-15-41; 2001, ch. 200, § 22.

53-4-42. Legality declared; not in restraint of trade. (1939)

No association, or method or act thereof which complies with these provisions 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 to accomplish any improper or illegal purposes.

History: Laws 1939, ch. 164, § 42; 1941 Comp., § 54-1442; 1953 Comp., § 51-15-42.

53-4-43. Laws not applicable. (1939)

No law of this state conflicting or inconsistent herewith shall, to the extent of the conflict or inconsistency be construed as applicable to associations formed hereunder.

History: Laws 1939, ch. 164, § 43; 1941 Comp., § 54-1443; 1953 Comp., § 51-15-43.

53-4-44. Subsequent laws. (1939)

No law of this state subsequent to these provisions shall be construed as amending or repealing these provisions or any part thereof unless such amendment or repeal is expressly stated therein.

History: Laws 1939, ch. 164, § 44; 1941 Comp., § 54-1444; 1953 Comp., § 51-15-44.

53-4-45. Taxation. (1993)

Associations formed under Chapter 53, Article 4 NMSA 1978 and foreign corporations admitted under Section 53-4-41 NMSA 1978 to do business in this state shall pay an annual license fee of twenty dollars (\$20.00).

History: Laws 1939, ch. 164, § 45; 1941 Comp., § 54-1445; 1953 Comp., § 51-15-45; Laws 1993, ch. 311, § 7.

ARTICLE 5

CORPORATE REPORTS

53-5-1. Short title.

53-5-2. Corporate and supplemental reports.

53-5-3. Public regulation commission to supply definitions.

53-5-4. Exempt corporations.

53-5-5. Corporate reports; affirmation; penalty.

53-5-6. Application for period of extension.

53-5-7. Failure to file corporate reports; penalty.

53-5-7.1. Canceled corporations stricken from public regulation commission files.

53-5-8. Public regulation commission may furnish forms; release of information; penalty.

53-5-9. Dormant corporations; statement in lieu of corporate report.

53-5-10. Repealed.

53-5-1. Short title. (1998)

Chapter 53, Article 5 NMSA 1978 may be cited as the "Corporate Reports Act".

History: 1953 Comp., § 51-21-1, enacted by Laws 1959, ch. 181, § 1; 1998, ch. 108, § 23.

53-5-2. Corporate and supplemental reports. (2003)

A. Pursuant to rules that the public regulation commission adopts to implement this section, a domestic or foreign corporation that is not exempted shall file in the office of the commission within thirty days after the date on which its certificate of incorporation or its certificate of authority, as the case may be, is issued by the commission, and biennially thereafter on or before the fifteenth day of the third month following the end of its taxable year, a corporate report in the form prescribed and furnished to the corporation not less than thirty days prior to such reporting date, by the commission, and signed and sworn to by the chairman of the board, president, vice president, secretary, principal accounting officer or authorized agent of the corporation, showing among other information prescribed by the commission:

(1) the current status of:

(a) the name of the corporation;

(b) the mailing address and: 1) street address if within a municipality; or 2) rural route number and box number or the geographical location, using well-known landmarks, if outside a municipality, of the corporation's registered office in this state and the name of the agent upon whom process against the corporation may be served;

(c) the names and addresses of all the directors and officers of the corporation and when the term of office of each expires;

(d) the address of the corporation's principal place of business within the state and, if a foreign corporation, the address of its registered office in the state or country under the laws of which it is incorporated and the principal office of the corporation, if different from the registered office; and

(e) the date for the next annual meeting of the shareholders for the election of directors; and

(2) the corporation's taxpayer identification number issued by the revenue processing division of the taxation and revenue department.

B. When the public regulation commission receives a report required to be filed by a corporation under the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978], it shall determine if the report conforms to the requirements of this section. If the commission finds that the report conforms, it shall be filed. If the commission finds that the report does not conform, it shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed in the Corporate Reports Act for failure to file the report in the time provided shall not apply if the report is corrected and returned to the commission within thirty days from the date on which it was mailed to the corporation by the commission.

C. The public regulation commission may refuse to file a corporate report or a supplemental report received from a corporation that has not paid all fees, including penalties and interest due and payable, to the commission at the time of filing. However, if the corporation and the commission are engaged in any adversary proceeding over the assessment of any fees, the commission shall file the report of the corporation upon its submission to the commission.

D. A supplemental report shall be filed with the public regulation commission within thirty days if, after the filing of the corporate report required under the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978], a change is made in:

(1) the mailing address, street address, rural route number and box number or the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;

(2) the name or address of any of the directors or officers of the corporation or the date when the term of office of each expires; or

(3) its principal place of business within or without the state.

History

History: 1953 Comp., § 51-21-1, enacted by Laws 1978, ch. 9, § 1; 1979, ch. 181, § 1; 1983, ch. 304, § 4; 1989, ch. 386, § 1; 2001, ch. 200, § 27; 2003, ch. 318, § 5.

53-5-3. Public regulation commission to supply definitions. (2001)

The public regulation commission shall prepare and make available with appropriate corporate report forms a list of definitions of corporate and financial terms used in the annual corporate reports.

History

History: 1953 Comp., § 51-21-3, enacted by Laws 1959, ch. 181, § 3; 2001, ch. 200, § 28.

53-5-4. Exempt corporations. (1977)

The following corporations shall be exempt from filing a report pursuant to the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978]:

A. state banks or insurance companies incorporated under the laws of New Mexico;

B. insurance companies which are incorporated under the laws of the United States, other states or foreign countries, and which are licensed to transact business in the state of New Mexico;

C. national banks; and

D. nonprofit corporations.

History

History: 1953 Comp., § 51-21-4, enacted by Laws 1959, ch. 181, § 4; 1969, ch. 154, § 1; 1977, ch. 103, § 4.

53-5-5. Corporate reports; affirmation; penalty. (1979)

A. All reports required to be filed with the commission pursuant to the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978] shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statements, and that all statements contained therein are true and correct."

B. Any person who makes and subscribes any report required under the Corporate Reports Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

History: 1978 Comp., § 53-5-5, enacted by Laws 1979, ch. 181, § 2.

53-5-6. Application for period of extension. (2001)

A. A corporation may, upon application to the public regulation commission by the date upon which a report is required to be filed under the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978], petition the commission for an extension of time in which to file the required report.

B. For good cause shown, the public regulation commission may extend for no more than a total of twelve months the date on which any return required by the provisions of the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978] must be filed or the date on which the payment of any fee is required for a specific corporation subject to the Corporate Reports Act. No extension shall prevent the accrual of interest as otherwise provided by law.

C. The public regulation commission shall, when an extension of time has been granted a corporation under the United States Internal Revenue Code of 1986 for the time in which to file a return, grant the corporation the same extension of time to file the required return and to pay the required fees and tax if a copy of the approved federal extension of time is attached to the corporation's annual report. No extension of time granted shall prevent the accrual of interest as otherwise provided by law.

D. Nothing contained in this section shall prevent the collection of any tax, penalty or interest due upon the failure of any corporation to submit the required report.

History: 1953 Comp., § 51-21-6, enacted by Laws 1959, ch. 181, § 6; 1961, ch. 197, § 7; 1977, ch. 103, § 6; 1979, ch. 181, § 3; 1989, ch. 102, § 1; 2001, ch. 200, § 29

53-5-7. Failure to file corporate reports; penalty. (2003)

A. A domestic corporation required to file an annual corporate report, as provided in the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978], that fails to submit the report within the time prescribed for a reporting period shall incur a civil penalty of two hundred dollars (\$200) in addition to the fee for filing the report, such civil penalty to be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to the corporation's mailing address as shown in the last corporate report filed with the public regulation commission, the corporation shall have its certificate of incorporation canceled by the commission without further proceedings, unless the report is filed and all fees and penalties are paid within that sixty-day period.

B. A foreign corporation required to file an annual corporate report that fails to submit the report within the time prescribed for any reporting period shall incur a civil penalty of two hundred dollars (\$200) in addition to the fee for filing the report. The civil penalty shall be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to the corporation's mailing address as shown in the last corporate report filed with the public regulation commission, the corporation shall have its certificate of authority to do business in this state canceled by the commission without further proceedings, unless the report is filed and all fees and penalties are paid within that sixty-day period. Nothing in this section authorizes a forfeiture of the right or privilege of engaging in interstate commerce.

C. A domestic or foreign corporation not exempted from filing a supplemental report, as provided in the Corporate Reports Act, that fails to submit the required report within the time prescribed for a reporting period shall incur a civil penalty of two hundred dollars (\$200) in addition to the fee for filing the report, such civil penalty to be paid upon filing the report.

D. An order of the public regulation commission may be appealed to the district court of Santa Fe county within sixty days of the date it was issued by the commission.

E. If a report required under the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978] is mailed, the public regulation commission shall allow three additional days when considering the postmark as the date of submission when determining if a filing is timely.

History

History: 1953 Comp., § 51-21-7, enacted by Laws 1959, ch. 181, § 7; 1961, ch 63, § 1; 1967, ch. 252, § 2; 1969, ch. 22, § 3; 1977, ch. 103, § 7; 1979, ch. 181, § 4; 1983, ch. 304, § 5; 1988, ch. 42, § 1; 2001, ch. 200, § 30; 2003, ch. 318, § 6.

53-5-7.1. Canceled corporations stricken from public regulation commission files. (2001)

A domestic corporation whose certificate of incorporation has been canceled by the public regulation commission pursuant to Section 53-5-7 NMSA 1978 shall be stricken from the files of the commission without further proceedings. A foreign corporation whose certificate of authority to do business in the state has been canceled by the commission pursuant to Section 53-5-7 NMSA 1978 shall be stricken from the files of the commission without further proceedings.

History: Laws 2001, ch. 200, § 26.

53-5-8. Public regulation commission may furnish forms; release of information; penalty. (2001)

- A. The public regulation commission may, upon application, furnish the necessary blank forms used in the preparation of the annual corporate reports.
- B. The public regulation commission shall provide pursuant to the provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978] for the retention, storage and destruction of annual corporate reports filed with the commission.
- C. Information obtained from reports filed pursuant to the provisions of the Corporate Reports Act [Chapter 53, Article 5 NMSA 1978] shall be made available to interested persons during proper hours, except that data contained in Paragraph (2) of Subsection A of Section 53-5-2 NMSA 1978 shall not be released unless in statistical form classified to prevent identification of particular corporations.
- D. All reports required under the Corporate Reports Act may be used as evidence at any trial or hearing of the public regulation commission.
- E. All reports required under the Corporate Reports Act shall be made available to the revenue processing division of the taxation and revenue department upon written request and the revenue processing division shall be subject to the same restrictions upon revealing the information as are imposed by this section upon the public regulation commission.
- F. Any other state agency or department or United States agency or department upon written request to the public regulation commission may examine reports filed with the commission upon a showing that the corporate reports sought to be examined are germane to an investigation being conducted by the petitioning agency or department, and any information revealed is subject to Subsection G of this section.
- G. Any person who releases information contrary to the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) nor less than one hundred dollars (\$100) or by

imprisonment in the county jail not more than ninety days nor less than thirty days or by both fine and imprisonment in the discretion of the judge.

History: 1953 Comp., § 51-21-8, enacted by Laws 1959, ch. 181, § 8; 1961, ch. 152, § 2; 1977, ch. 103, § 8; 2001, ch. 200, § 31.

53-5-9. Dormant corporations; statement in lieu of corporate report. (2003)

A. Whenever a corporation is no longer engaged in active business in this state or in carrying out the purposes of its incorporation, two of its shareholders, directors or officers may unite in signing a statement to that effect; the statement shall be filed with the public regulation commission in lieu of the required corporate report. Upon the filing of this statement and the payment of all fees and penalties, the commission is authorized to strike the name of the corporation from the list of active corporations in this state; but this action shall not be construed in any sense as a formal dissolution of the corporation and the corporation shall not be relieved thereby from any outstanding obligation. A dormant corporation may be fully revived by the resumption of active business and the filing of a corporate report.

B. A dormant corporation may continue in dormant status by filing a statement of renewal every five years to the effect that it is not engaged in active business in this state and is not carrying out the purposes of its incorporation. Sixty days after written notice of failure to file a statement of renewal has been mailed to its registered agent and also to the principal office of the corporation as shown in the last corporate report filed with the commission, the corporation shall have its certificate of incorporation or authority canceled by the commission without further proceedings unless the statement of renewal is filed and all fees are paid within that sixty-day period.

History: 1953 Comp., § 51-21-9, enacted by Laws 1959, ch. 181, § 9; 1983, ch. 304, § 6; 2001, ch. 200, § 32; 2003, ch. 318, § 7.