

Senate Engrossed House Bill

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

FILED
MICHELE REAGAN
SECRETARY OF STATE

CHAPTER 349

HOUSE BILL 2614

AN ACT

AMENDING SECTIONS 10-2001, 10-2003, 10-2004, 10-2005, 10-2008, 10-2016, 10-2018, 10-2020, 10-2025 AND 10-2026, ARIZONA REVISED STATUTES; RELATING TO COOPERATIVE ASSOCIATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Heading change

3 The chapter heading of title 10, chapter 19, Arizona Revised Statutes,
4 is changed from "CORPORATIONS AND ASSOCIATIONS NOT FOR PROFIT" to "NOT FOR
5 PROFIT CORPORATIONS AND ASSOCIATIONS, COOPERATIVES AND FRATERNAL AND
6 BENEVOLENT SOCIETIES".

7 Sec. 2. Section 10-2001, Arizona Revised Statutes, is amended to read:
8 10-2001. Definitions

9 In this article, unless the context otherwise requires:

10 1. "Active member" is a member growing a ~~product~~, PRODUCING,
11 MANUFACTURING, MARKETING, DISTRIBUTING OR SELLING PRODUCTS OR SERVICES
12 handled by the association at the time of the membership meeting, or who
13 during the previous year, delivered products OR SERVICES to the association.

14 2. "Agricultural products" includes horticultural, viticultural,
15 forestry, dairy, livestock, poultry, bee and any farm products.

16 3. "Association" means a corporation organized under ~~the provisions of~~
17 this article.

18 4. "Marketing agreement" OR "MARKETING CONTRACT" means any agreement
19 entered into between an association organized under this article and its
20 members, by the terms of which a subscribing grower, PRODUCER, MANUFACTURER,
21 MARKETER, DISTRIBUTOR OR SELLER and all other growers, PRODUCERS,
22 MANUFACTURERS, MARKETERS, DISTRIBUTORS OR SELLERS signing similar agreements,
23 agree to sell their ~~agricultural~~ products OR SERVICES, GOODS FOR IMPORT OR
24 EXPORT PURPOSES to or through such association.

25 5. "Member" includes members of associations.

26 Sec. 3. Section 10-2003, Arizona Revised Statutes, is amended to read:
27 10-2003. Requirements for formation; association profits

28 A. ~~Five or more persons engaged in the production of agricultural~~
29 ~~products~~ THE FOLLOWING may form a nonprofit, cooperative association WITH OR
30 without capital stock under ~~the provisions of~~ this article: ~~—~~

31 1. FIVE OR MORE PERSONS ENGAGED IN THE PRODUCTION OF PRODUCTS OR
32 SERVICES.

33 2. FIVE OR MORE SMALL BUSINESSES, INDIVIDUALS OR ENTITIES ENGAGED IN
34 THE MARKETING AND DISTRIBUTION OF MANUFACTURED GOODS FOR IMPORT AND EXPORT
35 PURPOSES.

36 B. Associations organized under this article ~~shall not~~ MAY make
37 profits for themselves or for their members, ~~but only for their members as~~
38 ~~producers~~.

39 Sec. 4. Section 10-2004, Arizona Revised Statutes, is amended to read:
40 10-2004. Articles of incorporation; amendments

41 A. Articles of incorporation shall be filed setting forth:

42 1. The name of the association.

43 2. The purposes for which it is formed.

44 3. The place where its principal business will be transacted.

45 4. The term for which it is to exist.

1 5. The number of directors thereof, which shall not be less than five,
2 and their term of office.

3 6. A STATEMENT INDICATING WHETHER THE ASSOCIATION WILL BE A FOR-PROFIT
4 ASSOCIATION OR A NONPROFIT ASSOCIATION.

5 7. IF THE ASSOCIATION WILL BE A FOR-PROFIT ASSOCIATION AND WILL HAVE
6 CAPITAL STOCK, A STATEMENT INDICATING THE NUMBER OF SHARES THAT THE
7 ASSOCIATION IS AUTHORIZED TO ISSUE.

8 B. The articles shall be subscribed and filed in accordance with the
9 provisions of general corporation law.

10 C. The articles of incorporation may be altered or amended at a
11 regular meeting, or at a special meeting called for that purpose, by the
12 affirmative vote of a majority of the active members of the association, and
13 on at least thirty ~~days~~ DAYS' notice in writing of the proposed alteration or
14 amendment. Amendments to the articles when adopted shall be filed as
15 required by law.

16 Sec. 5. Section 10-2005, Arizona Revised Statutes, is amended to read:

17 10-2005. Powers of association

18 An association incorporated under this article may:

19 1. Engage in any activity in connection with the MANUFACTURING,
20 marketing, harvesting, processing, storing, handling or utilization of
21 ~~agricultural products or their by-products delivered to it~~ SERVICES, or the
22 providing of labor, or in connection with the purchase, hiring or use by its
23 patrons of supplies, machinery or equipment, or in the financing of any such
24 activities, but the associations shall not deal in the products of nonmembers
25 to an amount greater in value than that of products handled for members.

26 2. Borrow money and make advances on products delivered.

27 3. Act as the agent or representative of any member or patron in such
28 activities.

29 4. Acquire, hold, own and exercise all rights of ownership in, and
30 sell, transfer or pledge shares of the capital stock or bonds, or become a
31 member or a stockholder of any corporation or association engaged in a
32 related activity or in the handling, marketing or financing of any products
33 handled by the association, but stocks, bonds or other securities owned by a
34 subsidiary may not be pledged, sold or otherwise disposed of until thirty
35 days notice has been given to all members of the association in the manner
36 provided by its bylaws. Such stock, bonds and other securities of a
37 subsidiary may be placed with the state treasurer for safe keeping, and he
38 shall not surrender them until proof of notice as required by this article
39 has been given.

40 5. Establish reserves and invest the funds thereof in stocks and bonds
41 of any corporation or association engaged in a related activity, or in the
42 handling, marketing, processing or financing of the products handled by the
43 association, or in such other property as the board of directors of the
44 association deems satisfactory.

1 6. Do any act necessary to carry out the specific powers conferred by
2 this article, and do such acts within or without the state.

3 7. Possess the powers, rights and privileges of corporations organized
4 under the general law of the state, unless inconsistent with this article.

5 8. ENGAGE IN ANY ACTIVITY IN CONNECTION WITH THE MARKETING OR
6 DISTRIBUTION OF MANUFACTURED GOODS FOR IMPORT AND EXPORT PURPOSES OR THE
7 PROVIDING OF LABOR, IN CONNECTION WITH THE PURCHASE, HIRING OR USE BY THE
8 ASSOCIATION'S PATRONS OF SUPPLIES, MACHINERY OR EQUIPMENT, OR IN CONNECTION
9 WITH THE FINANCING OF ANY SUCH ACTIVITIES, BUT THE ASSOCIATION MAY NOT DEAL
10 IN THE PRODUCTS OF NONMEMBERS TO AN AMOUNT GREATER IN VALUE THAN THAT OF
11 PRODUCTS HANDLED FOR MEMBERS.

12 9. ENGAGE IN ANY ACTIVITY INVOLVING THE HARVESTING, PROCESSING,
13 STORING, HANDLING OR USE OF PRODUCTS FOR THE PRODUCTION, MANUFACTURING AND
14 SALE OF PRODUCTS OR SERVICES OR THE PROVIDING OF LABOR, IN CONNECTION WITH
15 THE PURCHASE, HIRING OR USE BY THE ASSOCIATION'S PATRONS OF SUPPLIES,
16 MACHINERY OR EQUIPMENT, OR IN CONNECTION WITH THE FINANCING OF ANY SUCH
17 ACTIVITIES, BUT THE ASSOCIATION MAY NOT DEAL IN THE PRODUCTS OF NONMEMBERS TO
18 AN AMOUNT GREATER IN VALUE THAN THAT OF PRODUCTS HANDLED FOR MEMBERS.

19 10. RAISE EQUITY FROM NONPROFIT INVESTORS AND PATRON MEMBERS.

20 Sec. 6. Section 10-2008, Arizona Revised Statutes, is amended to read:

21 10-2008. Eligibility for membership

22 Under the terms and conditions prescribed in its ~~by-laws~~ BYLAWS, an
23 association may admit as members persons engaged in production of the
24 ~~agricultural~~ products OR SERVICES to be handled by or through the
25 association, including lessees and tenants of land used for production of
26 such products, lessors and landlords who receive as rent part of the crop
27 raised OR PRODUCTS CREATED on the leased premises and persons or corporations
28 regularly engaged in financing SUCH production of the ~~agricultural~~
29 commodities.

30 Sec. 7. Section 10-2016, Arizona Revised Statutes, is amended to read:

31 10-2016. Marketing contracts; remedies for breach

32 A. The association and its members may make and execute marketing
33 contracts requiring the members to sell, for any period of time not over ten
34 years, all or any specified part of their agricultural products, ~~or~~ THEIR
35 specified commodities, OR THEIR MANUFACTURED GOODS exclusively to or through
36 the association or its facilities.

37 B. The membership contract may provide for membership for a longer
38 period than ten years but not exceeding thirty years, if the contract
39 provides opportunity to the members for withdrawal at least once each year.

40 C. The contract may provide that the association may sell the products
41 of its members, with or without taking title thereto, and pay to its members
42 the average sale price based on grade and quantity, after deducting all
43 necessary selling, overhead and other costs and expenses.

44 D. When provided in the ~~by-laws~~ BYLAWS, the marketing contract may
45 fix, as liquidated damages, specific sums to be paid by the members to the

1 association upon the breach by him of any provision of the marketing contract
2 regarding the sale or delivery or withholding of products, and that the
3 member will pay all costs, premiums for bonds, expenses and fees if an action
4 is brought upon the contract by the association, and such provision shall be
5 valid and enforceable in the courts.

6 E. In event of a breach, or threatened breach, of the marketing
7 contract by a member, the association may apply for an injunction to prevent
8 the further breach of the contract, and to enforce specific performance
9 thereof.

10 Sec. 8. Section 10-2018, Arizona Revised Statutes, is amended to read:
11 10-2018. Investments; limitation; disposition of profits

12 A. An association may organize, form, operate, own, control, have an
13 interest in, own stock of or be a member of any other corporation, with or
14 without capital stock, engaged in processing, handling, utilizing,
15 manufacturing, marketing, financing or selling ~~agricultural~~ products OR
16 SERVICES handled by the association, or the by-products thereof.

17 B. Profits or income received from the investments provided for in
18 subsection A may be added to the reserves of the association to be
19 distributed or handled according to the discretion of the board of directors.

20 C. An association may enter into agreements and arrangements with
21 another cooperative corporation or association formed in this or any other
22 state for the cooperative and more economical carrying on of its business, or
23 any part thereof. Any two or more associations may by agreement unite in
24 employing and using the same methods, means and agencies for conducting their
25 businesses.

26 Sec. 9. Section 10-2020, Arizona Revised Statutes, is amended to read:
27 10-2020. License and other fees; tax exemption

28 Each association shall pay a nonrefundable annual license fee of ten
29 dollars, ~~but~~. A NONPROFIT AGRICULTURAL PRODUCTS ASSOCIATION FORMED PURSUANT
30 TO THIS ARTICLE shall be exempt from all franchise or license taxes IMPOSED
31 ON ITS INCOME. Each association shall pay a nonrefundable fee of ten dollars
32 for filing articles of incorporation and a nonrefundable fee of two dollars
33 fifty cents for filing an amendment to the articles. All other FOR-PROFIT
34 ASSOCIATION FILING, SERVICE AND COPYING FEES ARE DETERMINED PURSUANT TO
35 SECTION 10-122 AND ALL OTHER NONPROFIT ASSOCIATION filing, service and
36 copying fees are determined pursuant to section 10-3122.

37 Sec. 10. Section 10-2025, Arizona Revised Statutes, is amended to
38 read:

39 10-2025. Security law; applicability

40 Title 44, chapter 12 ~~does not apply to the issuance of membership~~
41 ~~certificates or other evidence of member interest, equity or contribution by~~
42 ~~any association organized pursuant to this article.~~ APPLIES ONLY TO A
43 COOPERATIVE ASSOCIATION THAT IS FORMED UNDER THIS ARTICLE IF EITHER:

44 1. THE COOPERATIVE ASSOCIATION IS FORMED WITH CAPITAL STOCK.

1 2. THE COOPERATIVE ASSOCIATION EXERCISES ITS POWERS PURSUANT TO
2 SECTION 10-2005, PARAGRAPH 10.

3 Sec. 11. Section 10-2026, Arizona Revised Statutes, is amended to
4 read:

5 10-2026. Merger, interest exchange, conversion, domestication
6 or division; definitions

7 A. A domestic cooperative ~~marketing~~ association may be a party to or
8 otherwise undertake a merger, an interest exchange, a conversion, a
9 domestication or a division by complying with chapter 34 of this title and
10 title 29, chapter 6.

11 B. If a domestic cooperative ~~marketing~~ association is to be created in
12 a merger, a conversion, a domestication or a division, the initial members of
13 the association must consist of ANY OF THE FOLLOWING:

14 1. Five or more persons engaged in the production of agricultural
15 products ~~in accordance with~~ PURSUANT TO section 10-2003, subsection A.

16 2. FIVE OR MORE SMALL BUSINESSES, INDIVIDUALS OR ENTITIES ENGAGED IN
17 THE MARKETING AND DISTRIBUTION OF MANUFACTURED GOODS FOR IMPORT AND EXPORT
18 PURPOSES.

19 3. FIVE OR MORE PERSONS FOR THE PURPOSE OF PRODUCING, MANUFACTURING
20 AND SELLING GOODS OR SERVICES.

21 C. For the purposes of this section, references in chapter 34 of this
22 title to a "corporation" are deemed references to a domestic cooperative
23 ~~marketing~~ association.

24 D. For the purposes of this section:

25 1. "Conversion" means a transaction authorized by title 29, chapter 6,
26 article 4.

27 2. "Division" means a transaction authorized by title 29, chapter 6,
28 article 6.

29 3. "Domestication" means a transaction authorized by title 29, chapter
30 6, article 5.

31 4. "Interest exchange" means a transaction authorized by title 29,
32 chapter 6, article 3.

33 5. "Merger" means a transaction authorized by title 29, chapter 6,
34 article 2.

APPROVED BY THE GOVERNOR MAY 18, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2016.

Passed the House March 1, 2016

Passed the Senate April 12, 2016

by the following vote: 58 Ayes,

by the following vote: 27 Ayes,

1 Nays, 1 Not Voting

1 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

Pro Tempore

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

 day of , 20

at o'clock M.

Secretary to the Governor

Approved this day of

at o'clock M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this day of , 20

at o'clock M.

Secretary of State

H.B. 2614

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 6, 2016,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of May, 2016,

at 8:18 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 18th day of

May, 2016,

at 8:59 o'clock A M.

[Signature]
Governor of Arizona

H.B. 2614

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18th day of May, 2016,

at 12:05 o'clock P M.

[Signature]
Secretary of State