

Nebraska State Statutes - 2008
Cooperative Corporations (21-1301 thru 21-1306)

21-1301 Cooperative corporation; formation; general purposes and powers; exceptions; action by cooperative corporation; vote required.

Any number of persons, not less than ten, or one or more cooperative companies, may form and organize a cooperative corporation for the transaction of any lawful business by the adoption of articles of incorporation in the same manner and with like powers and duties as is required of other corporations except as provided in sections 21-1301 to 21-1306. Nothing in sections 21-1301 and 21-1303 shall be deemed to apply to electrical cooperatives or electric member associations. If the Business Corporation Act requires an affirmative vote of a specified percentage of stockholders before action can be taken by a corporation, such percentage for a cooperative corporation shall be of the votes cast on the matter at the stockholders' meeting at which the same shall be voted upon.

Source Laws 1911, c. 32, § 2, p. 196; R.S.1913, § 734; Laws 1919, c. 197, § 3, p. 879; Laws 1921, c. 28, § 1, p. 161; C.S.1922, § 642; Laws 1925, c. 79, § 1, p. 243; C.S.1929, § 24-1301; R.S.1943, § 21-1301; Laws 1963, c. 102, § 1, p. 422; Laws 1975, LB 156, § 1; Laws 1995, LB 109, § 203.

| | | Cross Reference | | | |
|---|--------------------|------------------------|-----|---------|----------|
| Business | Corporation | Act, | see | section | 21-2001. |
| Transactions exempt from Securities Act of Nebraska, see section 8-1111. | | | | | |

Organization of cooperative association as a corporation is authorized. Schmeckpeper v. Panhandle Coop. Assn., 180 Neb. 352, 143 N.W.2d 113 (1966). Farmers' cooperative company organized under this article is not necessarily exempt from federal income tax. Farmers Union Co-op. Co. of Guide Rock v. Commissioner of Internal Revenue, 90 F.2d 488 (8th Cir. 1937).

21-1302 Cooperative corporation; articles of incorporation; contents.

Every such cooperative company shall provide in its articles of incorporation:

- (1) That the word cooperative shall be included in its corporate name and that it proposes to organize as a cooperative corporation;
- (2) That dividends on the capital stock shall be fixed but shall not exceed eight percent per annum of the amount actually paid thereon;
- (3) That the net earnings or savings of the company remaining after making the distribution provided in subdivision (2) of this section, if any, shall be distributed on the basis of or in proportion to the amount or value of property bought from or sold to members, or members and other patrons, or of labor performed or other services rendered to the corporation. This subdivision shall not be so interpreted as to prevent a cooperative company from declaring patronage dividends at different rates upon different classes or kinds or varieties of goods handled. This subdivision and subdivision (2) of this section shall not be so interpreted as to prevent a company from appropriating funds for the promotion of cooperation and improvement in agriculture;
- (4) That the articles of incorporation or the bylaws of the company shall give a detailed statement of the method followed in distributing earnings or savings;
- (5) The registered office and street address of such registered office;
- (6) The current registered agent and the name and street address of such registered agent. A post office box number may be provided in addition to the street address; and
- (7) The name and street address of each incorporator.

Source Laws 1921, c. 28, § 2, p. 161; C.S.1922, § 643; Laws 1925, c. 79, § 2, p. 243; C.S.1929, § 24-1302; R.S.1943, § 21-1302; Laws 1963, c. 102, § 2, p. 423; Laws 1967, c. 103, § 1, p. 318; Laws 2008, LB379, § 5. July 18, 2008

The requirement of the accumulation of a surplus equal to twenty percent does not restrict the corporation from providing a greater amount. Schmeckpeper v. Panhandle Coop. Assn., 180 Neb. 352, 143 N.W.2d 113 (1966).

21-1303 Cooperative corporation; additional powers; stockholder vote; conditions; adoption of articles and bylaws.

Every cooperative company which shall organize under sections 21-1301 and 21-1302 shall have power (1) to regulate and limit the right of stockholders to transfer their stock, (2) to restrict stock ownership to producers of agricultural products and, if such restriction is adopted, to provide an equitable procedure for redeeming the stock of any holder who is determined not to be a producer of agricultural products, (3) to provide that each individual holder of common stock may be limited to one vote per person, regardless of the number of shares of stock which he or she may own, at any stockholders' meeting and that such vote may be cast only in person, or by a signed, written vote if the stockholder has been previously notified in writing of the exact motion or resolution on which the vote is taken,

(4) to limit the amount of capital stock that any one person or corporation may own either directly or indirectly, (5) to prohibit or to limit the amount or percentage of the total business which may be transacted with nonmembers, (6) to set aside each year to a surplus fund a portion of the savings of the company over and above all expenses and dividends or interest upon capital stock which surplus may be used for conducting the business of the corporation, and (7) to adopt articles and bylaws for the management and regulation of the affairs of the company which shall set the number of directors, the terms of such directors, including any provisions for the staggering of such terms, the number or percentage of stockholders or shares of stock required to be present, in person or by proxy, in order to constitute a quorum at each stockholders' meeting, which number or percentage shall not be less than ten percent of the stockholders but never more than fifty nor less than five stockholders. Members represented by signed, written vote may be counted in computing a quorum only on those questions as to which the signed, written vote is taken.

Source Laws 1911, c. 32, § 3, p. 196; R.S.1913, § 735; Laws 1919, c. 57, § 1, p. 161; Laws 1921, c. 28, § 3, p. 162; C.S.1922, § 644; Laws 1925, c. 79, § 3, p. 244; C.S.1929, § 24-1303; R.S.1943, § 21-1303; Laws 1961, c. 79, § 1, p. 288; Laws 1963, c. 102, § 3, p. 423; Laws 1965, c. 89, § 1, p. 356; Laws 1975, LB 156, § 2; Laws 1981, LB 283, § 1.

Cooperative associations are given power to engage in enterprises requiring capital. *Schmeckpeper v. Panhandle Coop. Assn.*, 180 Neb. 352, 143 N.W.2d 113 (1966).

21-1304 Cooperative corporation; contracts with members; provisions; damages for breach.

The contracts mentioned in section 21-1303 may require the members to sell, for any period of time not over five years, all or a stipulated part of their specifically enumerated products through the association or to buy specifically enumerated supplies exclusively through the association, but in such case a reasonable period during each year after the first two years of the contract shall be specified during which any member, by giving notice in prescribed form, may be released from such obligation thereafter. In order to protect itself in the necessary outlay, which it may make for the maintenance of its services, and likewise to reimburse the association for any loss or damage which it or its members may sustain through a member's failure to deliver his products to, or to procure his supplies from the association, the association may stipulate that some regular charge shall be paid by the members for each unit of goods covered by such contract, whether actually handled by the association or not. In case it is difficult or impracticable to determine the actual amount of damage suffered by the association or its members through such failure to comply with the terms of such contract, the association and the members may agree upon a sum to be paid as liquidated damages for the breach of the contract, the amount to be stated in the contract.

Source Laws 1925, c. 79, § 3, p. 245; C.S.1929, § 24-1303.

21-1305 Cooperative corporation; fees, filings, and reports.

The fees for the incorporation of cooperative companies shall be the same as those required by law of other corporations. Such cooperative corporations shall be required to make the same reports and filings as is required of other corporations.

Source Laws 1911, c. 32, § 5, p. 197; R.S.1913, § 737; Laws 1921, c. 28, § 4, p. 162; C.S.1922, § 645; C.S.1929, § 24-1304.

21-1306 Cooperative; use of word restricted; penalty for violation.

No corporation, company, firm or association which shall not be incorporated as a cooperative corporation shall adopt or use the words cooperative or any abbreviation thereof as a part of its name. Any person or company violating the provisions of this section shall be guilty of a Class V misdemeanor for each day's continuance of the offense.

Source Laws 1921, c. 28, § 5, p. 162; C.S.1922, § 646; C.S.1929, § 24-1305; R.S.1943, § 21-1306; Laws 1977, LB 40, § 78.