

Consumer Co-ops: Incorporating Consumer Cooperatives in Missouri

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Generally, a cooperative is a corporation. A corporation is a separate legal entity from its owners and is created by or under authority of the laws of a state.

Consumer cooperatives in the past have had to overcome high hurdles to incorporate in Missouri. In fact, some have not been able to incorporate as cooperatives under the existing statutes. However, recent efforts have been successful to change the statutes to facilitate consumer cooperative incorporation.

It is often advantageous to incorporate a business enterprise that involves a group of people. Incorporation limits individual liability to the amount invested in the business and provides the organization with perpetual life.

This publication explains the consumer cooperative statute situation as it existed in 1985 and the options available to the many groups wishing to form consumer cooperatives. It is not intended as a source of legal advice. Any group planning to incorporate a consumer cooperative should seek competent legal counsel.

Missouri statutes

Existing statutes were drafted to promote incorporation of agricultural cooperatives. This reflects the fact that there was interest only in agricultural cooperatives at the time the laws were passed.

Chapter 357

Chapter 357, Missouri Statutes, authorizes incorporation "for the purpose of conducting any agricultural or mercantile business." But, due to recent statutory revision, the statute also provides incorporation "for the purpose of producing or furnishing goods, services, or housing on the cooperative plan." This revision, signed into law on July 16, 1985, became effective September 28, 1985.

Previously, many consumer cooperatives either were prevented from or were uncertain of incorporating under Chapter 357 because of the unclear definition of "mercantile business." Now any consumer cooperative that produces or furnishes goods, services or housing may incorporate under Chapter 357.

The statutory revision also includes a provision whereby a cooperative incorporated under any chapter other than Chapter 357 may become a Chapter 357 cooperative. To do this, the cooperative must qualify as a Chapter 357 cooperative and amend its articles of incorporation, thereby electing to become subject to the provisions of Chapter 357.

Chapter 357 requires an organization to follow the essential cooperative principles. It was passed in 1922 and is similar to laws passed in most states at that time. The law has many desirable features, but provides for capital stock. The stock provisions are practical and consistent with cooperative principles; but most cooperatives, particularly consumer cooperative groups, philosophically object to capital stock. This feature is the major problem with the statute.

Chapter 274

Chapter 274, Missouri Statutes, is labeled "The Non-Profit Cooperative Marketing Law." It differs from Chapter 357 by being restricted to agricultural producers and does not provide for capital stock. The law requires compliance with all accepted cooperative principles. It is not available, however, to consumer cooperatives.

Chapter 355

Chapter 355, Missouri Statutes, is the general not-for-profit code for Missouri. The non-profit concept leads some people interested in cooperatives to look to Chapter 355 to incorporate. Section 355.025 specifically prohibits incorporation under the chapter of an "organization created for or engaged in business activity for profit or on the cooperative plan, provision for the incorporation of which is made by any of the incorporation laws of this state." A cooperative that cannot incorporate under any other chapter must also have as its primary purpose one of those listed in Chapter 355.025, which includes purposes such as charitable, educational and trade associations.

In addition to this prohibition for cooperatives, there is problem relating to the distribution of assets upon dissolution. Section 355.230(4) prohibits a distribution of assets that "will result in diversion of such assets from not-for-profit purposes as authorized in this chapter, to the pecuniary gain or profit of any person, organization, or corporation." Rather assets shall be delivered to another similar not-for-profit corporation or to the state. Section 355.015(9) defines as non-profit "a corporation no part of the income or property of which is distributable to its members, directors or officers."

Most successful cooperatives will accumulate equity. For some types, such as housing, a major purpose is accumulating equity for the members. The severe restrictions imposed by Chapter 355 make it undesirable for cooperatives except for those providing public services such as education and recreation.

Chapter 351

Chapter 351, Missouri Statutes, is the General Business Corporation code. It authorizes corporations for profit. Successful cooperatives intend to and do make a "profit" for members. It is true that the cooperative as an entity does not make a profit. This ambivalence may result in questions by the Secretary of State and others about a cooperative that attempts to use this chapter for incorporation.

If a group interested in a cooperative attempts to use Chapter 351, the word "cooperative" cannot be used. Also, the statute requires stock and provides no guidance about cooperative principles.

The options

The brief review of present statutes indicates that options for incorporation by consumer cooperatives are limited. Chapter 357, with its recent statutory revisions, appears to be the only statute specifically authorizing incorporation of consumer cooperatives.

If a cooperative will not fit under Chapter 357, the only option is trying Chapter 351. If Chapter 351 is used, the cooperative principles and procedures should be incorporated in the by-laws and articles of incorporation. A cooperative that used Chapter 351 will have to convince the Internal Revenue Service that it is operating as a cooperative and, hence, is entitled to file taxes under the rules specified for cooperative corporations.

Both chapters 357 and 351 provide for capital stock. This should not in itself prove to be a serious obstacle. The statutes do not specify a number of shares, a par value or the distribution between common and preferred stock. Chapter 357 limits ownership per shareholder to not more than 10 percent of the aggregate par value of all shares of stock. It calls for one vote per stockholder regardless of the number of shares owned.

Similar restrictions can be included in the bylaws and articles of incorporation of Chapter 351 corporation. In fact, the bylaws can be even more restrictive than the statutes, even to limiting ownership to one share per member. Also, the bylaws can specify that stock can be sold only to the corporation and at no more than par value. The requirement of capital stock can be beneficial to a cooperative. All types of business firms need capital and must have some evidence of ownership. Capital stock will accomplish both ends.

Chapter 409 of the Missouri statutes requires all securities to be registered with the Commissioner of Securities within the office of the Missouri Secretary of State. There is an exemption for agricultural cooperatives, but the exemption is clearly limited to cooperatives that qualify as agricultural. Section 409.402(b)(10) exempts an issuer who will have no more than 15 transactions with the conditions spelled out in the paragraph.

Most cooperatives will want more than 15 shareholders. It is possible that the stock issued by a cooperative would not be classified as a security if it does not pay capital dividends, cannot be sold except back to the corporation, cannot be sold at a profit, and can be owned only by patrons of the corporation.

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