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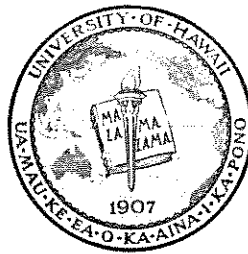
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AGRICULTURAL MARKETING  
AND  
PURCHASING COOPERATIVES



Report No. 2 - 1947

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AGRICULTURAL MARKETING AND PURCHASING COOPERATIVES

--Report No. 2. 1947--

(Request No. 275)

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AGRICULTURAL MARKETING AND PURCHASING COOPERATIVES

This report discusses the present status of agricultural marketing and purchasing cooperatives and outlines the changes which would result from the enactment of House Bill No. 754 (H. D. 3) of 1947. The general subject of cooperatives, and their advantages and disadvantages, is not within the purview of this report.

Summary of Conclusions

The scope of operations of agricultural marketing and purchasing cooperatives in the Territory are more limited than found on mainland United States.

H. B. No. 754 (H. D. 3) of 1947 corresponds closely to the Uniform Agricultural Cooperative Association Act, later reclassified as a Model Act, and subsequently withdrawn. It substitutes for the present law a complete procedure for the incorporation and operation of cooperatives. Major changes which would be effected relate to the identity of incorporators, designation of persons eligible for membership, application of the "blue sky law" to cooperative securities, authorization to maintain reserves and surpluses, permission to service non-members, specification of voting rights, provisions governing internal management, marketing contracts, and partial exemption of cooperatives from taxes and of members from the compensation-dividends tax.

Several minor incongruities of substance or syntax found in H. B. No. 754 require revision.

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## AGRICULTURAL MARKETING AND PURCHASING COOPERATIVES

### 1. Scope of Operations

Mainland United States: Although as early as 1851 a cooperative association for operating a cheese factory was founded in the United States,<sup>1</sup> development of agricultural cooperatives in America has been slow. It is only in relatively recent years that phenomenal growth has occurred, with agricultural cooperatives assuming their present important role in the economy of the United States. It is now probably no exaggeration to say that at least half of the farmers in the important agricultural areas throughout the United States are now associated with a cooperative enterprise of one kind or another.<sup>2</sup>

In the year 1915 there were 5,424 farmers' marketing and purchasing cooperatives in the United States, representing 651,186 farmer-members and doing an annual business of \$635,839,000. This latter figure was double the business done in 1913. By 1926 these numbers had risen to 10,803 associations serving 2,700,000 members and doing an annual volume of business of \$2,400,000,000. For the 1945-46 marketing season the estimated number of associations dropped to 10,150, but membership had risen to 5,010,000 and estimated business had more than doubled itself, being \$6,070,000,000.<sup>3</sup>

Grain, dry beans, rice, dairy products, fruits, and vegetables are the products of greatest importance marketed by farmers' cooperatives. The East and West North Central States have the bulk of the cooperatives, both in number of associations, estimated membership, and estimated business:

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<sup>1</sup>U. S. Dept. of Agr., "Agricultural Cooperative Associations, Marketing and Purchasing, 1925", Tech. Bul. 40, p. 4 (1928).

<sup>2</sup>Inter-Bureau Committee on Post War Programs, U. S. Dept. of Agr., "Agricultural Cooperatives in the Post War Period", p. 3 (July, 1945). In addition to agricultural marketing and purchasing cooperatives, there are mutual irrigation companies; financed service cooperatives, purchasing associations, and marketing associations; dairy herd improvement associations; dairy bull associations; cooperative dairy-cattle artificial-breeding associations; grazing associations; national farm loan associations; production credit associations; banks for cooperatives; rural credit unions; farmers' mutual fire insurance companies; mutual telephone companies; electric power and light associations.

<sup>3</sup>Undated, one page estimate of Cooperative Research and Service Division, Farm Credit Adm., U. S. Dept. of Agriculture. See table on next page.

Table 1.--Farmers' Marketing and Purchasing Associations: Number, Estimated membership and estimated business,<sup>a</sup> 1945-46 marketing season.<sup>b</sup>

Geographic division; group	Associations listed <sup>c</sup>		Estimated membership <sup>d</sup>		Estimated business <sup>e,f</sup>	
	Number	Per- cent	Number	Per- cent	Thousands	Per- cent
Geographic division:						
West North Central....	4,060	40.0	1,600,360	31.9	\$1,807,630	29.8
East North Central....	2,360	23.3	1,357,100	27.1	1,352,920	22.3
Pacific.....	831	8.2	259,890	5.2	975,940	16.1
Middle Atlantic.....	623	6.1	301,310	6.0	519,750	8.6
South Atlantic.....	470	4.6	477,320	9.5	460,520	7.6
West South Central....	803	7.9	300,010	6.0	343,440	5.6
Mountain.....	565	5.6	250,460	5.0	281,110	4.6
New England.....	159	1.6	119,140	2.4	197,980	3.3
East South Central....	279	2.7	344,410	6.9	130,710	2.1
Total.....	10,150	100.0	5,010,000	100.0	6,070,000	100.0
Marketing:						
Cotton and products...	529	5.2	285,000	5.7	176,500	2.9
Dairy products.....	2,210	21.8	739,000	14.8	1,428,000	23.5
Fruits and vegetables..	921	9.1	177,000	3.5	815,000	13.4
Grain, dry beans, rice	2,256	22.2	536,000	10.7	1,495,000	24.7
Livestock.....	618	6.1	800,000	16.0	705,000	11.6
Nuts.....	43	.4	62,700	1.3	176,500	2.9
Poultry and eggs.....	153	1.5	127,000	2.5	213,000	3.5
Tobacco.....	13	.1	150,000	3.0	24,100	.4
Wool and mohair.....	130	1.3	116,000	2.3	34,000	.6
Miscellaneous <sup>g</sup> .....	505	5.0	157,300	3.1	79,900	1.3
Total Marketing.....	7,378	72.7	3,150,000	62.9	5,147,000	84.8
Purchasing.....	2,772	27.3	1,860,000	37.1	923,000 <sup>h</sup>	15.2
Total Marketing and purchasing....	10,150	100.0	5,010,000	100.0	6,070,000	100.0

<sup>a</sup>Estimated membership and estimated business for each association is credited to the State in which the association has its headquarters.

<sup>b</sup>A marketing season includes the period during which the farm products of a specified year are moved into the channels of trade. Marketing seasons overlap.

<sup>c</sup>Includes independent local associations, federations, large-scale centralized associations and sales agencies.

<sup>d</sup>Includes members, contract members, and shareholders, but does not include patrons not in these categories. (There is some duplication in these membership figures due to the fact that some farmers belong to more than one association.)

<sup>e</sup>Includes some intra-association transactions.

<sup>f</sup>Includes the value of commodities sold or purchased for patrons and the service charges for associations rendering other essential services either in marketing or purchasing.

<sup>g</sup>Includes associations handling commodities not specified above, those handling several types of commodities, and those furnishing special marketing or related services.

<sup>h</sup>After making adjustments for the purchasing business of marketing associations and the marketing business of the purchasing associations it is estimated that the total purchasing business was approximately \$1,220,000,000 or 20.1 percent of total farmer cooperative business.

Source: Undated, one page estimate of Cooperative Research and Service Division, Farm Credit Adm., U. S. Dept. of Agr.

It is convenient to classify agricultural cooperatives as marketing cooperatives or as purchasing cooperatives, but this does not preclude associations whose activities are predominately concerned with marketing from also engaging in purchasing for their members, and vice-versa. For the period 1943-44, marketing of farm products for members by purchasing cooperatives amounted to only 5.1% of their total business, and a similarly small percentage of purchasing was done by marketing cooperatives. However, for some groups of marketing cooperatives, purchases were one-fifth of their total business:

Table 2.--Percentage of marketing and purchasing by each group of farmers' cooperative associations, 1943-44.

Group	Marketing	Purchasing	Total
	P e r c e n t		
Marketing cooperatives:			
Cotton and products.....	90.7	9.3	100.0
Dairy products.....	97.2	2.8	100.0
Fruits and vegetables.....	94.2	5.8	100.0
Grain, dry beans, rice.....	87.8	12.2	100.0
Livestock.....	99.0	1.0	100.0
Nuts.....	99.6	.4	100.0
Poultry and eggs.....	80.0	20.0	100.0
Tobacco.....	96.5	3.5	100.0
Wool and mohair.....	98.9	1.1	100.0
Miscellaneous.....	78.2	21.8	100.0
Total Marketing.....	93.2	6.8	100.0
Purchasing cooperatives.....	5.1	94.9	100.0
Total Marketing and Purchasing.....	80.6	19.4	100.0

Source: Wanstall, Grace. "Statistics of Farmers' Marketing and Purchasing Cooperatives 1944-45", Farm Credit Adm., U. S. Dept. of Agr. Misc. Rep. No. 108, p. 41 (May, 1947).

In 1944 cooperatives did almost 4% of all United States wholesale business, 1.5% of all retail.<sup>4</sup> For both the years 1944 and 1946 the dollar volume of agricultural marketing cooperatives was a little over 20% of the

<sup>4</sup>"Big Business Without Profit", Fortune, Vol. XXXII, No. 2, p. 154 (August, 1945).

cash receipts from marketings by farmers.<sup>5</sup> In the marketing of certain commodities, farmers' cooperatives were abreast or ahead of their commercial competitors. For example, they sold over half of the citrus fruit\*, 66% of the dates, and 75 to 80% of the walnuts marketed in 1945-46. In terms of Hawaiian agricultural products, about 30% of the total mainland supply of milk was marketed or utilized in the manufacture of dairy products by farmers' cooperatives in 1946, and they also produced about 40% of the butter; they accounted for about 20% of the livestock, 15% of the turkeys, 10% of the eggs\* and 3% of the chickens\*. About 25 to 30% of mainland rice, 75% of the avocados, and 7% of the truck crops\* were handled by mainland farmers' cooperatives. This statistical summarization does not evaluate the effect of their influence through the establishing of standards for products and services.

Territory of Fawaii: In the Territory, agricultural cooperatives have not enjoyed the same growth as on the mainland. This does not mean that cooperation in agricultural pursuits is new to the Islands. In 1905 a cooperative of some sort was suggested for the pineapple industry<sup>6</sup> and in 1913 at least six agricultural associations had been organized on Kauai, Hawaii, and Maui.<sup>7</sup> A survey of agricultural cooperatives in the Territory in September, 1947, reveals the existence of 10 cooperatives, with a total membership of about 915 persons.<sup>8</sup>

From the table on the next page, it will be seen that the Hawaii Farmers Cooperative, Ltd., of Honolulu, which is the oldest of all functioning

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<sup>5</sup>This ratio may be as high as 22 or 23% at the present time. These estimates, and those following, are only rough approximations and were furnished by letter dated October 14, 1947, from the Cooperative Research and Service Division, Farm Credit Adm., U. S. Dept. of Agr. Where an asterisk is used, estimates for the 1944-45 period are the latest available.

<sup>6</sup>Emmeluth, John. "Cooperation in the Pineapple Industry", Hawaiian Forester and Agriculturalist, Vol. 11, pp. 251-4 (1905)

<sup>7</sup>Wilcox, E. V. "Co-operation Among Farmers", Thrum's Annual, 1914, pp. 154-56.

<sup>8</sup>In addition, there are two egg producers' corporations with 95 members which probably would become cooperatives upon the present cooperative law being revised.

agricultural cooperatives here in the Territory, has had an existence of only 14 years. With one other exception all the rest are less than five years old, and the majority of all agricultural cooperatives are two years old or less.

Table 3. Incorporated farmer cooperatives in the Territory, September, 1947.

Name and Location of Headquarters	Date of Incorporation	1947 Membership	1947 President
Hawaii Farmers Cooperative, Ltd. Honolulu	January, 1934	173	T. Okano
Koolau Farmers Cooperative, Ltd. Kaneohe	October, 1941	160	M. Uchibori
Maui Farmers Cooperative Exchange Kahului	May, 1943	20	C. Koga
Hilo Farmers Cooperative Exchange Hilo	October, 1943	46	- - - -
Oahu Hog Raisers Cooperative Ass'n Honolulu	May, 1945	175	Alvin Haley
Maui Swine Growers Association Wailuku	August, 1945	12(?)	Mrs. Violet Harris
Maui Vegetable Growers Association Kahului	August, 1945	60(?)	T. Yamada
Kauai Farmers Cooperative, Ltd. Kapaa	November, 1945	14	K. Arashiro
Oahu Farmers Cooperative, Ltd. Honolulu	February, 1946	80	Henry Chun
Hawaii Growers Cooperative, Ltd. Honolulu	April, 1947	175	R. Lindsey
Total - 10 Cooperatives		915	Members

Source: Mr. Ralph Elliott, Extension Economist, Agricultural Extension Service, University of Hawaii.

In 1946 there were some 3,922 commercial farms in the Territory, excluding sugar and pineapple operations, although this figure is probably a little inflated due to a few farms being listed under several sources of income. In addition to these commercial farms there are small farms the income from which is of relatively minor importance to the owner and are not listed, as for example, the farm-home of the wage earner who has 70 chickens in his backyard and sells the eggs to supplement his wage income. The number of these farm-homes is probably large, but it is debatable to what extent their operators should be classed as farmers.<sup>9</sup> Again excluding sugar and pineapple operations, and disregarding these small farm-homes not large enough to be classed as commercial farms, probably somewhere between a fourth and a fifth of the farmers in the Territory are members of cooperatives.

In contrast to the mainland, no territorial dairy or poultry products are marketed through farmer cooperatives. It is estimated that about 15%<sup>10</sup> of the territorial volume of business in swine is now handled by cooperatives. A larger volume of business is handled by fruit and vegetable cooperatives, it being approximately 15% for Kauai, 20% for Oahu, 75% for Hawaii, and 85% for Maui at the present time. In terms of total territorial

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<sup>9</sup>For 1939, 42.1% of all farm operators reported work off their farms, and 1,169 (23.6%) reported working 250 days or over for that year off their farms. Territorial Table 4. Work off Farm for Pay or Income, by Race and by Tenure of Operator, 1939. 16th Census of the United States: 1940. Agriculture, Hawaii, p. 11.

<sup>10</sup>Estimates of volume of business handled by territorial cooperatives furnished by Mr. Ralph Elliott, Extension Economist, Agricultural Extension Service, University of Hawaii.

Table 4.—Number of Farms in 1946 by Major Source of Income

County	Beef Cattle a/	Sheep a/	Dairy b/	Hogs b/	Poultry c/	Fruits, Vegetables, and Nuts	Rice or Coffee	Honey	Total Farms
North Hawaii.....	32	1	2	4	8	80	--	2	129
West Hawaii.....	31	-	2	3	9	130	700 <sup>d/</sup>	-	875
East Hawaii.....	47	-	20	51	239	223	--	1	581
Total Hawaii.....	110	1	24	58	256	433	700	3	1,585
Maui.....	52	-	9	70	54	302	--	17	504
East Oahu.....	3	-	17	15	25	350	--	-	410
West Oahu.....	11	-	1	58	23	142	--	13	248
South Oahu.....	-	-	24	228	309	213	--	2	776
Total Oahu.....	14	-	42	301	357	705	--	15	1,434
Kauai and Niihau..	38	1	7	79	70	110	27 <sup>e/</sup>	4	336
Molokai and Lanai.	14	-	1	13	11	18	--	6	63
Territory.....	228	2	83	521	748	1,568	727	45	3,922

<sup>a</sup>Herds over 20<sup>b</sup>Herds over 10<sup>c</sup>100 layers or more<sup>d</sup>Coffee<sup>e</sup>Rice

Source: "1946 Statistics of Diversified Agriculture in Hawaii." Agricultural Extension Circular #217, pp. 5, 6 (March, 1947).

production for 1946,<sup>11</sup> roughly 45% of all fruits and vegetables, measured either in dollars or pounds produced, would have been handled by territorial cooperatives.

<sup>11</sup>Based upon Table 26.--Acreage, Production, and Wholesale Value of Hawaiian Diversified Crops by Island of Origin. 1946 Statistics of Diversified Agriculture in Hawaii. Agriculture Extension Circular #217, pp. 17, 18 (March, 1947).

## 2. Provisions of H. B. No. 754 of 1947

### a. History

The National Conference of Commissioners on Uniform State Laws adopted the Uniform Agricultural Cooperative Association Act in 1936. In the following year the State of Utah enacted the Uniform Act, with modifications, but no other State followed suit until 1945. Meanwhile, the National Conference redesignated the act as a Model Act<sup>12</sup> and in 1943 withdrew it upon the recommendation of the Conference's Committee on Review and Revision of Uniform and Model Acts, which reported:

"This is one of the Conference's Model Acts. It was approved in 1936 and has had only one adoption. It was enacted, with modifications, in Utah in 1937. The Act was first called to the attention of the Conference in 1925 by one of the farm organizations. Notwithstanding the interest of agricultural associations in this subject and the political power they can exert in farming areas, the Act has received scant attention." (Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings, 1943; pp. 66, 147, 148.)

The conference has not undertaken any work upon this subject matter since the withdrawal of the Act in 1943. In 1945 the State of Maine adopted the Act, so that at the present time two states have legislation on their statute books in the form proposed by the National Conference. Probably other states have legislation encompassing many of the provisions in the National Conference's Act, but none of them are sufficiently similar as

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<sup>12</sup>"The distinction between a Uniform Act and a Model Act, in designation by the Conference, is that where there is a demand for an Act covering a subject matter in a substantial number of states, but where in the judgment of the Conference, it is not a subject matter upon which uniformity is necessary or desirable, but where it would be helpful to have legislation which would tend toward uniformity, Acts on such subjects are designated as Model Acts." Quoted from a letter of Mr. Barton H. Kuhns, Secretary of the National Conference, dated August 29, 1947.

to be considered to have adopted the Act.

In Appendix 2 of this report, the National Conference Act is set out at length, with delete type (e.g., ~~delete~~) indicating words and punctuation not found in H. B. No. 754 (H. D. 3) of 1947 and underline type (e.g., underline) indicating matter added by the House Bill. It would appear that H. B. No. 754 (H. D. 3) was drafted so as to conform closely with the National Conference Act, and that deviations from the Model Act are relatively minor and arise from local conditions requiring more specific treatment. In fact, proposed section 8281 of H. B. No. 754 would permit the bill to be cited as the "Uniform Agricultural Cooperative Association Act."

b. Changes Proposed by H. B. No. 754

Present section 8254 of Chapter 154 of the Revised Laws of Hawaii 1945 now directs that agricultural cooperatives "shall be formed in the manner prescribed in, and be subject to, the provisions of Chapter 155, so far as they are not inconsistent." Chapter 155 is concerned with the incorporation and operation of general business corporations, and of non-profit corporations, as specially defined, the latter being granted charters by the governor. As a result of this reference, the rather incongruous situation has developed of agricultural cooperatives, which are declared to be non-profit corporations by Chapter 154, being incorporated under Chapter 155 not as non-profit corporations but in the same manner as general business corporations and being subject to the same requirements.

The proposed new Chapter 154, as found in H. B. No. 754 (H. D. 3), will terminate this. A complete incorporation procedure will be contained in the chapter dealing specifically with agricultural cooperatives, a procedure which at times will closely correspond with that now followed, and at other times will parallel it but differ in detail. In Appendix 1 there is a section-by-section comparison of the provisions of the proposed bill

with the present pertinent sections now found in the Revised Laws. Careful consideration of the present with the proposed law, as outlined in this appendix, will reveal many differences which appear to be of relatively minor importance and which will not be treated here. In addition, numerous changes in terminology may in fact embody no change in substance, the new language serving to clothe powers or duties inherently implied at the present. As a result, only those differences which seem to be of fundamental importance are considered in this report.

Incorporators--At present, a majority of the incorporators of an agricultural cooperative are required to be residents of the Territory and there apparently is no authorization for one cooperative to be an incorporator of another. The residence requirement is removed by proposed section 8253, and authorization for a cooperative to serve as an incorporator of another is added.

This change facilitates the establishing of interlocking cooperatives, with several kinds of cooperatives superimposed upon the local cooperative composed of producers of agricultural products. The present power of a cooperative to become a member of another (present section 8255), which is continued by the proposed bill, is thus augmented. Made possible would be an organizational structure such as that of the California Fruit Growers Exchange: approximately 14,000 citrus growers are members of 200 local packing units, 153 of which are cooperative associations of citrus growers; the local packing units are in turn members of 25 district exchanges, all of them incorporated cooperative associations; and the latter through their representatives are members of the California Fruit Growers Exchange.<sup>13</sup> The effects might be considered in the light of experience in

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<sup>13</sup>Fogelberg, Nepture and McKay, A.W. "The Citrus Industry and the California Fruit Growers Exchange System", Circular C-121 of the Farm Credit Administration, pp. 20-29 (June, 1940).

mainland United States where there are at least ten national manufacturing, finance and management cooperatives, owned by about 575 regional cooperatives, which are in turn owned by approximately 13,500 local cooperatives.<sup>14</sup>

Members--Present section 8255 limits eligibility for membership to producers of the agricultural products to be handled by or through the cooperative.

Proposed section 8261 appears to enlarge the group by deleting the limitation that the member's product be of a nature to be handled by the cooperative. Thus, a cattle grower might join a truck crop producers' cooperative to obtain the benefit of purchases through the cooperative if permitted by the cooperative's articles and by-laws.

Blue Sky Law--Present section 8266 exempts agricultural cooperatives from the "blue sky law"--chapter 174 of the Revised Laws of Hawaii 1945. This exemption is not contained in H. B. 754 of 1947, and in its absence it appears that cooperatives would be subject to the blue sky law.<sup>15</sup>

Reserves and surplus--Although present section 8260 authorizes a cooperative to invest its reserve fund in certain types of real estate and first mortgages, the Attorney General ruled on June 13, 1946, that if a cooperative accumulates a surplus, it is liable to a tax on the sale of the produce of members and on sales of goods to members under the general excise tax law. (Chapter 101 of the Revised Laws of Hawaii 1945).<sup>16</sup> This opinion had the indirect result of discouraging the building of surpluses or reserves by cooperatives. Proposed section 8260 (II-d) expressly authorizes establishing surpluses and reserves, and this, together with the cooperative's

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<sup>14</sup>National Tax Equality Association, "Legal Tax Dodging and Its Effect on Growth and Competition", p. 11 (Feb., 1947).

<sup>15</sup>Hulbert, L.S. "Legal Phases of Cooperative Associations", Bulletin No. 50 of the Farm Credit Administration, p. 35 (May, 1942).

<sup>16</sup>Letter of Rhoda Lewis, Assistant Attorney General, to William Borthwick, Tax Commissioner, dated June 13, 1946.

exemption from taxation (p. 15, below), will reverse both the rule and effect of the Attorney General's opinion.

Services for non-members--The opinion of the Attorney General previously referred to also ruled that in the Territory an agricultural cooperative cannot deal in the produce of non-members. Federal statutes applicable to agricultural cooperatives evince a uniform policy permitting non-member business, but this is not true of the State acts. Some of them are silent, and it would appear that an association incorporated under them may freely transact business with members and non-members. Generally, however, State statutes either prohibit a cooperative from doing business with non-members or provide that non-member business shall not exceed in value the amount of business transacted for members.<sup>17</sup>

Proposed section 8260 (II-h) will nullify the Attorney General's opinion. It will authorize dealing in products of non-members and furnishing services and supplies to them in an amount not greater than products dealt in of members, or services and supplies furnished to them. An additional limitation is also contained confining purchases in any one year for persons who are neither members nor producers to 15% of the value of total purchases. Both these requirements can be traced to federal acts giving tax exemptions or other benefits to associations meeting either or both of them.

The Capper-Volstead Act (exempting agricultural cooperatives from the anti-trust statutes) contains the 50% maximum rule (7 U.S.C. 291) as do both the Agricultural Marketing Act, as amended (12 U.S.C. 1141j(a)) and section 101 of the Internal Revenue Code (26 U.S.C.A. 101) exempting cooperatives from taxation. The Internal Revenue Code section also contains

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<sup>17</sup>Hulbert, L. S. "Legal Phases of Cooperative Associations", Bulletin No. 50 of the Farm Credit Administration, p. 171 (May, 1942).

the 15% maximum rule.

Voting rights--Members of agricultural cooperatives organized without capital stock now are limited to one vote, each, upon any subject pertaining to management, business or affairs of the cooperative (present section 8256); there is no similar provision relating to cooperatives organized with capital stock. Under proposed section 8261(e), unless the articles of incorporation otherwise provide, all members of both stock and non-stock cooperatives will be limited to one vote. The proposed section does not qualify the subjects to which the one-member-one-vote rule is applicable. Holders of preferred stock will not have voting rights (proposed section 8262(e)) nor be members of a cooperative solely because of holding such stock (proposed section 8252(g)).

Internal management of cooperatives--Several provisions apparently designed to obtain democracy of internal management are incorporated in H. B. 754. Proposed section 8263 would require a special meeting to be called upon 10% of the members filing a petition with the secretary demanding the meeting and specifying the business to be considered. Proposed section 8265 establishes a procedure for removal of a director upon petition, notice, and vote. If permitted by the articles or by-laws, two-fifths of the directors may force the referral of a matter of policy adopted by the board of directors to the members for their approval before the board's decision becomes effective (proposed section 8268).

At present, voluntary dissolution may be accomplished upon a three-fourth vote of all voting stock, or, in the case of non-stock cooperatives, by the vote of not less than three-fourths of the members present at the dissolution meeting (present section 8352). The minimum three-fourth vote for dissolution would be replaced in H. B. 754 by a requirement of "two-

thirds of the voting power voting thereon" (proposed section 8272). This appears both to lower the minimum votes required and to treat stock cooperatives like non-stock cooperatives by utilizing as the maximum the vote cast and not all voting stock issued and outstanding.

Marketing Contracts--Present section 8257 permits a marketing contract to run for a period not exceeding fifteen years. Breach of the contract may be prevented and specific performance to compel its observance may be obtained through recourse to equity jurisdiction of the courts. Proposed section 8269 would establish a procedure for withdrawal from such contracts after three years by withdrawing from the association. Also, the scope of the contract is broadened to permit binding the member to purchase through the association.

Upon recording the contract with the Bureau of Conveyances, constructive notice will be given to all of the cooperative's title or right to the product embraced in the contract, which will be superior to all rights or liens not acquired through the cooperative (proposed section 8269). To further insure the contract's efficacy, proposed section 8270 will make it a misdemeanor, with minimum punishment of \$100 fine, to induce violation of a marketing contract, or to slander the cooperative.

Taxation--Agricultural cooperatives are granted a large degree of tax immunity under proposed section 8277, which imposes an annual license fee of ten dollars "in lieu of all other corporation, franchise and income taxes and taxes and charges upon reserves held . . . for distribution to members". Cooperatives are specifically granted exemption from the consumption tax, general excise tax,<sup>18</sup> income tax, and personal property tax (repeal of latter tax

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<sup>18</sup>The Attorney General ruled on June 13, 1946, that a cooperative was not exempt from the general excise tax (as provided by section 5459) if it accumulated a surplus, nor to the extent to which it traded with non-members. (See pp. 12 and 13, above.)

effective January 1, 1948). By implication, dividends they may receive are also exempted from the compensation and dividends tax, declared by the Hawaii Supreme Court to be a "special income tax" (Yernian v. Hawaii, 1942, 35 Haw. 855). The elimination of present section 8264 would relieve cooperative associations from the payment of corporation fees,<sup>19</sup> other than the ten dollar annual license fee.

The effect of section 8277, then, would be to exempt agricultural cooperatives from all territorial taxes but those on real property, the vehicle weight tax, the fuel tax, and, if they engaged in the sale of such commodities, the tobacco and liquor taxes. Exemption of cooperatives from unemployment compensation contributions imposed by Chapter 74 does not seem to be intended by the proposed legislation.

Foreign cooperative corporations, permitted by Act 235 of the 1947 legislative session to organize, use cooperative names, and do business in the Territory as cooperatives, are afforded identical tax privileges under proposed sections 8276 and 8277, upon payment of the annual license fee of ten dollars. All foreign corporations except insurance companies and charitable institutions must now pay an annual license fee of one hundred dollars (present section 8393).

Distributions of earnings made by farm cooperative associations are exempted from the compensation and dividends tax by proposed section 8277. This is the sole tax immunity granted to the members of the agricultural cooperatives, leaving them liable for other levies imposed by the Territory upon their business and personal earnings. In particular, receipts of

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<sup>19</sup>Under present sections 8264 and 8351, cooperatives organized as corporations must pay, in addition to the recording fees, taxes of twenty cents per thousand dollars of capital stock for the certificate of incorporation or upon increasing their authorized capital stock, or upon extending or renewing their corporate existence. Annual filing fees of ten dollars and other fees for amending organization certificates, voluntary dissolution, etc., are also imposed.

cooperative distributions might be taxed directly under the income tax, if treated as a "gain, profit, or income," or may be reflected in a larger taxable income, if considered as reductions of the cost of farm supplies purchased through the cooperatives. If, however, patronage returns are made upon purchases of consumers' goods and these returns are not considered a "gain, profit, or income," the distribution would not be in any way taxable.

Specific income tax exemptions comparable with those extended under proposed section 8277 are afforded to agricultural cooperatives by twenty-three states<sup>20</sup> and by the District of Columbia. In California, Kentucky, New Mexico, Oklahoma, and Virginia, farm cooperatives are deemed "non-profit organizations", and are therefore implicitly, although not specifically, granted tax exemption, while in Connecticut all companies exempt from the federal income tax (see below) are tax-free. The income tax of Pennsylvania<sup>21</sup> applies to cooperatives having a corporate form, as does that of Maryland. Patronage refunds, however, are not included in taxable income under the Maryland levy.

In general, state legislation permitting the organization of income-tax-exempt farmers' cooperatives has followed the chief provisions of the federal Internal Revenue Code. Section 101 of the Code exempts from the federal income tax "farmers', fruit growers', or like associations organized and operated on a cooperative basis", provided (a) the annual dividend on capital stock does not exceed eight per cent; and (b) purchases and sales on behalf of non-members do not exceed the value of purchases and sales to

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<sup>20</sup>Alabama, Arizona, Arkansas, Colorado, Georgia, Idaho, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New York, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Utah, Vermont, and Wisconsin.

<sup>21</sup>Pennsylvania in 1945 imposed a tax of four per cent upon the net income of incorporated farmers' cooperatives (Act 360, 1945 Laws). A four per cent tax is also levied against corporations in general.

members, and do not constitute more than fifteen per cent of all its transactions.<sup>22</sup> Similar restrictions are established by proposed sections 8262(b) and 8260(II-h), respectively.

Among the states having a gross income or occupations tax, Indiana and New Mexico do not tax agricultural cooperatives. No provision is made for tax exemption to cooperative organizations under the occupational gross income levies imposed by Arizona, Washington, and West Virginia.

The statutes of seven states -- Arkansas, Kansas, Maryland, New Hampshire, New York, Ohio, and Tennessee -- contain provisions similar to that of proposed section 8277, in requiring a ten dollar annual fee "in lieu of all franchise, license or corporation taxes or taxes or charges upon reserves held by it for members" (Ohio Code, 10186-29; New Hampshire, Revised Laws, Chapter 273-48). Iowa exempts farm cooperatives from her corporate income tax, upon payment of an annual license fee of one dollar.

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<sup>22</sup>On the mainland a heated controversy is now centering around this exemption of cooperatives from the federal income tax.

### 3. Errata

As a by-product of the consideration of H. B. 754 (H. D. 3) of 1947 several minor matters were found which would seem to need correction prior to the bill's enactment. This does not indicate faulty draftsmanship for inevitably, upon close scrutiny of most measures, minor incongruities of substance or syntax will appear. All references are to proposed sections:

Section 8258: This section now refers to "articles of incorporation." All references should be changed to "articles of association" to comply with the definition contained in section 2852(j) and changes made in terminology by section 8257.

Section 8260(II-j): Section 8257 (c) sets the maximum life of a cooperative at fifty years. Consequently, some other time limit, presumably "fifty years," must be substituted for the words in parenthesis in the sub-section of section 8260 dealing with powers, and reading: "(j) To continue as a corporation for the time limit in its articles, and if no time limit is specified (then perpetually)."

Section 9269(IV-b): There is an erroneous cross-reference in the fourth sentence of this sub-section. Probably what is intended is that the words "The Bureau of Conveyances" be read in place of the word "They" which starts the sentence. It is suggested that the fifth sentence start a new paragraph so as to indicate the two subjects of this sub-section.

Section 8272: The major sub-divisions of this section are indicated by roman numerals. "I" should precede the first "(a)", but is omitted.

Section 8273: No doubt due to the inclusion of the name of the body with which the cooperative is to file its report, an error in syntax

occurred in the 4th line. It is suggested that the words "an annual" be added prior to the word "report" on the 4th line of this section.

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APPENDIX 1.

COMPARISON OF H.B. NO. 754 OF 1947, AS LAST AMENDED, WITH  
PRESENT CHAPTER 154 AND OTHER PERTINENT PROVISIONS OF THE  
REVISED LAWS OF HAWAII 1945 RELATING TO COOPERATIVES.

New chapter 154 of the Revised Laws of Hawaii 1945, as proposed by H.B. No. 754, H.D. 3, incorporates almost verbatim many of the provisions now contained in the present chapter 154 relating to cooperatives. In addition, with few exceptions, the balance of present chapter 154 is covered by sections of new chapter 154 through different or more complete statutory directions. The few statutory provisions which appear to be eliminated are present sections 8259, 8263, and 8266. Present section 8259 grants power to the cooperative to purchase its own stock, a power which does not appear to be duplicated in the provisions of the new chapter. Likewise eliminated is present section 8263 which empowers the bank examiner to prescribe the manner for keeping corporate books and to annually audit them. Finally, no provision is found comparable to present section 8266 exempting cooperatives from the securities act.

Proposed Sec. 8251. Declaration of policy: New. This might be compared with the "purposes" of associations as contained in the last portion of present section 8253.

Proposed Sec. 8252. Definitions:

- (a) "Agricultural products" as defined will include same products as now covered under present section 8252.
- (b) "Association", as defined by present section 8252, is limited to domestic corporations, but present section 8254 permits foreign corporations "duly organized as a cooperative" under State law to do business in the Territory. Proposed section 8252 defines "association" to include domestic corporations and foreign corporations authorized to do business in the Territory if they are organized as cooperative associations and confine their operations and restrict the return on their stock or membership capital in manner applicable to associations organized under chapter.
- (c) "Domestic association". New.
- (d) "Foreign association". New.
- (e) "This Act". New
- (f) Associations deemed non-profit corporations. Proposed section 8252 has same declaration as present section 8252 but states reasons differently.
- (g) "Member". Same as present section 8252.
- (h) "Person". Same as present section 8252.
- (i) "Board". New.
- (j) "Articles". New.

Proposed Sec. 8253. Qualifications of Incorporators: Present section 8251 requires majority of incorporators to be residents and all incorporators to be engaged in production of agricultural products. Present section 8255 permits cooperatives to become members in other associations, but apparently does not authorize them to be original incorporators. Proposed section eliminates residence requirement, and also permits two or more associations of such producers to form an association.

Proposed Sec. 8254. Purposes:

- (a) Proposed section adds "producing", "assembling", "buying", "manufacturing", "blending" and "warehousing" agricultural products to other activities listed. Probably they are now included by implication in present section 8253.
- (b) Defines "supplies" which can be manufactured, bought, etc., as "agricultural and household"; present section 8253 merely refers to "supplies". Also specifically included in the proposed subsection are feed, fertilizer and fuel.
- (c) Furnishing business or educational services to members. New.
- (d) Financing. Same as present section 8253.

Proposed Sec. 8255. Articles of Association: At present, section 8254 directs the formation of the cooperative in the manner prescribed for ordinary corporations (Chapter 155) "so far as . . . not inconsistent". Proposed sections 8255 and following spell out the complete procedure to be observed, in general adding directions where the ordinary incorporation law (Chapter 155) is inapplicable or silent.

The general requirement contained in Chapter 155 for filing a supporting affidavit showing information concerning shares subscribed for, price, amount of capital paid in by each subscriber, and subscribers' names is not included. Likewise deleted are the requirements that 75% of the authorized capital stock must be subscribed for prior to commencement of business and 10% must be paid in.

Proposed section 8255 should be compared to present section 8305.

Proposed Sec. 8256. Name: Same as present section 8254.

Proposed Sec. 8257. Filing and Recording Articles of Association:

- (a) Recording in office of Treasurer. Same as present section 8307.
- (b) Filing with board of commissioners of agriculture and forestry. New
- (c) Corporate existence; maximum life 50 years. Same as present section 8309.
- (d) No constructive notice of articles. New
- (e) Fees. Same as present section 8264.

Proposed Sec. 8258. Amendments of Articles of Incorporation: Proposed section should be compared with present section 8315.

Proposed Sec. 8259. By-laws: Proposed section should be compared with present sections 8335 and 8336.

Proposed Sec. 8260. Powers: Proposed section should be compared with present secs. 8338-8342. More particularly:

- I. Compare with present section 8339.
- II. (a) Act as agent, etc. New
- (b) To make contracts and exercise incidental powers. Compare with present sections 8338(5) and 8339.
- (c) To make loans, to acquire evidences of debt, but not engage in banking. The last portion of present section 8262 and present section 8341 now duplicate in part.
- (d) Reserves and surplus. Implied in part by present section 8260.
- (e) To hold membership or stock in other associations and corporations. Partially covered by present section 8255 permitting association to become member in another association.
- (f) To acquire, mortgage, and dispose of property. Same as present section 8338(4). See also present section 8262.
- (g) To borrow money and give note, etc. Covered by present section 8262.
- (h) Maximum services for non-members. New
- (i) Corporate seal. Same as present section 8338(3).
- (j) Corporate existence. Same as present section 8338(1).
- (k) To sue in corporate name. Same as present section 8338(2).
- (l) To conduct business in and out of Territory. New, but probably inherent in other powers.
- (m) To dissolve and wind up. Present section 8352 permits.

Proposed Sec. 8261. Members:

- (a) Persons eligible. Present section 8255 limits members to persons engaged in production of agricultural products to be handled by the association. Proposed section 8261 enlarges class to include any bona fide producer of agricultural products.
- (b) Maximum ownership by one person. New
- (c) Loss of membership. Compare last sentence of section 8255.
- (d) Member's personal liability. Proposed subsection is broader than present section 8346.

- (e) Voting rights. Present section 8256 limits members of non-stock associations to one vote on questions concerning management, business or affairs of the association. Proposed subsection prohibits all members from having more than one vote on any question, unless articles otherwise provide.

Proposed Sec. 8262. Certificates, Transfers, Dividends, Preferred Stock:

- (a) Issuance of certificate, voting and holding office prior to full payment. New
- (b) Dividends on stock. Compare with present section 8261(2).
- (c) Apportionment of net income on basis of patronage. Proposed section permits distribution to non-members, and at different rates; compare with present section 8261(1).
- (d) Withdrawal from association. The last sentence of present section 8255 covers.
- (e) Preferred stock. Compare with present section 8321.

Proposed Sec. 8263. General and Special Meetings: New. Compare with present sections 8332.01 and 8332.02.

Proposed Sec. 8264. Directors: Minimum number of three directors now fixed by present section 8304; present section 8305 requires the names of initial directors to be stated in articles. Rest appears New.

Proposed Sec. 8265. Removal of Directors: New

Proposed Sec. 8266. Officers: New

Proposed Sec. 8267. Removal of officers: New

Proposed Sec. 8268. Referendum on Matters of Policy: New

Proposed Sec. 8269. Contracts between Association and Members:

- I. Contract. Present section 8257 provides for marketing contracts covering selling through the association for periods not exceeding 15 years. Such contracts can run with and bind products from specific parcels of land, notwithstanding title to the land may be transferred. The proposed section eliminates the running-with-the-land clause, limits maximum term of contract to three years, after which the member may withdraw, and enlarges scope of contract to include purchasing through the association.
- II. Damages for breach. Same as present section 8258(1).
- III. Equitable relief. Same as present section 8258(2), with elimination for running-with-the-land feature.
- IV. Recording contracts. New

Proposed Sec. 8270. Misdemeanor to Induce Breach of Marketing Contract or to Spread False Rumors. New

Proposed Sec. 8271. Associations Not in Restraint of Trade:

- (a) Not in restraint of trade. Same as present section 8265.
- (b) Acquiring and disseminating data. New
- (c) Production adjustment. New

Proposed Sec. 8272. Voluntary Dissolution: Compare with present sections 8352, 8354-8357. In place of vote of 3/4 of issued and outstanding stock having voting power, or vote of 3/4 of members present at meeting when non-stock corporation (present Sec. 8352), "2/3 of the voting power voting thereon" is declared sufficient for dissolution. Publication of notice is not prescribed. No provision is made for involuntary dissolution.

Proposed Sec. 8273. Annual Reports: Compare with present sections 8349 and 8350. Proposed section specifies data required; how Treasurer determines information to be included.

Proposed Sec. 8274. Application to Existing Associations: New

Proposed Sec. 8275. Saving Clause: New

Proposed Sec. 8276. Foreign Associations: Covered in part by last sentence of present section 8254. Instead of foreign cooperative paying \$50 admittance fee and \$100 annual license fee (present sections 8392 and 8393) will pay same fees as domestic cooperatives.

Proposed Sec. 8277. Taxation: Annual license fee of \$10 to be paid in lieu of all other taxation. New

Proposed Sec. 8278. Extensions and Renewals: Present section 8314 (which proposed section incorporates by reference) now applies.

Proposed Sec. 8279. Constitutionality: New

Proposed Sec. 8280. Uniformity of Interpretation: New

Proposed Sec. 8281. Short Title: New

UNIFORM AGRICULTURAL COOPERATIVE ASSOCIATION  
ACT COMPARED TO H. B. NO. 754 (H.D. 3) OF 1947.  
(delete=words not in H.B.754; underline=words added by H.B.754)

Sec. 1 8251. Declaration of Policy. It is the declared policy of this State Territory, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective associations under the control of such producers, and to that end this Act should be liberally construed.

Sec. 2 8252. Definitions. As used in this Act, unless the context or subject matter requires otherwise:

(a) "Agricultural products" shall include floricultural, horticultural, viticultural, forestry, nut, coffee, dairy, livestock, poultry, bee and any farm or plantation products.

(b) "Association" means ~~a~~ any corporation organized under this Act, or a similar domestic corporation, or a foreign association or corporation if authorized to do business in this State Territory, organized under any general or special act as a cooperative association for the mutual benefit of its members, as agricultural producers, and which confines its operations to purposes authorized by this Act and restricts the return on the stock or membership capital and the amount of its business with non-members to the limits placed thereon by this Act for associations organized hereunder.

(c) "Domestic association" means an association or corporation formed under the laws of ~~this State~~ the Territory.

(d) "Foreign association" means an association or corporation not formed under the laws of this State Territory.

(e) "This Act" means the "Uniform Agricultural Cooperative Association Act".

(f) Associations shall be classified as ~~an~~ deemed to be non-profit corporations, inasmuch as their primary object is not to pay dividends on invested capital, but to render service and provide means and facilities by or through which the producers of agricultural products may receive a reasonable and fair return for their products.

(g) "Member" shall include~~s~~ the holder of a membership in an association without capital stock and/or the holder of common stock in an association organized with capital stock.

(h) "Person" shall include~~s~~ ~~an~~ individuals, a partnerships, a corporations and ~~an~~ associations.

(i) "Board" means the board of directors.

(j) "Articles" means the Articles of ~~Incorporation~~ Association.

Sec. 3 8253. Qualifications of Incorporators. Five or more adult persons, engaged in agriculture as bona fide producers of agricultural products, or two or more associations of such producers, may form an association

under this chapter.

Sec. 4 8254. Purposes. Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

(a) Producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping, or utilizing such products, or manufacturing or marketing the by-products thereof;

(b) Manufacturing, buying for or supplying to its members machinery, equipment, feed, fertilizer, fuel, seeds and other agricultural and household supplies;

~~(e)~~ Generating and distributing electrical energy and furnishing telephone services to its members, upon complying with the existing provisions of law applicable to other businesses of like kind;

~~(d)~~ (c) Performing or furnishing business or educational services, on a cooperative basis, for or to its members;

~~(e)~~ (d) Financing any of the above enumerated activities for its members.

Sec. 5 8255. Articles of ~~Incorporation~~ Association. Articles of ~~incorporation~~ association shall be signed ~~in quadruplicate~~ by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the President and Secretary ~~if of~~ associations, before any officer authorized to take acknowledgments, and shall ~~state~~ contain the following particulars:

(a) The name of the association, which ~~may or may not~~ shall include the word "cooperative." The ~~corporate~~ name shall not be the same as, nor ~~deceptively~~ similar to, the name of any association or corporation doing business in the State, unless the written consent of such other association or corporation, to the adoption of such name, is filed with the articles in the office of the ~~Secretary of State~~.

(b) The place of its principal office, which shall be in the Territory;

~~(b)~~ (c) The purposes and powers of the association;

~~(e)~~ (d) The proposed duration of the association;

~~(d)~~ The location and post office address of its registered office in this State; (e) The names and addresses of the persons who are to act as the initial directors and officers of the association;

~~(e)~~ (f) The names and post office addresses of the incorporators, and if organized with capital stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribes;

(f) ~~The names of the first directors and their post office addresses.~~  
(g) Whether organized with or without capital stock; and if organized with capital stock the total authorized number of par value shares and the par value of each share, and if any of its shares have no par value, the authorized number of such shares; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled;

(h) If organized without capital stock, whether the property rights and interests of each member are equal or unequal; if unequal, the rule by which such rights and interests shall be determined;

(i) The articles may also contain any other provisions, consistent with law for regulating the associations's business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent such districts and the members residing therein, for voting by proxy, and the issuance, retirement and transfer of memberships and stock.

Sec. 8256. Name. The provisions of section 8306 shall apply to associations formed under this chapter, and no corporation not organized hereunder shall use the word 'cooperative' as a part of its name, provided, however that nothing herein contained shall be construed to apply to any corporation duly organized as a cooperative under the laws of any state or of the District of Columbia so long as such corporation complies with the provisions of chapter 157. (Ed. Note: See Model Act Sec. 25 following proposed Sec. 8275.)

Sec. 6 8257. Filing and Recording Articles of Incorporation Association, etc. Issuing Certificate of Incorporation.

(a) ~~Quadruplicate originals of~~ the articles of incorporation shall be delivered to the ~~Secretary of State.~~ If the ~~Secretary of State~~ finds that the articles conform to law, he shall ~~put the endorsement of his approval on each set, and~~ when all fees and charges have been paid as required by law ~~he shall~~ file ~~and record~~ ~~one of such sets of~~ the articles in his office, and shall issue and record a certificate of incorporation.

(a) The articles of association, charters and any certificates of amendment thereof shall be recorded in the office of the treasurer of the Territory in a book to be kept for the purpose, which shall at all times during business hours be open to the inspection of the public without charge.

(b) ~~Upon the issuance of the certificate of incorporation the corporate existence shall begin.~~

(b) A certified copy of said articles or of a certificate of incorporation issued by the Treasurer shall be filed with the board of commissioners of agriculture and forestry.

(c) ~~The certificate of incorporation, together with the remaining sets of the articles bearing the endorsement of the fact and deed of filing in the office of the Secretary of State,~~ shall be returned to the incorporators or their representative. ~~One of the sets of the articles of incorporation shall then be filed recorded~~ in the office of the ~~Recorder of Deeds~~ of the county in which the registered office of the association is situated

and one set shall be filed with the Commissioner of Agriculture, and the other shall be retained by the association.

(c) On the filing of the articles of association with the Treasurer, the persons who have subscribed the articles, their associates, successors and assigns, shall thereafter be deemed to be and be a body corporate by the name and style provided in said articles; shall have succession and corporate existence for such term as shall have been agreed upon, not to exceed fifty years; shall have all of the powers and be subject to all of the liabilities provided for in this chapter; and shall be subject to all general laws then effective or thereafter enacted in regard to such associations.

(d) No person dealing with the association shall be charged with constructive notice of the contents of the articles or amendments thereto by reason of such filing or recording.

(e) For filing articles of incorporation an association shall pay to the Secretary of state \$10.00, together with the annual license fee which shall be due for the current and succeeding quarters of the fiscal year. For filing the copies of the articles with the Recorder of Deeds it shall pay to the Recorder of Deeds a fee of \$1.00.

(e) An association organized under the provisions of this chapter shall be subject to the provision of section 8351, relating to the payment of fees by corporations to the treasurer.

Sec. 7 8258. Amendments of Articles of Incorporation.

(a) An association may amend its articles of incorporation by the affirmative vote of two-thirds of the members voting thereon at any regular meeting, or at a special meeting called for the purpose, or if the association permits its members to vote on the basis of patronage, by the affirmative vote of a majority of the members and of two-thirds of the patronage, voting thereon. A written or printed notice of the proposed amendment and of the time and place of holding such meetings shall be delivered to each member, or mailed to his last known address as shown by the books of the association, at least thirty days prior to any such meetings. No amendment affecting the preferential rights of any outstanding stock shall be adopted until the written consent of the holders of two-thirds of the outstanding preference shares has been obtained.

(b) After an amendment has been adopted, articles of amendment shall be prepared in quadruplicate, setting forth the amendment and the adoption thereof, and shall be signed and sworn to by the president or vice president and by the treasurer or secretary or assistant secretary, and filed, recorded, and endorsed as in the case of original articles of incorporation. For filing, recording an amendment to the articles the association shall pay to the Secretary of State a fee of \$5.00, and to the Recorder of Deeds a fee of \$1.00.

(b) After an amendment has been adopted, articles of amendment shall be signed and sworn to by the president or vice president and by the treasurer or secretary or assistant secretary, and filed as in the case of articles of association, including the payment of fees.

Sec. 8 8259. By-laws. The members of the Association, within thirty days after its incorporation, shall adopt by-laws not inconsistent with law or

the articles, and they may alter and amend the same from time to time. The by-laws must be adopted by a majority of the members voting thereon, or if the association permits its members to vote on the basis of patronage then by a majority of members and a majority of the patronage, voting thereon. The by-laws may also provide for:

(a) The time, place and manner of calling and conducting meetings of the members, and the number of members that shall constitute a quorum;

(b) The manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations, and the voting power of votes based on patronage;

(c) Subject to any provision thereon in the articles and in this Act, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;

(d) The time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;

(e) Rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of contracts, the issuance, retirement and transfer of stock, and the relative rights, interests and preferences of members and shareholders;

(f) Penalties for violations of the by-laws.

Sec.9 8260. Powers.

I. An association formed under this Act, or an association which might be formed under this Act and which existed at the time this Act took effect, shall have the capacity to act possessed by natural persons, but such association shall have authority to perform only such acts as are necessary or proper to accomplish the purposes as set forth in its articles and which are not repugnant to law.

II. Without limiting or enlarging the grant of authority contained in subdivision I of this section, it is hereby specifically provided that every such association shall have authority:

(a) To act as agent, broker or attorney in fact for its members, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and for subsidiary and affiliated associations to property handled or managed by the association on their behalf.

(b) To make contracts, and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association.

(c) To make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire, endorse, discount or sell any evidence of debt, obligation or security, but it shall not engage in banking.

(d) To establish and accumulate reserves and surplus to capital.

(e) To own and hold membership in or shares of the capital stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing or marketing any of the products handled by the association; or, in financing its activities, and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon.

(f) To acquire, hold, sell, dispose of, pledge or mortgage, any property which its purposes may require, subject to any limitation prescribed by law or its articles.

(g) To borrow money and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge.

(h) To deal in products of, and handle machinery, equipment, supplies and perform services for non-members to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members, but the value of the annual purchases made for persons who are neither members nor producers shall not exceed fifteen per centum of the value of all its purchases.

(i) To have a corporate seal and to alter the same at pleasure.

(j) To continue as a corporation for the time limit in its articles, and if no time limit is specified (then perpetually).

(k) To sue and be sued in its corporate name.

(l) To conduct business in this ~~state~~ Territory and elsewhere as may be permitted by law.

(m) To dissolve and wind up its affairs.

Sec. ~~10~~ 8261. Members.

(a) An association may admit as members only bona fide producers of agricultural products, including tenants and landlords receiving a share of the crop, and cooperative associations of such producers. The incorporators named in the articles are thereby made members of the association, and they shall pay for their membership or stock the same amount and in the same manner as may be required in the case of other members.

(b) The articles may limit the amount of common stock which a member may own.

(c) Under the terms and conditions prescribed in the by-laws, a member shall lose his membership if he ceases to belong to the class eligible to membership under this section, but he shall remain subject to any liability incurred by him while a member of the association.

(d) No member shall be personally liable for any debt or liability of the association.

(e) Unless the articles otherwise provide, no member shall have more than one vote.

Sec. ~~11~~ 8262. Membership or Stock Certificates, Transfers, Dividends, Preferred Stock.

(a) No certificate for membership or stock shall be issued until fully paid for, but by-laws may provide that a member may vote and hold office prior to payment in full for his membership or stock.

(b) Dividends in excess of eight per centum on the actual cash value of the consideration received by the association shall not be paid on common or preferred stock or membership capital, but dividends may be cumulative.

(c) Net income in excess of dividends and additions to reserves and surplus shall be distributed on the basis of patronage, and the books of the association shall show the interest of members in the reserves and surplus. The distribution of the net income may be restricted to members or be made at the same or a different rate for members and non-members. The by-laws may provide that any distribution to a non-member, eligible for membership, may be credited to such non-member until the amount thereof equals the value of a membership certificate or a share of the association's common stock.

(d) The by-laws shall fix a time within which a member shall receive from the association, after he has notified the association of his withdrawal, or after the adoption of a resolution by the board terminating his membership, the value in money of his membership interest in the association as appraised by the board of directors. If the board of directors shall approve the member's designation of a transferee of his membership interest, the association shall be under no obligation to pay him the value of his interest.

(e) An association may issue preferred stock to members and non-members. Preferred stock may be redeemed or retired by the association on such terms and conditions as may be provided in the articles and printed on the stock certificate. Preferred stockholders shall not be entitled to vote, but no change in their priority or preference rights shall be effective until the written consent of the holders of two-thirds of the preferred stock has been obtained. Payment for preferred stock may be made in cash, services or property on the basis of the fair value of the stock, services and property as determined by the board.

Sec. ~~12~~ 8263. General and Special Meetings. How called. Within thirty days after the incorporation of an association the members thereof shall hold an organization meeting at a time and place fixed by the temporary board of directors. Not less than ten days' written notice thereof shall be given to each member. An association may provide in its by-laws for one or more regular meetings each year, which may be held within ~~or without the~~ State Territory at the time and place designated in the by-laws. Special meetings of the members may be called by the board of directors, and it shall be their duty to call such meetings when ten per centum of the members file with the secretary a petition demanding a special meeting and specifying the business to be considered at such meeting. Notice of all meetings, except

as otherwise provided by law or the articles or by-laws, shall be mailed to each member at least ten days prior to the meeting, and in case of special meetings the notice shall state the purposes for which it is called, but the by-laws may require that all notices, except of proposed amendments to the articles shall be given by publication in a periodical published by or for the association, to which substantially all its members are subscribers, or in a newspaper or newspapers whose combined circulation is general in the territory in which the association operates.

Sec. ~~13~~ 8264. Directors.

I. The business of the association shall be managed by a board of not less than three directors; at least two-thirds of the directors shall be members of the association or officers, directors or members of a member association. A director shall hold office for the term for which he was named or elected and until his successor is elected and qualified.

II. The names of the first directors shall be stated in the articles. Their successors shall be elected by the members at the first meeting of the members held after the incorporation of the association.

III. The number, qualifications, terms of office, manner of election, time and place of meeting and the powers and duties of the directors may, subject to the provisions of this Act, be prescribed by the articles or by-laws. Except as otherwise prescribed in the articles or by-laws:

(a) A director shall be elected for a term of one year.

(b) Vacancies in the board, other than by expiration of term, shall be filled by the remaining members of the board, unless the by-laws provide for the election of directors by districts, in which case the board shall call a special meeting of the members in the district to elect a person qualified to fill the vacancy. A director elected by the remaining members of the board shall serve until his successor is elected by the members, who may make such election at the next annual meeting of the members or at any special meeting called and held prior thereto.

IV. The by-laws may provide, if not restricted by the articles, that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such case, the by-laws shall specify, or vest in the board of directors authority to determine, the number of directors to be elected by each district and the manner and method of apportioning the directors and of districting and redistricting the territory covered by the association. The by-laws may provide that primary elections shall be held in each district to nominate the directors apportioned thereto and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered as a final election.

V. The by-laws may provide for an executive committee to be elected by the board of directors from their number and may allot to such committee all the functions and powers of the board subject to its general direction and control.

Sec. ~~14~~ 8265. Removal of Director. Any member may ask for the removal of a director by filing charges with the secretary or president of the

association, together with a petition signed by five per centum of the members requesting the removal of the director in question. The removal shall be voted upon at the next meeting of the members, and by two-thirds of the voting power voting thereon the association may remove the director. The director whose removal is requested shall be served with a copy of the charges not less than ten days prior to the meeting and shall have an opportunity at the meeting to be heard in person and by counsel and to present evidence; and the persons requesting the removal of a director shall have the same opportunity. In case the by-laws provide for election of directors by districts, then the petition for removal of a director must be signed by twenty per centum of the members residing in the district from which he was elected. The board must call a special meeting of the members residing in that district to consider the removal of the director; and by two-thirds of the voting power of the members of that district voting thereon the director in question shall be removed from office.

Sec. 15 8266. Officers. The board shall elect a president, a secretary and a treasurer, and may elect one or more vice presidents, and such other officers as may be authorized in the by-laws. The president and at least one of the vice presidents must be members and directors, but a vice president who is not a director cannot succeed to or fill the office of president. Any two of the officers of vice president, secretary and treasurer may be combined in one person.

Sec. 16 8267. Removal of Officer. Any member may bring charges of misconduct or incompetency against an officer by filing them with the secretary or president of the association, together with a petition signed by ten per centum of the members requesting the removal of the officer in question. The directors shall vote upon the removal of the officer at the first meeting of the board held after the hearing on the charges, and the officer may be removed by a majority vote, notwithstanding any contract the officer may have with the association, which shall terminate upon his removal, anything in the contract to the contrary notwithstanding. The officer against whom such charges are made shall be served with a copy of the charges not less than ten days prior to the meeting, and shall have an opportunity at the meeting to be heard in person and by counsel, and to present evidence, and the persons making the charges shall have the same opportunity.

Sec. 17 8268. Referendum. The articles or by-laws may provide that upon demand of two-fifths of all the directors, any matter of policy that has been approved or passed by the board must be referred to the members for their approval before it becomes effective. No referendum shall be allowed unless it is demanded by the required number of directors at the meeting at which the matter of policy in question is adopted.

Sec. 18 8269. Contracts between Association and Members.

I. Period, Withdrawal. The by-laws may require members to execute contracts with the association in which the members agree to patronize the facilities created by the association, and to sell all or a specified part of their products to or through it, or to buy all or a specified part of their supplies from or through the association or any facilities created by it. If the members contract to sell to the association, the fact that for certain purposes the relation between the association and its members may be one of agency shall not prevent the passage from the member to the association of absolute and exclusive title to the products which are the subject-matter of the contract. Such title shall pass to the association upon delivery of the product,

or at any other time specified in the contract. If the period of the contract exceeds three years, the by-laws and the contracts executed thereunder shall specify a reasonable period, not less than twenty days, in each year, after the third year, during which the member, by giving to the association such reasonable notice as the association may prescribe, may withdraw from the association. In the absence of such a withdrawal provision, a member may withdraw at any time after three years.

II. Damages for Breach. The contract may fix, as liquidated damages, which shall not be regarded as penalties, specific sums to be paid by the members to the association upon the breach of any provision of the contract, regarding the use of any facilities of the association or the sale, delivery, handling or withholding of products; and may further provide that the member who breaks his contract shall pay all costs, including premiums for bonds, and reasonable attorney's fees, to be fixed by the court, in case the association prevails in any action upon the contract.

III. Equitable Relief. A court of competent jurisdiction may grant an injunction to prevent the breach of the contract by a member and may decree specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and a bond in such form and amount as may be approved by the court, the court may grant a temporary restraining order or preliminary injunction against the member.

IV. Recording Contracts. The association may file contracts to sell agricultural products to or through the association in the office of the Register of Deeds of the county in which the products are produced Bureau of Conveyances. If the association has uniform contracts with more than one member in any county, it may, in lieu of filing the original contracts, file the affidavit of its president, vice president or secretary, containing or having attached thereto:

(a) A true copy of the uniform contract entered into with its members producing such product in that county;

(b) The names of the members who have executed such contract and a description of the land on which the product is produced, if such description is contained in the contract. The association may file from time to time thereafter affidavits containing revised or supplementary lists of the members producing such product in the county without setting forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof. All affidavits filed under the section shall state in substance that they are filed pursuant to the provisions of this section. The Register of Deeds They shall file such affidavits and make endorsements thereon and record and make entries thereof in the same manner as is required by law in the case of chattel mortgages, and he shall compile and make available for public inspection a convenient index containing the names of all signers of such contracts, and collect for its ~~his~~ services hereunder the same fees as for chattel mortgages. The filing of any such contract, or such affidavit, shall constitute constructive notice of the contents thereof, and of the association's title or right to the product embraced in such contract, to all subsequent purchasers, encumbrancers creditors, and to all persons dealing with the members with reference to such product. No title, right or lien of any kind shall be acquired to or on the product thereafter except through the association or with its consent, or subject to its rights; and the association may

recover the possession of such property from any and all subsequent purchasers, encumbrancers, and creditors, and those claiming under them, in whose possession the same may be found, by any appropriate action for the recovery of personal property, and it may have relief by injunction and for damages.

Sec. 19 8270. Misdemeanor to Induce Breach of Marketing Contract of Cooperative Association; Spreading False Reports about the Management or Finances thereof. Any person or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association to violate his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof, shall be guilty of a misdemeanor and shall be subject to a fine of not less than ~~one hundred~~ dollars and not more than ~~one thousand~~ dollars for each such offense; and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars for each such offense.

Sec. 20 8271. Associations are not in Restraint of Trade.

(a) No association complying with the terms thereof shall be deemed to be a conspiracy, or a combination in restraint of trade, or an illegal monopoly; or be deemed to have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its members, or any agreements authorized in this Act, be construed as an unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

(b) An association may acquire, exchange, interpret and disseminate to its members, to other cooperative associations, and otherwise, past, present and prospective crop, market, statistical, economic and other similar information relating to the business of the association, either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

(c) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.

Sec. 21 8272. Voluntary Dissolution.

¶ (a) The members of an association may at any regular meeting, or any special meeting called for the purpose, upon thirty days' notice of the time, place and object of the meeting having been given as prescribed in the by-laws, by two-thirds of the voting power voting thereon, discontinue the operations of the association and direct that the association be dissolved and its affairs settled. The meeting shall by like vote designate a committee of three members who, as trustees on behalf of the association and within the time fixed in their designation or any extension thereof, shall liquidate its assets, pay its debts, and divide any surplus among the members in accordance with their respective rights and interests under their contracts with the association and the articles and by-laws. Upon final settlement by such trustees, the association shall be deemed dissolved and shall cease to exist. The trustees shall make a report ~~in quadruplicate~~ of the proceedings

had under this section, which shall be signed and sworn to and filed as required for the filing of the articles of incorporation.

(b) The trustees may bring and defend all actions by them deemed necessary to protect and enforce the rights of the association.

(c) Any vacancies in the trusteeship may be filled by the remaining trustees.

II. In the case of an association dissolving pursuant to this section, the circuit courts upon the petition of the trustees or a majority of them, or in a proper case upon the petition of a creditor or member, or upon the petition of the attorney general, upon notice to all of the trustees and to such other interested persons as the court may specify, from time to time may order and adjudge in respect to the following matters:

(a) The giving of notice by publication or otherwise of the time and place for the presentation of all claims and demands against the association, which notice may require all creditors of and claimants against the association to present in writing and in detail at the place specified in their respective accounts and demands to the trustees by a day therein specified, which shall not be less than forty days from the service or first publication of such notice;

(b) The payment or satisfaction in whole or in part of claims and demands against the association, or the retention of moneys for such purpose;

(c) The presentation and filing of intermediate and final accounts of the trustees, the hearing thereon, the allowance or disallowance thereof, and the discharge of the trustees, or any of them, from their duties and liabilities;

(d) The administration of any trust or the disposition of any property held in trust by or for the association;

(e) The sale and disposition of any remaining property of the association and the distribution or division of such property or its proceeds among the members or persons entitled thereto;

(f) Such matters as justice may require.

III. All orders and judgments shall be binding upon the association, its property and assets, its trustees, members, creditors and all claimants against it.

IV. This section shall apply to all associations heretofore or hereafter incorporated in ~~this state~~ the Territory.

Sec. 22 8273. Annual Reports. An association formed under this Act, within ninety days after the close of its fiscal year, shall file with ~~Department of Agriculture~~ the Treasurer and with the Board of Commissioners of Agriculture and Forestry an annual report containing the name of the association, its place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of shareholders, if a stock corporation, or the number of members and the amount of membership fees received, if a non-stock association;

an income statement; and its balance sheet. A copy of such report shall be submitted to the members at their annual meeting, or mailed to each member of the association, or printed in an official publication of the association.7

Sec. 23 8274. Application to Existing Associations. Except where otherwise expressly stated herein, this Act shall be applicable to any existing association formed under any law of ~~this State~~ the Territory providing for the incorporation of agricultural cooperative associations, for a purpose for which an association may be formed under this Act.

Sec. 24 8275. Saving Clause. This Act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this Act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if this Act had not been passed.

Sec. 25. Limitations of the Use of the Word "Cooperative". No person, firm, corporation or association, domestic or foreign, hereafter commencing business in this state shall use the word "cooperative" as a part of its corporate or business name unless it has complied with the provisions of this act or some other statute of this state relating to cooperative associations. A foreign association organized under and complying with the cooperative law of the state of such association's creation shall be entitled to use the term "cooperative" in this state if it has obtained the privilege of doing business in this state.

Sec. 26 8276. Foreign Associations. A foreign corporation that can qualify as an association, as defined in Section 2 of this act, this chapter may be authorized to do business in this State Territory under the provisions of this ~~act~~ chapter by complying with the laws relating to foreign corporations doing business in the ~~state~~ Territory ~~and filing with the Commissioner of Agriculture,~~ Board of Commissioners of Agriculture and Forestry a copy of its articles of incorporation duly certified by the ~~Secretary of State~~ Treasurer of the Territory of ~~this state~~. It shall pay the same fees and charges as domestic associations. Upon such compliance it shall have all the rights and privileges of like domestic associations.

~~Sec. 27 8277. Taxation.~~ Domestic associations and foreign associations admitted to do business in this State territory under the provisions of this chapter shall pay an annual license fee of ten dollars, which shall be in lieu of all other corporation, franchise and income taxes and taxes and charges upon reserves held by the association for distribution to members, including, but without limitation upon the generality of the foregoing, any taxes imposed under the provisions of chapters 99, 101, 102, and 105; and any distributions by such associations under the provisions of Section 8262 shall be exempt from any taxes imposed under the provisions of chapter 98.

Sec. 8278. Extensions and renewals. The provisions of section 8314 relating to extensions and renewals of the duration of corporate existence shall apply to associations formed under this chapter.

Sec. 28 8279. Constitutionality. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 29 8280. Uniformity of Interpretation. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 30 8281. Short Title. This Act may be cited as the Uniform Agricultural Cooperative Association Act.

Sec. 31. Repeal. ~~The following acts and parts of acts are hereby repealed,~~ or ~~All acts and parts of acts which are inconsistent with the provisions of this act are hereby repealed.~~

Sec. 32 2. Effective Date. This Act shall take effect on the ----- day of -----, one thousand nine hundred and ----- upon its approval.