A BILL FOR AN ACT

RELATING TO AGRICULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

HAWAII COOPERATIVE LAW

PART I. GENERAL PROVISIONS

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

"Agricultural cooperative" means a cooperative in which the members, including landlords and tenants, are all producers of agricultural products.

"Agricultural products" include floricultural, horticultural, viticultural, forestry, nut, coffee, dairy, livestock, poultry, bee, farm or plantation products, and fish and aquacultural commodities.

"Articles" means the articles of incorporation of a cooperative and includes amended articles of incorporation,
restated articles of incorporation, and other organizational
documents of other entities.

"Board of directors" or "board" means the board of
directors or other governing body of a cooperative or other
entity.

"Bylaws" means the bylaws adopted by a cooperative and
includes amended bylaws and restated bylaws.

"Capital account cooperative" means a worker cooperative in
which the entire net book value is reflected in member capital
accounts, one for each member, and an unallocated capital
account, if any.

"Collective board worker cooperative" means a worker
cooperative in which there is only one class of members
consisting of worker-members, all of whom are members of the
board.

"Community investor" means a person who is not a worker-
member and who holds a share or other proprietary interest in a
worker cooperative.

"Cooperative" means any entity formed under or subject to
this chapter by election or otherwise, including a cooperative
formed under comparable law of another jurisdiction doing
business in this State and having the following characteristics:

(1) The business of the cooperative is operated at cost by
adjusting the prices charged for goods or services or
by returning any net margins at the end of a fiscal
year on a patronage basis to members and other persons
qualified to share in the net margins pursuant to the
articles or bylaws;

(2) Dividends on stock or interest on equity capital is
limited, as prescribed in the articles or bylaws of
the cooperative;

(3) Voting rights are limited to members of the
cooperative as prescribed in the articles or bylaws of
the cooperative;

(4) The cooperative's business is carried on for the
mutual benefit of its members; and

(5) Members are not liable for any debt, obligation, or
liability of the cooperative.

"Domestic" means an entity formed under the laws of this
State.
"Equity capital" means all investments in the cooperative except loans or other types of indebtedness, whether made by direct investment, such as investment in stock or memberships, or by retention of amounts of net savings, net margins, or net profits allocated to members and other patrons of the cooperative, or charged to them as part of the transactions between them and the cooperative.

"Foreign" means an entity formed under law other than the law of this State.

"Member" means a person who has been received into the membership of a cooperative without common stock or a person or stockholder who has acquired common stock in a cooperative formed with common stock and, in either case, is authorized to vote.

"Net margins" means the receipts from operations less the expenses thereof.

"Patron" means a person who may, but need not, be a member of a cooperative who uses the services of the cooperative through the purchase or sale of property or services to or from the cooperative. If the corporation is organized as a worker cooperative, the corporation's "patrons" are its worker-members.
"Patronage" means the volume or dollar value of business transacted with the cooperative. If the corporation is organized as a worker cooperative, "patronage" may be measured by work performed including wages earned, number of hours worked, number of jobs created, or some combination of these measures.

"Patronage refund" means a portion of a cooperative's net margins paid or allocated to a patron based on the patron's patronage.

"Per unit retain" means a deduction authorized by a patron to be made by the cooperative from proceeds of sale of a product or service by the patron to the cooperative or by the cooperative on behalf of the patron where the deduction is based upon the value or quantity of the product or service sold to the cooperative or on behalf of the patron and is deducted as a contribution or investment by the patron in the capital of the cooperative.

"Person" includes individuals, partnerships, corporations, limited liability companies, and associations.

"Worker" means a natural person contributing labor or services to a worker cooperative.
"Worker cooperative" means a corporation formed under this part that includes a class of worker-members who are natural persons whose patronage consists of labor contributed to or other work performed for the corporation.

"Worker-member" means a member of a worker cooperative who is a natural person and is also a patron of a worker cooperative.

§ -2 Annual report. (a) A cooperative formed under this chapter shall file with the director of commerce and consumer affairs an annual report. The annual report shall contain:

(1) The name of the cooperative;

(2) The mailing address of its principal office, the address of its registered office in this State, and the name of its registered agent at its registered office in the State; and

(3) A general statement of its business operations during the fiscal year that includes:

(A) The amount of capital stock paid up;

(B) The number of shareholders, if a stock corporation, or the number of members and the
amount of membership fees received, if a nonstock association;

(C) An income statement; and

(D) Its balance sheet.

(b) The annual report shall be filed within the time periods prescribed in subsection (c).

(c) Effective January 1, 2020, for cooperatives whose date of registration in this State falls between:

(1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the cooperative's affairs as of January 1 of the year when filed;

(2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the cooperative's affairs as of April 1 of the year when filed;

(3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the cooperative's affairs as of July 1 of the year when filed; and
(4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the cooperative's affairs as of October 1 of the year when filed; provided that if a cooperative is formed in the same year in which the annual report is due, the cooperative shall not be required to file an annual report for that year. Thereafter, the cooperative shall comply with the requirements of this section.

(d) A copy of the report shall be submitted to the members at their annual meeting, or mailed to each member of the cooperative, or printed in an official publication of the cooperative.

§ -3 Cooperative records. (a) A cooperative shall keep as permanent records, minutes of all meetings of its members and of the board, a record of all actions taken by the members or the board without a meeting by a written unanimous consent in lieu of a meeting, and a record of all waivers of notices of meetings of the members and of the board.

(b) A cooperative shall maintain appropriate accounting records.
(c) A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(d) A cooperative shall keep a copy of each of the following records at its principal office:

(1) Its articles of incorporation or other governing instrument;

(2) Its bylaws or other similar instrument;

(3) A record of the names and addresses of its members, in a form that permits preparation of a list of members that is alphabetical and that shows each member's address and the investment qualifying a member to vote held by each member;

(4) The minutes of members' meetings, and records of all actions taken by members without a meeting by unanimous written consent in lieu of a meeting, for the past three years;

(5) All written communications within the past three years to members as a group or to any class of members as a group;
(6) A list of the names and business addresses of its current board of directors and officers;

(7) A copy of its most recent annual report pursuant to section -2; and

(8) All financial statements prepared for periods ending during the last fiscal year.

(e) Except as otherwise limited by this chapter, the board of directors of a cooperative shall have discretion to determine what records are appropriate for the purposes of the cooperative, the length of time records are to be retained, and policies relating to the confidentiality, disclosure, inspection and copying of the records of the cooperative.

§ -4 Referendum. The articles or bylaws may provide that upon demand of two-fifths of all the directors, or 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, 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.

§ -5 Volunteers exempted. Section 421C-33 shall apply to cooperatives formed under this chapter.
PART II. INCORPORATION

§ 6 Articles of incorporation. (a) A cooperative may be formed pursuant to this chapter for the transaction of any lawful business. One or more persons may act as the incorporator or incorporators of a cooperative by delivering articles for the cooperative to the director of commerce and consumer affairs for filing.

(b) The articles shall state:

(1) The domestic entity name of the cooperative, which domestic entity name shall comply with section 414D-61 and shall include the word "cooperative" as part of the name;

(2) The principal office address of the cooperative's principal office;

(3) The registered agent name and registered agent address of the cooperative's initial registered agent;

(4) If formed without common voting stock, whether the property rights and interests of each member are equal or unequal and, if unequal, the general rule or rules applicable to all members by which the property rights and interests of each member are determined and fixed;
provisions for the admission of new members who are entitled to share in the property of the cooperative with the old members in accordance with such general rules; and whether the cooperative is authorized to issue one or more classes of preferred stock or other equity interests and, if so authorized, a statement as to the number of shares of stock of each class or other equity interests and the nature and extent of the preferences, limitations, relative rights, and privileges granted to each;

(5) If formed with stock, the classes of shares and the number of shares of each class the cooperative is authorized to issue. The stock may be divided into preferred and common stock, voting and nonvoting stock, or into any other class of stock. If so divided, the articles shall contain a statement as to the number of shares of stock in each class and the nature and extent of the preferences, limitations, relative rights, and privileges granted to each; and

(6) The true name and mailing address of each incorporator.
(c) The articles may contain provisions:

(1) Eliminating or limiting the personal liability of a director as provided in this chapter;

(2) Specifying the number and terms of the board of directors, which number shall be not less than three, together with the names and the street addresses of the initial directors. If the names of the initial directors are not stated in the articles, the initial board of directors shall be designated by the incorporator or incorporators following the delivery of the articles to the secretary of state for filing;

(3) Specifying the purpose or purposes for which the cooperative is incorporated that may state any lawful business;

(4) Specifying a par value for authorized shares of stock or classes of shares;

(5) Defining, limiting, and regulating the powers of the cooperative, its board, and its members;

(6) Limiting membership to producers of agricultural products;
(7) Limiting the handling of products or services for its own members only, or for members and nonmembers, and whether nonmembers are entitled to share in allocations of net margins or are subject to per unit retains;

(8) For the removal for cause of any director by the members at any regular or special members' meeting;

(9) Eliminating or limiting the indemnification of directors, officers, employees, or agents of the cooperatives as otherwise provided in this chapter;

(10) Required or permitted under this chapter to be stated in the bylaws;

(11) Not inconsistent with law; and

(12) Specifying whether the cooperative has elected to be governed as a worker cooperative.

(d) When incorporated, no member or shareholder shall be liable directly or indirectly, including by way of indemnification, contribution, or otherwise, under a judgment, decree, or order of a court, or in any other manner for a debt, obligation, or liability of, or chargeable to, the cooperative.
(e) A member does not have any vested property right resulting from any provision in the articles that may exist from time to time or at any time including any provision relating to management, control, capital structure, dividend entitlement purpose, or duration of the cooperative.

§ -7 Amendment of articles. (a) A cooperative 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 cooperative 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 the meetings shall be delivered to each member, or mailed to the member's last known address as shown by the books of the cooperative, at least thirty days prior to any 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) Unless otherwise provided in the articles, the board may adopt, without shareholder action, one or more amendments to the articles to:

1. Delete the statement of names and addresses of the incorporators or of the initial directors;
2. Delete the statement of the registered agent name and registered agent address of the initial registered agent or registered office, if a statement of change is on file at the director of commerce and consumer affairs containing the registered agent name and registered agent address of the cooperative's registered agent;
3. Delete the statement of the names and addresses of any or all of the individuals named in the articles as being individuals who caused the articles to be delivered for filing; and
4. Except as otherwise prohibited by law, change each issued and unissued share of a class into a greater number of whole shares if the cooperative has only shares of that class outstanding.
(c) After an amendment has been adopted, the articles of amendment shall be certified and executed by the president or vice president and by the treasurer or secretary or assistant secretary, and filed as in the case of articles of incorporation, including the payment of fees.

(d) Any amendment to the articles may not be invalidated because of the manner of its adoption unless an action to do so is commenced within two years after the date of filing.

§ -8 Cooperatives desiring to relinquish provisions of this chapter. (a) Any cooperative formed under, or that has elected to be subject to, this chapter may relinquish being bound by this chapter by amending its articles in the manner provided in this chapter; provided that the amendment shall be approved by a two-thirds majority of all the members present and voting in person or in any other manner authorized by the cooperative pursuant to this chapter unless a greater vote is required by the articles or bylaws.

(b) The board shall present to the members for approval, as described in subsection (a), a plan to relinquish the provisions of this chapter, including:
(1) A statement as to what type of business entity the cooperative is to become after the plan has been adopted;

(2) A statement as to what will be the effect on equities of the cooperative after the plan has been adopted; and

(3) A statement as to the procedures and mechanisms for changing the cooperative to another type of entity.

(c) Amendments to the articles shall be delivered to the director of commerce and consumer affairs for filing.

§ 9 Entities formed under other law but subject to this chapter. Any domestic entity or foreign entity authorized to transact business or conduct activities in this State and engaged in any of the activities enumerated in this chapter but formed under other law may be considered for all purposes as subject to this chapter by amending the entity's constituent operating document as necessary to conform to this chapter and delivering to the director of commerce and consumer affairs for filing a statement that the entity has determined to accept the benefits of and to be bound by this chapter and has amended its constituent operating document as necessary to conform to this
chapter by amendments adopted in accordance with applicable law and its constituent operating document.

§ -10 Bylaws. (a) The initial board of each cooperative formed under this chapter, within thirty days after the articles become effective, shall adopt bylaws for the government and management of its affairs that are not inconsistent with law or the articles of the cooperative. The bylaws may be amended or modified in a manner as the bylaws may provide. If the bylaws do not provide a manner for their amendment, the bylaws may be amended at any time upon a majority vote of the members present and voting in person or in any other manner authorized by the cooperative pursuant to this chapter at a regular or special meeting, the notice of which meeting shall state that consideration will be given at the meeting to amending the bylaws and stating the proposed amendment or amendments.

(b) The bylaws of the cooperative shall prohibit the transfer of the voting common stock or membership in the cooperative to persons not eligible to be a member of the cooperative and, if the cooperative issues certificates of common stock or of membership, the restrictions shall be printed
upon every certificate of stock or certificate of membership subject to the restrictions. At the election of the cooperative, the restrictions may also be included in the articles.

(c) If not stated in the articles, the bylaws of the cooperative shall specify:

(1) The qualifications for membership, manner of succession, and conditions for suspension, withdrawal, or expulsion;

(2) The amount of any membership fee or capital subscription required by the cooperative to become a member, conditions of membership, and procedures for acquiring and repayment of membership capital;

(3) Any limitations on dividends on stock or interest on equity capital;

(4) The time, place, and manner of conducting or determining membership meetings of the cooperative, which shall be at least annually;

(5) The number, terms, and time of the election of directors, or the manner for determining the same;
(6) The number of directors that shall constitute a quorum for a meeting of the board, which shall be at least a majority;

(7) The number, terms, and titles of officers, their authority and duties as well as the manner of election or appointment, the filling of vacancies, or removal of officers; and

(8) A requirement that the cooperative's business shall be conducted on a cooperative basis for the mutual benefit of the cooperative's members.

(d) The bylaws may specify:

(1) The time, place, and manner of conducting its meetings;

(2) The mode and manner of removal of directors and the mode and manner of filling vacancies on the board caused by death, resignation, or removal;

(3) The compensation of directors and officers or the manner for determining compensation;

(4) The mode and manner of conducting business;
(5) The mode and manner of conducting elections and provisions for voting by ballots forwarded by mail or otherwise;

(6) The manner of assignment and transfer of interests in the cooperative;

(7) The manner of collection and enforcement for member nonpayment or nonperformance, including forfeiture of property rights and interests;

(8) The method of determination of property rights and interests in the cooperative and the value thereof;

(9) Methods and procedures for acquiring and returning equity capital to members and other patrons of the cooperative;

(10) Procedures for the handling of unclaimed equity capital and other funds declared payable by the cooperative and unclaimed by the holder; and

(11) Any other matter as may be proper to carry out the purpose for which the cooperative was formed or the governance of the cooperative.

§ 11 Renewable energy cooperatives. (a) A renewable energy cooperative may be organized for the purpose of promoting
electric energy efficiency technologies to its members,

generating electricity from renewable resources and
technologies, and transmitting and selling the electricity at
wholesale.

(b) For the purposes of this section, "renewable resources
and technologies" means biomass, geothermal energy, solar
energy, small hydroelectricity, and wind energy. Hydrogen
derived from biomass, geothermal energy, solar energy, small
hydroelectricity, and wind energy shall also be considered to be
renewable energy. "Renewable resources or technologies" does
not include pumped storage facilities; hydroelectricity other
than small hydroelectricity; coal, natural gas, oil, propane, or
any other fossil fuel; nuclear energy; or hydrogen derived from
pumped storage facilities.

§ -12 Worker cooperatives. (a) A corporation organized
under this chapter may elect to be governed as a worker
cooperative by making the following statement in its articles of
incorporation or its amended articles of incorporation: "This
corporation is a worker cooperative corporation organized under
the Hawaii Cooperative Law."
(b) A corporation that makes the election to be governed as a worker cooperative shall be governed by this chapter.

(c) A worker cooperative, including a capital account cooperative or collective board worker cooperative, may be formed under this chapter.

(d) The following shall apply to worker cooperatives:

(1) The net earnings and losses of a worker cooperative shall be apportioned and distributed at the time and in the manner specified in the articles of incorporation or bylaws;

(2) Net earnings declared as patronage distributions with respect to a period of time, and paid to a creditor or member, shall be apportioned among the members in accordance with the ratio that each member's patronage during the period bears to total patronage by all members during the period;

(3) The apportionment, distribution, and payment of net earnings may be paid in cash, credits, written notices of allocation, or capital stock issued by the worker cooperative;
(4) A worker cooperative, in its articles or bylaws, may establish itself as a capital account cooperative;

(5) The articles or bylaws of a capital account cooperative may authorize assignment of a portion of retained net earnings and net losses to an unallocated capital account. The unallocated capital account in a capital account cooperative shall reflect any paid-in capital and retained net earnings not allocated to individual members. Earnings assigned to the unallocated capital account may be used for any and all corporate purposes, as determined by the board of directors;

(6) The system of member and unallocated capital accounts may be used to determine the redemption price of member shares, capital stock, and written notices of allocation. The articles or bylaws may provide for the capital account cooperative worker cooperative to pay or credit interest on the balance in each member's capital account;

(7) The articles or bylaws of a capital account cooperative may permit the periodic redemption of
written notices of allocation and capital stock and
shall provide for recall and redemption of membership
shares upon termination of membership in the
cooperative; and

(8) A collective board worker cooperative shall not be
required to hold an annual meeting of members.

PART III. MEMBERS AND OWNERSHIP

§ -13 Members. (a) A cooperative may limit admission
or issue common stock only to persons engaged in the particular
business or using the goods or services provided by or through
the cooperative, including any entity formed under the law of
this State or any other jurisdiction, or may admit as members or
issue common stock to any person meeting uniform terms and
conditions stated in its articles or bylaws.

(b) When any required membership fee or payment for stock
as required in the articles, the bylaws, or a resolution of the
board has been paid in full or a promissory note executed for
the required membership fee or capital subscription, a
cooperative may issue a certificate of membership or common
stock evidencing the membership or ownership of the stock or may
evidence the same on the books or other records of the
cooperative as determined by the articles, the bylaws, or the board; provided that for a cooperative formed with stock, promissory notes of members may not be accepted by the cooperative as full or partial payment for stock unless permitted by the bylaws and adequately secured. The cooperative shall hold the stock as security for the payment of the note, but retention as security shall not affect the member's right to vote.

(c) No member shall have a right to vote until the required membership fee or payment for stock has been paid in full.

(d) A cooperative may limit the amount of common stock that a member may own.

(e) No member shall be liable directly or indirectly, including by way of indemnification, contribution, or otherwise, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of or chargeable to the cooperative while it is incorporated for an amount exceeding the sum remaining unpaid on the member's membership fee or the member's subscription to the stock, including any unpaid balance on any promissory note given in payment thereof; provided that
this subsection shall not affect the liability of a member who
is also a member of the board or an officer for that member's
negligence, wrongful act, or misconduct in that capacity.

(f) A cooperative formed with or without capital stock
under this chapter may issue or accept investments in nonvoting
stock or equity that may have rights and preferences, including
being subject to per unit retains or allocations of net margins,
as may be provided in the articles, the bylaws, or by the board.
Nonvoting stock or equity may be issued and sold by the
cooperative to any person, including those persons not otherwise
qualified to be members, and may be redeemable or retireable by
the cooperative on terms and conditions as are provided for in
the articles, the bylaws, or a resolution of the board providing
for the issuance of or the investment in the nonvoting stock or
equity. The terms and conditions of redemption shall be printed
on any certificate evidencing the stock or equity.

(g) A cooperative shall impose restrictions on the
transfer of voting common stock or membership in the cooperative
in its bylaws and may also impose restrictions in its articles
and on the transfer of other equity investments in the
cooperative in its articles, bylaws, or by resolution of its
board. Any restriction shall be printed upon any certificate or
other written evidence of the membership, voting common stock,
or other equity investment if one is issued.

(h) A cooperative may, at any time as stated in its
articles, bylaws, or resolution of the board adopted at the time
of issuance, acquire, recall, redeem, exchange, or reissue its
common stock, memberships, preferred stock, preferred equity,
memberships, or other equity capital. Consideration paid for
stock, memberships, or other equity capital acquired, recalled,
redeemed, exchanged, or reissued by the cooperative shall be the
par value, stated value, price originally paid, or book value,
whichever is less, as conclusively determined by the board, plus
any accrued and unpaid dividends, if any, and, if the price
originally paid for the stock, memberships, or other equity
capital included an additional amount based upon the right of
the holder to engage in business with the cooperative, the
consideration shall include the additional amount. If stock,
memberships, or other equity capital acquired, recalled,
redeemed, or exchanged does not have a par value, then the par
value shall not be considered in determining the consideration.
The cooperative may set off against the consideration to be paid
obligations to it of the holder of stock, membership, or other equity capital and shall have a continuing perfected security interest in the stock, membership, and other equity capital of a member, stockholder, or holder of other equity capital to secure payment of any indebtedness to the cooperative of the stockholder, member, or holder of other equity capital, whenever indebtedness is incurred. Notwithstanding any other provision of law, the security interest shall take priority over all other perfected security interests. No acquisition, recall, or redemption shall be made if the result would be to bring the value of the remaining assets of the cooperative below the aggregate of its indebtedness. The articles or bylaws may provide other limitations on the right of a cooperative to acquire recall, redeem, exchange, or reissue its stock memberships or other equity capital.

(i) If a member of a cooperative is other than an individual, the member may be represented by any individual, associate, officer, manager, member, shareholder, or other equity holder thereof duly authorized in writing by the member's board or other governing body having the right to authorize the representation.
(j) A cooperative may group its members in districts, or
other units, or by types of goods or services used, for
administration or otherwise achieving the purposes of the
cooperative.

(k) A cooperative may limit the amount of common stock or
other equity capital held by members or other persons.

(l) All worker-members shall have the rights, privileges,
preferences, restrictions, or conditions as provided in the
articles or bylaws. This membership shall not be divided into
partial memberships.

(m) A worker cooperative shall only make patronage
distributions to the worker-member class.

§ -14 Member meetings. (a) Each cooperative shall
provide for one or more regular member meetings annually, except
for a collective worker board cooperative. Either the board or
officers designated in the bylaws shall have the right to call a
special meeting of the members at any time, and the president,
or other officer designated in the bylaws, shall call a special
meeting to be held within sixty days upon petition by ten per
cent of the total number of members stating the specific
business to be brought before the meeting; provided that in a
worker cooperative with more than four worker-members, a special
meeting may be called by only the greater of three worker-
members or five per cent of the worker-members. In a worker
cooperative with fewer than four worker-members, special
meetings may be called by one worker-member. The board or the
person calling the special meeting shall determine the date,
time, and place of the meeting.

(b) Written notice of all member meetings shall be mailed
to each member at that member's last known address or
transmitted to each member in any other manner as may be
provided in the bylaws at least ten days prior to the meeting.
A worker cooperative shall provide notice of the meeting not
less than forty-eight hours before the meeting if the meeting is
a meeting of only worker-members; provided that the notice is
delivered personally to every worker-member. Notice of any
special meeting shall include a statement of the purpose for the
meeting. At all regular meetings of members of the cooperative,
any and all lawful business may be brought before the meeting
regardless of whether stated in the notice of the meeting;
provided that amendments to the articles or the bylaws of the
cooperative or other action required to be stated in the notice
of the meeting by this article shall not be subject to action unless the notice is stated in the notice of the meeting. At all special meetings of the members of the cooperative, business brought before the meeting shall be limited to the purpose stated in the notice.

(c) Actions taken or agreed to be taken during a member meeting shall not be invalidated on account of any member's failure to receive notice of a meeting if reasonable effort has been made to give notice in accordance with this section.

(d) Lawful actions or other membership votes may be taken by the cooperative in lieu of or without a member meeting if all members entitled to act or vote with respect to the action agree to that action by unanimous written consent.

§ -15 Membership list for meeting. (a) After fixing a record date for a meeting of the membership, the cooperative shall prepare a list of the names and addresses of all its members who are entitled to be given notice of the meeting. The membership list shall be available for inspection by any member or member's agent or attorney, for a proper corporate purpose, beginning the earlier of ten days before the meeting for which the list was prepared or two business days after notice of the
meeting is given and continuing through the meeting, and any adjournment.

(b) The cooperative shall make the membership list available at the meeting and any member or member's agent or attorney is entitled to inspect the list at any time and for a proper corporate purpose during the meeting or any adjournment.

(c) If the cooperative refuses to allow a member or the member's agent or attorney to inspect the membership list before or at the meeting, the member may apply to the circuit court of the county in which the street address of the cooperative's principal office is located or, if the cooperative has no principal office in this State, to the circuit court of the county in which the street address of its registered agent is located or, if the cooperative has no registered agent, to the first circuit court of the city and county of Honolulu for an order permitting the member or the member's agent or attorney to inspect the membership list.

(d) The court may order inspection of the membership list pursuant to subsection (c), unless the cooperative proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of
the member or the agent or attorney of the member to inspect or copy the membership list. The court may also postpone or adjourn the meeting for which the list was prepared until the inspection ordered by the court is complete. In any action:

(1) The court may order the losing party to pay the prevailing party's reasonable costs, including reasonable attorney fees;

(2) The court may order the losing party to pay the prevailing party for any damages the prevailing party shall have incurred by reason of the subject matter of the litigation;

(3) If inspection or copying is ordered pursuant to subsection (c), the court may order the cooperative to pay the member's inspection and copying expenses; and

(4) The court may grant either party any other remedy provided by law.

(e) If a court orders inspection of the membership list pursuant to subsection (c), the court may impose reasonable restrictions on the use or distribution of the list by the member.
(f) Failure to prepare or make available the membership list shall not affect the validity of action taken at the meeting.

§ -16 Quorum. (a) A quorum for conducting business at all meetings of the members shall be five per cent of the total number of members or thirty members present in person at the meeting, whichever is less. Members present and voting in person or in any other manner authorized by the cooperative shall be counted toward the quorum with respect to that matter; provided that this section shall not be construed to prevent a cooperative from requiring a greater number of members or percentage thereof as a quorum.

(b) An action by a cooperative shall not be valid in the absence of a quorum at the meeting at which the action was taken, unless the action taken is subsequently ratified by the required number of members.

§ -17 Member voting. (a) Members of a cooperative may vote either in person or, if provided in the articles or the bylaws of the cooperative or a resolution of the board with respect to a particular issue, by any of the following methods:
(1) Mail or electronic transmission if a means is provided
to verify that a member so voting has received the
exact wording of the matter upon which the vote is to
be taken;
(2) Telecommunication; or
(3) Any other means by which all persons in the meeting
may communicate with each other during the meeting.
(b) In this chapter, whenever reference is made to voting
by membership, the vote may be taken in any manner established
pursuant to this section unless specifically provided otherwise
in this chapter or by the board with respect to a particular
matter upon which the vote is to be taken.
(c) With respect to a matter where a vote has been cast by
an authorized means other than the person being present and
voting in person, the person casting the vote shall be counted
as present and voting for purposes of those provisions in this
chapter that refer to persons "present and voting".
(d) Proxy or cumulative voting shall be prohibited;
provided that the articles or bylaws may allow votes on specific
preannounced items by mail or otherwise by members absent from
meetings; provided further that where a member is other than an
individual, the member's vote may be cast by a representative authorized pursuant to this chapter.

(e) Except as otherwise provided in subsection (f), each member of a cooperative formed under this chapter shall be entitled to one vote only.

(f) Community investor voting power in a worker cooperative shall be provided in the articles or bylaws, and shall be limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.

§ -18 Reserves, distributions, and patronage refunds.

(a) A cooperative shall periodically set aside a portion of net margins, per unit retains, or other funds that is reasonable as determined by the board or in accordance with the articles or bylaws, for reserves, distributions, patronage refunds, capital, or other lawful business purposes.

(b) Net margins, after deductions for reasonable reserves and for allowances for income tax, shall be calculated and allocated on a patronage basis at least once every twelve months to members or to members and other qualified persons on an equitable basis as determined by the board or in accordance with
the articles or bylaws. This section shall not be construed as prohibiting the retention of net margins, excess per unit retains, or other funds allocated to members as a means of providing capital for the cooperative.

(c) If a cooperative has retained net margins or other funds allocated to members, the board shall have the right in accordance with the articles, bylaws, and policies established by the board to redeem or retire the net margins or other funds so retained. All decisions relating to the redemption or retirement of those funds shall be made solely by the board.

(d) A worker cooperative may create an indivisible reserves account that shall not be distributed to members. Funds in the indivisible reserves account shall derive only from non-patronage-sourced income, in a manner provided in the articles or bylaws, or by the board, and shall be used as capital for the cooperative.

§ -19 Inspection of cooperative records by member. (a) A member may inspect and copy, at the member's expense, during regular business hours at a reasonable location designated by the cooperative, any corporate records if the member meets the requirements of subsection (b) and gives the cooperative written
demand at least five business days before the date on which the member wishes to inspect and copy records; provided that no member shall have the right to inspect or copy any records of the cooperative relating to the amount of equity capital in the cooperative held by any person or any accounts receivable or other amounts due the cooperative from any person.

(b) To be entitled to inspect and copy permitted records, the member shall meet the following requirements:

(1) The member has been a member for at least one year immediately preceding the demand to inspect or copy or is a member holding at least five per cent of all of the outstanding equity interests in the cooperative as of the date the demand is made;

(2) The demand is made in good faith and for a proper corporate business purpose;

(3) The member describes with reasonable particularity the purpose and the records that the member desires to inspect; and

(4) The records are directly connected with the described purpose.
(c) The right of inspection granted under this section may not be abolished or limited by the articles, bylaws, or any actions of the board or the members.

(d) This section shall not affect:

(1) The right of a member to inspect records even if the member is in litigation with the cooperative; or

(2) The power of a court to compel the production of the cooperative's records for examination.

(e) If the records of the cooperative to be inspected or copied are in active use or storage at the time otherwise provided for inspection or copying, the cooperative shall notify the member of this fact and shall set a date and hour within three business days of the date otherwise set in this section for the inspection or copying.

§ 20 Scope of member's inspection right. (a) A member's agent or attorney has the same inspection and copying rights as the member.

(b) The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic copying, or other means.
(c) The cooperative may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production and reproduction of the records.

§ -21 Court-ordered inspection. (a) If a cooperative refuses to allow a member, or the member's agent or attorney, to inspect or copy any records that the member is entitled to inspect or copy within a prescribed time limit or, if none, within a reasonable time, the circuit court of the county in this State in which the street address of the cooperative's principal office is located or, if the cooperative has no principal office in this State, the circuit court of the county in which the street address of its registered agent is located or, if the cooperative has no registered agent, the first circuit court of the city and county of Honolulu, on application of the member, may summarily order the inspection or copying of the records demanded at the cooperative's expense.

(b) If a court orders inspection or copying of the records demanded, unless the cooperative proves that it refused inspection or copying in good faith because it had a reasonable
basis for doubt about the right of the member or the member's agent or attorney to inspect or copy the records demanded:

1. The court may order the losing party to pay the prevailing party's reasonable costs, including reasonable attorney fees;
2. The court may order the losing party to pay the prevailing party for any damages that the prevailing party shall have incurred by reason of the subject matter of the litigation;
3. If inspection or copying is ordered pursuant to subsection (a), the court may order the cooperative to pay the member's inspection and copying expenses; and
4. The court may grant either party any other remedy provided by law.

(c) If a court orders inspection or copying of records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

PART IV. OFFICERS AND ELECTIONS

§ 22 Directors; elections; remuneration; vacancy. (a) The affairs of a cooperative formed under or subject to this chapter shall be managed by a board of not less than three
directors as provided in the articles or bylaws and who are
elected by and from the members of the cooperative or designated
representatives of members who are not individuals. If
authorized by the articles or the bylaws, up to twenty per cent
of the board may consist of directors who are neither members
nor representatives of members. Directors who are not members
of the cooperative or are representatives of members may be
elected by a vote of two-thirds of the cooperative members
present and voting. Nominations for the position of director
shall be conducted in a manner provided in the bylaws or in a
resolution of the board or of the members.

(b) The articles or bylaws may provide that the territory
in which the cooperative has members shall be divided into
districts and that the directors shall be elected according to
those districts, either directly or by district delegates
elected by the members in that district; provided that the
articles or bylaws shall specify the number of directors to be
elected by each district and the manner and method of
reapportioning the directors and of redistricting the territory
covered by the cooperative. The bylaws may provide that primary
elections shall be held in each district to elect the directors
apportioned to those districts and that the result of all
primary elections shall be ratified at the next regular meeting
of the cooperative or be considered final as to the cooperative.

(c) A cooperative may provide a reasonable remuneration
for the time actually spent by its officers and directors in its
service. No director, during the term of the director's office,
shall be a party to a contract for profit with the cooperative
differing in any way from the business relations accorded
members of the cooperative.

(d) The articles or bylaws may limit directors from
occupying any position in the cooperative that is subject to a
regular salary or substantially full-time pay. The articles or
bylaws may provide for an executive committee and may allot to
the committee all the functions and powers of the board, subject
to the general direction and control of the board.

(e) When a vacancy on the board occurs other than by
expiration of term, the remaining members of the board, even
though not a quorum, by a majority vote, shall fill the
unexpired term, unless the articles or bylaws provide for an
election of directors by district, in which event, unless the
articles or bylaws provide for a different procedure, the board
shall immediately call a special meeting of the members in the
district to fill the vacancy.

§ -23 Officers; titles; election; duties and authority;
removal. (a) The bylaws shall provide for one or more officers
and the titles of those officers. The officers may include a
board chair, one or more vice-chairs, a president, one or more
vice presidents, a secretary, a treasurer, and assistant
officers or other officers. The officers shall be elected by
the board or in any other manner prescribed in the bylaws. At
least one officer shall be an individual at least eighteen years
of age. At least one officer shall be a member of the board.
One individual may simultaneously hold more than one office, but
may not concurrently hold the offices of president and
secretary.

(b) The bylaws or board of each cooperative shall
designate one or more officers responsible for preparing and
maintaining the minutes of meetings and all records required to
be kept and for authenticating records.

(c) All officers and agents of the cooperative, as between
themselves and the cooperative, shall have the authority and
perform duties in the management of the cooperative as may be
provided in the bylaws, or as may be determined by resolution of
the board of directors not inconsistent with federal, state, and
local law, the articles, and the bylaws.
(d) Unless otherwise provided in the articles or bylaws,
the board may remove any officer at any time with or without
cause.
§ -24 Procedures for meetings of the board of directors.
(a) The board shall meet at least annually. The board may
establish a time and place for regular board meetings.
(b) Special meetings of the board shall require at least
two days' notice of the date, time, and place. Unless otherwise
provided by the articles or bylaws, the purposes of a special
meeting are not required to be stated in the notice of any
special meeting.
(c) A director's attendance at a special meeting
constitutes a waiver of the notice requirement for that meeting
unless the director objects to the lack of or method of notice
and does not thereafter participate in the meeting or if notice
of the purpose of the meeting was required but not given and the
director objects to the transaction of business for that purpose
and does not thereafter participate in the meeting with respect to that purpose.

(d) A director is deemed to have assented to an action of the board unless:

(1) The director votes against it or abstains and causes the abstention to be recorded in the minutes of the meeting;

(2) The director objects at the beginning of the meeting and does not vote for it later;

(3) The director causes the director's dissent to be recorded in the minutes;

(4) The director does not attend the meeting at which the vote is taken; or

(5) The director gives notice of the director's objection in writing to the secretary within twenty-four hours after the meeting.

(e) Unless otherwise provided by the articles or bylaws:

(1) The board may permit any or all directors to participate in a regular or special meeting through the use of any means of communication by which all
directors participating are able to communicate simultaneously with each other during the meeting;

(2) Actions of the board may be taken without a meeting if the action is agreed to by all members of the board and is evidenced by one or more written consents together signed by all directors and filed with the corporate records reflecting the action taken; and

(3) Purposes of a special meeting are not required to be stated in the notice of any special meeting, but at least two days' notice of the date, time, and place shall be given.

§  -25 Removal of director by the membership or the board. (a) At a meeting called expressly for that purpose, as well as any other proper purpose, a director may be removed by the members in the manner provided in this section upon an affirmative vote of a majority of the members present and voting in person or in any other manner authorized by the cooperative or, if removal of a director is by the board, then by a majority of the members of the board not subject to removal.
(b) The board may remove a director who does not meet the qualifications for board membership stated in the articles and bylaws of the cooperative.

(c) The members may remove one or more directors only for cause unless the articles or bylaws allow directors to be removed without cause.

(d) Removal of directors by the vote of the members shall be initiated by written petition signed by at least ten per cent of the members stating the alleged causes or reasons for removing the director. No petition shall seek removal of more than one director.

(e) Within ninety days after receipt of a petition meeting the requirements of subsection (d), the board shall schedule the removal vote at a regular or special meeting of the membership upon determination by the board, if necessary, that cause has been stated. Any determination of cause shall be made by a majority of the directors not subject to removal petitions. If more than a majority of the board is subject to removal petitions, then the matter shall be promptly referred to an attorney who has been duly licensed to practice law in the State for at least five years and who has not previously represented
the cooperative. The attorney's determination of whether cause has been stated shall be final for the purpose of whether to schedule a vote on removal.

(f) Any director subject to a removal petition under this section shall be promptly informed in writing by the board and shall have the opportunity, in person and by counsel, to be heard and present evidence at the meeting called for the vote. The persons seeking removal shall have the same opportunity.

§ 26 Removal of director by judicial proceeding. (a)

A director may be removed by the circuit court of the county in which the street address of the cooperative's principal office is located or, if the cooperative has no principal office in this State, by the circuit court of the county in which the street address of its registered agent is located or, if the cooperative has no registered agent, by the first circuit court of the city and county of Honolulu, in a proceeding commenced either by the cooperative or by at least ten per cent of the members, if the court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the
cooperative, and that removal is in the best interests of the cooperative.

(b) If the members commence a proceeding under this section, they shall make the cooperative a party defendant.

(c) A court that removes a director may bar the director from reelection for a period prescribed by the court.

§ -27 Indemnification and personal liability of directors, officers, employees, and agents. (a) Unless limited in the cooperative's articles, the cooperative shall have the same powers, rights, and obligations and shall be subject to the same limitations with respect to indemnification and personal liability of directors, officers, employees, and agents as apply to domestic corporations. Cooperative directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents of domestic corporations. For purposes of this section, any reference to shareholders having the right to vote under the laws that apply to domestic profit corporations shall be construed to refer to members of the cooperative having the right to vote.

(b) The articles may eliminate or limit the liability of a director of the cooperative to the cooperative or its members
for monetary damages for any breach of the duty of care arising
after the date that the articles became effective, including the
effective date of any provision adopted under a prior statute,
except any:

(1) Acts or omissions in bad faith or that involve
    intentional misconduct or a knowing violation of law;
(2) Transaction from which the director derived an
    improper personal benefit;
(3) Unlawful liquidating distributions of assets to
    members;
(4) Unlawful loans to directors, or unlawful guarantees of
    loans to directors;
(5) Unlawful dividends;
(6) Unlawful stock or other equity repurchases; or
(7) Other unlawful distribution that was voted for or
    assented to if the director did not act in conformance
    with the standard of care applicable to directors.

(c) Nothing in subsection (b) shall be construed to
eliminate or limit the liability of a director or officer to the
cooperative or its members for monetary damages for any act or
omission occurring prior to the date when the provision becomes effective.

(d) A distribution of stock or other equity repurchase shall be unlawful if it renders the cooperative unable to pay its debts as they become due in the usual course of business or, unless the articles permit otherwise, causes the assets to be less than the liabilities plus the amount necessary to satisfy the interests of the holders of securities or other equity capital preferential to those receiving the distribution, if dissolved at the time of the distribution.

(e) No director or officer shall be personally liable for any tort committed by an employee unless the director or officer was personally involved.

§ 28 Persons to be bonded. At the discretion of the board of a cooperative, any officer, employee, or agent handling funds or negotiable instruments or property of or for the cooperative may be bonded for the faithful performance of the person's duties and obligations.

PART V. POWERS AND PURPOSES: APPLICATION OF OTHER LAWS
§ 29 Powers. (a) A cooperative organized under this chapter shall have the power, except as specifically limited by this chapter or by its own articles or bylaws, to:

1. Have perpetual existence and succession by its domestic entity name unless limited by the articles;
2. Sue and be sued and to complain and defend in courts of law and equity;
3. Make and use a common seal, alter the same at its pleasure, and to use the seal or a facsimile thereof, including a rubber stamp, by impressing or affixing it or by reproducing it in any other manner;
4. Purchase, receive, lease, and otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;
5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
6. Purchase, receive, subscribe for, and otherwise acquire shares and other interests in, and obligations of, any other entity, including any other cooperative, and to own, hold, vote, use, sell, mortgage, lend,
pledge, and otherwise dispose of and deal in and with, the same;

(7) Make contracts and guarantees; incur liabilities; borrow money; issue notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the cooperative; and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) Be a partner, member, associate, trustee, promoter, or manager of, or to hold any similar position with, any entity;

(10) Conduct its business, locate offices, and exercise the powers granted under this chapter within or outside this State;

(11) Elect directors and officers and appoint employees and agents of the cooperative, define their duties, fix their compensation, and lend them money and credit;
1(12) Pay pensions and establish pension plans, pension
2 trusts, profit sharing plans, share bonus plans, share
3 options and rights plans, and benefit or incentive
4 plans for any or all of its current or former
5 directors, officers, employees, and agents;
6(13) Make payments or donations for the public welfare or
7 for charitable, scientific, or educational purposes;
8(14) Regulate and limit the right of members to transfer
9 their memberships, stock, or other equity;
10(15) Make and amend its articles and bylaws for the
11 management of its affairs and to make provisions in
12 its articles for the terms and limitations of stock
13 ownership or membership and for the distribution of
14 its earnings;
15(16) Indemnify its directors, officers, employees, and
16 agents to the extent provided or permitted in this
17 chapter and to eliminate or limit the personal
18 liability of a director, officers, employees, or
19 agents of the cooperative to the extent permitted by
20 law;
(17) Establish in its bylaws procedures for the disposition of funds when declared payable by the cooperative and unclaimed by the holder three years after notification has been mailed to the holder's last-known address of record on the books of the cooperative, which disposition may consist of transferring the funds to the general operating account of the cooperative;

(18) Establish, secure, own, and develop patents, trademarks, and copyrights;

(19) Make advance payments and advances to members;

(20) Act as the agent or representative of any member for any lawful purpose or in any lawful transaction of the cooperative;

(21) Purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of shares of the stock or bonds of any person engaged in any lawful activity;

(22) Allocate earnings and pay patronage dividends;

(23) Use per unit retains;
(24) Prohibit or place limitations on amounts or rates of dividends payable on any class of capital stock or other equity investment in the cooperative;

(25) Engage in any activity in connection with the purchase, hiring, or use by its members or other patrons of goods, services, products, equipment, supplies, utilities, telecommunications, housing, or health care;

(26) Establish amounts for reasonable and necessary reserves for bad debts, obsolescence, grain, quality and grade, contingent losses, working capital, debt retirement, buildings and equipment, and ownership retirement and to provide that no member or other person entitled to share in the allocation of the cooperative's net margins or other funds shall have any rights except upon dissolution when the entire reserve funds of the cooperative shall be distributed in accordance with applicable federal, state, and local law and the articles and bylaws of the cooperative;
(27) Manufacture, sell, or supply goods, machinery, equipment, supplies, or services to its members and to other patrons or persons;

(28) Adopt a trade name;

(29) Finance one or more of the activities described in this section; and

(30) Perform every other form or type of act that is necessary or proper for accomplishing any lawful purpose of the cooperative that is not otherwise prohibited to it by law or its articles and bylaws or that is conducive to or expedient for the interest or benefit of the cooperative.

(b) In addition to the powers granted in subsection (a), a cooperative incorporated under this chapter shall have the following powers:

(1) To engage in any activity in connection with the marketing, selling, preserving, raising, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, and use of any products, by-products, or services produced or delivered to the cooperative by its members or other patrons; and
(2) To engage in any activity in connection with
agricultural education and research and to represent
its members' interests in legislative and
administrative forums.

(c) In addition to the powers specifically authorized in
this chapter, a cooperative shall have all powers, rights, and
privileges granted by the law of this State to domestic
corporations or domestic nonprofit corporations that are not
inconsistent with this chapter.

(d) The powers enumerated in this chapter shall vest in
each cooperative in this State formed under this chapter or that
has elected to be subject to this chapter, regardless of whether
reference is made to those powers in its charter or in its
articles.

§ -30 Marketing or purchasing contracts. Cooperatives
that limit membership to agricultural producers may make and
execute marketing or purchasing contracts that require the
members to sell or purchase, for any period of time not over ten
years, all or any specified part of their agricultural products
or specified commodities, goods, services, or input supplies
exclusively to or through the cooperative or any facilities used
or to be created by the cooperative. If a producer contracts to
sell to the cooperative, it shall be conclusively presumed that
title to the products passes absolutely and unreservedly, except
for recorded liens, to the cooperative upon delivery or at any
other specified time if expressly and definitely agreed to in
the contract. The contract may provide, among other things,
that the cooperative may sell or resell the products delivered
by its members with or without taking title to the products and
pay over to its members the resale price, after deducting all
necessary selling, overhead, and other costs and expenses,
including interest or dividends on stock, which shall not exceed
eight per cent per annum, and reserves for proper purposes.

§ -31 Remedies for breach of marketing or purchasing
contract. (a) The bylaws or the marketing or purchasing
contracts of an agricultural cooperative may fix as liquidated
damages specific sums to be paid by a member to the cooperative
upon the breach by the member of any provision of the marketing
or purchasing contract regarding the sale, purchase, receipt, or
delivery or withholding of products or other goods and may
further provide that the member will pay all costs, premiums for
bonds, expenses, and fees if any action is brought upon the

2020-1177 SB2738 SD1 SMA.doc
contract by the cooperative. All provisions shall be valid and enforceable in the courts of this State, and clauses providing for liquidated damages shall be enforceable and shall not be regarded as penalties.

(b) If a member breaches or threatens to breach a marketing or purchasing contract, the cooperative shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance of the contract. Pending the adjudication of the action and upon filing a bond and verified complaint showing the breach or threatened breach, the cooperative shall be entitled to a temporary restraining order and preliminary injunction against the member.

(c) In any action upon a marketing contract, it shall be conclusively presumed that a landowner, landlord, or lessor is able to control the delivery of products or other goods produced on the landowner's, landlord's, or lessor's land by tenants or others whose tenancy or possession or work on the land or the terms of whose tenancy or possession or labor on the land was created or changed after execution by the landowner, landlord, or lessor of the marketing contract. The remedies provided in
this section for nondelivery or breach shall lie and be
enforceable against the landowner, landlord, or lessor in any
action upon a marketing contract.

§ -32 Inducing breach of marketing or purchasing
contract. Any person who knowingly induces any member of an
agricultural cooperative formed under this chapter, or under
similar statutes of another jurisdiction with similar
restrictions and rights and operating in this State, to break
the member's marketing or purchasing contract or agreement with
the cooperative shall be subject to all available civil remedies
including injunctive relief.

§ -33 Purchases of property or other interests. If a
cooperative with preferred stock or preferred equity purchases
or otherwise acquires any interest in any property, stock, or
interest in another entity, it may, with the consent of the
person or persons from whom the property or interests are being
acquired, discharge the obligations incurred in the purchase or
other acquisition, wholly or in part, by exchanging for the
acquired property, stock, or interest shares or amounts of its
preferred stock or preferred equity an amount that, at par or
stated value, would equal the value of the property, stock, or
interest so purchased, as determined by the board. A transfer
to the cooperative of the property, stock, or interest purchased
or otherwise acquired shall be equivalent to payment in cash for
the shares or amounts of preferred stock or preferred equity
issued by the cooperative.

§ -34 Warehouse receipts; interest in warehouse

entities. If a cooperative formed under or that has elected to
be subject to this chapter organizes, forms, operates, owns,
controls, has an interest in, owns stock of, or is a member of
any commodities warehouse, the warehouse may issue legal
warehouse receipts to the cooperative against the commodities
delivered by it or to any other person, and any legal warehouse
receipt shall be considered as adequate collateral to the extent
of the usual and current value of the commodity represented by
the receipt. If the warehouse is licensed or licensed and
bonded under the law of this State, any other state, or the
United States, its warehouse receipt delivered to the
cooperative on commodities of the cooperative or its members or
delivered by the cooperative or its members shall not be
challenged or discriminated against because of ownership or
control, wholly or in part, by the cooperative.
§  -35 Application of other law.  

(a) If a matter is not addressed in this chapter, then chapter 414 shall apply to the cooperatives formed under or subject to this chapter; provided that a cooperative may elect to have chapter 414D or chapter 420D apply to it if the cooperative makes the election in its articles or by a resolution of its members that is delivered to the director of commerce and consumer affairs for filing that states that the cooperative elects to have chapter 414D or chapter 420D apply to it.  A cooperative may revoke the election by amending its articles or by delivering to the director of commerce and consumer affairs a statement of change that states that the cooperative revokes its election to have chapter 414D or chapter 420D apply to it and that the revocation of the election has been approved by resolution of its members.

(b) Any exemptions under any existing law applying to goods or agricultural products in the possession or under the control of an individual producer shall apply similarly and completely to the goods or products when delivered by its members to, and in the possession or under the control of, the cooperative.
§  -36 Cooperatives not in restraint of trade. No cooperative formed under or subject to this chapter shall solely by its organization and existence be deemed to be a conspiracy or a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily, nor shall the marketing or purchasing contracts and agreements between any cooperative and its members or any agreements authorized under this chapter be considered illegal, in unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

§  -37 Renewable energy cooperatives; powers. (a) In addition to the powers granted under this chapter, renewable energy cooperatives may generate electricity from renewable resources or technologies and transmit and sell electricity at wholesale.

(b) No renewable energy cooperative shall sell electricity at retail in this State unless otherwise provided for under chapter 269.

PART VI. PROPERTY ENCUMBRANCES, BUSINESS COMBINATIONS, AND PROPERTY SALES
§ -38 Encumbering property. The board of a cooperative
has full power and authority, without approval of its members,
to mortgage, pledge, encumber, dedicate to the repayment of
indebtedness, whether with or without recourse or otherwise
encumber any or all of the cooperative's property, whether or
not in the usual and regular course of business, and to execute
and deliver mortgages, deeds of trust, security agreements, or
other instruments for those purposes.

§ -39 Merger. The general corporation laws relating to
the merger of domestic corporations shall apply to cooperatives
formed under this chapter.

A worker cooperative that has not revoked its election to
be governed as a worker cooperative shall not consolidate or
merge with another corporation other than another worker
cooperative. Two or more worker cooperatives may merge or
consolidate in a manner consistent with this chapter.

PART VII. DISSOLUTION

§ -40 Voluntary Dissolution. (a) For voluntary
dissolutions of cooperatives formed under this chapter, chapter
414, or chapter 414D, as the case may be; provided that the
dissolution shall be approved at a meeting duly called and held
for the purpose by not less than two-thirds of the voting power voting on the matter. Upon dissolution of a worker cooperative, the majority of the unallocated capital account shall be distributed to members on the basis of any of the following, as specified in the articles of incorporation or bylaws of the cooperative:

1. Patronage;
2. Capital contributions; and
3. A combination of patronage and capital contributions.

(b) A worker cooperative is authorized to include patronage provided by past and current members in its distribution of the unallocated capital account.

(c) Subsection (a) shall not apply to any amounts in the indivisible reserve account. Any amount in the indivisible reserve account, upon dissolution, shall be allocated to a cooperative development organization designated in the articles of incorporation or the bylaws.

§ -41 Grounds for judicial dissolution. (a) A cooperative may be dissolved in a proceeding brought in court by the attorney general if it is established that:
(1) The cooperative obtained its organization through fraud; or

(2) The cooperative has exceeded or abused the authority conferred upon it by law.

(b) A cooperative may be dissolved in a proceeding brought in court by not less than ten per cent of the total number of members if it is established that:

(1) The directors are deadlocked in the management of the cooperative's affairs, the members are unable to break the deadlock, and irreparable injury to the cooperative is threatened or suffered; or the business and affairs of the cooperative can no longer be conducted to the advantage of the members generally;

(2) The directors or those in control of the cooperative have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent; or

(3) The members are deadlocked in voting power and have failed for a period that includes at least two consecutive annual meeting dates to elect successors to directors whose terms have expired or would have expired upon the election of their successors.
(c) A cooperative may be dissolved in a proceeding brought in court by a creditor if it is established that:

(1) A creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the cooperative is insolvent; or

(2) The cooperative is insolvent and the cooperative has admitted in writing that a creditor's claim is due and owing.

§ -42 Procedure for judicial dissolution. (a) A proceeding to dissolve a cooperative brought by the attorney general shall be brought in the circuit court of the county in this State in which the street address of the cooperative's principal office is located or, if the cooperative has no principal office in this State, in the circuit court of the county in which the street address of its registered agent is located or, if the cooperative has no registered agent, in the first circuit court of the city and county of Honolulu.

(b) A court in a proceeding brought to dissolve a cooperative may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the
cooperative's assets, wherever located, and carry on the
business of the cooperative until a full hearing can be held.
§ 4-3 Receivership or custodianship. (a) A court in a
proceeding to dissolve a cooperative may appoint one or more
receivers to wind up and liquidate, or one or more custodians to
manage the business and affairs, of the cooperative. The court
shall hold a hearing, after giving notice to all parties to the
proceeding and any interested persons designated by the court,
before appointing a receiver or custodian pursuant to this
section. The court appointing a receiver or custodian has
exclusive jurisdiction over the cooperative and all of its
property, wherever located.
(b) The court may appoint an individual, a domestic
entity, or a foreign entity or other entity authorized to
transact business or conduct activities in this State as a
receiver or custodian. The court may require the receiver or
custodian to post bond, with or without sureties, in an amount
the court directs.
(c) The court shall describe the powers and duties of the
receiver or custodian in its appointing order, which may be
amended from time to time. Among other powers, the receiver may:

(1) Dispose of all or any part of the property of the cooperative, wherever located, at a public or private sale, if authorized by the court; and

(2) Sue and defend in the receiver's own name as receiver of the cooperative in all courts.

(d) The custodian may exercise all of the powers of the cooperative, through or in place of its board or officers, to the extent necessary to manage the affairs of the cooperative in the best interests of its members and creditors.

(e) The court, during a receivership, may redesignate the receiver as custodian, and during a custodianship may redesignate the custodian as receiver if doing so is in the best interests of the cooperative and its members and creditors.

(f) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the person's counsel from the assets of the cooperative or proceeds from the sale of the assets.
§ -44 Decree of dissolution. (a) If, after a hearing, the court determines that one or more grounds for judicial dissolution exist, it may enter a decree dissolving the cooperative and stating the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the director of commerce and consumer affairs.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the cooperative's business and activities and the giving of notice to the cooperative's registered agent, or to the director of commerce and consumer affairs if it has no registered agent.

PART VIII. FOREIGN COOPERATIVES

§ -45 Authority to transact business or conduct activities required. This chapter shall apply to foreign cooperatives.

PART IX. TRANSITION PROVISIONS

§ -46 Application to existing cooperatives. An existing cooperative may elect to be governed by this chapter by complying with this chapter."
SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. This Act shall take effect upon its approval.
Report Title:
Agriculture; General Cooperatives

Description:
Authorizes agricultural entities and other entities having a common interest and purpose to incorporate as general cooperatives. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.