

JAN 24 2013

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# A BILL FOR AN ACT

RELATING TO WORKERS COOPERATIVE ASSOCIATIONS.

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

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

4                                   **"CHAPTER**

5                                                                                   **WORKERS COOPERATIVE ASSOCIATIONS**

6           §   -1 **Definitions.** As used in this chapter, unless the  
7 context or subject matter requires otherwise:

8           "Articles" means the articles of incorporation.

9           "Association" means a workers cooperative association.

10          "Directors" means the board of directors of an association.

11          "Member" means the holder of a membership in an association  
12 without capital stock or the holder of common stock in an  
13 association organized with capital stock.

14          "Patron" means any person that directly or indirectly  
15 performs services for a workers cooperative association or  
16 directly or indirectly receives services from a workers  
17 cooperative association.



1 "Patronage" means services directly or indirectly performed  
2 by a person for a workers cooperative association or directly or  
3 indirectly received by a person from a workers cooperative  
4 association.

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

7 "Stockholder" means any person that holds stock issued by a  
8 workers cooperative association.

9 "Workers cooperative association" means any workers  
10 cooperative organized under this chapter for any lawful business  
11 or activity for the mutual benefit of its members.

12 § -2 **Operation on a cooperative basis, purpose.** (a)

13 The articles shall provide that the association intends to  
14 operate on a cooperative basis and shall comply with the  
15 requirements of this chapter.

16 (b) An association may be incorporated under this chapter  
17 to:

18 (1) Perform services for and receive services from its  
19 patrons, members, stockholders, and other persons;

20 (2) Engage in other activities reasonably related to the  
21 provision or receipt of services for or from patrons,  
22 members, stockholders, and other persons; and



1           (3) Engage in any other lawful business or activity.

2           §   -3 **Forms.** The department of commerce and consumer  
3 affairs may prescribe and furnish, on request, forms for  
4 documents required or permitted to be filed by this chapter.  
5 The director of commerce and consumer affairs may require that  
6 the use of these forms be mandatory.

7           §   -4 **Articles.** Section 421C-11.5, relating to the  
8 articles certified and executed by incorporators of consumer  
9 cooperative associations, shall apply to associations formed  
10 under this chapter.

11          §   -5 **Bylaws; contents.** Section 421C-12, relating to  
12 bylaws of consumer cooperative associations, shall apply to  
13 associations formed under this chapter.

14          §   -6 **Members.** (a) The articles shall establish  
15 qualifications and the method of acceptance and termination of  
16 members; provided that pursuant to the articles, at least a  
17 majority of the members of an association shall be employees of  
18 the association.

19          (b) Except as otherwise provided in the articles, at least  
20 a majority of the employees of the association shall be members  
21 of the association.



1           §   -7   **Ownership of voting and nonvoting stock.**   (a)

2   Except as otherwise provided in the articles, all voting stock  
3   shall be owned by members; provided that pursuant to the  
4   articles, at least a majority of each class of voting stock  
5   shall be owned by members.

6           (b)   The nonvoting stock of an association may be owned by  
7   any person.

8           §   -8   **Meetings, etc.**   Section 421C-13, relating to  
9   meetings of consumer cooperative associations, shall apply to  
10   associations formed under this chapter.

11          §   -9   **One member, one vote.**   Except as otherwise provided  
12   in the articles, at least a majority of the directors shall be  
13   elected by the members on the basis of one member, one vote.

14          §   -10   **No proxy.**   No member of an association shall be  
15   permitted to vote by proxy, subject to section   -11.

16          §   -11   **Absentee voting.**   The articles or bylaws may allow  
17   votes on specific preannounced items by mail or otherwise by  
18   members absent from meetings.

19          §   -12   **Removal of directors.**   Section 421-14, relating to  
20   the removal of a director of an agricultural association, shall  
21   apply to associations formed under this chapter.



1           §    **-13 Removal of officers.** Section 421-16, relating to  
2 the removal of an officer of an agricultural association, shall  
3 apply to associations formed under this chapter.

4           §    **-14 Allocation of earnings.** (a) The net earnings of  
5 an association shall be allocated and distributed by the  
6 directors in accordance with the articles.

7           (b) Except as otherwise provided in the articles, all of  
8 the net earnings of the association with respect to a period of  
9 time shall be allocated to members on the basis of patronage  
10 during the period of time; capital contributions; or some  
11 combination of patronage during the period of time and capital  
12 contributions; provided that pursuant to the articles, at least  
13 a majority of the allocated earnings of the association with  
14 respect to a period of time shall be allocated to members on the  
15 basis of patronage during the period of time; capital  
16 contributions; or some combination of patronage during the  
17 period of time and capital contributions.

18           (c) The allocation, distribution, and payment of earnings  
19 required by this section may be in cash, credits, written  
20 notices of allocation, or any other type of tangible or  
21 intangible property, including shares of stock issued by the  
22 association.



1           §    **-15 Voluntary dissolution, etc.** Section 421-21 shall  
2 apply to associations formed under this chapter. For the  
3 purposes of this chapter, the term "voting power voting thereon"  
4 means those members present.

5           §    **-16 Merger.** The general corporation laws relating to  
6 the merger of domestic corporations shall apply to associations  
7 formed under this chapter.

8           §    **-17 Associations and agreements are not in restraint**  
9 **of trade.** No association, or method or act thereof which  
10 complies with this chapter, shall be deemed a conspiracy or  
11 combination in restraint of trade or an illegal monopoly, or an  
12 attempt to lessen competition or fix prices arbitrarily, or the  
13 creation of a combination or pool, or to accomplish any improper  
14 or illegal purpose. Any agreements authorized under this  
15 chapter shall not be considered as illegal, in restraint of  
16 trade, or as part of a conspiracy or combination to accomplish  
17 an illegal purpose or act.

18           §    **-18 Use of name "cooperative"; penalty.** (a) Only  
19 associations organized under chapter 421C or this chapter;  
20 groups organized on a cooperative basis under this or any other  
21 law of this State; and foreign corporations authorized to do  
22 business in this State on a cooperative basis under this or any



1 other law of this State, shall be entitled to use the term  
2 "cooperative" or any abbreviation or derivation thereof, as part  
3 of their business name, or to represent themselves, in their  
4 advertising or otherwise, as conducting business on a  
5 cooperative basis as defined in this chapter, notwithstanding  
6 section 421-5.

7 (b) Any person, firm, or corporation violating this  
8 section shall be punished by a fine of not more than \$1,000, and  
9 the attorney general or any aggrieved individual, association,  
10 or group organized on a cooperative basis under this or any  
11 other law of this State may sue to enjoin an alleged violation  
12 of this section."

13 SECTION 2. Section 92-28, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **"§92-28 State service fees; increase or decrease of.** Any  
16 law to the contrary notwithstanding, the fees or other nontax  
17 revenues assessed or charged by any board, commission, or other  
18 governmental agency may be increased or decreased by the body in  
19 an amount not to exceed fifty per cent of the statutorily  
20 assessed fee or nontax revenue, to maintain a reasonable  
21 relation between the revenues derived from such fee or nontax  
22 revenue and the cost or value of services rendered,



1 comparability among fees imposed by the State, or any other  
2 purpose which it may deem necessary and reasonable; provided  
3 that:

- 4 (1) The authority to increase or decrease fees or nontax  
5 revenues shall be subject to the approval of the  
6 governor and extend only to the following: chapters  
7 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189,  
8 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A,  
9 417E, 419, 421, 421C, \_\_\_\_\_, 421H, 421I, 425, 425E,  
10 428, 431, 436E, 437, 437B, 438, 439, 440, 441, 442,  
11 443B, 444, 447, 448, 448E, 448F, 448H, 451A, 451J,  
12 452, 453, 453D, [454~~7~~] 455, 456, 457, 457A, 457B,  
13 457G, 458, 459, 460J, 461, 461J, 462A, 463, 463E, 464,  
14 465, 466, 466K, 467, 467E, 468E, 468L, 468M, 469, 471,  
15 482, 482E, 484, 485A, 501, 502, 505, 514A, 514B, 514E,  
16 572, and 574 [~~and 846 (part II)~~];
- 17 (2) The authority to increase or decrease fees or nontax  
18 revenues under the chapters listed in paragraph (1)  
19 that are established by the department of commerce and  
20 consumer affairs shall apply to fees or nontax  
21 revenues established by statute or rule;





- 1           (3) The authority to increase or decrease fees or nontax  
2 revenues established by the University of Hawaii under  
3 chapter 304A shall be subject to the approval of the  
4 board of regents; provided that the board's approval  
5 of any increase or decrease in tuition for regular  
6 credit courses shall be preceded by an open public  
7 meeting held during or prior to the semester preceding  
8 the semester to which the tuition applies;
- 9           (4) This section shall not apply to judicial fees as may  
10 be set by any chapter cited in this section;
- 11          (5) The authority to increase or decrease fees or nontax  
12 revenues pursuant to this section shall be exempt from  
13 the public notice and public hearing requirements of  
14 chapter 91; and
- 15          (6) Fees for copies of proposed and final rules and public  
16 notices of proposed rulemaking actions under chapter  
17 91 shall not exceed 10 cents a page, as required by  
18 section 91-2.5."

19           SECTION 3. Section 247-3, Hawaii Revised Statutes, is  
20 amended to read as follows:

21           "**§247-3 Exemptions.** The tax imposed by section 247-1  
22 shall not apply to:



- 1           (1) Any document or instrument that is executed prior to  
2                    January 1, 1967;
- 3           (2) Any document or instrument that is given to secure a  
4                    debt or obligation;
- 5           (3) Any document or instrument that only confirms or  
6                    corrects a deed, lease, sublease, assignment,  
7                    transfer, or conveyance previously recorded or filed;
- 8           (4) Any document or instrument between husband and wife,  
9                    reciprocal beneficiaries, or parent and child, in  
10                  which only a nominal consideration is paid;
- 11          (5) Any document or instrument in which there is a  
12                  consideration of \$100 or less paid or to be paid;
- 13          (6) Any document or instrument conveying real property  
14                  that is executed pursuant to an agreement of sale, and  
15                  where applicable, any assignment of the agreement of  
16                  sale, or assignments thereof; provided that the taxes  
17                  under this chapter have been fully paid upon the  
18                  agreement of sale, and where applicable, upon such  
19                  assignment or assignments of agreements of sale;
- 20          (7) Any deed, lease, sublease, assignment of lease,  
21                  agreement of sale, assignment of agreement of sale,  
22                  instrument or writing in which the United States or



1 any agency or instrumentality thereof or the State or  
2 any agency, instrumentality, or governmental or  
3 political subdivision thereof are the only parties  
4 thereto;

5 (8) Any document or instrument executed pursuant to a tax  
6 sale conducted by the United States or any agency or  
7 instrumentality thereof or the State or any agency,  
8 instrumentality, or governmental or political  
9 subdivision thereof for delinquent taxes or  
10 assessments;

11 (9) Any document or instrument conveying real property to  
12 the United States or any agency or instrumentality  
13 thereof or the State or any agency, instrumentality,  
14 or governmental or political subdivision thereof  
15 pursuant to the threat of the exercise or the exercise  
16 of the power of eminent domain;

17 (10) Any document or instrument that solely conveys or  
18 grants an easement or easements;

19 (11) Any document or instrument whereby owners partition  
20 their property, whether by mutual agreement or  
21 judicial action; provided that the value of each  
22 owner's interest in the property after partition is



- 1 equal in value to that owner's interest before  
2 partition;
- 3 (12) Any document or instrument between marital partners or  
4 reciprocal beneficiaries who are parties to a divorce  
5 action or termination of reciprocal beneficiary  
6 relationship that is executed pursuant to an order of  
7 the court in the divorce action or termination of  
8 reciprocal beneficiary relationship;
- 9 (13) Any document or instrument conveying real property  
10 from a testamentary trust to a beneficiary under the  
11 trust;
- 12 (14) Any document or instrument conveying real property  
13 from a grantor to the grantor's revocable living  
14 trust, or from a grantor's revocable living trust to  
15 the grantor as beneficiary of the trust;
- 16 (15) Any document or instrument conveying real property, or  
17 any interest therein, from an entity that is a party  
18 to a merger or consolidation under chapter 414, 414D,  
19 415A, 421, 421C, \_\_\_\_\_, 425, 425E, or 428 to the  
20 surviving or new entity;
- 21 (16) Any document or instrument conveying real property, or  
22 any interest therein, from a dissolving limited



1 partnership to its corporate general partner that  
 2 owns, directly or indirectly, at least a ninety per  
 3 cent interest in the partnership, determined by  
 4 applying section 318 (with respect to constructive  
 5 ownership of stock) of the federal Internal Revenue  
 6 Code of 1986, as amended, to the constructive  
 7 ownership of interests in the partnership; and  
 8 ~~[+]~~ (17) ~~[+]~~ Any document or instrument that conforms to the  
 9 transfer on death deed as authorized under chapter  
 10 527."

11 SECTION 4. Section 414-310, Hawaii Revised Statutes, is  
 12 amended by amending the definition of "association" to read as  
 13 follows:

14 "Association" means an association organized under  
 15 ~~[chapter]~~ chapters 421, ~~[or]~~ 421C~~[-]~~, or \_\_\_\_\_."

16 SECTION 5. Section 414D-200, Hawaii Revised Statutes, is  
 17 amended by amending the definition of "association" to read as  
 18 follows:

19 "Association" means an association organized under  
 20 ~~[chapter]~~ chapters 421, ~~[or]~~ 421C~~[-]~~, or \_\_\_\_\_."

21 SECTION 6. Section 421-21.6, Hawaii Revised Statutes, is  
 22 amended by amending subsection (1) to read as follows:



1           "(1) For the purposes of a merger, an association shall be  
2 defined as an association organized under [~~chapter~~] chapters  
3 421, [~~or~~] 421C[-], or \_\_\_\_\_."

4           SECTION 7. Section 425-201, Hawaii Revised Statutes, is  
5 amended by amending the definition of "association" to read as  
6 follows:

7           ""Association" means an association organized under  
8 [~~chapter~~] chapters 421, [~~or~~] 421C[-], or \_\_\_\_\_."

9           SECTION 8. Section 425E-1101, Hawaii Revised Statutes, is  
10 amended by amending the definition of "association" to read as  
11 follows:

12           ""Association" means an association organized under  
13 [~~chapter~~] chapters 421, [~~or~~] 421C[-], or \_\_\_\_\_."

14           SECTION 9. Section 428-901, Hawaii Revised Statutes, is  
15 amended by amending the definition of "association" to read as  
16 follows:

17           ""Association" means an association organized under  
18 [~~chapter~~] chapters 421, [~~or~~] 421C[-], or \_\_\_\_\_."

19           SECTION 10. Section 480-11, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

21           "(a) Nothing in this chapter shall be construed to forbid  
22 the existence and operation of fishery, agricultural, [~~or~~]



1 consumer cooperative organizations or associations, or workers  
 2 cooperative associations instituted for the purpose of mutual  
 3 help that are organized and operated under [~~chapter~~] chapters  
 4 421, [~~or~~] 421C, or \_\_\_\_\_, or that conform and continue to  
 5 conform to the requirements of the Capper-Volstead Act (7 U.S.C.  
 6 291 and 292); provided that if any organization or association  
 7 monopolizes or restrains trade or commerce in any section of  
 8 this State to an extent that the price of any fishery,  
 9 agricultural, or consumer product is unduly enhanced by reason  
 10 thereof, this chapter shall apply to those acts."

11 SECTION 11. Statutory material to be repealed is bracketed  
 12 and stricken. New statutory material is underscored.

13 SECTION 12. This Act shall take effect upon its approval.

14

INTRODUCED BY:                     *M.D.M.*                    

*B/R*



# S.B. NO. 1356

**Report Title:**

Workers Cooperative Association; Incorporation; Business  
Registration

**Description:**

Permits workers cooperative associations to incorporate and  
register in the State.

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

