

ACT 103

H. B. NO. 1881-72

A Bill for an Act Relating to Agricultural Cooperative Associations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 421-2, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 421-2 Purposes. An association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

- (1) Producing, assembling, marketing, buying or selling agricultural products or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping, or utilizing the products, or manufacturing or marketing the by-products, thereof; provided seventy-five per cent of such agricultural products shall be of Hawaiian origin;
- (2) Manufacturing, buying for or supplying to its members machinery, equipment, feed, fertilizer, fuel, seeds, and other agricultural supplies;
- (3) Performing or furnishing business or educational services, on a cooperative basis, or to its members;
- (4) Financing any of the above enumerated activities for its members.”

SECTION 2. Section 421-4, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 421-4 Articles of association. Articles of association shall be signed and acknowledged by each of the incorporators, if natural persons, and by the president and secretary of associations, before any officer authorized to take acknowledgments, and shall contain the following particulars:

- (1) The place of its principal office, which shall be in the State;
- (2) The purposes and powers of the association;
- (3) The proposed duration of the association;
- (4) The names and addresses of persons who are to act as the initial directors and officers of the association;
- (5) The names and post office addresses of the incorporators, and if organized with capital stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (6) Whether organized with or without capital stock, and if organized with capital stock the total authorized number of par value shares and the par value of each share, and if the privilege of subsequent extension of the authorized capital stock is asked for, the limit of the extension; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled;
- (7) If organized without capital stock, whether the property rights and interest of each member are equal or unequal, if unequal, the rule by which the rights and interests shall be determined.

The articles may also contain any other provisions, consistent with law for regulating the association’s business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent the districts, and the members residing therein, for voting by proxy, and the issuance, retirement, and transfer of membership and stock.”

SECTION 3. Section 421-6, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 421-6 Filing and recording articles of association, etc. (a) The articles of association, charters, and any certificates of amendment thereof shall be recorded in the office of the director of regulatory agencies in a book to be kept for the purpose, which shall at all times during business hours be open to the inspection of the public without charge.

(b) A certified copy of the articles or of a certificate of incorporation issued by the director shall be filed with the department of agriculture.

(c) On the filing of the articles of association with the director, the persons who have subscribed the articles, their associates, successors, and assigns, shall thereafter be a body corporate by the name and style provided in the articles; shall have succession and corporate existence for such term as shall have been agreed upon; which may be perpetual; shall have all of the powers and be subject to all of the liabilities provided for in this chapter; and shall be subject to all general laws in regard to the associations.

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

(e) An association organized under this chapter shall be subject to section 416-97 relating to the payment of fees by corporations to the director.”

SECTION 4. Section 421-9, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 421-9 Powers. (a) An association formed under this chapter, or an association which might be formed under this chapter and which existed at the time this chapter took effect, shall have the capacity to act possessed by natural persons, but the association shall have the authority to perform only such acts as are necessary or proper to accomplish the purposes as set forth in its articles and which are not repugnant to law.

(b) Without limiting or enlarging the grant of authority contained in subsection (a), every association shall have authority:

- (1) To act as agent, broker, or attorney in fact for its members, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and for subsidiary and affiliated associations to property handled or managed by the association on their behalf.
- (2) To make contracts, and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable, or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association.
- (3) To make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase or otherwise acquire, endorse, discount, or sell

any evidence of debt, obligation, or security, but it shall not engage in banking.

- (4) To establish and accumulate reserves to capital.
- (5) To own and hold membership in or shares of the capital stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing, or marketing any of the products handled by the association; or, in financing its activities, and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon.
- (6) To acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require, subject to any limitation prescribed by law or its articles.
- (7) To borrow money and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge.
- (8) To deal in agricultural products and handle agricultural machinery, equipment, and supplies, and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled, or performed for or on behalf of its members.
- (9) To have a corporate seal and to alter it at pleasure.
- (10) To continue as a corporation for the time limit in its articles, which may be perpetual.
- (11) To sue and be sued in its corporate name.
- (12) To conduct business in this State and elsewhere as may be permitted by law.
- (13) To dissolve and wind up its affairs.”

SECTION 5. Section 421-18, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 421-18 Contracts between association and members.

(a) Period, withdrawal. The bylaws may require members to execute contracts with the association in which the members agree to patronize the facilities created by the association, and to sell all or a specified part of their products to or through it, or to buy all or a specified part of their supplies from or through the association or any facilities created by it. If the members contract to sell to the association, the fact that for certain purposes the relation between the association and its members may be one of agency shall not prevent the passage from the member to the association of absolute and exclusive title to the products which are the subject matter of the contract. The title shall pass to the association upon delivery of the product, or at any other time specified in the contract. If the period of the contract exceeds ten years, the bylaws and the contracts executed thereunder shall specify a reasonable period, not less than twenty days, in each year, after the tenth year, during which the member, by giving to the association such reasonable notice as the association may prescribe, may withdraw from the association. In the absence of a withdrawal provision, a member may withdraw at any time after ten years; provided that if a member is expelled from the association before the end of the ten year period, the contract shall be void.

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

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

(d) Recording contracts. The association may file contracts to sell agricultural products to or through the association in the office of the bureau of conveyances. If the association has uniform contracts with more than one member in any county, it may, in lieu of filing the original contracts, file the affidavit of its president, vice-president, or secretary, containing or having attached thereto:

- (1) A true copy of the uniform contract entered into with its members producing the product in the county;
- (2) The names of the members who have executed the contract and a description of the land on which the produce is produced if the description is contained in the contract.

The association may file from time to time thereafter affidavits containing revised or supplementary lists of the members producing the product in the county without setting forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof. All affidavits filed under the section shall state in substance that they are filed pursuant to this section. The bureau of conveyances shall file the affidavits and make endorsements thereon and record and make entries thereof in the same manner as required by law in the case of chattel mortgages, and shall compile and make available for public inspection a convenient index containing the names of all signers of the contracts, and collect for its services hereunder the same fees as for chattel mortgages. The filing of the contract, or the affidavit, shall constitute constructive notice of the association's title or right to the product embraced in the contract, to all subsequent purchasers, encumbrancers, creditors, and to all persons dealing with the members with reference to the product. No title, right, or lien of any kind shall be acquired to or on the product thereafter except through the association or with its consent, or subject to its rights; and the association may recover the possession of such property from any and all subsequent purchasers, encumbrancers, and creditors, and those claiming under them, in whose possession the same may be found, by any appropriate action for the recovery of personal property, and it may have relief by injunction and for damages.

(e) Effect of other statutes upon contracts. The provisions of this chapter are intended to encourage and to authorize associations to effectively produce and market agricultural products, and to derive the maximum benefits possible from such cooperative production and marketing. Accordingly, the contracts between an association and its members shall be deemed to authorize the collective production and marketing of the members' products, including but not limited to the combining, pooling and blending of production quotas, marketing adjustments and distribution rights, the provisions of any other law to the contrary notwithstanding. This section shall be liberally construed in favor of associations and their contracts with their members."

SECTION 6. Section 421-23, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 421-23 Taxation. Domestic associations organized under this chapter shall pay an annual license fee of \$10 to the director of regulatory agencies (and which shall be a general realization of the State) which shall be in lieu of all other corporation, franchise, and income taxes, and taxes and charges upon reserves held by the association for distribution to members, including without limitation upon the generality of the foregoing any taxes imposed under chapter 235.

To obtain the exemptions from taxation granted by this section or any other law, the association annually shall file with the director of taxation a copy of its report made under section 421-22, and in addition thereto, within ninety days after the close of its fiscal year, shall file with the tax assessor of each district in which there are persons doing business to whom it has paid, during the preceding fiscal year, any proceeds of goods marketed, a report showing the name of each person to whom the proceeds were paid, the total proceeds of sales for which such person is taxable under chapter 237 for the fiscal year, and the rate or rates of such tax applicable thereto or to the several amounts thereof, as the case may be."

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 8. This Act shall take effect upon its approval.

(Approved May 23, 1972.)

*Edited accordingly.