

**ACT 97**

**S.B. NO. 2696-82**

**A Bill for an Act Relating to Consumer Cooperative Associations.**

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

**SECTION 1.** The legislature finds that it is in the public interest to support consumer cooperative associations. A cooperative association is a business that is owned by its customers. It has fixed rates of return on investment capital, operates cooperatively (each member, regardless of investment, has one vote, profits are shared by members), and exists primarily to allow consumers to band together to provide goods and services at relatively inexpensive rates to its membership.

The purpose of this Act is to provide for the chartering of consumer cooperative associations in the State of Hawaii.

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

## “CHAPTER CONSUMER COOPERATIVE ASSOCIATIONS PART I. GENERAL PROVISIONS

§ -1 **Definitions.** Except where the context requires otherwise, wherever used in this chapter:

- (1) “Articles” means the articles of incorporation of an association.
- (2) “Association” means a group enterprise incorporated under this chapter.
- (3) “Directors” means the board of directors of an association.
- (4) “Interest-dividends” means the return on share, membership fee, or membership capital of the association which is limited in accordance with section -19.
- (5) “Member” means a member of either a stock or a nonstock association in accordance with section -3.
- (6) “Net savings” means the total income of an association minus the costs of operation.
- (7) “Patronage refund” means the amount returned to the patrons in proportion to their patronage in accordance with section -25.
- (8) “Share or membership capital” refers to the capital paid into an association by a member in accordance with section -3.
- (9) “Surplus funds” means funds of an association which may be utilized for capital improvements, emergencies, or other expenditures of the association upon the authorization of the directors as specified in section -25 or as otherwise specified in this chapter.

§ -2 **Purpose.** An association may be incorporated under this chapter only for the purpose of transacting any lawful business for its membership, the general public, or both.

§ -3 **Stock and nonstock associations; general corporation laws, when applicable.** (a) An association may either be organized with stock or without stock. Subject to section -20, if organized with stock, the association shall require a certain amount of common stock to be purchased from the association in order to permit a stockholder voting and membership privileges, and no class of stock except common stock may grant voting and membership privileges in a stock association. Subject to section -20, if organized without stock, the association shall require a membership fee or amount of membership capital to be paid in, in order to permit the member voting and membership privileges by means of issuance of a membership certificate.

(b) Except where otherwise provided, statutes which apply to domestic profit corporations shall apply to stock associations, and statutes which apply to domestic nonprofit corporations shall apply to nonstock associations.

(c) Associations may amend their articles upon petition to and approval by the director of regulatory agencies to convert from a stock association to a non-stock association or vice-versa. This subsection may be employed by an association only once every two calendar years.

## PART II. SPECIAL PROVISIONS

§ -11 **Forms.** The department of regulatory agencies shall prepare forms for association articles which may be used by association incorporators and associations, and which shall be supplied to them on request.

§ -12 **Articles; contents.** The articles shall contain:

- (1) The name of the association which shall contain the term "cooperative" or some abbreviation thereof notwithstanding section 421-5.
- (2) The maximum amount or percentage of capital which may be owned or controlled by one member.
- (3) A provision that in all decisions to amend the articles or bylaws the members shall be informed of such decision at least thirty days in advance through a mailing or a prominent notice at all association locations.
- (4) The method and terms of admission to membership and the disposal of members' interests on termination of membership for any reason.
- (5) A provision that a majority of directors, or five per cent of the, or two hundred fifty, members, whichever is less, may submit a petition in writing and demand a special membership meeting, which shall be called by the secretary within thirty days of such demand.
- (6) A provision that notice for all meetings shall be made through posting prominent signs at all association locations or by mailing to the last known address of each member or director. Notices for special meetings shall specify the purpose of the meeting.
- (7) A provision that associations shall not discriminate on their acceptance of members on a basis of race, gender, religion, income, marital status, or nationality.
- (8) A provision that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least five per cent of the, or two hundred fifty, members, whichever is less, or by vote of at least a majority of the directors; provided that rights of third parties which have vested between the time of action by the directors and approval or disapproval by the members shall not be impaired.

§ -13 **Meetings, etc.** The articles or bylaws may provide for the holding of meetings by units or portions of the total membership and may provide for a method of transmitting the votes cast to the central meeting, or for a method of representation of members by the election of delegates to attend the central meeting, or for a combination of these methods. If delegates are provided for, all references in this chapter to votes cast by members shall apply to votes cast by delegates. Directors may be apportioned among the units or portions of the total membership and may be elected by the units or portions of the total membership to which they are apportioned.

§ -14 **One member, one vote.** (a) Each member of an association shall have one and only one vote; provided that secondary associations, which are associations solely comprised of other associations or groups organized on a cooperative basis, may allow exceptions to the one vote per member rule, by allo-

cating votes on the basis of the following:

- (1) The number of individual members in each organization; or
- (2) Size of dollar volume of direct transactions between the member organizations and the secondary association.

(b) For the purposes of this section, "groups organized on a cooperative basis" means that:

- (1) Each member has one vote and only one vote, except as may be altered in the articles or bylaws of a secondary cooperative by provision for voting by member organizations;
- (2) The maximum rate at which any return is paid on share or membership capital is limited; and
- (3) The allocation or distribution of net savings after making provision for such separate funds as may be required or specially permitted by statute, articles, or bylaws, is made to member patrons or to all patrons, in proportion to their patronage; or is allocated in a manner which benefits the general welfare of all of the members of the association.

(c) No voting agreement or other device to evade the one member, one vote rule shall be enforceable.

§ -15 **No proxy.** No member of an association shall be permitted to vote by proxy, subject to section -16.

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

§ -17 **Removal of directors.** Section 421-14, relating to the removal of a director of an agricultural association, shall apply to associations formed under this chapter.

§ -18 **Removal of officers.** Section 421-16, relating to the removal of an officer of an agricultural association, shall apply to associations formed under this chapter.

§ -19 **Limitations on interest-dividends.** (a) Interest-dividend interest on share or membership capital shall not exceed the current annual Consumer Price Index percentage increase, or eight per cent, whichever is greater. Interest on loans by members to the association shall not be limited by this section.

(b) Total interest-dividends distributed for any single period shall not exceed thirty per cent of the net savings for that period. Interest-dividends are non-cumulative and the association shall have the right to confiscate all interest-dividends not claimed within six months after the notice of the distribution has been made by either mail or by prominent sign in all the association's locations.

§ -20 **Admission to membership.** The bylaws may provide that a subscriber may vote and hold office prior to payment in full of share or membership capital.

§ -21 **Issuance of stock and membership certificates.** (a) No certificate for membership or any class of stock shall be issued until paid for in full.

(b) The amount required to be paid in on share or membership capital by members shall not exceed twenty-five per cent of the average monthly wage in this State, as defined by the department of labor and industrial relations.

(c) Associations shall make available to all members a statement listing all rights and privileges of membership.

§ -22 **Transfer of shares and membership; withdrawal.** (a) If a member desires to withdraw from the association or dispose of any or all of the member's holdings therein, the directors shall have the power to purchase such holdings by paying the member out of surplus funds the par value or book value, whichever is less, of any or all of the holdings offered. The directors shall then reissue or cancel the holdings. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

(b) If the association fails, within ninety days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any prospective transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors shall exercise their power to purchase, if and when there are sufficient surplus funds.

(c) Members who withdraw from an association under this section may not rejoin that association for six months except with the majority approval of the directors.

§ -23 **Recall of member's holdings.** (a) The bylaws may give the directors the authority to use surplus funds to recall, at par value or book value, whichever is less, the holdings of any member in excess of the amount requisite for membership.

(b) The directors may purchase the amount requisite for membership in cases of inactivity, expulsion, death of the member, or otherwise, as provided in the bylaws of the association. When so recalled, such stock or membership certificate shall be either reissued or canceled.

§ -24 **Expulsion.** Pursuant to section -23(b), associations may provide for expulsion of members. Unless otherwise provided, a member may be expelled and lose all rights and privileges in the association, by the vote of a majority of the directors voting at any validly held meeting of directors. The member against whom the charges are to be proffered shall be informed thereof in writing at least ten days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at such meeting. On decision of the association to expel a member, the directors shall purchase the member's holdings at par or book value, whichever is less, if and when there are sufficient surplus funds.

§ -25 **Allocation and distribution of net savings.** (a) At least once a year the members, the directors, or both, as the articles or bylaws provide, shall apportion the net savings of the association to one or more of the following categories; except that not less than ten per cent shall be placed in a surplus fund until such time as the fund shall equal at least fifty per cent of the paid-up share or membership capital:

- (1) Interest-dividends, within the limitations of section -19 may be paid upon share or membership capital;
- (2) A portion of the net savings as determined by the articles or bylaws,

may be allocated to an educational fund to be used to further the understanding of the practices and principles of cooperation;

- (3) The association may also choose to pay a patronage refund from net savings and this shall be allocated at the same uniform rate to either the members or to all patrons of the association in proportion to their individual patronage, and according to the federal Internal Revenue Code of 1954, as amended; provided that:

- (A) In the case of a member patron, the patron's proportionate amount of patronage refund shall be distributed to the patron;

- (B) In the case of nonmember patrons, their proportionate amount of patronage refund, as the articles or bylaws may provide, may be distributed to them or, if requested by them, credited to their account until the amount of share or membership capital subscribed for has been fully paid.

- (4) The association may also choose to retain some or all its net savings and allocate it in the manner in which it will benefit the general welfare of all the members of the association.

(b) The reserve fund established in subsection (a) may be expended for capital improvements or emergencies upon a two-thirds majority vote of the directors, or may be expended under section -22, -23, or -24, by majority vote of the directors.

§ -26 **Cooperative agreements.** (a) Any association may enter into contracts, agreements, or arrangements with other associations, individuals, joint-ventures, partnerships, or corporations, for the cooperative and economical carrying on of its business.

(b) Any two or more associations by agreement may unite in employing and using or separately employ and use the same personnel, methods, means, and agencies for carrying on and conducting their respective business.

§ -27 **Bonding.** Any individual acting as manager of an association and handling funds or securities amounting to \$5,000 or more, in any one year, shall be covered by an adequate bond as determined by the directors and at the expense of the association. The bylaws may also provide for the bonding of other employees or officers.

§ -28 **Books; auditing.** (a) Subject to subsection (b), every association shall keep a set of books of the association's business operations, which shall be audited at the end of each fiscal year by a certified public accountant who shall not be an officer, director, or employee of the association.

(b) Where the annual gross business income of an association amounts to less than \$1,000,000 (which amount shall be adjusted for changes in the Consumer Price Index since the effective date of this chapter), the audit need not be done by a certified public accountant but may be performed by an auditing committee of two individuals who shall not be employees, plus the association's treasurer.

(c) A written report of the audit, which may include a statement of the amount of business transacted with members and the amount transacted with nonmembers, and which shall include a balance sheet of the association's income and expenses, shall be submitted to the annual meeting of the association.

§ -29 **Annual report.** Every association, within one hundred twenty days of the close of its fiscal year, shall file with the director of regulatory agencies an annual report as prescribed by the director. A copy of the report shall be submitted to the members at their annual meeting, mailed to each member of the association, or printed in an official publication of the association.

§ -30 **Voluntary dissolution, etc.** Section 421-21 shall apply to associations formed under this chapter. For the purposes of this chapter, the term "voting power voting thereon" means those members present.

§ -31 **Merger and consolidation.** Chapter 417, part I, relating to the merger and consolidation of domestic corporations shall apply to associations formed under this chapter.

§ -32 **Associations and agreements are not in restraint of trade.** No association, or method or act thereof which complies with this chapter, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily, or the creation of a combination or pool, or to accomplish any improper or illegal purpose. Any agreements authorized under this chapter shall not be considered as illegal, in restraint of trade, or as part of a conspiracy or combination to accomplish an illegal purpose or act.

§ -33 **Volunteers exempted.** (a) For the purposes of this section, "volunteer" means an individual who:

- (1) is a member of an association;
- (2) is not an employee of the association; and
- (3) who volunteers and donates up to 25 hours of labor and services per month to the association.

(b) Associations may accept labor and services from volunteers.

(c) In addition to any exemptions granted to non-paid labor, volunteers who acknowledge in writing that they are volunteers shall be construed not to be in the employ of the association, their labor and services shall be construed to not be employment, and they shall not be construed to be employees of the association, under title 21 or any other labor law.

§ -34 **Use of name "cooperative"; penalty.** (a) Only (1) associations organized hereunder, (2) groups organized on a cooperative basis under this or any other law of this State, and (3) foreign corporations authorized to do business in this State on a cooperative basis under this or any other law of this State, shall be entitled to use the term "cooperative" or any abbreviation or derivation thereof, as part of their business name, or to represent themselves, in their advertising or otherwise, as conducting business on a cooperative basis as defined in this chapter, notwithstanding section 421-5.

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

§ -35 **Construction of chapter.** If there is any conflict between this chapter and any other law, the provisions of this chapter shall control.

§ -36 **Exemption of voting stock from registration.** Membership stock

or membership certificates under section -3 (a), or share or membership capital of any association organized under or existing prior to passage of this chapter shall be included as exempt securities under section 485-4.

§ -37 **Existing cooperatives.** Any corporation or group operating on a cooperative basis as defined in this chapter currently in the State may elect by a vote of two-thirds of the members present and voting to secure the benefits of and be bound by these provisions, and shall thereupon file such papers or amend such of its articles and bylaws as are not in conformity with these provisions. A certified copy of any amended articles shall be filed with the director of regulatory agencies and a fee of \$25 shall be paid."

SECTION 3. Section 480-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Nothing in this chapter shall be construed to forbid the existence and operation of fishery [or], agricultural,<sup>1</sup> or consumer cooperative organizations or associations instituted for the purpose of mutual help, and which are organized and operated under chapter 421 [or], 422, or \_\_\_\_\_, or which conform and continue to conform to the requirements of the Capper-Volstead Act (7 U.S.C. 291 and 292), provided that if any such organization or association monopolizes or restrains trade or commerce in any section of this State to such an extent that the price of any fishery [or], agricultural, or<sup>2</sup> consumer product is unduly enhanced by reason thereof this chapter shall apply to such acts."

SECTION 4. Section 485-4, Hawaii Revised Statutes, is amended to read as follows:

"§485-4 **Exempt securities.** The following securities are exempt from sections 485-8 and 485-25(a)(7):

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state or territory, any political subdivision of a state or territory, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer of guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state or territory or any investment certificate issued by an industrial loan company duly licensed under the industrial loan law of the State of Hawaii;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state or territory and authorized to do business in the State;



- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state or territory and authorized to do business in the State;
- (6) Any security issued or guaranteed by any federal credit union, or any credit union or similar association organized and supervised under the laws of the State;
- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state or territory; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States or any state or territory;
- (8) Any security listed or approved for listing upon notice of issuance on any exchange registered or exempted under the Securities Exchange Act of 1934, as amended; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe for any of the foregoing;
- (9) Any security issued by any issuer organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;
- (11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan;
- (12) Any option on a commodity futures contract subject to regulation under the Commodity Exchange Act;
- (13) Any security issued by an "investment company" as defined by and registered under the "Investment Company Act of 1940" (15 U.S.C. §80a)[.];
- (14) Any cooperative association membership stock, membership certificates or share or membership capital, pursuant to section -36, chapter 421 or chapter 422."

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 15, 1982.)

**Notes**

1. The comma should be underscored.
2. The “, or ” should be underscored.