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TITLE 2

AGRICULTURAL COÖPERATIVE ASSOCIATIONS

2-0-1 to 2-0-18. (Repealed.)

L. 1937, ch. 2; eff. Mar. 18.

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- 2-0-49. Effective Date.

2-0-1 to 2-0-18. (Repealed by L. 37, ch. 2, § 30, eff. Mar. 18. See 2-0-48.)

L. 1937, ch. 2; eff. Mar. 18.

AN ACT concerning Agricultural Coöperative Associations; providing for the incorporation, operation, control, management and dissolution thereof; prescribing penalties for conduct that may impair the standing or credit of such associations; making uniform the law with relation thereto; and superseding and repealing Title 2, Revised Statutes of Utah, 1933.

Be it enacted by the Legislature of the State of Utah:

2-0-19. Declaration of Policy.

It is the declared policy of this state, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective associations under the control of such producers, and to that end this act should be liberally construed. (Sec. 1.)

Comparable provisions.

Although this statute is designated as a “uniform” act and is listed as such in

the 1941 Handbook of the National Conference of Commissioners on Uniform Laws and Proceedings, no other state has

as yet adopted it as a uniform act. Reference is made to similar provisions in the laws of California, Idaho, Iowa and Montana. The following statutes also bear a similarity to some of the provisions of this statute: Ill. Rev. Stats. 1941, ch. 32, § 440 et seq.; McKinney's N. Y. Consol. Laws, Co-operative Corporations Law, § 1 et seq.; Wis. Stats. §§ 94.15, 185.01 et seq.

Cal. Civil Code, p. 286, § 653aa, Idaho Code, § 22-2001, Mont. Rev. Codes, § 6428 (acts were passed to promote, foster and encourage intelligent and orderly marketing of agricultural products).

Decisions from other jurisdictions.

—California.

History of California statute reflects change in legislative policy towards pow-

ers of co-operatives, the change being based on fact that experience has demonstrated that the two main classes of growers, owners and renters, have fundamentally different problems to face, and that a policy favorable to owner growers would not interest renter growers. *California Canning Peach Growers v. Harkey*, 11 Cal. 2d 188, 78 P.2d 1137.

A. L. R. notes.

Co-operative marketing of farm and dairy products by producers' association, 25 A. L. R. 1113, 33 A. L. R. 247, 47 A. L. R. 936, 77 A. L. R. 405, 98 A. L. R. 1406.

2-0-20. Definitions.

As used in this act, unless the context or subject matter requires otherwise:

(a) "Agricultural products" includes floricultural, horticultural, viticultural, forestry, nut, seed, ground stock, dairy, livestock, poultry, bee and any and all farm products.

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

(c) "Domestic associations" means an association or corporation formed under the laws of this state.

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

(e) "This act" means the "uniform agricultural coöperative association act."

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

(g) "Member" includes the holder of a membership of which there shall be but one class, in an association without stock and the holder of common stock in an association organized with stock.

(h) "Producer" means a person who produces agricultural products, or an association of such persons.

(i) "Person" includes an individual, a partnership, a corporation and an association.

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

(k) "Articles" means the articles of incorporation.

(Sec. 2.)

Comparable provisions.

Cal. Agric. Code, § 1191 ("products" defined similarly to "agricultural products" herein; "member" similarly defined; "association" means any corporation organized under this chapter).

Iowa Code 1939, § 8512.02 (Co-operative Associations Act; "association"

means corporation under this chapter; includes similar definition of "agricultural products"; also includes similar definition as to "member").

Idaho Code, § 22-2002, Mont. Rev. Codes, § 6429 (include clauses similar to or substantially identical with subs. (a), (f), (g) and (i) herein).

2-0-21. Qualifications of Incorporators.

Five or more adult persons, engaged in agriculture or two or more associations of such producers, may form an association. (Sec. 3.)

Comparable provisions.

Iowa Code 1939, § 8512.05 (includes substantially identical provision).

Idaho Code, § 22-2003, Mont. Rev. Codes, § 6430 (five or more persons engaged in production of agricultural prod-

ucts may form nonprofit association, with or without capital stock).

Cal. Agric. Code, § 1193 (five or more persons, majority of whom are residents of California).

2-0-22. Purposes.

Such association may be organized for the purpose of engaging in any coöperative activity for producers of agricultural products in connection with:

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

(b) Seed and crop improvement, and soil conservation and rehabilitation.

(c) Manufacturing, buying or supplying to its members and others, machinery, equipment, feed, fertilizer, coal, gasoline and other fuels, oils and other lubricants, seeds, and all other agricultural and household supplies.

(d) Generating and distributing electrical energy and furnishing telephone service to its members and others.

(e) Performing or furnishing business or educational services, on a coöperative basis, for or to its members.

(f) Financing any of the above enumerated activities. (Sec. 4.)

Comparable provisions.

Cal. Civil Code, p. 286, § 653dd, Idaho Code, § 22-2004, Mont. Rev. Codes, § 6431 (substantially the same except that electrical energy, telephone service, and business or educational services, are not specifically mentioned).

Iowa Code 1939, § 8512.06 (1. associations may be formed to conduct mercantile, manufacturing, mechanical or mining business, or to construct or operate telephone or electric transmission lines; 2. provision similar in scope to that hereof as to producers of agricultural products, but without specific mention in said subd. (2) of electrical energy and telephone service).

Cross-reference.

Co-operative agreements by board of agriculture, 3-1-31.

Decisions from other jurisdictions.**—Iowa.**

The reviewing court affirmed judgment dismissing petition of relator, member of rural co-operative organized by farmers under statutory provisions, relator seeking to attack validity of formation, by several such co-operatives, of the "Federated Co-operative Power Association," the reviewing court pointing out that the statute concerning co-operative associations providing that associations might be formed by co-operatives to

conduct a mercantile, manufacturing, mechanical or mining business, or to construct or operate telephone or electric transmission lines should be liberally construed to effect purpose of such legislation in its broadest scope. State ex rel. Winterfield v. Hardin County Rural Electric Co-operative, 226 Iowa 896, 285 N. W. 219.

Where articles of power association formed by county rural electric co-operatives organized by farmers authorized association to operate transmission lines, acquire property, franchises, licenses,

rights-of-way and easements, borrow money, issue bonds, extend credit and perform all acts permitted by law, such powers were merely incidental to accomplishing association's single purpose of procuring and distributing electric energy, and article was not contrary to, or violative of, statute providing that co-operatives might form associations to conduct a mercantile, manufacturing or mining business. State ex rel. Winterfield v. Hardin County Rural Electric Co-operative, 226 Iowa 896, 285 N. W. 219.

2-0-23. Articles of Incorporation.

Articles of incorporation shall be signed in quadruplicate by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the president and secretary if associations, before an officer authorized to take acknowledgments, such acknowledgment to state that it is bona fide their intention to commence and carry on the business specified in the articles, and if natural persons, that each of them is an adult person. The articles shall state:

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

(b) Its purposes.

(c) Its duration.

(d) The location and post office address of its principal place of business in this state.

(e) The name of each of the incorporators, and if organized with stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class or classes of shares for which each subscribes.

(f) The names of the first directors and their post office addresses.

(g) Whether organized with or without stock; and if organized with stock the total authorized number of par value shares and the par value of each share, and if any of its shares have no par value, the authorized number of such shares; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled. If only one class of stock is authorized, it shall be common, and if more than one class is authorized, one class shall be designated common stock, and, in any event, the common stock shall carry all voting rights.

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

(i) The articles may also contain any other provisions, consistent with law for regulating the association's business or the conduct of

its affairs, the establishment of voting districts, the election of delegates to represent such districts and the members residing therein, for representation of each district upon the board of directors and for changing the number of directors to correspond to changes in the number of districts, and for the issuance, retirement and transfer of memberships and stock. (Sec. 5.)

Comparable provisions.

Iowa Code 1939, § 8512.40 (articles signed and acknowledged by each incorporator; duration of association may be perpetual; name must include word "co-operative").

Idaho Code, § 22-2008, Mont. Rev. Codes, § 6435 (similar; but association's term of existence shall not exceed 50 years in Idaho, 40 years in Montana; articles must be subscribed by incorporators and acknowledged by one of them).

Cal. Agric. Code, § 1196 (includes clauses similar to subds. (b), (d), (g) and (h) herein).

Cross-reference.

Nonprofit corporations generally, 18-6.

Decisions from other jurisdictions.

—Iowa.

Where county rural electric co-operatives organized by farmers formed association to generate and distribute electric energy, that article of incorporation authorized purchasing of electric energy was not statement of separate purpose or business, in view of whole object of association, which was to furnish county co-operatives, their individual members, nonmembers, governmental bodies, municipalities and other patrons with an uninterrupted supply of electric current. State ex rel. Winterfield v. Hardin County Rural Electric Co-operative, 226 Iowa 896, 285 N. W. 219.

2-0-24. Id. Filing and Recording—Certificate of Incorporation—Fees.

(a) The articles of incorporation shall be deposited with the county clerk of the county in which such corporation has its principal place of business, and a copy thereof, duly certified by said county clerk, shall be filed in the office of the secretary of state, who shall thereupon issue a certificate of incorporation, which certificate or a certified copy of the same shall be prima facie evidence of the due incorporation of the association. Upon the issuance of such certificate of incorporation, the corporate existence shall begin. A like copy, duly certified by the said county clerk shall be filed in the office of the state commissioner of agriculture.

(b) The fee for depositing articles of incorporation with the county clerk and securing two certified copies thereof, where the copies for certification are furnished by the incorporators, shall be \$5, whether incorporated with or without stock; for filing articles of incorporation with the secretary of state and for the issuance of a certificate of incorporation, \$5, whether incorporated with or without stock; for filing amendments to articles the fee shall be \$2.50 to the county clerk and \$2.50 to the secretary of state. No fee shall be charged for the filing of original oaths of office with the county clerk, or for filing copies of articles or amendments in the office of the state commissioner of agriculture.

(c) No person dealing with the association shall be charged with constructive notice of the contents of the articles or amendments thereto by reason of such filing or recording. (Sec. 6.)

Comparable provisions.

Iowa Code 1939, § 8512.44 (similar to subd. (a) herein).

Idaho Code, § 22-2008, Mont. Rev. Codes, § 6435 (concluding paragraph provides that articles shall be filed in ac-

cordance with provisions of General Corporation Law; similar as to prima facie evidence; certified copy of articles must be filed with department of agriculture in Idaho; with dean of state college of agriculture in Montana).

2-0-25. Id. Amendments.

(a) An association may amend its articles of incorporation by the affirmative vote of a majority of the members voting thereon at any regular meeting, or at a special meeting called for the purpose. A notice of the proposed amendment and of the time and place of holding such meetings shall be published in a daily or weekly newspaper of general circulation in the territory in which the members reside, or in case the association publishes and distributes to the members, through the United States post office, a publication devoted to the interests of the association and issued at least once a month, such notice may be published therein, in lieu of publication in a general newspaper as aforesaid. If such notice is published in a general newspaper, the period thereof shall be not less than twenty-one days, if in a paper published by the association, then it must be published in at least two issues and for a period of at least thirty-six days. No amendment affecting the preferential rights of any outstanding preferred stock shall be adopted until the written consent of the holders of a majority of the outstanding preference shares has been obtained.

(b) After an amendment has been adopted, articles of amendment shall be prepared, in quadruplicate, setting forth the amendment and the adoption thereof, and shall be signed and sworn to by the president or vice president and by the secretary or treasurer, and filed as in the case of original articles of incorporation. (Sec. 7.)

Comparable provisions.

Idaho Code, § 22-2009, Mont. Rev. Codes, § 6436 (amendment must first be approved by two-thirds of directors and then adopted by affirmative vote of two-

thirds of members present at meeting, except as otherwise provided in § 22-2008, and provided that quorum is present).

2-0-26. By-Laws.

The members of the association shall adopt by-laws not inconsistent with law or the articles, and they may alter and amend the same from time to time. By-laws may be adopted, amended or repealed, at any regular meeting, or at any special meeting called for that purpose, by a majority vote of the members voting thereon. The by-laws may provide for:

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

(b) The manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations.

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

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

(e) Rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of

contracts, the issuance, retirement, and transfer of stock, and the relative rights, interests and preferences of members and shareholders.

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

(g) Such additional provisions as shall be deemed necessary for the carrying out of the purposes of this act. (Sec. 8.)

Comparable provisions.

Cal. Agric. Code, § 1200, Idaho Code, § 22-2010, Mont. Rev. Codes, § 6437 (in-

clude clauses similar to opening paragraph herein, and subs. (a), (b), (c) and (f) herein).

2-0-27. Powers.

(I) An association formed under this act, or an association which might be formed under this act and which existed at the time this act took effect, shall have the power and capacity to act possessed by natural persons and may do each and everything necessary, suitable or proper for the accomplishment of any one or more of the purposes, or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interests or benefit of the association, and may exercise all powers, rights, and privileges necessary or incident thereto, including the exercise of any rights, powers, and privileges granted by the laws of this state to corporations generally, excepting such as are inconsistent with the express provisions of this act.

Special Authority.

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

(a) To act as agent, broker, or attorney in fact for its members and other producers, 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 other producers, and for subsidiary and affiliated association to property handled or managed by the association on their behalf.

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

(c) To make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire, endorse, discount, or sell any evidence of debt, obligation or security.

(d) To establish and accumulate reasonable reserves and surplus funds and to abolish the same; also to create, maintain, and terminate revolving funds or other similar funds which may be provided for in the by-laws of the association.

(e) To own and hold membership in or shares of the stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehous-

ing or marketing any of the products handled by the association; or, in financing its activities; and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon.

(f) To acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require.

(g) To borrow money without limitation as to amount, and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge.

(h) To deal in products of, and handle machinery, equipment, supplies and perform services for non-members to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members, but the value of the annual purchases made for persons who are neither members nor producers shall not exceed fifteen per centum of the value of all its purchases. Business transacted by an association for or on behalf of the United States or any agency or instrumentality thereof, shall be disregarded in determining the volume or value of member and non-member business transacted by such association.

(i) If engaged in marketing the products of its members, to hedge its operations.

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

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

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

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

(n) To dissolve and wind up.

(Sec. 9.)

Comparable provisions.

Iowa Code 1939, § 8512.07 (includes clauses similar to subs. (b), (c), (e), (f) and (g) herein).

Cal. Agric. Code, § 1194, Idaho Code, § 22-2006, Mont. Rev. Codes, § 6433 (similar).

A. L. R. note.

Responsibility of agricultural society for tort, 52 A. L. R. 1400.

2-0-28. Members, Qualifications and Liabilities—Voting Rights.

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

(b) No stockholder shall hold more than one share of the common voting stock.

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

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

(e) No member or stockholder shall be entitled to more than one vote and no vote shall be cast by proxy; *provided*, that where the mem-

ber is a corporation, its vote may be cast by an accredited representative. (Sec. 10.)

Comparable provisions.

Iowa Code 1939, § 8512.12 (similar to subd. (d) herein); §§ 8512.28, 8512.29 (similar to subds. (b) and (e) herein).

2-0-29. Certificates of and Termination of Membership—Dividends and Distribution of Reserves—Preferred Stock—Certificate of Interest, Assignability.

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

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

(c) Savings in excess of dividends and additions to reserves and surplus shall be distributed on the basis of patronage. The by-laws may provide that any distribution to a non-member, eligible for membership, may be credited to such non-member until the amount thereof equals the value of a membership certificate or a share of the association's common stock. The distribution credited to the account of such non-member may be transferred to the membership fund at the option of the board, if, after two years, the amount is less than the value of the membership certificate or a share of common stock.

(d) The by-laws shall provide the time and manner of settlement of membership interests with members who withdraw from the association or whose membership is otherwise terminated. Provisions for forfeiture of membership interests may be made in the by-laws. After termination of membership, for whatever cause, the withdrawing member shall exercise no further control over the facilities, assets or activities of the association.

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

(f) The association may from time to time issue to each member a certificate of interest evidencing his interest in any fund, capital investment, or other assets of the association. Such certificate may be transferred only to the association, or to such other purchaser as may be approved by the board of directors, upon such terms and conditions as shall be provided for in the by-laws. (Sec. 11.)

2-0-30. Meetings.

Within ninety days after the incorporation of an association the members thereof shall hold an organization meeting at a time and place

fixed by the temporary board of directors. Not less than ten days written notice thereof shall be given to each member. An association may provide in its by-laws for one or more regular meetings each year, which may be held within or without the state at the time and place designated in the by-laws. Special meetings of the members may be called by the board of directors, and it shall be their duty to call such meetings when ten per centum of the members file with the secretary a petition demanding a special meeting and specifying the business to be considered at such meeting. Notice of all meetings, except as otherwise provided by law or the articles or by-laws, shall be mailed to each member at least ten days prior to the meeting, and in case of special meetings the notice shall state the purposes for which it is called, but the by-laws may require that all notices shall be given by publication in a periodical published by or for the association, to which substantially all its members are subscribers, or in a newspaper or newspapers whose combined circulation is general in the territory in which the association operates. (Sec. 12.)

Comparable provision.

Iowa Code 1939, § 8512.27 (special meetings must be called on written de-

mand of 20 per cent of members, unless otherwise provided in articles).

2-0-31. Directors.

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

First Directors.

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

Provisions Concerning, in Articles and By-Laws.

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

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

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

Districts, Provision for in By-Laws.

(IV) The by-laws may provide, if not restricted by the articles, that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such dis-

tricts, either directly or by district delegates elected by the members in that district. In such case, the by-laws shall specify, or vest in the board of directors authority to determine, the number of directors to be elected by each district and the manner and method of apportioning the directors and of districting and redistricting the territory covered by the association. The by-laws may provide that primary elections shall be held in each district to nominate the directors apportioned thereto and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered as a final election.

Executive Committee.

(V) The by-laws may provide for an executive committee to be elected by the board of directors from their number and may allot to such committee all the functions and powers of the board subject to its general direction and control. (Sec. 13.)

Comparable provision.

Cal. Agric. Code, § 1201 (board of not less than three directors elected by

stockholders or members from their own number). .

2-0-32. Removal of Directors.

Any member may ask for the removal of a director by filing charges with the secretary or president of the association, together with a petition signed by ten per centum of the members requesting the removal of the director in question. The removal shall be voted upon at the next meeting of the members, and the association may remove the director by a majority vote of the members voting thereon. The director whose removal is requested shall be served with a copy of the charges not less than ten days prior to the meeting and shall have an opportunity at the meeting to be heard in person and by counsel and to present evidence; and the persons requesting the removal shall have the same opportunity. In case the by-laws provide for election of directors by districts, then the petition for removal of a director must be signed by twenty per centum of the members residing in the district from which he was elected. The board must call a special meeting of the members residing in that district to consider the removal of the director; and by a majority vote of the members of that district voting thereon the director in question shall be removed from office. (Sec. 14.)

Comparable provisions.

Cal. Agric. Code, § 1207, Idaho Code, § 22-2015, Mont. Rev. Codes, § 6442 (sub-

stantially the same provision as to removal of officer or director).

2-0-33. Officers.

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

2-0-34. Removal of Officer.

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

Comparable provisions.

Cal. Agric. Code, § 1207, Idaho Code, § 22-2015, Mont. Rev. Codes § 6442 (sub-

stantially identical provision dealing with removal of officer or director).

2-0-35. Contracts with Association.

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

Damages for Breach.

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

Equitable Relief.

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

Remedy Not Exclusive.

(IV) No remedy, either legal or equitable, herein provided for, shall be exclusive, but the association may avail itself of any and all such remedies, at the same or different times, in any action or proceeding.

Landowners Presumed to Control Delivery.

(V) In any action upon such marketing contracts, it shall be conclusively presumed that a landowner or landlord or lessor is able to control the delivery of products produced on his land by tenants or others, whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landowner or landlord or lessor of such a marketing contract; and in such actions, the foregoing remedies for non-delivery or breach shall lie and be enforceable against such landowner, landlord, or lessor.

Filing Contract.

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

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

(b) The names of the members who have executed such contract and a description of the land on which the product is produced, if such description is contained in the contract. The association may file from time to time thereafter affidavits containing revised or supplementary lists of the members producing such product in that county without setting forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof. All affidavits filed under this section shall state in substance that they are filed pursuant to the provisions of this section. The county recorder shall file such affidavits and make endorsements thereon and record and make entries thereof in the same manner as is required by law in the case of chattel mortgages, and he shall compile and make available for public inspection a convenient index containing the names of all signers of such contracts, and collect for his services hereunder the same fees as for chattel mortgages. The filing of any such contract, or such affidavit, shall constitute constructive notice of the contents thereof, and of the association's title

or right to the product embraced in such contract, to all subsequent purchasers, encumbrancers, creditors, and to all persons dealing with the members with reference to such product. No title, right, or lien of any kind shall be acquired to or on the product thereafter except through the association or with its consent, or subject to its rights; and the association may recover the possession of such property from any and all subsequent purchasers, encumbrancers, and creditors, and those claiming under them, in whose possession the same may be found, by any appropriate action for the recovery of personal property, and it may have relief by injunction and for damages. (Sec. 17.)

Comparable provisions.

Cal. Agric. Code, § 1208 (similar to subd. (I) herein, but duration of contract must not exceed 15 years); § 1209 (substantially identical with subd. (II) herein); § 1210 (substantially identical with subd. (III) herein); § 1211 (substantially identical with subd. (V) herein); § 1221 (additional provision as to specific enforcement of contracts notwithstanding any provision of Civil Code to contrary).

Cal. Civil Code, § 3423 (provision denying right to injunction except, inter alia, to prevent breach of contract between nonprofit co-operative association or corporation and member or stockholder thereof as to sale or delivery of products).

Idaho Code, § 22-2017, Mont. Rev. Codes, § 6444 (similar to subd. (I) herein, but duration of contract must not exceed period of ten years; and also include provisions substantially identical with subds. (II) and (III) herein).

Iowa Code 1939, § 8512.08 (contracts must be for a specified time, not less than one year); § 8512.09 (includes provisions similar to subds. (II) and (III) herein).

Decisions from other jurisdictions.

— California.

Marketing contracts between grower and co-operative association are essentially to and with all other members of the association, and the interests of every member rest upon the same foundation. *California Canning Peach Growers v. Downey*, 76 Cal. App. 1, 243 P. 679; *Taresh v. California Canning Peach Growers*, 3 Cal. 2d 686, 45 P.2d 964.

Plaintiff, assignee of corporate-owner of almond orchards which marketed its crops through defendant exchange, a

co-operative nonprofit marketing association of almond growers, was entitled to an accounting giving to her complete information concerning credits to and charges against all pools in which nuts delivered by her assignor were packed and sold. *Reinert v. California Almond Growers Exchange*, 9 Cal. 2d 181, 70 P.2d 190.

Notification by state association that it would make advance payment to plaintiff grower on his crop of prunes did not supersede membership agreement between plaintiff and county Local wherein plaintiff agreed to sell to the Local his entire crop of dried prunes grown on his ranch during the 1937 season, inasmuch as the agreement itself provided the sole method of withdrawal. *Meyer v. California Prune & Apricot Growers' Ass'n*, 42 Cal. App. 2d 632, 109 P.2d 726.

Co-operative marketing agreement which specified exactly how it might be terminated could not be abrogated or modified by anyone in violation of rights of others to the contract. *Meyer v. California Prune & Apricot Growers' Ass'n*, 42 Cal. App. 2d 632, 109 P.2d 726.

— Idaho.

Where books of an unincorporated association, including account against defendant grower, came into the hands of an individual as an employee or agent or officer of that association, the mere fact that this individual later became manager and secretary of plaintiff nonprofit co-operative marketing association, incorporated under Co-operative Marketing Act, did not operate to transfer said account to plaintiff corporation; and the individual's possession was the possession of the individual members of the unincorporated association. *Idaho Apple Growers' Ass'n v. Brown*, 51 Idaho 540, 7 P.2d 591.

2-0-36. Id. Inducing Breach—False Reports—Penalty.

Any person or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association to violate his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or

management thereof, shall be guilty of a misdemeanor and shall be subject to a fine of not less than one hundred dollars and not more than one thousand dollars for each such offense; and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars for each such offense. (Sec. 18.)

Comparable provision.

Idaho Code, § 22-2024 (substantially identical, but maximum fine is \$500).

2-0-37. Association Not in Restraint of Trade—May Disseminate Information.

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

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

(c) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus. (Sec. 19.)

Comparable provisions.

Cal. Agric. Code, § 1218 (similar to subd. (a) herein).

Iowa Code 1939, § 8512.11 (similar to subd. (a) herein).

2-0-38. Voluntary Dissolution—Proceedings.

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

cease to exist. The trustee shall make a report in quadruplicate of the proceedings had under this section, which shall be signed and sworn to and filed as required for the filing of the articles of incorporation.

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

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

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

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

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

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

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

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

(f) Such matters as justice may require.

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

(IV) This section shall apply to all associations heretofore or hereafter incorporated in this state. (Sec. 20.)

Comparable provision.

Iowa Code 1939, § 8512.47 (association may be dissolved by two-thirds of all

votes cast at meeting called for that purpose; trustees designated to wind up affairs).

2-0-39. Existing Associations Continue Under Act.

(a) This act shall be applicable to any existing association formed under any law of this state providing for the incorporation of agricultural coöperative associations, for a purpose for which an association may be formed under this act, and particularly to associations formed under the Agricultural Coöperative Association Act, Title 2, Revised Statutes of Utah, 1933, and all such associations shall have and may

exercise and enjoy all the rights, privileges, authority, powers, and capacity heretofore granted, and all such associations shall have and may also exercise and enjoy all the rights, privileges, authority, powers, and capacity granted or afforded under and in pursuance of this act to the same extent and effect as though organized hereunder.

(b) Any coöperative association heretofore organized by producers of agricultural products under the terms of Chapter VI, Title 18, Revised Statutes of Utah, 1933, for purposes in this act provided, may bring itself under and within the terms of this act as if organized hereunder and may thereafter operate in pursuance of the terms hereof, and may exercise and enjoy all the rights, privileges, authority, powers, and capacity afforded and provided for under the terms of this act, by filing with the county clerk in the county where the principal place of business of such association is located, and also with the secretary of state, a sworn statement signed by the president and secretary of such association, to the effect that by resolution of the board of directors of such association duly adopted, such association has elected to bring itself with [within] the terms of this act. (Sec. 21.)

2-0-40. Accrued Rights Not Affected by Act.

This act shall not impair nor affect any act, offense committed, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted as fully and to the same extent as if this act had not been passed.

(Sec. 22.)

2-0-41. Use of Term "Coöperative" Limited.

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

(Sec. 23.)

Comparable provisions.

Cal. Agric. Code, § 1214 (similar).

Iowa Code 1939, § 8512.04 (similar).

2-0-42. Eligible Foreign Corporations May Operate Under Act.

A foreign corporation that can qualify as an association, as defined in section 2 of this act, may be authorized to do business in this state under the provisions of this act by complying with the laws relating to foreign corporations doing business in the state and filing with the commissioner of agriculture a copy of its articles of incorporation duly certified by the secretary of state of this state. It shall pay the same

fees and charges as domestic associations. Upon such compliance it shall have all the rights and privileges of like domestic associations. (Sec. 24.)

Comparable provisions.

Iowa Code 1939, § 8512.54 (similar).

2-0-43. Annual License Fee.

Domestic associations and foreign associations admitted to do business in this state shall pay an annual license fee of five dollars, which shall be in lieu of all other corporation, franchise, and income taxes and taxes and charges upon reserves held by the association for distribution to members. (Sec. 25.)

2-0-44. Partial Invalidity—Saving Clause.

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. (Sec. 26.)

2-0-45. Uniformity of Interpretation.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (Sec. 27.)

2-0-46. Short Title.

This act may be cited as the Uniform Agricultural Coöperative Association Act. (Sec. 28.)

2-0-47. Inconsistent Acts Repealed—Existing Associations Continued.

All acts and parts of acts which are inconsistent with the provisions of this act are repealed. It is intended by the enactment of this measure to continue in good standing all existing associations organized under similar acts heretofore existing, and in no way to detract from or interfere with the continued operations of such associations, and it is intended that this act shall supersede Title 2, Revised Statutes of Utah, 1933, in the interest of the further aid, encouragement, strengthening, and stabilizing of all such associations. (Sec. 29.)

2-0-48. Title Repealed.

Title 2, Revised Statutes of Utah, 1933, is hereby repealed. (Sec. 30.)

2-0-49. Effective Date.

This act shall take effect upon approval.
Approved March 18, 1937. (Sec. 31.)