

tion of a special parking regulation during snow emergencies unless the violator has been notified by certified mail, return receipt requested, of a prior violation of such special parking regulations occurring between the first day of November and the first day of April of the following year.

Section 2. This act shall take effect immediately.

APPROVED—The 12th day of June, A. D. 1968.

RAYMOND P. SHAFER.

No. 94

AN ACT

HB 1413

To provide for the incorporation and regulation of cooperative agricultural associations; providing for the operation, taxation, merger, dissolution and winding up of such associations; conferring certain rights, powers, duties, restrictions, privileges and immunities upon them and their directors, officers, stockholders and members; conferring powers and imposing duties upon the courts, the Department of State, the Department of Agriculture and other State offices; and imposing penalties for the violation of this act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.—This act shall be known, and may be cited, as the “Cooperative Agricultural Association Act.”

Section 2. Declaration of Policy.—It is the declared policy of this Commonwealth, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective cooperative agricultural associations under the control of such producers for their mutual benefit and to that end this act should be liberally construed.

Section 3. Associations Not in Restraint of Trade.—(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 producers, or any agreements authorized in this act, be construed as an unlawful restraint of trade, or as a part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

(b) An association may acquire, exchange, interpret and disseminate 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 of agricultural products.

Section 4. Definitions.—As used in this act, unless the context or subject matter requires otherwise:

(1) "Agricultural products" include all livestock and livestock products, dairy and dairy products, poultry and poultry products, horticultural, floricultural and viticultural products, forestry and forestry products, seeds, nuts, mushrooms and bee products, and any and all kinds of farm products.

(2) "Engaging in agriculture" includes engaging in dairying, livestock raising, poultry raising, fur bearing animal raising, horticulture, floriculture, viticulture, forestry, beekeeping, seed growing, nut growing, mushroom growing, and engaging in any and all kinds of farming and other allied occupations.

(3) "Supplies" include any and all types of supplies, machinery and equipment used or consumed by persons engaging in agriculture.

(4) "Association" means a domestic corporation with or without capital stock incorporated under, adopting or subject to this act, or a foreign corporation with or without capital stock, incorporated under any general or special act as a cooperative agricultural association for the mutual benefit of its members, patrons and producers.

(5) "Member" means the holder of a membership in an association without capital stock, or the holder of voting stock in an association organized with capital stock.

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

(7) "Patron" means a person using the facilities of an association for the marketing of agricultural products, or a person using the facilities of an association for the purchase of supplies or the rendering of services.

(8) "Producer" means a person engaging in agriculture.

(9) "Board" means the board of directors of an association.

Section 5. Scope of Act.—(a) This act shall be applicable to any domestic association incorporated hereafter.

(b) This act shall be applicable to every existing domestic corporation incorporated under or governed by either:

(1) The act of June 12, 1919 (P. L. 466), relating to cooperative

agricultural associations without capital stock; or

(2) The act of April 30, 1929 (P. L. 885), relating to cooperative agricultural associations with capital stock.

(c) This act shall be applicable to any existing domestic corporation, either with or without capital stock, incorporated under or subject to any prior law of this Commonwealth concerning the incorporation and regulation of cooperative corporations, by the filing with the Department of State of a certificate which shall be executed under the seal of the corporation, shall be signed by two duly authorized officers of the corporation and shall set forth:

(1) The name of the corporation;

(2) The act of the General Assembly by or under which it was created or formed;

(3) A statement that the members or stockholders of the corporation have elected, by a majority vote of the members or shareholders present at a meeting called for such purpose at which a quorum is present, to accept the provisions of this act for the government and regulation of the affairs of the corporation.

(d) This act shall be applicable to every foreign association, whether or not the association has received a certificate of authority under the "Business Corporation Law" to transact the business of an association.

(e) The reference in subclause (v) of clause (1) of subsection B of section 4 of the "Business Corporation Law" shall hereafter be deemed to be a reference to the "Cooperative Agricultural Association Act."

Section 6. Saving Clause.—Unless the context or subject matter requires otherwise, this act shall not impair or affect any act done, 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; and this act shall not impair or affect any contract entered into by any association prior to the effective date of this act.

Section 7. Powers of Department of State.—The Department of State shall have the power and authority reasonably necessary to enable it to administer this act efficiently and to perform the duties imposed upon it by this act. All articles, papers and other documents required by this act to be filed with the Department of State shall be made in such form as shall be prescribed by that department. The Department of State may make a copy, on microfilm or otherwise, of any document filed with or by it pursuant to this act or any act hereby repealed, and thereafter destroy such document or return it to the person who filed the same.

Section 8. Formation of Association Authorized.—Five or more individuals, engaging in agriculture, or two or more cooperative agricultural associations may form an association. If an association is

formed by individuals, at least three of such individuals must be citizens of this Commonwealth. If an association is formed by cooperative agricultural associations, at least one of such associations must have been organized under a law of this Commonwealth.

Section 9. Purposes of Association.—Such associations 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, selling, bargaining or contracting for agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing such products, or manufacturing or marketing the by-products thereof.

(2) Manufacturing, processing, storing, transporting, delivering, handling, buying for or furnishing supplies to its members and patrons.

(3) Performing or furnishing business, educational, recreational or other services, including the services of labor, buildings, machinery, equipment, trucks, trailers and tankers, or any other services connected with the purposes set forth in clauses (1) and (2) of this section on a cooperative basis.

(4) Financing any of the above enumerated activities.

Section 10. Articles of Association.—Articles of association shall be signed by each of the incorporators and shall state:

(1) The name of the association which may include the word "cooperative" and which shall not be the same as, or confusingly similar to, the name of any association or corporation, whether issuing shares or not issuing shares, existing under the laws of this Commonwealth, or the name of any foreign association or corporation, whether issuing shares or not issuing shares, authorized to transact business in this Commonwealth, or any corporate name reserved or registered as provided by law.

(2) The address of its initial registered office (including both (i) the post office address with street and number, if any, and (ii) the name of the county and city in which it is located).

(3) Its purposes.

(4) If organized with capital stock, a description of the capital stock of each class which is to be issued and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights granted to or imposed upon the shares of each class, the total authorized capital stock, the number of shares into which the same is divided, and the par value of each share.

(5) If organized without capital stock, whether the property rights and interests of each member are equal or unequal; and if unequal, the priorities of such rights and interests.

(6) The number of directors, not less than five, constituting the initial board of directors, and the names and addresses of the persons

who are to serve as directors until the first annual meeting of the members or until their successors be elected and take office.

(7) If the duration of an association is not to be perpetual, the period of its duration.

(8) Any other provisions, consistent with law for regulating the association's business or the conduct of its affairs.

Section 11. Filing and Recording Articles of Association.—The articles of association, duly signed by each of the incorporators, together with any filing fee required to be paid, shall be delivered to the Department of State. If the Department of State finds that the articles comply with the law and that all required fees have been paid, it shall approve the articles of association, and a copy of said articles shall be recorded in the office of the Secretary of the Commonwealth. Upon the approval of the articles of association, the association's existence shall begin. The articles of association as approved shall be conclusive evidence of the fact that the association has been organized.

Section 12. Powers of Association.—Each association shall have the following powers:

(1) To exist for the period limited in its articles of association and, when no period is limited thereby, to exist perpetually, subject to the power of the General Assembly under the Constitution of the Commonwealth, and, unless sooner dissolved by operation of law or under the provisions of this act.

(2) To maintain and defend judicial proceedings by the name specified in the articles of association.

(3) To adopt and use a common seal and alter the same at pleasure.

(4) To hold, purchase, lease and transfer such real and personal property as is necessary or proper to effect the purposes of the association.

(5) To elect a board of directors, which board shall have the power to appoint such officers, agents and employes as may be deemed necessary; to prescribe their duties; to require bonds of them and to dismiss them in accordance with the bylaws of said association.

(6) To make bylaws, not inconsistent with the law and its articles of association, for the management of its property, the regulation of its affairs and the conduct and management of the association.

(7) To act as agent, broker or attorney-in-fact for its members and patrons and for any subsidiary or affiliated person, and to hold title for its members and patrons and for subsidiary and affiliated persons to property handled or managed by the association on their behalf.

(8) To make contracts and to assist or join with persons to effect any one or more of the activities authorized by its articles of association, and that may be conducive to or expedient for the interest or benefit of the association; and to exercise, by its board or duly authorized officers or agents, all such powers as may be necessary, suitable or proper for the accomplishment of the purposes of the associ-

ation and not inconsistent with the law or its articles of association.

(9) To borrow money necessary to the conduct of its operations and to issue notes, bonds and other evidences of indebtedness therefor and to give security in the form of mortgage or otherwise for the payment thereof.

(10) In furtherance of association purposes, to make loans or advances to its members and patrons or to subsidiary and affiliated persons or their members and to purchase or otherwise acquire, endorse, discount or sell any evidence of debts, obligation or security.

(11) To establish and accumulate reserves and surplus to capital and such other funds as may be authorized by the articles of association or the bylaws.

(12) To issue membership certificates and to foster membership in the association and to solicit patrons by advertising or by educational or other lawful means.

(13) To issue and to sell common and preferred stock.

(14) To own shares of the capital stock of, to hold membership in, and to hold bonds or other obligations of other corporations and cooperative agricultural associations engaged in any related activity, or engaged in producing, manufacturing, warehousing or marketing any of the products handled by the association, or engaged in financing its activities or those of its members, and, while the owner thereof, to exercise all the rights of ownership, including the right to vote.

(15) To pay pensions and establish pension plans, pension trusts and other incentive plans for its directors, officers and employes.

(16) To indemnify any director or officer or former director or officer of the association, or any person who may have served at its request as a director or officer of another corporation or association in which it holds membership or owns shares of capital stock, or of which it is a creditor, in the manner provided by law.

(17) To make contributions and donations for the public welfare or for religious, charitable, scientific or educational purposes.

(18) 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.

(19) To merge and consolidate.

(20) To dissolve and wind up.

(21) To exercise such incidental powers as may be necessary or proper in the conduct of its operations.

Section 13. Members.—An association shall admit to membership only persons who are engaging in agriculture, including both tenants and landlords receiving a share of the crop, and cooperative agricultural associations of such producers who agree to patronize the association in accordance with the uniform terms prescribed by it and only such persons shall be regarded as eligible members of an association. The articles of association or the bylaws may prescribe additional qualifications for membership but shall not enlarge the class

eligible for membership hereinabove described.

Section 14. Issuance of Stock or Membership Certificates; Voting Rights; Evidences of Equity; Limitations on Dividends; Preemptive Rights.—(a) Every association without capital stock shall issue a certificate of membership to each member. Every association with capital stock shall issue a certificate of common stock to each member, certifying the number of shares of stock held by him. An association shall issue common stock or a membership certificate only to persons eligible for membership upon such terms and conditions as shall be provided in the articles of association or bylaws. Each eligible member shall be entitled to only one vote on each question that may be presented at any meeting of the members, regardless of the number of shares of stock or membership capital owned by him. An association may issue preferred stock to any person upon such terms and conditions as shall be provided in the articles of association or bylaws. Such preferred stock shall carry no voting rights.

(b) No association shall issue a certificate of membership and no certificate for common stock shall be issued until fully paid for, but promissory notes may be accepted by the association as full or partial payment. The association shall hold the membership certificate or stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote and hold office.

(c) The association may, from time to time, issue to any patron a certificate or other evidence of the patron's equity in any fund, capital investment or other asset of the association. Such certificate or other evidence of equity may bear interest at a rate not in excess of six per cent per annum and may be transferred only to the association or to such other person as may be approved by the board of directors.

(d) Fractional shares of common and preferred stock may be issued by an association.

(e) Certificates representing shares, certificates of membership and evidences of a patron's equity in any fund, capital investment or other asset of the association, shall be signed by the president or a vice president, or treasurer or assistant treasurer and the secretary or an assistant secretary of the association, or by facsimiles of their signatures, and may be sealed with the seal of the association or a facsimile thereof.

(f) Dividends not in excess of six per cent per annum may be paid on any stock and dividends on preferred stock may be cumulative if so provided in the articles of association. An association shall have a lien on all of its issued common and preferred stock and dividends declared or accrued thereon for all indebtedness of the holders thereof to the association, if provision therefor is stated on the face of the certificate of stock.

(g) Unless otherwise provided in its articles, an association may issue shares without first offering them to shareholders of any class or classes.

Section 15. Sale or Transfer of Stock; Redemption of Stock.—(a)

The common stock of an association may be transferred only with the consent of the board of directors of an association and on the books of an association and then only to persons eligible to own the same; and no purported assignment or transfer of such stock shall pass to any person not eligible to hold the same, any rights or privileges on account of such stock or vote or voice in the management or affairs of an association.

(b) In the event a holder of common stock has done no business with an association for a period of twelve months, or in the event the board of directors of an association shall find that any of the common stock has come into the hands of any person who is not eligible for membership, or that the holder thereof has ceased to be an eligible member, in any of such events, such holder shall have no rights or privileges on account of such stock or vote or voice in the management or the affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the book or par value of such stock, whichever is less, in the event of its sale or transfer as herein provided) and the association shall have the right at its option (i) to redeem such stock at its book or par value, whichever is less; (ii) to require the transfer of any such stock at such book or par value, whichever is less, to any person eligible to hold the same; or (iii) to require such holder of any such stock to convert the same into shares of preferred stock of equal value.

In exercising its right to redeem or to require the transfer or conversion of common stock if the holder thereof fails to deliver the certificate evidencing the stock, an association may cancel such certificate on its books and issue a new certificate of common or preferred stock, as the case may be, to the party entitled thereto.

(c) The preferred stock of an association may be transferred only on the books of an association and the articles of association or bylaws may provide that an association shall have the option, at any time, to redeem such preferred stock at par value, plus declared or accrued dividends.

(d) Any restrictions or options which an association places upon the transfer or sale of any of its outstanding stock, and any association options retained thereon, shall be printed on each stock certificate.

Section 16. Termination of Membership.—(a) Under the terms and conditions prescribed in the bylaws, a member in an association without capital stock shall lose his membership and his right to vote if he ceases to belong to the class eligible for membership, or has done no business with an association for a period of twelve months. Certificates of membership in an association without capital stock shall not be transferred without the consent of the board of directors of an association.

(b) After a member has notified an association without capital stock of his withdrawal, or after the adoption of a resolution by the board terminating his membership, the board shall appraise the value in money of his membership interest in the association and shall deter-

mine and fix the manner in which the association shall pay him the value of his interest, unless the member, with the consent of the board transfers his certificate of membership.

Section 17. Liability for Debts.—The stockholders or members of an association, organized under or subject to the provisions of this act, shall not be individually liable for the debts of such association.

Section 18. Voting by Proxy or Mail.—Unless provided otherwise in the articles of association or the bylaws, no member may vote by proxy or by mail. If proxy voting is authorized in the bylaws, every proxy shall be executed in writing by the member, or by his duly authorized attorney-in-fact, and filed with the secretary of the association. No unrevoked proxy shall be valid eleven months from the date of its execution. If voting by mail is permitted, absent members may, under rules prescribed by the bylaws, be permitted to vote on specific questions by written ballot prepared by the association, sent by mail to or deposited with the secretary or other proper officer of the association.

Section 19. Meetings.—After the organization of an association the incorporators thereof shall hold an organization meeting at a time and place fixed by the board of directors named in the articles of association and shall adopt a set of bylaws, and not less than ten days' written notice thereof shall be given to each incorporator before such meeting. Thereafter, there shall be at least one meeting of members or delegates each year. Annual and special membership or delegate meetings shall be governed by the association's bylaws. The bylaws shall provide for the giving of notice to members or delegates of each meeting of the association.

Section 20. Amendments to the Articles of Association.—(a) An association may amend its articles of association for any lawful purpose, including an increase in the amount of its authorized capital stock, by the affirmative vote of two-thirds of the members or delegates voting thereon at any general meeting, or at a special meeting called for the purpose. Such vote may be cast in person by members or delegates attending such general or special meeting, or if provided by the bylaws may be cast by mail ballot or by proxy. No amendment affecting the priority or preferential rights of any outstanding stock shall be adopted until the written consent of two-thirds of the holders of such outstanding stock has been obtained. Amendments to the articles of association, signed by two duly authorized officers of the association, together with any required filing fee shall be delivered to the Department of State. If the Department of State finds that the amendments to the articles comply with the law and that all the required fees have been paid, it shall approve the amendments to the articles of association and a copy of the amended articles shall be recorded in the office of the Secretary of the Commonwealth. Upon the approval of said amendments to the articles, they shall become effective.

(b) Any association not having capital stock may become reincor-

porated into an association with capital stock, by the filing with the Department of State of an application which shall be executed under the seal of the association, which shall be signed by two duly authorized officers of the association and shall set forth:

- (1) The name of the association;
- (2) The act of Assembly by or under which it was created;
- (3) A description of the capital stock of each class which is to be issued and a statement of the preferences, qualifications, limitations, restrictions, and the special or relative rights granted to or imposed upon the shares of each class;
- (4) A statement that the board of directors of the association adopted a resolution by a three-fourths vote to authorize the execution of this certificate.

Section 21. Bylaws.—The association, before commencing business, shall adopt bylaws not inconsistent with law or its articles of association, and the bylaws may be altered, amended or revised from time to time in the manner provided in the articles of association or the bylaws; provided, that any bylaws authorized to be made by the board of directors may be repealed or changed and new bylaws made by the members or delegates, and the members or delegates may prescribe that any bylaw made by them shall not be altered, amended or repealed by the directors. The bylaws may provide for the following matters:

- (1) The time, place and manner of calling and conducting meetings of the members or delegates, and the number of members or delegates (which may be less than a majority) that shall constitute a quorum;
- (2) The manner of voting and the conditions upon which members or delegates may vote at general and special meetings;
- (3) Subject to any provision thereon in the articles of association and in this act, the number, qualifications, eligibility requirements, manner of nomination, duties and terms of office of directors and officers; the time of their election and mode and manner of giving notice thereof;
- (4) The time, place and manner for calling and holding meetings of the directors and any executive committee, and the number that shall constitute a quorum;
- (5) Rules consistent with law and the articles of association for the management of the association, the establishment of any election districts, the making of contracts, the issuance, redemption and transfer of stock, the relative rights, duties, interests and preferences of members and stockholders, the mode, manner and effect of expulsion of a member;
- (6) Any other provisions deemed necessary or proper to carry out the purposes of the association;
- (7) Penalties for violations of the bylaws.

Section 22. Directors.—(a) The business of the association shall

be managed by a board of not less than five directors, who shall be adult natural persons. All directors shall be members. The first directors shall serve until the first annual meeting of the association, at which time their successors shall be elected by the members of the association. Thereafter, a director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

(b) Except as otherwise provided in the articles of association or the bylaws:

(1) A director shall be elected for a term of at least one year, except that the first directors shall serve only until the first annual meeting;

(2) Vacancies in the board of directors, including vacancies resulting from an increase in the number of directors, shall be filled by a majority of the remaining members of the board, though less than a quorum, and in the case in which the election of directors is by districts, the board shall fill the vacancy with a person who resides in or is a member of a local in the district in which the vacancy exists. Each person so elected shall be a director until his successor is elected by the members, who may make such election at the next annual meeting of the members or at any special meeting duly called for that purpose and held prior thereto;

(3) The meetings of the board of directors may be held at such place within this Commonwealth, or elsewhere, as a majority of the directors may from time to time appoint, or as may be designated in the notice calling the meeting;

(4) A majority of the directors in office shall be necessary to constitute a quorum for the transaction of business and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of directors;

(5) The board of directors may, by resolution adopted by a majority of the whole board, delegate two or more of its number to constitute an executive committee, which, to the extent provided in such resolution, shall have and exercise the authority of the board of directors and the management of the business of the association;

(6) Any action which may be taken at a meeting of the directors or the members of the executive committee may be taken without a meeting, if consent in writing setting forth the action so taken shall be signed by all of the directors or all of the members of the executive committee, as the case may be, and shall be filed with the secretary of the association.

(c) The articles of association or the bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such case the bylaws shall specify or the board of directors shall determine the number of directors to be elected by

each district and the manner and method of dividing the directors and of districting and redistricting of the territory in which the association has members. The board of directors may use such standards as are reasonable for assigning directors and districting and redistricting the territory in which the association has members. The bylaws or the board of directors may provide for dividing districts into locals and for the election of district delegates at local meetings of members. The articles of association or the bylaws shall prescribe the procedures by which districts shall elect directors. The board of directors shall hear and decide any controversy arising out of a district election, and such decisions shall be incontestable except for fraud.

(d) If the articles or bylaws so provide, the directors of an association may be classified in respect to the time for which they shall severally hold office. In such case, each class shall be as nearly equal in number as possible, the term of office of at least one class shall expire in each year, and the members of a class shall not be elected for a shorter period than one year or for a longer period than three years. If, at any meeting, directors of more than one class are to be elected, each class of directors to be elected shall be elected in a separate election.

Section 23. 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 bylaws. The president and at least one of the vice presidents must be members. Any two of the offices of vice president, secretary and treasurer may be combined in one person.

Section 24. Removal of Director; Removal of Officer.—(a) A director may be removed from office by the affirmative vote of not less than two-thirds of the members present and voting at any regular or special meeting called for that purpose; or, in the case the bylaws provide for the election of directors by districts, by the affirmative vote of no less than two-thirds of the members or delegates residing in or representing the district from which he was elected. The bylaws shall provide for the filing of charges, the giving of notice thereof, an opportunity to be heard and the procedures under which a director may be removed.

(b) Any officer may be removed by the affirmative vote of a majority of the directors whenever in their judgment the best interests of the association will be served thereby.

Section 25. Marketing and Service Contracts; Enforcement; Inducing Breach; Spreading False Reports.—(a) An association and its members may make and execute contracts, requiring the members to obtain all or any part of specific services from the association or to sell or deliver all or any part of their specified agricultural products to or through the association or any facilities to be created by the association. The contract may provide that the association may sell

or resell the products sold or delivered by its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary overhead costs, expenses, valuation reserves, interest, dividends on common and preferred stock and such deductions for capital and other purposes as may be specified in the contract or bylaws of an association.

Each marketing or service contract shall contain a provision which shall specify a reasonable period in each year during which any contracting member of an association, upon giving notice as prescribed in the contract, may terminate the contract.

(b) The bylaws or the marketing or service contract may provide for applying patronage refunds or savings allocated to any member or other patron toward the payment for liquidated damages specified in the contract to be paid to an association by the member or other patron upon the breach by him of any provision of the marketing or service contract; the bylaws or the contract may further provide that the member will pay all costs, premium for bonds, expenses and fees in case any action is brought upon the contract by the association, and any such provision shall be valid and enforceable in the courts of this Commonwealth. The bylaws and/or contract may provide that the association shall have the option to redeem the voting stock at book value or par value, whichever is lower, plus declared dividends, or the membership certificate, whenever any contract between the association and its members shall have been cancelled in accordance with the terms or conditions of said contract or by reason of breach of such contract by the member.

(c) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action, and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. The right to an injunction shall be in addition to the remedy provided in subsection (b) of this section.

(d) Any person who knowingly induces any member of an association to breach his marketing contract with the association shall be liable to the association for the full amount of damages sustained by it by reason of such breach; and any person who maliciously and knowingly spreads false reports about the finances or management of any such association shall be liable to the association in a civil suit for the actual damage which it may sustain by reason of such false reports, and also for punitive damages for each such act, and such punitive damages may be recovered in the same action. Such association shall be entitled to an injunction against any such person to prevent further injury to the association. In any civil action or suit in equity brought by an association pursuant to this subsection, the association shall be entitled to, in addition to any other recovery or remedy, rea-

sonable attorneys' fees involved in such litigation or proceedings.

Section 26. Patronage Distributions.—(a) The net proceeds or savings of an association shall be apportioned, distributed and paid periodically on the basis of patronage to those persons entitled to receive them, at such times and in such manner as the bylaws shall provide. The bylaws may provide that the net proceeds or savings may be restricted to members or to be made at the same or a different rate for member and non-member patrons. The bylaws may contain any reasonable provisions for the apportionment and charging of net losses. The bylaws 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 an association's common stock.

(b) The apportionment, distribution and payment of net proceeds or savings required by subsection (a) of this section may be in cash, credits, capital stock, certificates of indebtedness, revolving fund certificates, letters of advice or other securities or certificates issued by an association or by any affiliated domestic or foreign cooperative association.

(c) Apportionment and distribution of its net proceeds or savings or losses may be separately determined for, and be based upon the patronage of, single or multiple pools or particular departments of an association, or as to particular commodities, supplies or services, or such apportionment and distribution may be based upon classification of patronage according to the type thereof.

(d) An association may provide in its bylaws the minimum amount of any single annual patronage transaction which shall be taken into account for the purpose of participation in allocation and distribution of net proceeds or savings or net losses under this section.

(e) For the purposes of this section net proceeds or savings or net losses shall be computed in accordance with generally accepted accounting principles applicable to cooperative associations, and after deducting from gross proceeds or savings all costs and expenses of operation and any dividends paid upon capital stock and interest paid upon certificates or other evidence of equity in any fund, capital investment or other assets of an association.

Section 27. Audit of Operations; Summary of Audit; Failure to File Summary of Audit; Penalties.—(a) At the close of each fiscal year a complete audit of the operations of the association shall be made, by a qualified accountant or accountants, employed by the board of directors, the written report of whom shall include the balance sheet, operating statement commissions; salaries and other remunerations of managers and officers and other proper information, and shall be submitted to the members at the next regular meeting. Within three months after the expiration of the fiscal year for which made, the secretary of the association shall file a summary of the statistical information contained in the report of audit, to be called a "summary of audit," with the Secretary of Agriculture of this Commonwealth

upon a form prescribed by the Secretary of Agriculture.

(b) Any association which, for three successive years, shall fail to file with the Secretary of Agriculture the summaries of audit hereinbefore provided, shall be notified by certified mail by the Secretary of Agriculture that such summaries must be filed within sixty days from the date of mailing of such notice, and that upon failure to so file such summaries within the time so limited, the Secretary of Agriculture shall notify the Secretary of the Commonwealth and the association that its articles of association have been forfeited, annulled and vacated for failure to comply with the provisions of this section. However, such forfeiture shall not prejudice the rights of creditors and members in and to any property, assets, claims or demands of or belonging to such association. The Secretary of Agriculture shall, on or before April 1, 1968, and annually thereafter, furnish each existing association and make public and record with the Secretary of the Commonwealth, a listing of the status of existing associations. Any association which has so automatically forfeited its articles of association shall be reinstated as an association under this act if the unfiled summaries of audit for the three preceding years be submitted to the Secretary of Agriculture within one year next succeeding such automatic forfeiture or within any extension thereof as may be granted by the Secretary of Agriculture, who shall thereupon notify the Secretary of the Commonwealth that such association has complied with the provisions of this section of this act, and in such event no new articles of association need be filed with or obtained from the Department of State.

(c) No person shall, without the consent or authorization of the board of directors of the association, except for official purposes or in obedience to judicial process, make or permit any disclosure whereby any information contained in a summary of audit may be identified as having been furnished by said association. No person shall knowingly exercise or attempt to exercise any powers, privileges or franchises for an association, given by this act, while such association's articles are forfeit, unless such person shall be and disclose that he is acting to reinstate the association to full privileges under this act, or is acting to wind up the affairs of such an association. Any person violating the prohibitions set forth in this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars (\$300), or imprisoned for not more than six months, or both.

Section 28. Contract Assignments to Association.—If any contract authorized by a cooperative contains an assignment to the association of any part or all of funds due or to become due the member during the life of the contract for any product produced or to be produced by him or for any services performed or to be performed in producing any product, any person who accepts or receives such product from the member is bound by such assignment after receiving written notice from the association and the member of the amount

and duration of such assignment. However, as to any seasonal crop, if no funds are paid or become payable by any person under such an assignment for a period of two consecutive years during the life of the contract, thereafter the assignment shall not be binding upon any person who receives or accepts such product from the member until the assignment is reaffirmed by the member in writing and written notice thereof is given by the association or the member. Any such reaffirmation shall continue to be effective during the life of the contract until another such lapse of two consecutive years shall occur. The provisions of this section shall not apply to any contract or assignment thereunder in existence on the effective date of this act.

Section 29. Dissolution, Merger, Consolidation or Sale, Lease or Exchange of Assets.—(a) A domestic association may dissolve and wind up, may merge or consolidate with one or more domestic or foreign associations or business corporations engaged in a related activity, or may sell, lease, or exchange all, or substantially all, of its property and assets, in the same manner as is provided for business corporations under the provisions of the “Business Corporation Law” insofar as such provisions are applicable, and where not applicable, in a manner analogous to that set forth in said provisions. The procedures and effect of the dissolution and winding up, merger or consolidation, or the sale, lease, or exchange of all, or substantially all, the property and assets of an association shall be governed in accordance with the aforesaid provisions of the “Business Corporation Law.” For the purposes of this section, dissenting stockholders or members of an association shall acquire the same rights and remedies with respect to their stock or membership interest as are granted to dissenting shareholders with respect to their stock under the provisions of the “Business Corporation Law.”

(b) A mortgage, pledge or creation of a security interest shall not be deemed a sale within the meaning of this section. Unless otherwise provided in the articles of association or bylaws, any association may create or increase its indebtedness in the manner, to the extent, for the purpose, and upon such terms and conditions and upon such security as shall be authorized by resolution adopted by its board of directors, and in such case, no authorization or consent of the members shall be required.

Section 30. Exemption from Tax on Capital Stock and Indebtedness.—No State or local tax shall be levied or placed upon an association’s capital stock or upon any scripts, bonds, certificates or other evidences of indebtedness issued by such association. Such association shall not be required to file with the Secretary of Revenue of this Commonwealth, or with any other State or local official of this Commonwealth, the reports relative to such taxes as are or may be required of corporations not exempt from the payment of such taxes.

Section 31. Limitations of the Use of the Word “Cooperative.”—No person, firm, corporation or association, domestic or foreign, hereafter commencing business in this Commonwealth shall use the word

“cooperative,” or any abbreviation thereof, as a part of its corporate or business name, unless it has complied with the provisions of this act or some other act of Assembly relative to cooperative corporations or associations. A foreign association organized under and complying with the cooperative law of the state of such association's creation shall be entitled to use the term “cooperative” in this Commonwealth if it has obtained a certificate of authority under the “Business Corporation Law” to transact the business of an association. Any violation of this section may be enjoined upon suit by any domestic or qualified foreign association, without a showing of any damage to itself.

Section 32. Jurisdiction and Venue of Courts.—In addition to the provisions of Article X of the “Business Corporation Law,” the jurisdiction and venue of the courts of the Commonwealth shall extend over foreign cooperative agricultural associations or corporations, and the powers exercised by them, to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact that such association or corporation has with the Commonwealth allowed under the Constitution of the United States.

Section 33. Foreign Associations.—A foreign association which shall have received a certificate of authority under the “Business Corporation Law” setting forth a kind or kinds of business, but no more, for the transaction of which a domestic association, if not existing, would be required to incorporate under this act, so long as such certificate of authority shall not be revoked or cancelled, shall enjoy the same rights and privileges as a domestic association, but no more and, except as otherwise provided in this act and the “Business Corporation Law,” shall be subject to the same liabilities, restrictions, duties and penalties now in force or hereafter imposed upon domestic associations, to the same extent as if it had been incorporated under this act to transact the business set forth in its certificate of authority. The Department of State shall revoke the certificate of authority of a foreign association in any case where the articles of incorporation of the association, if a domestic association, would be forfeited, annulled or vacated under this act or any other act of Assembly. A foreign association which shall have received a certificate of authority setting forth any kind or kinds of business for which a domestic association could not be incorporated under this act shall not be deemed a qualified foreign association for the purposes of this act and shall not be entitled to any of the benefits of this section. A foreign corporation shall not do any business as an association in this Commonwealth unless permitted to do so by this section and any violation of this provision may be enjoined upon suit by any domestic or qualified foreign association.

Section 34. Repeals.—(a) Except as provided in subsection (b) of this section, the following acts are repealed:

(1) Act of June 12, 1919 (P. L. 466), entitled “An Act to provide for the incorporation and regulation of cooperative agricultural asso-

ciations not having a capital stock and not conducted for profit, and defining agriculture so as to include persons engaged in agriculture, dairying, livestock raising, poultry raising, beekeeping, and horticulture."

(2) Act of April 30, 1929 (P. L. 885), entitled "An Act to provide for the incorporation and regulation of cooperative agricultural associations having capital stock; and defining agriculture so as to include persons engaged in agriculture, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture, and other allied occupations; and providing penalties."

(3) Act of May 22, 1933 (P. L. 915), entitled "An Act for unemployment relief; authorizing cooperative agricultural associations to purchase and improve agricultural land, and lease and stock such land for unemployment relief; providing for the sale of such land to the lessees."

(b) The provisions of the acts specified in subsections (a) and (b) of this section to the extent inconsistent with the provisions of this act, are hereby expressly saved from repeal for one year from the effective date hereof in so far as they relate to domestic associations in existence on the effective date hereof.

(c) Subclause (i) of clause (1) of section 4 of the act of May 5, 1933 (P. L. 289), known as the "Nonprofit Corporation Law," is hereby repealed absolutely.

(d) All other acts and parts of acts inconsistent with this act are hereby repealed to the extent of such inconsistency.

Section 35. Severability.—If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 36. This act shall take effect immediately.

APPROVED—The 12th day of June, A. D. 1968.

RAYMOND P. SHAFER

No. 95

AN ACT

HB 1933

Amending the act of June 24, 1939 (P. L. 872), entitled "An act to consolidate, amend and revise the penal laws of the Commonwealth," requiring each administrative department, independent administrative board and commission of the Commonwealth to promulgate rules and regulations governing vehicular traffic at