

this act to the extent that its application in the first instance was discretionary with them; and with like exception as to impairing substantial vested rights, nothing herein shall preclude amendment or repeal of this act, or any part of it.

Sec. 10. Act severable.—If any section, part or provision hereof be found unconstitutional, such determination shall not affect the validity of the remaining provisions not clearly dependent thereon.

Sec. 11. Act shall be paramount.—The provisions of this act shall be paramount and controlling, notwithstanding any other act or part thereof which may be inconsistent herewith; and this act shall take effect and be in force from and after its passage.

Approved April 1, 1941.

CHAPTER 114—H. F. No. 813

An act relating to co-operative associations and their organization, and defining their powers; amending the 1940 supplement to Mason's Minnesota Statutes of 1927. Sections 7834 and 7836, amending Mason's Minnesota Statutes of 1927, Sections 7835, 7840, 7843 and 7844, and repealing Mason's Minnesota Statutes of 1927, Sections 7847-1 and 7847-2.

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

Section 1. Law amended.—The 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 7834, is hereby amended to read as follows:

“7834. Co-operative associations—who may organize—purpose—powers.—A co-operative association may be formed for the purpose of conducting any agricultural, dairy, marketing, transportation, warehousing, commission, contracting, building, mining, telephone, manufacturing, or any mechanical, mercantile or electrical heat, light or power business, or for all such purposes or for any other lawful purpose, upon the co-operative plan, and in addition to other powers such co-operative association shall have the power either as agent or otherwise to buy, sell or deal in its own products, the products of its individual members or patrons, the products of any other co-operative association or of its members or patrons, whether such co-operative association be organized under the

provisions of this act or otherwise. It shall be lawful for such co-operative association to sell its own products as well as the products of its members or patrons for them, or the products of any other co-operative association or of its members or patrons for them, as the case may be, either individually or collectively, and to negotiate the price at which such products may be sold either for itself or for its members or patrons, or such other co-operative association and its members or patrons, individually or collectively, as the case may be; also to enter into or become a party to any contract or agreement either for itself or for its individual members or patrons, or between it and its member. For the purposes above stated such co-operative association shall have the power and authority as a corporation to purchase and hold, lease, mortgage, encumber, sell, exchange and convey such real estate, buildings and personal property as the business of the association may require, also to erect buildings or other structures or facilities upon its own lands or leased grounds, or upon right of way legally acquired by such co-operative association. Such co-operative association shall have the power and authority to issue bonds or other evidence of indebtedness and to borrow money to finance the business of the association, or to make advances to its members or patrons upon produce delivered by such members or patrons to the association provided, however, that the indebtedness so incurred shall not exceed the limit of indebtedness fixed in the articles of incorporation of such co-operative association, as hereinafter required. For the purpose of empowering and authorizing co-operative associations incorporated under the provisions of this act to join with other co-operative associations in this state or other states, whether incorporated under this act or under the laws of any other state, to form district, state or national organizations or market agencies, any co-operative association incorporated under this act, by vote of the governing board thereof may purchase, acquire, hold or dispose of the stock of any other co-operative association or corporation, whether incorporated under this act or under the laws of any other state, and assume all rights, interests, privileges, responsibilities and obligations arising out of the ownership of such stock. A co-operative association incorporated under this act shall also have the power and authority, either for itself or for its individual members or patrons, to do and perform every act and thing necessary or proper to the conduct of its business or the accomplishment of the purposes set forth in this act, and in addition any other rights, powers or privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this act.

A co-operative association incorporated under this act, constituted wholly or partially of other co-operative associations organized under this act or under the laws of this or any other state, shall have the power to accept deposits of money or securities from such co-operative associations, to loan or borrow upon such security as it may consider sufficient in dealing with its member co-operatives and to exercise any and all fiduciary powers in its relations with such co-operatives as constitute its membership.

For the purpose of this act a co-operative association shall be defined as any corporation or association of ultimate producers and consumers organized under this act or any other statute of the state of Minnesota now existing providing for the incorporation of co-operative associations; also any central *corporation or association* composed wholly or in part of such associations. No corporation or association hereafter organized in this state shall be entitled or permitted to use the term "co-operative" as part of its corporate or business name or title, or to represent itself as a co-operative association, unless it has complied with the provisions of this act, or any other law of this state now existing or hereafter enacted providing for the incorporation of co-operative associations. Any corporation or association which violates this provision shall be guilty of a misdemeanor."

Sec. 2. Law amended.—Mason's Minnesota Statutes of 1927, Section 7835, is hereby amended to read as follows:

"7835. Organizers — articles of incorporation — contents and filing.—A co-operative association may be organized under the provisions of this act by five or more incorporators, who may act for themselves as individuals or as the agents of other co-operative associations, whether organized under this act or otherwise.

Persons forming a co-operative association under this act shall sign and acknowledge written articles of incorporation. *The articles of incorporation of any association organized under or subject to the provisions hereof shall always contain provisions specifying (1) the name of the association, its purpose, the general nature of its business, and the principal place of transacting the same. Such name shall distinguish it from all other corporations, domestic or foreign, doing business in the state and shall be preserved to it during its corporate existence; (2) the highest amount of indebtedness to which the association shall at any time be subject; (3) the period of its duration, which shall not exceed 50 years in the first instance, but the articles of incorporation may from time to time be*

amended so as to provide for an additional term or terms not exceeding 50 years each; (4) if organized on a capital stock basis the total authorized number of shares and the par value of each share; a description of the classes of shares, if the shares are to be classified; a statement of the number of shares in each class and relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and a provision that only common stockholders shall have voting power; (5) that individuals owning common stock shall be restricted to one vote in the affairs of the association; (6) that shares of stock shall be transferable only with the approval of the board of directors of the association; (7) that dividends upon capital stock of the association shall not exceed six per cent annually; (8) in what governing board its management shall be vested, the time of the annual meeting of the stockholders at which such governing boards shall be elected, and the names and places of residence of those who shall compose such governing board until the first annual meeting of the stockholders; and (9) that net income in excess of dividends and additions to reserves and surplus shall be distributed on the basis of patronage, and that the records of the association may show the interest of patrons, stockholders and members in the reserves and surplus. The articles of incorporation may contain any other lawful provision. Co-operative associations may also be formed upon a membership basis and without capital stock. Such associations organized on a capital stock basis may be organized, and shall have the same powers and authority as are conferred upon such associations, and the articles of incorporation of any such non-stock association shall contain the provisions required in the articles of incorporation of an association organized upon a capital stock basis wherever the same are applicable to an association organized upon a membership basis. No member of an association organized upon a membership basis shall have more than one vote. Common stockholders shall be deemed to be members of associations organized on a capital stock basis.

Co-operative associations organized under or subject to the provisions hereof shall be subject to the provisions of Section 3996-1, 1940 Supplement to Mason's Minnesota Statutes of 1927, except as specifically provided in Section 3996-2 (9), 1940 Supplement to Mason's Minnesota Statutes of 1927.

The original articles of incorporation, or a certified copy thereof, verified as such by the affidavits of two of the incorporators, shall be filed with the secretary of state and a copy thereof, certified as above required, shall be recorded in the office of the register of deeds of the county in which the prin-

cipal place of business of the association is located. For filing the articles of incorporation or amendments thereto with the secretary of state there shall be paid to the state treasurer a fee of \$5.00."

Sec. 3. **Law amended.**—The 1940 Supplement to Mason's Minnesota Statutes of 1927, Section 7836, is hereby amended to read as follows:

"7836. Capital—limits of interest—vote.—The amount of the authorized capital stock and the number of shares may be increased or diminished at any regular meeting of the stockholders of the association or at any special meeting of the stockholders called for such purposes, in the manner hereinafter provided for amending the articles of incorporation.

Within 30 days after the adoption of an amendment increasing or diminishing the authorized capital stock, *articles of amendment* shall be filed and recorded *as provided in Section 7844*. The association may commence business whenever 20 *per cent* of the authorized capital stock has been subscribed and paid in and the amount of the capital stock outstanding shall at no time be diminished below 20 *per cent* of the amount of the authorized capital. No share shall be issued for less than its par value nor until the same has been paid for in cash or its equivalent.

Any co-operative association organized under this act may acquire and hold stock in any other corporation organized under any law of this state or of any other state of the United States, the purpose of which may be a federation of co-operative associations or for the purpose of forming a district, state or national marketing, sales or service agency or for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states. A stockholder in any co-operative association organized under this act shall not be entitled to more than one vote which shall be in person, or by mail as hereinafter provided, and not by proxy, except that any such co-operative association that is a stockholder in any other corporation shall have the power and authority by its board of directors or by its stockholders to elect or appoint any person or persons to represent it at any meeting of the stockholders of any corporation in which it owns stock and the person or persons so elected or appointed shall have full power and authority to represent such co-operative association and also to cast its vote or votes at any such meeting.

Provided, however, that in co-operative associations wholly or partially constituted of other co-operative associations

organized under this act or under the laws of this or any other state, each affiliated member co-operative shall have an additional vote for a certain stipulated volume of business done by it with its central organization or a certain stipulated number of members in such associations, to be determined in either or both cases by the articles and by-laws of the central association.

Provided further, that any such co-operative central association organized under this act or under the laws of this or any other state having at any time more than 3,000 individual members or stockholders may group such members or stockholders in local units or territorial or other basis as may be determined by the articles and by-laws of the central association.

The grouping of such members or stockholders shall be determined by the directors of the central association at their first meeting immediately following the adoption of such provision in the articles and by-laws of the central association.

Each of said units shall be entitled to be represented at any and all stockholders' meetings of the central association by a delegate or delegates of their own choosing and such delegates shall exercise the same powers at such stockholders' meetings as any shareholder of the central association may exercise on such basis of voting rights as is provided for in the articles and by-laws of the central association pertaining to such shareholders.

The directors of the central association shall have the power to do all things necessary to give full force and effect to this section including the power to fix the time and place and rules of conduct for the holding of meetings by such units for the purpose of their electing a delegate or delegates to all stockholders' meetings of the central association.

Stock in any co-operative association organized under this act shall be sold or transferred only with the consent and approval of the board of directors and the by-laws of such co-operative association shall provide that it shall have the first privilege of purchasing stock offered for sale by any stockholder. Any stock so acquired by the board of directors for such co-operative association may be held as treasury stock or may be retired and cancelled. Any stockholder who knowingly, intentionally or repeatedly violates a provision of the by-laws adopted by any co-operative association organized under this act may be required by the board of directors of the co-operative association to forfeit his stock, in which case the

association shall refund to *the* stockholder the par value of his stock or in case the book value of such stock shall be greater or lesser than the par value, *the* stockholder shall be paid the amount of the book value of *the* stock. Stock so forfeited shall be retired and cancelled by the board of directors and such stockholders shall thereafter have no rights, privileges or benefits in such co-operative association.

Any stockholder who is absent from any meeting of the stockholders of any association organized under the provisions of this act, may, as herein provided but not otherwise, vote by mail on the ballot herein prescribed, upon any motion, resolution or amendment to be acted upon at such meeting. Such ballot *may* be in the form prescribed by the board of directors of such association and shall contain the exact text of the proposed motion, resolution or amendment to be acted upon at such meeting and the date of the meeting; and shall also contain spaces opposite the text of such motion, resolution or amendment in which such stockholder may indicate his affirmative or negative vote thereon. Such stockholder shall express his choice by marking an 'X' in the appropriate space upon such ballot. Such ballot shall be certified to and signed by the stockholder if an individual, or if a corporation by the president or secretary thereof, and when received by the secretary of the association holding the meeting, shall be accepted and counted as the vote of such absent stockholder at such meeting."

Sec. 4. Law amended.—Mason's Minnesota Statutes of 1927, Section 7840, is hereby amended to read as follows:

"7840. Earnings—reserve fund—distribution.—*An association organized under this act may set aside such part of its net income during its first two fiscal years as its board of directors deems advisable, for the purpose of creating a reserve for permanent surplus, and annually thereafter its board of directors shall set aside for the purpose of such reserve at least ten per cent of the annual net income until the reserve for permanent surplus shall equal 50 per cent of the paid-up capital, and thereafter the reserve for permanent surplus may be increased from time to time by the board of directors of the association to such an amount as it deems advisable. In addition to such reserve for permanent surplus the directors of any such association may set aside a sum not to exceed five per cent of the annual net income of the association, which shall be used for the purposes of promoting and encouraging co-operative organization, and may establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and*

other proper purposes. Net income in excess of dividends on capital stock and additions to reserve and surplus shall be distributed on the basis of patronage. The stockholders may provide in the by-laws of the association that non-member patrons shall participate in the distribution of net income upon equal terms with member patrons. If the patron is qualified and eligible for membership, the amount of patronage refund due him shall be credited to his individual account, and when such credits shall equal the value of a share of common stock or a membership a share of common stock or a membership shall be issued to him. If the patron is not qualified or eligible for membership, the refund due him may be credited to his individual account, and when such credits shall equal the value of a share of preferred stock or a certificate of interest a share of preferred stock or a certificate of interest may be issued to him, and thereafter such patron may participate in the distribution of income upon the same basis as a common stockholder or member.

Distribution of *net income* shall be made annually or oftener, provided, however, that *net income* of a co-operative association arising from trucking operations shall be distributed only annually. The directors of such association shall present to the stockholders at their annual meeting a report covering the operations of the association during the preceding fiscal year.

Dividends may be paid on capital stock only when the net income of the association for the previous fiscal year is sufficient and shall not be cumulative.

Sec. 5. Law amended.—Mason's Minnesota Statutes of 1927, Section 7843, is hereby amended to read as follows:

"7843. Associations heretofore organized.—Any co-operative corporation or association heretofore organized and doing business under prior statutes of this state, or under the laws of other states, or which has conducted its business upon the co-operative plan, which retains the same corporate name or title, may come under the provisions of this act and be bound thereby upon amending its articles of incorporation to conform to the requirements of this act in the manner hereinafter provided for the adoption of amendments. Co-operative associations organized under the laws of other states shall be required to amend their articles of incorporation, in the manner required by the laws of the state in which such association was incorporated, so as to comply with the provisions of this act, whereupon it shall be entitled to file a certified copy of its articles of incorporation and amendments thereto with the secretary of state, subject to the fees and requirements pre-

scribed by this act, and such association shall henceforth be considered as a co-operative association in this state and subject to the provision of this act. Provided, that any co-operative association originally organized under the laws of another state, which has heretofore complied with the provisions of section 11 of said original act, and has received a certificate of incorporation from the secretary of state of Minnesota, shall be, and it hereby is declared to be a de jure corporation under the provisions of this act without any further act by it or any officer of this state, and all acts of any such corporation heretofore had or taken as a Minnesota corporation are hereby in all things validated and confirmed.

Voluntary proceedings for dissolution of any association organized under or subject to the provisions of this act or any other law of Minnesota relating to the organization of co-operative associations may be instituted whenever a resolution therefor is adopted by two-thirds of the voting power voting thereon at a meeting duly called for that purpose. The resolution may provide that the affairs of the association shall be wound up out of court, in which case the resolution shall designate a trustee or trustees to conduct the winding up, and may provide a method for filling vacancies in the office of trustee; but such appointment shall not be operative until a certificate setting forth the resolution and the manner of adoption thereof, signed and acknowledged by the president or vice-president and by the secretary or assistant secretary, shall be filed for record with the secretary of state. If a vacancy occurs in the office of trustee, it may be filled by resolution adopted by a majority of the voting power represented at a meeting of stockholders or members. The meeting may be called by the remaining trustee or trustees, if any, and if none, then by any stockholder or member. Unless the resolution to dissolve otherwise provides, the trustee or trustees may be removed with or without cause by the vote of a majority of the voting power at a meeting called for that purpose. The resolution to dissolve may provide that the affairs of the corporation shall be wound up under the supervision of the court, in which case the resolution shall authorize certain directors or stockholders to sign and present a petition to the court praying that the corporation be wound up and dissolved under the supervision of the court. Where a corporation is being wound up and dissolved out of court, the trustee, or if there be more than one then a majority of the trustees, may by petition apply to the court for a receiver and to have the proceedings continued under the supervision of the court, and thereafter the proceedings shall continue as if originally instituted subject to the supervision of the court.

Except as otherwise provided in the resolution for dissolution, the trustee or trustees appointed by the stockholders or members to conduct the winding up out of court shall, as speedily as practicable after his or their appointment has become operative as hereinabove provided, proceed to collect all sums due or owing to the corporation; to sell and convert into cash all corporate assets; to collect any amounts remaining unpaid on subscriptions to shares, and to pay all debts and liabilities of the association according to their respective priorities. Any property remaining after discharging the debts and liabilities of the corporation shall be distributed by the trustee or trustees to the stockholders, members, or patrons of the association. Stockholders shall first be paid the par value of their shares, and the remainder of such property shall be distributed among patrons, members and common stockholders in accordance with their interest in the reserves and surplus as shown by the records of the association."

Sec. 6. Law amended.—Mason's Minnesota Statutes of 1927, Section 7844, is hereby amended to read as follows:

"7844. Amending articles of incorporation.—The articles of incorporation of any association organized under this act or which may elect to come under the provisions of this act may be amended in the following manner: The board of directors, by majority vote of its members may pass a resolution setting forth the full text of the proposed amendment. Upon such action by the board of directors, notice shall be mailed to each and every stockholder containing the full text of the proposed amendment. Such notice shall also designate the time and place of the meeting at which such proposed amendment shall be considered and voted upon, in the same manner as elsewhere provided in this act. An association having in excess of 200 stockholders or members may publish such notice in two successive issues of a legal newspaper of general circulation in the area served by such association, in lieu of notice by mail. If a quorum of the stockholders is registered as being present or represented by mail vote at such meeting, a majority of the members so present or represented by mail vote, may adopt or reject such proposed amendment. After an amendment has been adopted by the stockholders, articles of amendment setting forth the amendment and the manner of adoption thereof shall be signed and acknowledged by the president or vice president and by the secretary or assistant secretary, and filed in the office of the secretary of state and recorded in the office of the register of deeds of the county of its principal place of business.

(1) *Articles of incorporation and of amendment shall be approved by the attorney general before the same are filed in the office of the secretary of state."*

Sec. 7. **Law repealed.**—Section 7847-1 and Section 7847-2, Mason's Minnesota Statutes of 1927, are hereby repealed.

Approved April 1, 1941.

CHAPTER 115—S. F. No. 1183

An act to appropriate \$5,000 out of any moneys in the state treasury not otherwise appropriated to the Great Lakes-St. Lawrence Tidewater Commission.

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

Section 1. Appropriation for Great Lakes-St. Lawrence Tidewater Commission.—There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of Five Thousand Dollars (\$5,000), to be available for the fiscal year ending June 30, 1941, to the Great Lakes-St. Lawrence Tidewater Commission. Any balance remaining in the above fund at the end of the 1941 fiscal year shall not be cancelled but shall be available to the Great Lakes-St. Lawrence Tidewater Commission for the fiscal year ending June 30, 1942.

Approved April 1, 1941.

CHAPTER 116—S. F. No. 89

An act defining farm tractor fuels, regulating the sale and use thereof, and exempting the sale thereof from the Minnesota state gasoline tax, amending Mason's Supplement 1940, Sections 2720-100, 2720-100a, 2720-100b, 2720-100c, 2720-100d, 2720-100e, and adding new provisions and providing penalties for the violation thereof.

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

Section 1. Law amended.—Mason's Supplement 1940, Section 2720-100 is hereby amended to read as follows: