

Approved March 25, 1992  
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE

The meeting was called to order by Sen. Don Montgomery at  
Chairperson

10:00 a.m./~~xxx~~p.m. on March 24, 1992 in room 423-S of the Capitol.

All members were present except:

Senators Francisco and Harder - Excused

Committee staff present:

Raney Gilliland, Legislative Research  
Lynne Holt, Legislative Research  
Jill Wolters, Revisor of Statutes  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Joe Lieber, Kansas Cooperative Council  
Howard Tice, Kansas Association of Wheat Growers  
Terry Bertholf, Attorney at Law  
Bill Fuller, Kansas Farm Bureau  
Al LeDoux, Committee of Kansas Farm Organizations  
Ivan Wyatt, Kansas Farmers Union

HB 3043 - Concerning cooperative marketing.

The chairman called on staff to review HB 3043 as amended by the House Committee of the Whole. (Attachment 1).

Joe Lieber, Kansas Cooperative Council, was first to testify in support of the bill. (Attachment 2).

Howard Tice, Kansas Association of Wheat Growers, followed in support. (Attachment 3).

\*\*Terry Bertholf, an attorney specializing in cooperative law, appeared in support of the bill and to briefly explain the substantive changes made in the statute which are as follows: 1. Addition of the word "trust" which has become a popular method for estate planning, 2. Changes wanted by the Secretary of State to add the address of the registered office and registered agent, 3. The repeal of penalties for making bad statements about cooperatives as is the case for other corporations, 4. Repeal of the provision requiring cooperatives to redeem stock of withdrawing members, and 5. Change in voting to two-thirds of those voting rather than two-thirds attending a meeting.

Bill Fuller, Kansas Farm Bureau, testified in support. (Attachment 4).

Final testimony in support of the bill was given by Al LeDoux, Committee of Kansas Farm Organizations. (Attachment 5).

Ivan Wyatt, Kansas Farmers Union, testified in opposition to HB 3043. (Attachment 6).

There being no further time, the chairman said discussion of the bill would be continued until tomorrow's meeting.

The minutes of March 23 were approved.

The meeting was adjourned at 11:00 a.m.

\*\*Attachment 7, Recieved March 25, 1992.



MEMORANDUM

TO: Senate Agriculture Committee  
FROM: Jill Wolters, Assistant Revisor  
RE: HB 3043, As Amended by House Committee of the Whole

This memorandum is a review of HB 3043 stating the current law, as well as reviewing the proposed changes in the bill.

Section 1 amends K.S.A. 17-1601, which is currently, and will remain, the purpose section of the act. Briefly, this section states that the purpose of the act is to promote, encourage and develop the marketing of agricultural products and to distribute the agricultural products efficiently.

Section 2 amends K.S.A. 17-1602, the definition section of the bill. The first three terms are not amended; however, the term "person" was amended to include trusts; it was inadvertently left out. The terms "patronage", "equity" and "cooperative" are added and defined.

Subsection (b) states that associations that organize under this act shall be nonprofit. The act shall be referred to as the Cooperative Marketing Act.

Section 3 amends K.S.A. 17-1603. Currently, under subsection (a), it takes 10 persons engaged in agricultural production to form a coop. The bill changes that number to five.

Subsection (b), at present, allows a corporation, organized under this act, to join with four other members or stockholders of the corporation to form a corporation under this act, to act as a subsidiary of the original corporation and conduct any business of such corporation. The amendment strikes the four-member requirement and would allow a corporation to form a new corporation to act as a subsidiary and conduct business.

Subsection (c) amendments are technical. This subsection states that all cooperatives who organize under this act shall have the benefits and be bound by the provisions of the act.

Subsection (d) states what "this act" includes.

The first paragraph of section 4, K.S.A. 17-1604, states what an association may be organized to do. Such activities include

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the marketing or selling of agricultural products of the association's members, as well as those activities listed on the top of page 3, lines 1 through 12.

Paragraph 2 makes it clear that an association shall not engage in banking. It further states that, unless prohibited by the articles of incorporation, associations may deal in products of nonmembers and provide services to nonmembers. The amendments in lines 18 through 21 allow the association to supply to nonmembers services, products, etc., whether or not supplied to members and otherwise engage in business with nonmembers. The last sentence states that the association shall not market, deal, etc., services or supplies to nonmembers in an amount greater in value than the association provides for members. The amendments to that sentence are the same as stated above, so they are included in the amount of value of services to nonmembers.

The powers of the association are set forth in section 5, K.S.A. 17-1605. Subsection (a) allows the association to engage in any activity in connection with marketing, selling, processing or handling of any agricultural products, as well as agricultural education and research.

Subsection (b) permits the association to collect dues; the ability to borrow money and make advances to members is granted in subsection (c).

The association may act as the agent of the members in subsection (d).

Subsection (e) discusses the association's rights with respect to the shares of the capital stock or bonds.

Subsection (f) has an amendment to note. Current law allows the association to become a member of a corporation engaged in any "related activity". The proposed amendment would allow the association to engage in any "lawful activity".

Subsection (g) permits the association to establish reserves and invest funds.

The association, pursuant to subsection (h), may own real and personal property as is necessary to conduct its business.

Subsection (i) currently allows the association to do all that is necessary to benefit the association, as well as to exercise all powers and privileges "necessary or incidental to the purposes for which the association is organized", in addition to other rights under the laws of Kansas that are granted to corporations. The amendment strikes the incidental language and allows associations to do all that ordinary corporations in Kansas may do.

Section 6, K.S.A. 17-1606, states who may be a member of an association. A member must be engaged in the production of agricultural products. This section currently allows the association to accept associate or sustaining members, without voting power, to anyone regardless of occupation. The amendments strike the use of "sustaining" member and insert a participating nonmember and participant as nonvoting members.

Subsection (b) currently permits a member who is not a natural person to be represented by an individual or officer if authorized in writing. The amendments insert "stockholder" along with member and allows a trustee to represent a stockholder or member who is not a natural person.

Subsection (c) allows the association to become a member or stockholder of any association organized under this act.

K.S.A. 17-1607, section 7, sets forth that an association must file an application for charter stating the name and purpose of the association. Current law requires that the application state where the association's principal business will be transacted; the bill strikes that language. Presently, the association's charter can have a term of existence not to exceed 50 years. This language is redrafted to allow perpetual existence, or a set term. The association shall have five or more directors. The charter of the association shall further state that, if organized without capital stock, the property rights of each member shall be determined and fixed. The association may admit new members in accordance with the association's general rules, but the provisions of the application for charter cannot be altered, except by the vote or written consent of 3/4 of the members. If organized with capital stock, the charter shall state the amount of stock and the number of shares, as well as its par value.

Subsection (b) allows the stock to be divided into preferred and common stock. This section further states that the application to charter must be witnessed and acknowledged by the incorporators and duly filed.

Section 8, K.S.A. 17-1608, discusses when a charter may be altered or amended. An amendment must be first approved by 2/3 of the directors and then adopted by a vote representing a majority of all members. In lieu of this vote, the amendment may be adopted by 2/3 vote of voting members attending the annual or a special meeting. The remaining language provides that notice of the meeting must have been mailed at least 10 days prior to the meeting. The changes in the bill draft allow "voting stockholders" to vote and be counted in the majority of the association. At the meeting, the voters (members and stockholders) must be present and voting to be counted in the 2/3 majority.

Section 9, K.S.A. 17-1609, states that an association, 30 days after incorporation, shall adopt bylaws. The association may include in its bylaws, such things as the time and place of meeting, penalties for violations, membership fees and the number of directors to constitute a quorum.

The amendment in subsection (b) [page 6, line 31] allows the bylaws to state the number or voting power of stockholders or members to constitute a quorum. Current law allows the bylaws to set the number of stockholders or members.

Subsection (i) provides other items the bylaws may contain. The current law requires an association to pay a member who withdrew or was expelled from membership an equitable amount for such member's interest within one year of withdrawal/expulsion. This language has been deleted in the bill draft.

Subsection (j) currently sets a limit of 8% interest on annual dividends paid on stock. The amendments allow the interest rate to be higher, as set forth in the contract interest rate. (Currently 10.24%). An association will want to be very careful here; to meet the requirements of the Capper-Volstead Act, an association must have the one-member one-vote rule or limit the dividends on stock to 8% per year.

Section 10, K.S.A. 17-1610, requires the bylaws to provide for an annual meeting, as well as setting standards for calling a special meeting. The amendments to this section require the special meeting to be held within 60 days of receipt of demand. Notice shall be mailed to members at least 10 days prior to the meeting. The amendment strikes the provision that allows the bylaws to instead provide for notice by publication in a newspaper.

Section 11, K.S.A. 17-1611, currently mandates a board of at least five directors elected by the members or stockholders from the membership. The amendments allow the members and "voting" stockholders to elect the directors. This section further allows the bylaws to state how elections will be carried out, the compensation for officers and directors, and how a vacancy on the board will be filled.

Section 12, K.S.A. 17-1612, provides for officers to be elected. The amendments allow the president to be referred to as the chairperson and the vice presidents to be referred to as the vice chairpersons.

Section 13, K.S.A. 17-1613, discusses the payment of membership fees and the certificate of membership. Currently, no stockholder, except another association, shall own more than 5% of the common stock. The association, through the bylaws, may

limit the amount of common stock a member may own to less than 5%. The amendments to the bill allow 20% ownership of the association by one person.

Subsection (b) states the bylaws may require the one-person one-vote rule. The amendments allow voting to be based on patronage or patronage equity, or both. If based on patronage, in no event can this vote exceed 5%, unless the member is another association. Here again, note that a violation of the Capper-Volstead Act may occur if the association enacts this provision, as well as exceeding the 8% limit on dividends.

In subsection (c), the bylaws shall prohibit the transfer of common stock of the association to persons not eligible to be members.

Currently, subsection (d) provides that except when the debts exceed 50% of the assets, the association may buy its common stock at book value within a year. The amendment strikes the debt/asset ratio language, as well as inserting par value along with book value as the purchase price and further, strikes the requirement of paying within one year.

K.S.A. 17-1614, section 14, allows members to bring charges against an officer or director. The removal and filling of the vacancy shall be voted on by a majority of the members. The amendments to this section allow voting stockholders to bring charges and vote under the one-person one-vote plan. It also allows a vote of a majority of the outstanding shares of voting stock.

Subsection (b) provides that the person against whom the charges have been brought shall be informed of the charges and have an opportunity to be heard.

Section 15, K.S.A. 17-1615, provides that if, 1/3 of the board so demands, any matter approved by them shall be referred to the entire membership. The amendment provides that the meeting shall be held not less than 15 but not more than 60 days after the board's action.

Section 16, K.S.A. 17-1616, allows the association to make marketing contracts. Included in the expenses currently is the 8% limit on interest. The amendment changes the interest to a greater amount and the Capper-Volstead concerns apply here, as well.

Subsection (b) permits the bylaws to fix sums, as liquidated damages, if a contract breach occurs.

Section 17, K.S.A. 17-1617a, allows any association to have an interest in, or become a member of, any association. It

further allows any association to have an interest in, or become a part of, another corporation. The language stricken on page 12, lines 9 through 12 is redundant.

Section 18, K.S.A. 17-1618, is technical, merely adding "and amendments thereto".

Section 19, K.S.A. 17-1621, allows associations or corporations organized under other statutes by 2/3 vote of the stockholders or members attending the annual meeting, to accept the benefits and be bound by the provisions of the Cooperative Marketing Act. The amendments include, "voting" stockholders or members "voting" at an annual meeting to by 2/3 majority accept the provisions of this act.

Sections 20, 21, 22 and 23 are technical, merely adding "and amendments thereto".

Section 24, K.S.A. 17-1629, currently allows a corporation organized under this act to increase its capital if approved by 2/3 majority of the outstanding shares of voting stock or 2/3 of members, if one-person one-vote. In lieu of the above, the 2/3 vote may be of those voting and present at a meeting. The amendment allows the increase in capital, but it must first be approved by 2/3 of the directors and then approved by 2/3 of the voting stock or voting stockholders.

Section 25, K.S.A. 17-1630, states, unless otherwise provided by the bylaws, the stockholder meetings shall be at the corporation's principal office. The amendment replaces "principal office" with "the corporation's registered office". Current law further allows the stockholders to hold the meetings elsewhere; but, requires them to maintain a principal office in the state, as well as to have a resident agent. The amendments do not require the corporation to have a principal office in Kansas, just a resident agent.

Sections 26, 27, 28 and 29 are technical.

Section 30, K.S.A. 17-1636, permits a corporation to dispose of its property and assets for consideration as determined by the board. These transactions shall be approved by a 2/3 vote of the members or stockholders, or, in lieu thereof, by a 2/3 vote of members or stockholders at a meeting.

Two sections of the cooperative marketing act are repealed. K.S.A. 17-1619 is a statement concerning inconsistent laws. K.S.A. 17-1622 made it a misdemeanor (fine of \$100 to \$1,000) to maliciously and knowingly spread false reports about the finances or management of a coop. The coop could recover civilly in an amount not to exceed \$500.

The House Committee of the Whole added an amendment on page 5, lines 39-41. The Secretary of State's office requested that each coop provide in its articles of incorporation the address and county of its registered office and resident agent.



Testimony on HB 3043  
Senate Agriculture Committee  
March 24, 1992  
Prepared by Joe Lieber

Mr. Chairman and members of the Committee, for the record I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council.

The Council has a membership of nearly 200 cooperatives which have a combined membership of nearly 200,000 Kansas farmers and ranchers.

We appreciate the Committee's willingness to hear HB 3043 that updates the Kansas Cooperative Marketing Act which was enacted in 1921.

As most of you remember we appeared before this Committee last year asking for your support for SB 73. You gave us that and so did the full Senate. At that time we felt we had over 100 supporters in the House. Unfortunately, we could not get the bill moved up the calendar and we were willing to accept a compromise in order to get the more pressing parts of the bill passed.

The part that did pass was all new language and had to do with guidelines for mergers and consolidations (Section 17-1637 to 1642).

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Thanks to your support several cooperatives have used this provision to consolidate and many others are in the process.

We're asking for your support on all the proposed changes we didn't get last year except Section 17-1611, which has to do with allowing non-members to serve on the board.

Several of our members stated that they, "didn't see anything wrong with this provision but they probably would never use it."

Because of this, and because it was a point of contention, we felt in the spirit of compromise we would not ask for it.

The reason we are asking for the other provisions is that the "Act" was enacted 71 years ago and there have been a lot of changes in cooperatives and farming during that time.

Another way of looking at it is to imagine what farming and agriculture will look like in the year 2063, 71 years from now.

If farmer-owned cooperatives are going to continue to provide services for their member-owners, they must be able to diversify and become more flexible.

What does the proposed changes do to help the farmer-owned cooperatives to prepare for the 90's and beyond?

1. It makes technical changes such as modern spelling, new terms and definition.
2. It allows five persons to form a cooperative instead of ten.
3. It allows cooperatives to form cooperative subsidiaries or invest in other corporations.
4. It allows cooperatives to engage in business with non-members as long as the majority of their business comes from members.
5. It amends the language to increase control of the association by members who attend and vote at meetings.
6. It leaves the decision on payment for a member's stock to the discretion of the board of directors.
7. It allows cooperatives to pay higher annual dividends on common or preferred stock.
8. It designates a special time that the directors must call a special meeting and the notice of that meeting must be mailed.

9. It allows cooperatives to call their board presidents, chairmen, and the manager, president of the cooperative if they want to.
10. It allows voting to be based on patronage if the members want it, but no member will have over 5% unless it is another cooperative.
11. It requires that if the cooperative's bylaws provide for election of directors by district, then a petition to remove a director must be signed by 20% of members residing in that district.
12. It provides that any increase in Capital be first approved by two-thirds of the directors.
13. It removes the section that makes it a crime to spread false reports about the cooperative. Current law limits the amount of damages the cooperative can receive.

It is important to remember that cooperatives are owned by the producers and ranchers of Kansas.

Because of this we felt it was important that we receive their input and support.

In the fall of 1990 and again in the fall of 1991 we contacted the following ag organizations and explained our proposed changes:

<i>Associated Milk Producers</i>	<i>Kansas Electric Cooperatives</i>
<i>American White Wheat Prod. Assn.</i>	<i>Kansas Farm Bureau</i>
<i>Farmers Union</i>	<i>Kansas Livestock Assn.</i>
<i>Kansas Agri-Women</i>	<i>Kansas Soybean Assn.</i>
<i>Kansas Board of Agriculture</i>	<i>Kansas State Grange</i>
<i>Kansas Corn Growers</i>	<i>Kansas Wheat Growers Assn.</i>
<i>Kansas Pork Producers Assn.</i>	<i>Mid-America Dairymen</i>
<i>Committee of Kansas Ag Organizations</i>	

It is hard to determine how many producers have had the opportunity to hear about the proposed changes but I can tell you this, the Kansas Wheat Growers discussed this with everyone at their county meetings and then discussed it at their annual meeting before giving their support.

The Kansas Grain had me come and discuss the changes at their annual meeting that had over 100 people in attendance.

Farm Bureau had it go through a resolution process and then voted on it at their annual meeting. This process included over 3,000 producers.

The Kansas Cooperative Council has discussed the changes at three of our annual meetings, sixteen district meetings, two managers only meetings and two directors only meetings. Of course, a lot of the same people attended these meetings, but there were probably close to 700 to 800 different people.

We also gave each of our farm/supply cooperatives 100 brochures to send to the "decision makers" in their co-ops. The "decision makers" would be defined as members who attend meetings and have shown an interest in the co-op.

We're sure that not all managers sent them out but if half of them did, that would mean approximately 10,000 producers were aware of our changes.

We realize that we did not reach every producer but it wasn't because we didn't try.

I am happy to report we have received favorable support from Associated Milk Producers, Committee of Kansas Farm Organizations, Kansas Farm Bureau, Kansas Pork Producers Assn., Kansas State Grange, Kansas Wheat Growers and Mid-America Dairy.

The only negative response has been from the Farmers Union. We're disappointed by that because we feel that the philosophy expressed in these changes in the Kansas Cooperative Marketing Act coincides

with the philosophy of the Farmers Union.

I have visited with Farmers Union members, representatives and their board over the last 18 months and feel their opposition comes from a misunderstanding and misinterpretation of the proposed changes.

This past summer I asked Farmers Union if they would like to work a compromise. I was told that they wanted to keep to \$1,000 maximum fine for spreading false reports about the finances or management of the cooperative.

As I explained before, we could not accept this.

The second suggestion by Farmers Union was to have mandatory mail balloting.

We feel mandatory mail balloting would be in direct conflict with the purpose of cooperatives for the following reasons:

1. Most members would not vote so those votes would be counted "no."
2. How many members would actually take time to read the material explaining the vote and would just mark the ballot and send it back in?

3. Any group, including management or board, could make a few phone calls and swing the vote.
4. Because of absentee landlords, many producers have the power of attorney and could have several votes to cast.
5. In the real world, the family farmers who use and depend on their cooperative do attend the cooperative's annual meeting and vote. And if it's an important issue, 99.9 percent will make sure they are there.
6. I'm not sure any organization, including Farmers Union, has mandatory mail balloting.

As you can see, no compromise was obtained.

Remember, if we did not get support from the majority of the ag organizations in the fall of 1990 we would not have asked for the changes because these people own the cooperatives.

Mr. Chairman and members of the Committee, since September 1980, 67 Kansas cooperatives have ceased to be independent operations. Forty-eight have merged, 12 have been sold to non-co-op companies and 7 have ceased to operate.



Sixteen of these changes have happened in the last 18 months; five already this year and 12 other cooperatives are in the process of seeking merger negotiations.

If the producers and ranchers of Kansas are going to have their cooperatives in the future, those cooperatives are going to have to be flexible and be able to diversify.

In a lot of communities, the cooperative is the largest tax payer and the largest employer. The proposed changes to the "Act" will not save all cooperatives but it will give some of them an opportunity to adjust and grow if necessary.

I have brought with me Terry Bertholf, a cooperative attorney who wrote most of the proposed changes. Terry is the only attorney in the state who specializes in cooperative law. He works with the Kansas Cooperative Marketing Act every day and he has virtually been involved in every co-op case in Kansas for the last 18 years.

I would like to thank the Committee for your time this morning and for hearing HB 3043. We would also like to thank the Revisor's Office and Legislative Research for the work they have done.

Terry or I will be willing to answer any questions.

## COOPERATIVES PAY TAXES

(1) Farmer cooperatives are taxed like any other corporate entity with one exception. With respect to earnings which may qualify for distribution to the cooperative's farmer members, such earnings may also be deductible to the cooperative. Even so, such earnings remain taxable to the cooperative's farmer members as part of their overall taxable income.

(2) Earnings by farmer cooperatives thus are not exempt from taxation. Such earnings are taxed either at the cooperative level or as taxable income to its farmer members. And, in some cases, such earnings or income may be subject to taxation at both levels.

(3) According to USDA data, the 100 largest cooperatives paid over \$164 million in income taxes in 1989.

(4) Surveys conducted by the Kansas Cooperative Council for 1988, 1989 and 1990 show:

In 1988 local cooperatives paid, on the average, \$41,182.91 in property taxes.

In 1989 the average was \$44,739.72.

In 1990 the average was \$51,566.78.

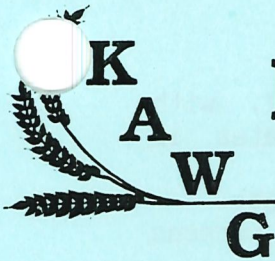
(5) The annual payroll average was:

1988 - \$428,801.34  
1989 - 439,069.75

(6) The average paid for licenses and fees annually:

1988 - \$4,136.31  
1989 - 6,396.58

Exhibit A



# Kansas Association of Wheat Growers

P.O. Box 2349

Hutchinson, KS 67504-2349

(316) 662-2367

ONE STRONG VOICE FOR WHEAT

## TESTIMONY

Senate Committee on Agriculture  
Chairman: Senator Don Montgomery

HB-3043

Mr. Chairman and members of the committee, my name is Howard W. Tice, and I have the pleasure of serving as Executive Director of the Kansas Association of Wheat Growers. On their behalf, I appreciate this opportunity to appear today in support of House Bill 3043.

When the changes to the Co-op Marketing Act, which are contained in this bill, were proposed, Joe Lieber, of the Kansas Co-op Council, attended a meeting of our Board of Directors and asked for their support. Our board heard Joe's explanation of the proposed changes and questioned him quite thoroughly. They agreed to present the changes to our members at the local meetings held each fall prior to our state convention.

In the fall of 1990, we had a total of 13 meetings across the state. With the exception of the eastern third, where our membership and organization are sparse, meetings were available to all of our membership. Approximately 850 farmers attended those meetings. Joe Lieber was on the program at some of the larger meetings, and when he could not attend, I explained the changes and answered questions to the best of my ability.

During the course of the fall meetings, a resolution was passed, and sent on to the state convention, to support the changes contained in last year's legislation. At the convention, the issue was debated again in a well attended committee session, and finally, by all of the voting delegates.

Last year, many of the proposed changes were stricken from the bill in the House. When the Co-op Council decided to try again this year, for most of the changes that were taken out of last year's bill, they again asked for our support. The same process was followed, and again the delegates voted to support the Co-op Council's efforts.

Attendance at the 1990 convention was approximately 300. We counted between 350 and 400 members and guests at the 1991 convention. When we debated State Affairs resolutions last year, this issue was the most thoroughly explored. There were a number of probing questions. In the end, the vote to support the proposed changes was unanimous. This past December, there was very little debate because the delegates felt they had a good understanding of the issues involved. Once again, the vote was unanimous.

The KAWG statement of support, as it appears in our official resolutions book, is reproduced on the next page.

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Attachment 3*

The Kansas Cooperative Marketing act was adopted in 1921, with revisions made in the 1940's. It has become apparent that updates in the Act would be appropriate.

The Kansas Cooperative Council proposes the following changes:

Changes in Section 17-1603 would reduce the number of persons necessary to form a cooperative, from ten to five.

In section 17-1604, the changes would allow a cooperative to engage in any legitimate activity as long as a majority of its business is done with or for its members.

Section 17-1608 changes the language so that a determination on the vote to amend the articles of incorporation is based on the number of voting members or voting stockholders attending and voting at a meeting.

Section 17-1609 (j) would allow an increase in the rate of dividends permitted on common or preferred stock from 8 percent to an amount not to exceed rates established by Kansas statutes. (In August, 1990 it was 15%.)

In several sections -- including 1609, 1613 and 1642 -- there are changes in the Act to leave the redemption of stock solely to the discretion of the board of directors.

Section 1612 would allow the cooperative board to elect a chairman and vice chairman, instead of a president and vice president. They then could hire a president to run the cooperative.

Section 1613 permits voting based upon patronage, but no member shall have more than five percent of the total vote.

**RESOLUTION:** The KAWG supports changes in the Kansas Cooperative Marketing Act, as proposed by the Kansas Cooperative Council.



# PUBLIC POLICY STATEMENT

## SENATE COMMITTEE ON AGRICULTURE

### RE: H.B. 3043 - Updating the Kansas Cooperative Marketing Act

March 24, 1992  
Topeka, Kansas

Presented by:  
Bill Fuller, Assistant Director  
Public Affairs Division  
Kansas Farm Bureau

**Chairman Montgomery and members of the Committee:**

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We appreciate this opportunity to testify in support of H.B. 3043. Our remarks are on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

Many of our members do business with and are stockholders in cooperatives in Kansas. For these reasons, our farm and ranch members have studied the recommended changes, debated the issues and adopted policy. Early in the summer of 1990 the Kansas Cooperative Council pointed out to Kansas Farm Bureau the need for an update and outlined their recommended changes to the law. We appreciate the efforts of the Cooperative Council in seeking input from our members. We informed our members by distributing 5,000 of the Cooperative Council brochures, "For the 90's and Beyond". Also, we included a section in the "1990 Policy Development Questionnaire" for Farm Bureau members.

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An information paper, "KANSAS COOPERATIVE MARKETING ACT ... time for update?" was prepared and distributed. Our members overwhelmingly support an update in the Cooperative Marketing Act. They believe the changes are needed to allow diversification, flexibility and the ability to compete in today's business world.

While strong support was given for the recommendations proposed by the Cooperative Council, some concern was expressed on the recommendation that would allow the election of some directors who are not members. We are pleased the Cooperative Council did not include that provision in H.B. 3043.

The Voting Delegates at the 1990 KFB Annual Meeting adopted this resolution and reaffirmed it at the 1991 Annual Meeting:

*Kansas Cooperative Marketing Act*

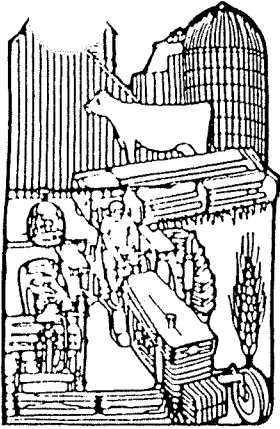
*We believe the Kansas Cooperative Marketing Act should be updated. The Cooperative Marketing Act was enacted in 1921 and has been amended or changed only slightly since that time.*

*We support changes in the Kansas Cooperative Marketing Act which will permit local cooperatives to be more competitive in today's business and economic environment. Statutes governing cooperatives should provide management and membership with flexibility and the opportunity for diversification.*

*We strongly believe the control, operation and management of a Cooperative must remain with the members and their elected directors.*

The key point in KFB Policy is found in the last paragraph. **Our members insist that members and their elected directors must control, operate and manage their Cooperative.** Therefore, our members believe all changes to the Act must be "permissive" and require action by the members before changes in structure or operation is allowed. H.B. 3043 meets that requirement!

Thank you for this opportunity to express the opinions of our members on this important issue. We will attempt to respond to any questions.



# Committee of Kansas Farm Organizations

## STATEMENT OF POSITION OF THE COMMITTEE OF KANSAS FARM ORGANIZATIONS

RE: HOUSE BILL 3043

SENATE AGRICULTURE COMMITTEE

**Al LeDoux**

*Legislative Agent*  
Route 1  
Holton, KS 66436  
(913) 364-3219

March 24, 1992

**Committee of Kansas  
Farm Organization Members**

Associated Milk Producers, Inc.

Kansas Agri-Women Association

Kansas Association of Soil  
Conservation Districts

Kansas Association of  
Wheat Growers

Kansas Cooperative Council

Kansas Corn Growers Association

Kansas Electric Cooperatives

Kansas Ethanol Association

Kansas Farm Bureau

Kansas Fertilizer and  
Chemical Association

Kansas Grain and Feed Association

Kansas Livestock Association

Kansas Meal Processors  
Association

Kansas Pork Producers Council

Kansas Rural Water  
Districts Association

Kansas Seed Industry Association

Kansas Soybean Association

Kansas State Grange

Kansas Veterinary Medical  
Association

Kansas Water Resources Association

Kansas Water Well Association

Mid America Dairymen, Inc.

Western Retail Implement and  
Hardware Association

Kansas Grain Sorghum Producers

Kansas Association of Nurserymen

Mr. Chairman, Members of the Committee: My name is Al LeDoux and I am speaking to you this morning on behalf of the Committee of Kansas Farm Organizations. As you well know, our group is made up of twenty-five (25) Ag and Ag related organizations operating here in Kansas. A listing of our membership is found on the left hand column of this handout.

Our organization has elected to unanimously support House Bill 3043. We would therefore solicit your favorable consideration and passage of House Bill 3043.

Respectfully submitted,

Al LeDoux

Senate Agriculture  
3-24-92  
Attachment 5



Statement

of

Ivan W. Wyatt, President

Kansas Farmers Union McPherson, Kansas

HB - 3043 (COOP Marketing Act)

Before:

The Senate Committee in Agriculture

March 24, 1992

Mr. Chairman, Members of the Committee:

I am Ivan Wyatt, President of the Kansas Farmers Union.

Farmer-owned cooperatives have changed much over the decades. Those earlier farmer-owned cooperatives were as much a part of the community as the school or the church.

During the past decade, there has been a need to consolidate many of those locally farmer-owned cooperatives to the point that many now encompass counties.

With an aging rural population, much of today's farming operations are cost-share crop operations between the land operator and the landowner. Even though many of these farm-owner cooperative members may live in a distant county or state, they continue to be customers of today's consolidated CO-OP. Many of these members contributed the original seed-money or start-up funds to that beginning CO-OP.

*Senate Agriculture  
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Farmland and the CO-OP Council have stated they want to make corporations out of these farmer-owned cooperatives. Corporations are

*Attachment 6*

investor-owned. Cooperatives are customer-owned. Corporate stock-  
owners are provided the means to vote on corporate by-laws, structure  
changes, etc., regardless of their domicile or ability to attend the  
annual or special meetings.

We oppose the proposed changes in HB-3043 that could restrict or  
prohibit the same voting privileges of farmer-owned cooperative members  
as granted to corporate voting members.

We question whether there really is a serious problem in getting enough members of the farmer-owned cooperatives to attend and vote at annual meetings. Since the 1991 legislative change, there have been four or five CO-OP mergers that have passed, and only one that failed. It appears the present voting system is not broken.

We have consistently stated if there is a change needed, it should be an inclusive change so all members have the opportunity to vote. (as in a corporation) rather than an exclusive vote of only those who are able to attend. A mail-out ballot to all member-owners with a clear definition of the issue would be an acceptable change.

We have continually contended Section 17-1622 is an important part of present law. Section 17-1622 provides protection to that farmer-owner cooperative member if he or she is misled into making a wrong decision by someone with authority within a CO-OP. An example might be the value of their stock in a stock sale or exchange.

The Farmland attorney and the CO-OP Council have verbally disputed the validity of our definition, and explanation of Section 17-1622. We challenged The House Agricultural Committee members to check this

validity with a Kansas county attorney, or their association, or any other attorney.

Section 17-1622 presently allows an individual to file a civil suit with his or her county attorney for damages not to exceed \$500. If Section 17-1622 is repealed, an individual would have to hire an attorney to file under Kansas general corporate statutes.

Supporters of HB-3043 have verbally stated they would limit the amount of patronage voting power to one individual to no more than 5%. Yet under section 17-1613, they would repeal a stockholder voting limit of 5%, changing that limit to 20%, or 5 members. This could change the number of controlling votes of a farmer-owned cooperative attending a meeting from 11 to 3.

Intimidation can be a terrible thing. It can be like a dreaded disease. Those that suffer from it are reluctant to admit to it.

I fear there may be some of this involved in this issue. When people react in anger to honest questions, anger becomes a symptom of the victim of intimidation. Often this develops into a case of the "go-along" syndrome.

I witnessed this in the 70's during the Kepco debate on whether Kansas REC's should enter into the joint venture with KG & E and Wolf Creek generation.

Most local REC's boards succumbed to that barrage of intimidation, which developed into the "go-along" syndrome. Today, their members' electric rates are triple what they should be.

There were at least three electric coops who withstood the charge. Mr. Chairman I believe some, if not all, of those CO-OPs are in your Senatorial District.

Because the Kansas Farmers Union opposed the involvement of the CO-OPs in that venture, we also were a recipient of an attack of intimidation, but we withstood it. We lost the battle. Because we lost, today the REC's members are paying the price.

That is the issue here with HB-3043. It should not be what Farmland wants, or what the CO-OP manager wants, or what the CO-OP Council wants. The issue should be what will the result of this bill be on those CO-OP members out in the countryside in coming years. We must remember it is the CO-OP members that own the CO-OPs, not Farmland, not the CO-OP Council, not management, but the members.

Remember, the people supporting this bill are the same people who pay into the CO-OP Council, not necessarily the members. No doubt, this is why the CO-OP owners-members are not being informed of these proposed changes.

I don't think it is an accident that during the committee hearings, legal representatives of Farmland and the CO-OP Council have not provided written, precise responses to issues we have raised, like their dispute of what the repeal of Section 17-1622 really does to a CO-OP members' rights of recourse. It would be helpful to be able to point to a statement and say, this is what they claim. This issue alone raises a cloud of doubt over many other long term aspects of this bill, which could result in the lessening of member-owner control of their CO-OPs. It raises the question: Who should the CO-OPs should serve?

Let me give you an example:

A Wichita Eagle news story on 2-16-92 indicates what can happen when the farmer-owners of a CO-OP lose control, and the management begins to serve their own interests.

The news story indicates that a western Kansas CO-OP's CEO was demoted and later fired because he made recommendations more profitable

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to the producer, that did not necessarily sell more of the CO-OPs fertilizers or chemicals. One member was quoted in the news story as saying, "he made recommendation that made the producers the most money, not that sold the most chemicals, and that was a problem for some CO-OPs".

This bill is legislation that will eventually lead to where this recent incident could become a general practice.

Farmer-members of the Rural Electric CO-OPs learned in the 70's how costly it can be to farm families when good people "go-along" with bad legislation.

We urge you to vote no on HB-3043 in it's present form.

Thank You

Terry D. Bertholf  
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100 East First, P.O. box 2560  
Hutchinson, KS 67504-2560  
316/663-5453

HOUSE BILL 3043  
Senate Agriculture Committee

This memorandum is prepared in order to provide the Senate Agriculture Committee with written testimony on certain important portions of H.B. 3043, and as a follow up to my brief oral testimony of March 24, 1992. The opponents to H.B. 3043 have asserted that the Bill would reduce local control, or somehow reduce farmers' control over their cooperatives. The Bill makes no change to the existing Cooperative Marketing Act, K.S.A. 17-1601 et seq., which would in any way reduce farmers' control over their cooperatives, except that Section 13 does limit proportional voting to 5% - or no member, or stockholder, other than another Cooperative, shall be entitled to more than 5% of the vote if the cooperative permits "proportional" voting, K.S.A. 17-1613(b). Except as stated, above the Bill's only effects on members'/stockholders' voting rights or privileges are that the Articles of Incorporation may be amended, or the authorized capital increased, or all the assets of the cooperative sold upon the affirmative vote of 2/3rds of a quorum of members/stockholders voting at a duly called meeting. Sections 8, 19, 24, and 26. The existing statute requires the 2/3rds vote of the members/stockholders attending such a meeting, so that members who attend but do not vote must be counted as "no" votes. K.S.A. 17-1608, 17-1621, 17-1629 and 17-1636.

The opponents have suggest that Cooperatives should permit voting by mail. Neither the existing statute, K.S.A. nor H.B. 3043 limits or restricts a cooperative's right to permit voting by mail. K.S.A. 17-1611, Section 11(d) of the Bill. The Bylaws of virtually every Kansas farmers' cooperative permits members/stockholders to vote by mail, provided that every member/stockholder is provided with a notice of meeting which gives the member/stockholder notice of his/her right to vote by mail.

*Senate Agriculture  
3-24-92 (Submitted 3-25-92)  
Attachment 7*

Kansas farmers' cooperatives prohibit proxy voting, and voting by mail would be tantamount to proxy voting if the opponents position should be adopted. Kansas cooperatives could permit such mail voting, but the membership/stockholders would have to amend the cooperative's Articles.

The other major issue raised by the opponents is whether K.S.A. 17-1622 should be repealed. K.S.A. 17-1622 makes it a misdemeanor for any person to "knowingly spread false reports about the finances or arrangement of a cooperative", and allows an aggrieved cooperative to recover \$500 in a civil suit for each such offense. There have been no cases reported regarding the existing statute, and to my knowledge the Section has never been used or enforced. The rights of cooperative's members will therefore obviously not be reduced by the elimination and repeal of K.S.A. 17-1622. Because farmers do business with and own their cooperative, and because farmers actively participate in their cooperatives by voting, and by competing for positions on the board of directors, if the existing provision is ever used, its first use will likely be against a farmer. Cooperatives are opposed to K.S.A. 17-1622 because it specifically limits their recovery in civil suits to \$500, regardless of the damages suffered by the Cooperative.

Respectfully,

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Terry D. Bertholf