

SB 468 -1, -2 STAFF MEASURE SUMMARY

Senate Committee On Labor and Business

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Meeting Dates: 3/9

WHAT THE MEASURE DOES:

Prohibits director of agricultural cooperative from intentionally or negligently deceiving members regarding financial condition of cooperative. Establishes duty of corporate officer of agricultural cooperative to discharge duties in good faith and with the care of an ordinarily prudent person. Declares that officer fails to act in good faith or with due care when officer intentionally or negligently deceives members regarding financial condition of the cooperative. Allows agricultural cooperative member to bring action to recover damages incurred as a result of a violation or breach of a cooperative director or corporate officer. Take effect on 91st day following adjournment *sine die*.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Clarifies provisions related to cooperative contracts. Allows cooperative member to bring action to rescind contract with cooperative without penalty if the member relied in good faith on information that the cooperative provided about the financial condition of the cooperative and the member later finds the cooperative intentionally or negligently acted to deceive the member. Declares that a member's execution of a contract with the cooperative creates a rebuttable presumption that the member relied in good faith on information provided about the financial condition of the cooperative. Provides that presumption may only be rebutted with clear and convincing evidence.

-2 Defines "agricultural cooperative" as cooperative in which farmers act together to market the farmers' agricultural products or purchase, test, grade, process, distribute, or furnish farm produce or farm products. Removes reference to existing definition of "agricultural cooperative."

BACKGROUND:

In a 1965 case, the Supreme Court of Oregon defined a cooperative corporation as a corporate entity organized "for the purposes of providing services and profits to its members and not for corporate profit." See *Linnnton Plywood Ass'n v. State Tax Comm'n*, 241 Or. 1, 4, 403 P2d 708 (1965). Oregon law defines an agricultural cooperative as a corporate entity organized for the purpose of allowing farmer members to act together in producing, processing, preparing for market, handling, or marketing the agricultural products of its members, or for purchasing, testing, grading, processing, distributing, and furnishing farm supplies or farm services. Oregon's cooperative laws regulate the formation, operation, conversion, and dissolution of cooperative corporations.

In 2018, NORPAC Foods was one of the largest agricultural cooperatives in the Northwest, with over 200 member family farms in the Willamette Valley and over 1,400 employees. The cooperative filed for Chapter 11 bankruptcy protection in August of 2019 claiming it was unable to repay \$165 million the company owed to creditors, including its member farmers.

Senate Bill 468 establishes additional regulations for agricultural cooperatives designed to protect farmer members. The measure prohibits the director of an agricultural cooperative from intentionally or negligently acting to deceive members regarding the financial condition of the cooperative, and establishes a duty for corporate officers to act in good faith in the administration of the cooperative. The measure allows a cooperative

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member to bring action to recover damages incurred as a result of a violation or breach of a director or corporate officer.

PRELIMINARY