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Agricultural Cooperative Formation:

Indiana



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Section 15-12-1-1 – Purpose; Legislative Declaration

- (a) The following are the purposes of this chapter:
- (1) To promote, foster, and encourage the intelligent and orderly production and marketing of agricultural products through cooperation.
 - (2) To eliminate speculation and waste.
 - (3) To make the distribution of agricultural products between producer and consumer as direct as can be efficiently done.
 - (4) To stabilize the marketing of agricultural products.
 - (5) To provide for the organization and incorporation of agricultural cooperative associations and societies.
- (b) The general assembly recognizes the following:
- (1) That agriculture is characterized by individual production in contrast to the group or factory system that characterizes other forms of industrial production.
 - (2) That the ordinary form of corporate organization permits industrial groups to combine for the purpose of group production and the ensuing group marketing.
 - (3) That the public has an interest in permitting farmers to bring their industry to the high degree of efficiency and merchandising skill evidenced in the manufacturing industries.
 - (4) That the public interest demands that the farmer be encouraged to attain a superior and more direct system of marketing as an alternative to the blind, unscientific, and speculative selling of crops.

Section 15-12-1-10 – Association; Powers

Each association incorporated under this chapter has the following powers:

- (1) To engage in any activity in connection with the following:



- (A) Producing, marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, or use of any agricultural products produced or delivered to the association by the association's members or others.
 - (B) Manufacturing or marketing the byproducts of agricultural products produced or delivered to the association by the association's members or others.
 - (C) Manufacturing, producing, processing, procuring, purchasing, or supplying supplies, machinery, or equipment to the association's members or others.
 - (D) Financing any activities described in clauses (A) through (C).
 - (E) Performing or furnishing economic, educational, or other services.
 - (F) Any one (1) or more of the activities specified in this section.
- (2) To transact business with and perform services for nonmembers in an amount not greater in value than the total amount of business transacted with and services performed for members in the same fiscal year.
- (3) To borrow money without limitation as to the amount of corporate indebtedness or liability.
- (4) To act as the agent or representative of any member or members or others in any of the activities described in subdivisions (1) through (3).
- (5) To make advances to members and other persons.
- (6) To:
- (A) purchase or acquire;
 - (B) hold, own, and exercise all rights of ownership in;
 - (C) sell, transfer, or pledge; or
 - (D) guarantee the payment of dividends or interest on or the retirement or redemption of;
- shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing, handling, or marketing of any of the products handled by the association.
- (7) To establish and accumulate reserves and surplus.
- (8) To:
- (A) buy; or
 - (B) acquire, hold, and exercise all privileges of ownership over; real and personal property as may be necessary, convenient, or incidental to the conduct and operation of the business and activities of the association.
- (9) To:
- (A) establish, secure, own, and develop; and
 - (B) dispose of;
- patents, trademarks, and copyrights.
- (10) To:
- (A) do anything:
 - (i) necessary or proper for the accomplishment of any one (1) of the purposes or the performance of any one (1) or more of the activities listed in this section; or
 - (ii) conducive to or expedient for the interest or benefit of the association; and



- (B) contract accordingly.
- (11) To exercise and possess the following:
 - (A) All powers, rights, and privileges necessary for or incidental to:
 - (i) the purposes for which the association is organized; or
 - (ii) the activities in which the association is engaged.
 - (B) Any other rights, powers, and privileges granted by Indiana law or to for-profit or nonprofit corporations, except as are inconsistent with the express provisions of this chapter.
- (12) To recover, after two (2) years, any unclaimed stocks, dividends, capital credits, patronage refunds, utility deposits, membership fees, account balances, or book equities:
 - (A) for which the owner cannot be found; and
 - (B) that are the result of distributable savings of the association returned to the members on a pro rata basis.

Section 15-12-1-12 – Articles of Incorporation

- (a) The incorporators of an association to be formed under this chapter shall execute and file articles of incorporation setting forth the following:
 - (1) The name of the proposed association.
 - (2) The purpose or purposes for which it is formed.
 - (3) The period during which it is to continue to exist, if the period is to be limited.
 - (4) The post office address of its principal office and the name and address of its registered agent as provided in [IC 23-0.5-4](#).
 - (5) If organized without capital stock, whether the property rights and interest of the members are equal or unequal. If property rights and interest of the members are unequal, the articles of incorporation must set forth the provisions under and by which the property rights and interests of the respective members are to be determined and fixed.
 - (6) The following information, if the association is organized with capital stock:
 - (A) The total number of shares that the association may issue.
 - (B) Whether all or part of the shares have a par value.
 - (C) If all or part of the shares have a par value, the number and par value of the shares.
 - (D) Whether all or part of the shares are without a par value.
 - (E) If all or part of the shares are without a par value, the number of shares without a par value.
 - (F) If the shares are to be divided into classes or kinds:
 - (i) the number and par value, if any, of the shares of each class; and
 - (ii) subject to the limitations provided in this chapter with respect to issuance of voting stock, either a statement of the relative rights, preferences, limitations, and restrictions of each class, or a provision expressly vesting authority in the board of directors to determine the relative rights, preferences, limitations, and restrictions of each class by resolution or resolutions adopted before the issuance of any shares of the specific class.



- (G) If the shares of any class are to be issuable in series:
 - (i) descriptions of the several series; and
 - (ii) subject to the limitation provided in this chapter with respect to the issuance of voting stock, a statement of the relative rights, preferences, limitations, and restrictions of each series, or a provision expressly vesting authority in the board of directors to determine the relative rights, preferences, limitations, and restrictions of each series by resolution or resolutions adopted before the issuance of any of the shares of the specific series.
- (7) The number of directors constituting the initial board of directors of the association.
- (8) The names and post office addresses of the first board of directors.
- (9) The names and post office addresses of the incorporators.
- (10) Any other provisions, consistent with Indiana laws, for the regulation of the business and conduct of the affairs of the association and for creating, defining, limiting, or regulating the powers of the following:
 - (A) The association.
 - (B) The directors.
 - (C) The members.
 - (D) The shareholders of any class or classes of shareholders.
- (b) The articles of incorporation must be:
 - (1) prepared and signed in duplicate by the incorporators;
 - (2) acknowledged by at least one (1) of the incorporators before a notary public; and
 - (3) presented in duplicate to the secretary of state at the secretary of state's office and accompanied by the fees prescribed by this chapter.

Section 15-12-1-15 – Bylaws; Adoption and Amendment; Scope

- (a) Each association organized under or governed by this chapter shall, not more than thirty (30) days after the association's incorporation or after the association's acceptance of the requirements of this chapter, adopt a code of bylaws.
- (b) The power to adopt, make, alter, amend, or repeal the bylaws is vested in the board of directors, unless specifically provided in the articles of incorporation.
- (c) The bylaws may contain any provisions for the regulation and management of the business and affairs of the association that are not inconsistent with the articles of incorporation and the laws of this state, including provisions concerning the following:
 - (1) The time and place of holding and the manner of calling and conducting meetings of members and directors.
 - (2) The number of members that constitute a quorum at a meeting of the members.
 - (3) The number of directors that constitute a quorum at a meeting of the directors.
 - (4) The right of members to vote by proxy, by mail, or by delegates elected by members in their respective districts, or by any one (1) or more such methods.



- (5) The number of directors, their qualifications, the date, time, place, and manner of their election, and the length of their terms of office.
- (6) The powers, duties, tenure, and qualifications of officers of the association and the date, time, place, and manner of electing the officers.
- (7) The creation and appointment of executive and other committees, and the number of members of the committees and their powers.
- (8) The:
 - (A) amount of entrance, organization, and membership fees, if any;
 - (B) manner and method of collection of the fees; and
 - (C) purposes for which the fees may be used.
- (9) The:
 - (A) amount, if any, that each member is required to pay annually or from time to time to carry on the business of the association;
 - (B) charge, if any, to be paid by each member for services rendered by the association to the member; and
 - (C) time of payment and manner of collection of the amounts.
- (10) The requirements made or imposed on members to enter into contracts with the association for the marketing of the members' products or for the purchasing of the members' supplies, machinery, or equipment, or both.
- (11) The following:
 - (A) Qualifications for membership in the association and the conditions precedent to membership.
 - (B) The method, time, and manner in which a member can withdraw from membership.
 - (C) The conditions upon which and the time when the membership of any member ceases.
 - (D) The automatic suspension of the voting rights of a member when the member ceases to be eligible for membership in the association.
 - (E) The method, manner, and effect of the expulsion of a member.
 - (F) The manner of determining the value of a member's interest or shares:
 - (i) when the member is expelled; or
 - (ii) upon the member's death or withdrawal from membership.
 - (G) The manner in which the interest or shares of a member can be transferred or assigned.
 - (H) The time and manner in which a member's interest or shares may be redeemed by the association.
- (12) Penalties for violation of the bylaws.

Section 15-12-1-24 – Board of Directors; Eligibility

(a) Each director must during the director's term of office be a citizen of the United States. Each director, other than a public director, must be engaged in or have a direct interest in the production of agricultural products.



- (b) An association may provide in the association's bylaws that a person is not eligible for election as a director unless the person is a member or patron of the association.
- (c) An association may provide in the association's bylaws that a person is not eligible for election as a director unless the person has paid any indebtedness owed by the person to the association.

Section 15-12-1-27 – Election of Officers

- (a) The officers of an association must consist of a president, one (1) or more vice presidents, a secretary, a treasurer, and other officers that may be prescribed by the bylaws. Each officer shall be elected or appointed by the board of directors at the time, in the manner, and for the terms as the bylaws provide, subject to the following conditions:
 - (1) The president and one (1) vice president must be members of the board of directors.
 - (2) A vice president who is not a director may not succeed to or fill the office of president.
- (b) Except for the offices of the president and secretary, any two (2) or more offices may be held by the same individual.
- (c) The treasurer may be a bank or depository. If the treasurer is a bank or depository:
 - (1) the treasurer is considered to be a function of the board of directors but not an officer of the board of directors; and
 - (2) the secretary shall perform the usual accounting duties of the treasurer. However, the funds of the association must be deposited only as and where authorized by the board of directors.
- (d) The bylaws may provide for the election of the president and one (1) vice president by the members or their delegates at the annual meeting of the members.

Section 15-12-1-11 – Association; Membership; Issuance of Stock

- (a) An association may under the terms and conditions prescribed in the bylaws adopted by the association admit as members or issue common and voting stock to any of the following:
 - (1) The individuals or political subdivisions of Indiana that meet the requirements of subsection (b).
 - (2) The associations that meet the requirements of subsection (c).
- (b) To meet the requirements of this subsection, individuals or political subdivisions must be engaged in the production of agricultural products. For purposes of this section, a lessor or landlord of land used for the production of agricultural products or any individual devoting a substantial part of the individual's time to assisting others to produce agricultural products, whether employed by a farmer, an agricultural cooperative corporation, or an association, is considered to be engaged in the production of agricultural products. Except as otherwise provided in this section, the holders of common stock of an association limited by its articles of incorporation to one (1) or more particular agricultural services



must be producers of agricultural products that use the articles or services to which the activities of the association are limited.

(c) An association:

(1) organized under or governed by this chapter or organized under or governed by the agricultural law of another state of the United States; or

(2) that complies with 7 U.S.C. 291 and 7 U.S.C. 292, whether incorporated in or outside the United States, and with acts amendatory or supplementary to 7 U.S.C. 291 and 7 U.S.C. 292;

may become a member or stockholder of any association or associations organized under this chapter. Any corporation, however organized, that is lawfully engaged in the production of agricultural products, either as owner, lessor, or lessee of land used for the production of agricultural products, may become a stockholder or member in any association that is organized under this chapter and for which more than one-half (1/2) of the value of the association's business consists of the patronage of individuals who are direct producers of agricultural products.

(d) A member of an association organized under this chapter that is not an individual may be represented by any individual authorized to do so in writing by the member.

Section 15-12-1-28 – Membership Certificates

(a) A certificate of membership or a share or shares of voting stock may not be issued by an association until the membership fee or consideration for the share of stock has been paid in full. A promissory note may be accepted in full or partial payment for a share of stock or membership fee. However, the stock or membership certificate shall be held as security for the payment of the note. The acceptance of a note in full or partial payment of a share of stock or membership fee does not affect the member's right to vote if the member is not in default under the terms of the note.

(b) A member is not liable for the debts of the association to an amount exceeding the sum remaining unpaid on the member's membership fee or on the member's subscription or agreement to purchase a share or shares of stock, including any unpaid balance on any note given in payment.

(c) An association may provide in the association's articles of incorporation or bylaws that a member may not own more than a fixed amount or percentage of the association's membership capital or a fixed percentage or number of shares of the association's outstanding voting stock.

