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Agricultural Cooperative Formation:

Montana



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Section 35-17-105 – Permissible Purposes for Organization

An association may be organized to engage in:

- (1) any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof or the manufacturing or marketing of the byproducts thereof;
- (2) any activity in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies;
- (3) the financing of the above-enumerated activities; or
- (4) any one or more of the activities specified herein.

Section 35-17-106 – Powers of Association

Each association incorporated under this chapter shall have the following powers:

- (1) to engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members or the manufacturing or marketing of the byproducts thereof or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment or in the financing of any such activities or in any one or more of



the activities specified in this section. No association shall handle the agricultural products of nonmembers in greater volume than that of members.

- (2) to borrow money and to make advances to members;
- (3) to act as the agent or representative of any member or members in any of the above-mentioned activities;
- (4) to purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association;
- (5) to establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;
- (6) to buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;
- (7) to do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association and to contract accordingly and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged and in addition any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this chapter, and to do any such thing anywhere.

Section 35-17-202 – Articles of Incorporation; Contents; Filing; Articles or Copies as Prima Facie Evidence

- (1) Each association formed under this chapter shall prepare and file articles of incorporation setting forth:
 - (a) the name of the association;
 - (b) the purposes for which it is formed;
 - (c) the place where its principal business will be transacted;
 - (d) the term for which it is to exist, which may be perpetual;



- (e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;
 - (f) if organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;
 - (g) the designation of classes of members, if more than one;
 - (h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:
 - (i) the designation, preferences, limitations, and relative rights of each class;
 - (ii) which classes of stock are membership stock;
 - (iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and
 - (iv) any reservation of a right to acquire or recall any stock.
- (2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-14-202.
- (3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association.

Section 35-17-206 – Bylaws

- (1) Each association incorporated under this chapter shall, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders or their written assent is necessary to adopt the bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders.
- (2) Each association under its bylaws may also provide for any or all of the following matters:



- (a) the time, place, and manner of calling and conducting its meetings;
- (b) the number of stockholders or members constituting a quorum;
- (c) the right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner, form, and effects of those votes;
- (d) the number of directors constituting a quorum;
- (e) the qualifications, compensation, duties, and term of office of directors and officers, the time of their election, and the mode and manner of giving notice of these matters;
- (f) penalties for violations of the bylaws;
- (g) the amount of entrance, organization, and membership fees, if any, the manner and method of collection of the fees, and the purposes for which they may be used;
- (h) the amount that each member or stockholder is required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to the stockholder or member and the time of payment and the manner of collection, and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;
- (i) the number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock, the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock, the manner of assignment and transfer of the interest of members and the shares of common stock, and the conditions upon which and the time when membership of any member ceases;
- (j) the automatic suspension of the rights of a member when the member ceases to be eligible for membership in the association and the mode, manner, and effect of the expulsion of a member;
- (k) the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of membership or, at the option of the association, by conclusive appraisal by the board of directors.

Section 35-17-311 – Directors; Election; Compensation; Interest in Contracts; Vacancies



(1) The affairs of the association must be managed by a board of not less than five directors elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members must be divided into districts and that the directors must be elected according to the districts. In that case, the bylaws must specify the number of directors to be elected by each district, the manner and method of reapportioning the directors, and the manner and method of redistricting the territory covered by the association. The bylaws may provide that primary elections must be held in each district to elect the directors apportioned to the districts, and the result of all primary elections must be ratified by the next regular meeting of the association.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(3) A director during the term of office may not be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(4) When a vacancy on the board of directors occurs, other than by expiration of a term, the remaining members of the board by a majority vote shall fill the vacancy unless the bylaws provide for an election of directors by district. In that case, the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

Section 35-17-312 – Officers; Election; Bank as Treasurer

(1) The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and treasurer who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, in which case it may not be considered an officer but instead a function of the board of directors, and the secretary shall perform the usual accounting duties of the treasurer, except that the funds must be deposited only as authorized by the board of directors.

(2) (a) If the bylaws provide, the directors may also elect from their number a presiding officer and one or more vice presiding officers, in which case the president and vice presidents need not be directors or stockholders.

(b) Any other officer may be chosen as provided in the bylaws.

Section 35-17-301 – Who May be Members

(1) Under the terms and conditions prescribed in its bylaws, an association may admit as members or issue stock only to persons engaged in the production of the agricultural products to be handled by or through the



association, including the lessees and tenants of land used for the production of the products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(2) If a member of a nonstock association is other than a natural person, that member may be represented by any individual, associate, officer, or member authorized in writing.

(3) One association organized under this chapter may become a member or stockholder of any other association or associations organized under this chapter.

Section 35-17-302 – Stock; Issuance; Limitations on Ownership and Transfer; Repurchase by Association

(1) When a member of an association established without capital stock has paid the member's membership fee in full, the member must receive a certificate of membership.

(2) (a) An association organized with capital stock may issue the amount of stock stated in its articles. The stock may be divided into two or more classes with the designations, preferences, limitations, and relative rights as stated in the articles, except that stock without par value may not be issued.

(b) The articles may require that members own one or more shares of membership stock. The membership stock may be issued or transferred only to a person eligible to become a member and only when that person satisfies the other requisites for membership. Unless restricted by the articles, stock other than membership stock may be issued or transferred to any person.

(3) An association may not issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but retention as security does not affect the members' right to vote.

(4) An association, in its bylaws, may limit the amount of common stock that one member may own.

(5) (a) Unless the articles provide otherwise, an association may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the association a prior right to acquire any stock offered for sale or the right to recall the stock of any stockholder, or both rights.

(b) The consideration paid by the association for recalled stock must be its par value and accrued unpaid dividends. However, if the book value of the stock is less than the par value, the consideration must be the book value.



- (c) An association may set off obligations of a stockholder to the association.
- (d) If the remaining assets of an association would be less than the aggregate amount payable to creditors and persons holding stock with preferential rights upon liquidation, the association may not acquire, recall, exchange, or redeem any stock for consideration other than stock or certificates of equity interest of equal or subordinate rank.
- (6) (a) If stock is acquired, recalled, exchanged, or redeemed by an association, the stock is restored to the status of authorized but unissued stock.
- (b) Stockholders do not have a preemptive right to purchase additional stock.

Section 15-31-102 – Organizations Exempt from Tax; Unrelated Business Income Not Exempt

(1) Except as provided in subsection (3), there may not be taxed under this title any income received by any:

- (a) labor, agricultural, or horticultural organization;
- (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;
- (c) cemetery company owned and operated exclusively for the benefit of its members;
- (d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;
- (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;
- (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone



company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

(n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a).

(2) In determining the corporate income tax imposed under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business



income tax return on which it reports its unrelated business income with the department.

