



The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

Agricultural Cooperative Formation:

Ohio



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Agricultural Cooperative Formation: Ohio

Fast Find:

- 1) Agricultural Cooperative Provisions: [§ 1729.70 and § 1729.84](#)
- 2) Purpose: [§ 1729.02](#)
- 3) Power: [§ 1729.03](#)
- 4) Articles of Incorporation: [§ 1729.07](#)
- 5) Bylaws: [§ 1729.14](#)
- 6) Directors and Officers: [§ 1729.22](#) and [§ 1729.26](#)
- 7) Membership: [§ 1729.18](#)
- 8) Capitalization: [§ 1729.13](#)

[Ohio Rev. Code §§ 1729.01 to 1729.99](#)

Section 1729.70 – Agricultural Cooperative Not Illegal

(A) An agricultural cooperative is not a conspiracy, a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily; and the marketing agreements between such an agricultural cooperative and its members, or any other marketing agreements or sales contracts authorized or described in sections 1729.67 to 1729.70 of the Revised Code, are not illegal as such, in unlawful restraint of trade, or part of a conspiracy or combination to accomplish an improper or illegal purpose.

(B) An agricultural cooperative, upon resolution of its board, may enter into marketing agreements and other arrangements with any other agricultural cooperative. Any two or more agricultural cooperatives may, by agreement between them, unite in employing or separately employ the same personnel, methods, means, and agencies for carrying on their respective businesses. Agricultural cooperatives, acting singly or collectively, may meet in conference with two or more purchasers of their products who are acting collectively, and may at the conference fix by agreement the prices to be paid by the purchasers to the agricultural cooperative for the products. Such concerted action by the purchasers is not a contract in restraint of trade.

Section 1729.84 – Exemptions for Agricultural Products

Any exemptions under any law applying to agricultural products in the possession or under the control of the individual producer also shall apply to such products delivered by its producer members, as long as such products are in the possession or under the control of an agricultural cooperative.

Section 1729.02 – Purposes; Associations Deemed Nonprofit; Chapter Title



(A) An association may be organized under this chapter for any lawful purpose permitted to corporations by the laws of this state, except any such purpose that is inconsistent with the provisions of this chapter or other chapters of Title XVII of the Revised Code. This section does not authorize any professional services otherwise prohibited by law.

(B) Associations shall be corporations that are deemed nonprofit because they are not organized for the purpose of making a profit for themselves as such, or for the purpose of making a profit for their members as such, but for their members as patrons. This chapter and not Chapter 1702. of the Revised Code shall govern associations.

(C) A municipal power agency, as "municipal power agency" is defined in section 3734.058 of the Revised Code, is not an association for the purposes of this chapter.

(D) This chapter shall be known as the "Ohio Cooperative Law."

Section 1729.03 – Powers of Association

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

(A) It may make contracts, incur liabilities, and borrow money; issue capital stock and other equity interests and issue certificates therefor; acquire property; and dispose of, mortgage, pledge, lease, or otherwise use in any manner, any of its property, or any interest in its property, wherever situated.

(B) It may invest its funds, lend money for its purposes, and hold any property as security for repayment.

(C) It may act as the agent or representative of any members or other patrons in any activities authorized by this chapter.

(D) It may conduct its business and affairs, have offices, and exercise its power in the United States or in any foreign country.

(E) It may establish reserves and invest these funds.

(F) It may buy, hold, and exercise all privileges of ownership over such real or personal property as is necessary, convenient, or incidental to the conduct of any authorized business of the association.

(G) It may establish, secure, own, and develop patents, trademarks, copyrights, service marks, and other intellectual property.



(H) Notwithstanding Chapter 169. of the Revised Code, it may effectuate the forfeiture of any unclaimed stock or other equity interests, dividends, and patronage allocations, for which the owner cannot be found after a period of three years. Notice of the existence of unclaimed stock or other equity interests and a request for written acknowledgment from the owner to the association shall be evidence of a bona fide attempt to deliver the unclaimed stock or other equity interests to the owner. If the notice is not acknowledged within thirty days after the notice is sent or within the period specified in the notice, if longer, all such unclaimed stock or other equity interests specified in the notice are forfeited and become the property of the association.

(I) It may make donations for charitable, scientific, educational, community development, or religious purposes, and may use all or part of the funds forfeited to the association under division (H) for these purposes.

(J) It may do everything necessary, suitable, or proper for the accomplishment of any of the purposes enumerated in this section. In addition it may 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 any other powers, rights, and privileges granted to corporations by the laws of this state, except as are inconsistent with the express provisions of this chapter.

Section 1729.07 – Articles of Incorporation

(A) The articles of incorporation of an association shall set forth all of the following:

- (1) The name of the association;
- (2) The association's purposes, as permitted by this chapter. It is sufficient to state in the articles that the association may engage in any activity within the purposes for which associations may be organized under this chapter.
- (3) The county and municipal corporation or township where the association's principal place of business will be located which need not be within this state;
- (4) The names and addresses of the incorporators;
- (5) The number of its directors or a statement that the number of directors shall be as specified in the bylaws;
- (6) The names and addresses of those who are to serve as directors until the first meeting of members or until the election and qualification of their successors;
- (7) Whether the association is organized with or without capital stock.



(a) If the association is organized without capital stock, the articles shall set forth the general rules by which the property rights and interests of each member are to be determined.

(b) If the association is organized with capital stock, the total amount of the stock, the number and par value of the shares, and dividend rights, if any. If there is more than one class of stock, the articles shall set forth a statement of the number of shares in each class and a statement of the designations, preferences, rights, and limitations of the shares in each class.

(B) The articles may include additional provisions, consistent with law, including provisions that are required or permitted to be set forth in the bylaws.

(C) The articles shall be signed by the incorporators and filed with the secretary of state in accordance with section 1729.12 of the Revised Code. The articles shall be accompanied by the appointment of a statutory agent in accordance with division (B) of section 1729.06 of the Revised Code. The legal existence of an association begins upon the filing of the articles and, unless the articles provide otherwise, its period of existence is perpetual.

Section 1729.14 – Bylaws

Each association shall adopt for its governance and management, bylaws that are consistent with the powers granted by this chapter and the articles of incorporation of the association. The bylaws may provide for any of the following:

(A) The time, place, and manner of calling and conducting the association's meetings;

(B) The number of members constituting a quorum. If voting by any method other than personal appearance is used, members represented by a ballot or by proxy may be counted in computing a quorum only on those matters for which the ballots or proxies were submitted.

(C) The right of members to vote by proxy or by ballot delivered in person, by mail, by electronic or telephonic transmittal, or any combination of these, and the conditions, manner, form, and effect of such votes;

(D) Subject to the provisions of section 1729.17 of the Revised Code, a method of voting by members or delegates, and any limitations on voting rights of any group or class of members or delegates;

(E) The number of directors constituting a quorum;

(F) The number, qualifications, compensation, duties, and terms of office of directors and officers, and the time of their election and the manner of giving notice of the election;



(G) Penalties for violation of the bylaws;

(H) The amounts of entrance, organization, and membership fees, if any; the manner of collecting them; and the purposes for which they may be used;

(I) Any amount that each member is required to pay annually or from time to time to carry on the business of the association; any charge to be paid by each member for services rendered by the association, and the time of payment and the manner of collection of such charge; and any marketing contract between the association and its members that every member may be required to sign;

(J) The number and qualifications of members of the association and the conditions of membership or for ownership of membership stock in the association;

(K) The time and manner of permitting members to withdraw or the holders of membership stock to transfer their stock; and the manner of assignment and transfer of membership stock;

(L) The conditions upon which, and the time when, the membership of any member ceases; and the suspension of the rights of a member who ceases to be eligible for membership in the association;

(M) The manner and effect of the expulsion of a member;

(N) In the event of the death or withdrawal of a member or upon the expulsion of a member or the forfeiture of membership, any of the following:

(1) The manner of determining the value of a member's interest;

(2) Provision for the purchase of a member's interest by the association;

(3) At the option of the association, provision for such purchase at a price fixed by appraisal by the board of directors of the association.

(O) Any other provision for any matter relative to the control, regulation, operation, management, or government of the association.

Section 1729.22 – Board of Directors

(A) Except where this chapter or an association's articles of incorporation or bylaws require that action be otherwise authorized or taken, all of the authority of an association shall be exercised by or under the direction of the board. The board shall consist of not less than five directors, elected by and from the members, unless the number of members is less than five, in which case, the number of directors may equal the number of members.



(B) The bylaws may provide that the membership of an association be divided into districts or other groupings and that the directors shall be elected according to such districts or groupings. In that case, the bylaws shall specify the number of directors to be elected and the manner of reapportioning or redistricting the membership.

(C) The bylaws may provide that one or more directors may be appointed by the other directors. The appointed directors need not be members of the association, but shall have the same powers, rights, and responsibilities as other directors. The appointed directors shall not number more than one-fifth of the entire number of directors.

(D) The bylaws may provide for an executive committee and may allot to the executive committee any of the functions and powers of the board, subject to the general direction and control of the board.

(E) The association may provide a fair remuneration for the time actually spent by its officers and directors in its service, and for the services of the members of its executive committee.

(F) Unless the bylaws provide otherwise, when a vacancy on the board occurs other than by expiration of term, the remaining directors on the board, by a majority vote, shall elect a director to fill the vacancy. If the bylaws provide for an election of directors by the members in a district or other grouping, the board may call a special meeting of the members in that district or group to fill the vacancy.

Section 1729.26 – Officers

(A) The officers of an association shall consist of a president, a secretary, a treasurer, and, if desired, a chairperson and one or more vice chairpersons of the board, one or more vice-presidents, and other officers and assistant officers as necessary. The officers shall be elected by the board. The chairperson and any vice chairperson of the board shall be a director. Unless the association's articles of incorporation or bylaws provide otherwise, none of the other officers need be a director. Any two or more offices may be held by the same person, but no officer shall execute, acknowledge, or verify any instrument in more than one capacity if the instrument is required by law or by the articles or bylaws to be executed, acknowledged, or verified by two or more officers. Unless the articles or the bylaws provide otherwise, all officers shall be elected annually.

(B) All officers have the authority to perform, and shall perform, the duties as the bylaws provide, or as the board may determine in accordance with the bylaws.

Section 1729.18 – Association Members; Meetings



(A) An association shall have two or more members. However, an association may have one member if that member is a cooperative that has two or more members.

(B) Each association shall hold an annual meeting of its members. The board may call a special meeting of the members at any time. Any meeting of the members may be held at one time or in a series of meetings at one or more locations.

(C) Twenty per cent of the members entitled to vote may file with the board a petition stating the specific business to be brought before the association and demanding a special meeting at any time for consideration of such business. Upon compliance with this division, the meeting shall be called by the board.

(D) Notice of every meeting, together with a statement of the purpose of the meeting, shall be sent to each member who is entitled to vote at the meeting and any affected stockholder at the member's or stockholder's current address, as shown in the records of the association, at least ten days prior to the meeting, in accordance with section 1729.20 of the Revised Code. The bylaws may provide that the notice be given by publication in a newspaper or newspapers of general circulation in the trade area of the association if notice to individual members and affected shareholders is impracticable.

Section 1729.13 – Dividends; Stock; Security Interest

(A) An association may pay dividends annually on its capital stock. All its other net income from business with or for members and other eligible patrons, less reserves which shall be provided for in the bylaws or other written agreements, shall be distributed to its members and other eligible patrons on the basis of patronage as provided in the bylaws or other written agreements. Any receipts or dividends from subsidiary corporations, or from stock or other securities owned by the association, may be included in the ordinary receipts of the association, and may be distributed accordingly.

(B) An association, at any time, may purchase its own common stock at par or book value as determined by the board.

(C) An association shall have a continued perfected security interest in its membership stock and patronage stock to secure payment of any indebtedness or other obligation of the holder or owner to the association. Notwithstanding Chapters 1308. and 1309. of the Revised Code, the security interest shall have priority over all other perfected security interests. Unless otherwise provided in the association's articles of incorporation or bylaws, or by contract, a member or other patron has no right to compel an association to offset its membership stock or patronage stock against any indebtedness or obligation owed to the association.

Section 1729.01 – Tax Charged Against Corporations



(A) The tax provided by this chapter for domestic corporations shall be the amount charged against each corporation organized for profit under the laws of this state and each nonprofit corporation organized pursuant to Chapter 1729. of the Revised Code, except as provided in sections 5733.09 and 5733.10 of the Revised Code, for the privilege of exercising its franchise during the calendar year in which that amount is payable, and the tax provided by this chapter for foreign corporations shall be the amount charged against each corporation organized for profit and each nonprofit corporation organized or operating in the same or similar manner as nonprofit corporations organized under Chapter 1729. of the Revised Code, under the laws of any state or country other than this state, except as provided in sections 5733.09 and 5733.10 of the Revised Code, for the privilege of doing business in this state, owning or using a part or all of its capital or property in this state, holding a certificate of compliance with the laws of this state authorizing it to do business in this state, or otherwise having nexus in or with this state under the Constitution of the United States, during the calendar year in which that amount is payable.

(B) A corporation is subject to the tax imposed by section 5733.06 of the Revised Code for each calendar year prior to 2014 that it is so organized, doing business, owning or using a part or all of its capital or property, holding a certificate of compliance, or otherwise having nexus in or with this state under the Constitution of the United States, on the first day of January of that calendar year. No credit authorized by this chapter may be claimed for tax year 2014 or any tax year thereafter.

(C) Any corporation subject to this chapter that is not subject to the federal income tax shall file its returns and compute its tax liability as required by this chapter in the same manner as if that corporation were subject to the federal income tax.

(D) For purposes of this chapter, a federally chartered financial institution shall be deemed to be organized under the laws of the state within which its principal office is located.

(E) For purposes of this chapter, any person, as defined in section 5701.01 of the Revised Code, shall be treated as a corporation if the person is classified for federal income tax purposes as an association taxable as a corporation, and an equity interest in the person shall be treated as capital stock of the person.

(F) For the purposes of this chapter, "disregarded entity" has the same meaning as in division (D) of section 5745.01 of the Revised Code.

(1) A person's interest in a disregarded entity, whether held directly or indirectly, shall be treated as the person's ownership of the assets and liabilities of the disregarded entity, and the income, including gain or loss, shall be included in the person's net income under this chapter.

(2) Any sale, exchange, or other disposition of the person's interest in the disregarded entity, whether held directly or indirectly, shall be treated as a



sale, exchange, or other disposition of the person's share of the disregarded entity's underlying assets or liabilities, and the gain or loss from such sale, exchange, or disposition shall be included in the person's net income under this chapter.

(3) The disregarded entity's payroll, property, and sales factors shall be included in the person's factors.

(G) The tax a corporation is required to pay under this chapter shall be as follows:

(1)(a) For financial institutions, the greater of the minimum payment required under division (E) of section 5733.06 of the Revised Code or the difference between all taxes charged the financial institution under this chapter, without regard to division (G)(2) of this section, less any credits allowable against such tax.

(b) A corporation satisfying the description in division (E)(5), (6), (7), (8), or (10) of section 5751.01 of the Revised Code, as that section existed before its amendment by H.B. 510 of the 129th general assembly, that is not a financial institution, insurance company, or dealer in intangibles is subject to the taxes imposed under this chapter as a corporation and not subject to tax as a financial institution, and shall pay the greater of the minimum payment required under division (E) of section 5733.06 of the Revised Code or the difference between all the taxes charged under this chapter, without regard to division (G)(2) of this section, less any credits allowable against such tax.

(2) For all corporations other than those persons described in division (G)(1)(a) or (b) of this section, the amount under division (G)(2)(a) of this section applicable to the tax year specified less the amount under division (G)(2)(b) of this section:

(a)(i) For tax year 2005, the greater of the minimum payment required under division (E) of section 5733.06 of the Revised Code or the difference between all taxes charged the corporation under this chapter and any credits allowable against such tax;

(ii) For tax year 2006, the greater of the minimum payment required under division (E) of section 5733.06 of the Revised Code or four-fifths of the difference between all taxes charged the corporation under this chapter and any credits allowable against such tax, except the qualifying pass-through entity tax credit described in division (A)(30) and the refundable credits described in divisions (A)(31) to (35) of section 5733.98 of the Revised Code;

(iii) For tax year 2007, the greater of the minimum payment required under division (E) of section 5733.06 of the Revised Code or three-fifths of the difference between all taxes charged the corporation under this chapter and any credits allowable against such tax, except the qualifying pass-through entity tax credit described in division (A)(30) and the refundable credits described in divisions (A)(31) to (35) of section 5733.98 of the Revised Code;



(iv) For tax year 2008, the greater of the minimum payment required under division (E) of section 5733.06 of the Revised Code or two-fifths of the difference between all taxes charged the corporation under this chapter and any credits allowable against such tax, except the qualifying pass-through entity tax credit described in division (A)(30) and the refundable credits described in divisions (A)(31) to (35) of section 5733.98 of the Revised Code;

(v) For tax year 2009, the greater of the minimum payment required under division (E) of section 5733.06 of the Revised Code or one-fifth of the difference between all taxes charged the corporation under this chapter and any credits allowable against such tax, except the qualifying pass-through entity tax credit described in division (A)(30) and the refundable credits described in divisions (A)(31), (32), (33), and (34) of section 5733.98 of the Revised Code;

(vi) For tax year 2010 and each tax year thereafter, no tax.

(b) A corporation shall subtract from the amount calculated under division (G)(2)(a)(ii), (iii), (iv), or (v) of this section any qualifying pass-through entity tax credit described in division (A)(30) and any refundable credits described in divisions (A)(31) to (35) of section 5733.98 of the Revised Code to which the corporation is entitled. Any unused qualifying pass-through entity tax credit is not refundable.

(c) For the purposes of computing the amount of a credit that may be carried forward to a subsequent tax year under division (G)(2) of this section, a credit is utilized against the tax for a tax year to the extent the credit applies against the tax for that tax year, even if the difference is then multiplied by the applicable fraction under division (G)(2)(a) of this section.

(d) References in division (G)(2) of this section to section 5733.98 of the Revised Code is to that section before its amendment by H.B. 59 of the 130th general assembly and by H.B. 340 of the 131st general assembly.

(3) Nothing in division (G) of this section eliminates or reduces the tax imposed by section 5733.41 of the Revised Code on a qualifying pass-through entity.

