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Agricultural Cooperative Formation:

Utah



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Agricultural Cooperative Formation: Utah

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Utah Code §§ 3-1-1 to 3-1-46

Section 3-1-4 – Purposes

Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

- (1) producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping, or utilizing such products, or manufacturing or marketing the by-products thereof;
- (2) seed and crop improvement, and soil conservation and rehabilitation;
- (3) manufacturing, buying or supplying to its members and others, machinery, equipment, feed, fertilizer, coal, gasoline and other fuels, oils and other lubricants, seeds, and all other agricultural and household supplies;
- (4) generating and distributing electrical energy and furnishing telephone service to its members and others;
- (5) performing or furnishing business or educational services, on a co-operative basis, for or to its members; or
- (6) financing any of the above enumerated activities.

Section 3-1-9 – Powers



- (1) An association formed under this act, or an association which might be formed under this act and which existed at the time this act took effect, shall have power and capacity to act possessed by natural persons and may do each and everything necessary, suitable, or proper for the accomplishment of any one or more of the purposes, or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interests or benefit of the association, and may exercise all powers, rights, and privileges necessary or incident thereto, including the exercise of any rights, powers, and privileges granted by the laws of this state to corporations generally, excepting such as are inconsistent with the express provisions of this act.
- (2) Without limiting or enlarging the grant of authority contained in Subsection [\(1\)](#), it is hereby specifically provided that every such association shall have authority:
 - (a) to act as agent, broker, or attorney in fact for its members and other producers, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and other producers, and for subsidiary and affiliated association to property handled or managed by the association on their behalf;
 - (b) to make contracts and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association;
 - (c) to make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire, endorse, discount, or sell any evidence of debt, obligation or security;
 - (d) to establish and accumulate reasonable reserves and surplus funds and to abolish the same; also to create, maintain, and terminate revolving funds or other similar funds which may be provided for in the bylaws of the association;
 - (e) to own and hold membership in or shares of the stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing or marketing any of the products handled by the association; or, in



- financing its activities; and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon;
- (f) to acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require;
 - (g) to borrow money without limitation as to amount, and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge;
 - (h) to deal in products of, and handle machinery, equipment, supplies and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members, but the value of the annual purchases made for persons who are neither members nor producers may not exceed 15 per centum of the value of all its purchases. Business transacted by an association for or on behalf of the United States or any agency or instrumentality thereof, shall be disregarded in determining the volume or value of member and nonmember business transacted by such association;
 - (i) if engaged in marketing the products of its members, to hedge its operations;
 - (j) to have a corporate seal and to alter the same at pleasure;
 - (k) to continue as a corporation for the time limited in its articles, and if no time limit is specified then perpetually;
 - (l) to sue and be sued in its corporate name;
 - (m) to conduct business in this state and elsewhere as may be permitted by law; and
 - (n) to dissolve and wind up.

Section 3-1-5 – Articles of Incorporation

- (1)
 - (a) Articles of incorporation shall be signed in duplicate by each of the incorporators and acknowledged before a notary public.
 - (b) Where the incorporators are associations, the president and secretary of each of the associations shall sign the articles of incorporation, and their signatures shall be acknowledged as provided in Subsection (1)(a).
 - (c) The acknowledgment shall state that it is the good faith intention of the incorporators to commence and carry on the business specified in the articles, and if the incorporators are individuals, that each of them is at least 18 years of age.





____ (2) (a) (i) The articles shall state the name of the association, which may _____
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include the word "cooperative."





———— (ii) The corporate name shall be distinguishable from any registered ————



name or trademark of record filed with the Division of Corporations

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and Commercial Code.

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- (b) A statement of the association's purposes shall be included in the articles.
- (c) (i) The articles shall state the name and street addresses of each of the incorporators.
 - (ii) If the association is organized with stock, a statement of the number of shares subscribed by each incorporator, which may not be less than one share, and the class or classes of shares for which each incorporator subscribes shall be stated in the articles.
- (d) The name and address of the registered agent shall be stated in the articles.
- (e) (i) The articles shall state whether the association was organized with or without stock.
 - (ii) If the association was organized with stock, the total authorized number of par value shares and the par value of each share shall be specified.
 - (iii) If any of the association's shares have no par value, the authorized number of the shares shall be specified.
 - (iv) If more than one class of stock is authorized, the following shall be specified:
 - (A) a description of the classes of shares;
 - (B) the number of shares in each class;
 - (C) the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class; and
 - (D) the dividends to which each class shall be entitled.
 - (v) (A) If only one class of stock is authorized, it shall be common, and if more than one class is authorized, one class shall be designated common stock.
 - (B) Common stock shall carry all voting rights.
- (f) (i) If the association is organized without stock, the articles shall state whether the property rights and interest of each member are equal or unequal.
 - (ii) If the property rights and interests are unequal, the articles shall state the rule by which those rights and interests shall be determined.



- (3) The articles may also contain other provisions, consistent with the provisions of this chapter, for:
 - (a) regulating the association's business or the conduct of its affairs;
 - (b) the establishment of voting districts;
 - (c) the election of delegates to represent voting districts and the members residing within them;
 - (d) representation of each district upon the board of directors;
 - (e) changing the number of directors to correspond to changes in the number of districts; and
 - (f) the issuance, retirement, and transfer of memberships and stock.

Section 3-1-8 – Bylaws

The members of the association shall adopt bylaws not inconsistent with law or the articles, and they may alter and amend the same from time to time. Bylaws may be adopted, amended or repealed, at any regular meeting, or at any special meeting called for that purpose, by a majority vote of the members voting thereon. The bylaws may provide for:

- (1) the time, place and manner of calling and conducting meetings of the members, and the number of members that shall constitute a quorum;
- (2) the manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations;
- (3) subject to any provision thereon in the articles and in this act, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;
- (4) the time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;
- (5) rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of contracts, the issuance, retirement, and transfer of stock, and the relative rights, interests and preferences of members and shareholders;
- (6) penalties for violations of the bylaws; and
- (7) such additional provisions as shall be deemed necessary for the carrying out of the purposes of this act.

Section 3-1-13 – Directors



- (1)
 - (a)
 - (i) Except as provided in Subsection (1)(c), the business of the association shall be managed by a board of not less than three directors.
 - (ii) At least two-thirds of the directors shall be members of the association, or officers, directors, or members of a member association.
 - (b) A director shall hold office for the term for which he or she was named or elected and until a successor is elected.
 - (c) If an association has less than three associations of producers as its members, the association may be managed by a board of two directors, each of whom shall be an officer, director, or member of a member association.
 - (2) Directors shall be elected by the members at the first meeting of the members held after the incorporation of the association.
 - (3) Subject to the provisions of this chapter, the articles, or bylaws, shall specify the:
 - (a) number;
 - (b) qualifications;
 - (c) terms of office;
 - (d) manner of election;
 - (e) time and place of meeting; and
 - (f) powers and duties of the directors.
 - (4) Unless otherwise provided in the articles or bylaws, a director shall be elected for a term of one year.
 - (5)
 - (a)
 - (i) Unless otherwise provided in the articles or bylaws and except as provided in Subsection (5)(b), a vacancy on the board, other than by expiration of term, shall be filled by the remaining members of the board.
 - (ii) A director elected by the remaining members of the board shall serve until a successor is elected by the members at the next annual meeting of the members, or at a special meeting.
 - (b)
 - (i) If the bylaws provide for the election of directors within districts, the board shall call a special meeting of the members in the district to elect a person qualified to fill the vacancy.



- (ii) Unless otherwise provided in the articles or bylaws, a director elected by a district shall serve until a successor is elected at the next regular meeting at which a director or directors are to be elected.
- (6)
 - (a) If not restricted by the articles, the bylaws may provide that the:
 - (i) area in which the association has members shall be divided into districts; and
 - (ii) directors shall be elected within those districts.
 - (b) The directors may be elected either directly or by district delegates elected by the members in that district.
 - (c) The bylaws shall specify, or authorize the board of directors to determine:
 - (i) the number of directors to be elected within each district;
 - (ii) the apportionment of the directors; and
 - (iii) the method of changing district boundaries.
 - (d) The bylaws may provide that primary elections shall be held in each district to nominate its directors, and that the result of the primary elections may be:
 - (i) ratified at the next regular meeting of the association; or
 - (ii) considered to be the final election.
- (7)
 - (a) The bylaws may provide for an executive committee to be elected by the board of directors from its members and may delegate to this committee the functions and powers of the board.
 - (b) The executive committee shall be subject to the general direction and control of the board.

Section 3-1-15 – Officers

The board shall elect a president, a secretary and a treasurer, and may elect one or more vice-presidents, and such other officers as may be authorized in the bylaws. Unless the articles otherwise specifically provide, the president and at least one of the vice-presidents shall be directors, but a vice-president who is not a director cannot succeed to or fill the office of president. Any two of the offices of vice-president, secretary and treasurer may be combined in one person.

Section 3-1-10 – Members; Qualifications and Liabilities; Voting Rights



- (1) As used in this section, "patronage" means business or services transacted or performed by a member or shareholder with an association.
- (2) (a) An association may only have as members or issue common stock to:
 - (i) current producers of agricultural products;
 - (ii) tenants and landlords receiving a share of the crop; and
 - (iii) cooperative associations of those producers.(b) The incorporators named in the articles shall be members of the association, and shall pay the same amount and in the same manner for their membership or stock as do other members.
- (3) A stockholder may not hold more than one share of the common voting stock.
- (4) (a) Under the terms and conditions prescribed in the bylaws, a member shall lose his or her membership if that member no longer qualifies for membership under this section.
(b) Despite termination of membership under Subsection (4)(a), the former member shall remain subject to any liability he or she incurs while a member of the association.
- (5) A member is not personally liable for any debt or liability of the association.
- (6) (a) (i) A member or stockholder is entitled to:
 - (A) one vote based on the amount of stock or membership capital owned; and
 - (B) additional votes, if the bylaws provide that a member or shareholder is entitled to more than one vote based on actual patronage of the association.(ii) A vote may not be cast by proxy, unless the member is a corporation, in which case its vote may be cast by an authorized representative.
- (b) (i) The bylaws of an association may provide that a member may vote by signed ballot.
(ii) The member's signature on a ballot shall be notarized by a notary public before the ballot can be counted in any election.

Section 3-1-11 – Certificates of and Termination of Membership; Dividends and Distribution of Reserves; Preferred Stock; Certificates of Interest; Unclaimed Credits



- (1) No certificate for membership or stock shall be issued until fully paid for, but bylaws may provide that a member may vote and hold office prior to payment in full for his membership or stock.
- (2) Dividends in excess of eight per centum per annum on the actual cash value of the consideration received by the association may not be paid on common stock or membership capital, but dividends may be cumulative if so provided in the articles or bylaws.
- (3)
 - (a) Savings in excess of dividends and additions to reserves and surplus shall be distributed on the basis of patronage.
 - (b) The bylaws may provide that any distribution to a nonmember, who is eligible for membership, may be credited to that nonmember until the amount of the distribution equals the value of a membership certificate, or a share of the association's common stock.
 - (c) The distribution credited to the account of the nonmember may be transferred to the membership fund at the option of the board, if, after two years, the amount is less than the value of the membership certificate or a share of common stock.
- (4)
 - (a) The bylaws shall provide the time and manner of settlement of membership interests with members who withdraw from the association or whose membership is otherwise terminated.
 - (b) Provisions for forfeiture of membership interests may be made in the bylaws.
 - (c) After the termination of the membership, for whatever cause, the withdrawing member shall exercise no further control over the facilities, assets, or activities of the association. The withdrawing member may not claim or receive any assets of the association except as follows:
 - (i) undistributed patronage allocated to the withdrawing member may be paid to the withdrawing member pursuant to the association's bylaws;
 - (ii) the withdrawing member may be reimbursed for the par value of membership or stock in the association pursuant to the association's articles, bylaws, and membership agreement; and
 - (iii) the withdrawing member shall receive any distributions to which the member is entitled pursuant to [Subsection 3-1-20\(3\)\(d\)](#).
- (5)
 - (a) An association may issue preferred stock to members and nonmembers.



- (b) Preferred stock may be redeemed or retired by the association on the terms and conditions as are provided in the articles or bylaws and printed on the stock certificates.
 - (c) Preferred stockholders may not vote, but no change in their priority or preference rights shall be effective until the written consent of the holders of a majority of the preferred stock has been obtained.
 - (d) Payment for preferred stock may be made in cash, services, or property on the basis of the fair value of the stock, services, and property, as determined by the board.
- (6)
- (a) The association may issue to each member a certificate of interest evidencing the member's interest in any fund, capital investment, or other assets of the association.
 - (b) Those certificates may be transferred only to the association, or to other purchasers, as approved by the board of directors, under the terms and conditions provided for in the bylaws.
- (7)
- (a) As used in this Subsection (7), "reasonable effort" means:
 - (i) a letter to a member's or former member's last-known address, a listing of unclaimed credits in an association publication, and the posting of a list of unclaimed credits at the association's principal place of business; and
 - (ii) publishing a list of the unclaimed credits exceeding \$25 each, or greater, in a newspaper of general circulation in the area where the association's principal offices are located.
 - (b) The association may retain revolving certificates of interest described in this Subsection (7) as an exception to the provisions of [Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act](#), if:
 - (i) the board of directors of the association determines to revolve the certificates and the certificates remain unclaimed by the association's members or former members for five years after the credit is declared;
 - (ii) the association is authorized to retain those credits by its bylaws;
 - (iii) the board of directors of the association approves the retention; and
 - (iv) before retaining the credits, the association makes a reasonable effort to locate and communicate the issuance of the credits to the members or former members.



- (c) (i) The board of directors may either add the unclaimed credits as a contribution to the capital fund, or use them to establish an agricultural educational program as described in Subsection (7)(c)(ii).
- (ii) If the board of directors chooses to use the unclaimed credits to establish an agricultural educational program, it shall establish an agricultural educational program to:
 - (A) provide scholarships for low income and worthy students to colleges and universities;
 - (B) provide funding for director training and education;
 - (C) provide funds for cooperative education programs in secondary or higher education institutions; or
 - (D) provide other educational opportunities.
- (iii) The board of directors may not distribute unclaimed credits to current patrons of the association.
- (iv) Upon dissolution of an association, the board of directors shall report and remit unclaimed credits to the Division of Unclaimed Property.
- (d) (i) Each association that applies credits under Subsection (7)(c) during a calendar year shall file an annual report with the State Treasurer by April 15 of the following year.
- (ii) The report shall specify:
 - (A) the dollar amount of credits applied during the year;
 - (B) the dollar amount of credits paid to claimants during the year; and
 - (C) the aggregate dollar amount of credits applied since January 1, 1996.
- (e) At any time after the association retains credits under this Subsection (7), the association shall pay the members, former members, or their successors in interest, the value of the credit, without interest, if the members, former members, or their successors in interest:
 - (i) file a written claim for payment with the association; and
 - (ii) surrender the certificate issued by the association that evidences the credit.

Section 59-7-102 – Exemptions



- (1) Except as provided in this section, the following are exempt from a tax under this chapter:
 - (a) an organization exempt under Section 501, Internal Revenue Code;
 - (b) an organization exempt under Section 528, Internal Revenue Code;
 - (c) an insurance company that is subject to taxation on the insurance company's premiums under [Chapter 9, Taxation of Admitted Insurers](#), regardless of whether the insurance company has a tax liability under that chapter;
 - (d) a local building authority as defined in Section [17D-2-102](#);
 - (e) a farmers' cooperative;
 - (f) a public agency, as defined in Section [11-13-103](#), with respect to or as a result of an ownership interest in:
 - (i) a project, as defined in Section [11-13-103](#); or
 - (ii) facilities providing additional project capacity, as defined in Section [11-13-103](#);
 - (g) an insurance company that engages in a transaction that is subject to taxation under Section [31A-3-301](#) or [31A-3-302](#), regardless of whether the insurance company has a tax liability under that section; or
 - (h) a captive insurance company that pays a fee under Section [31A-3-304](#).
- (2) A corporation is exempt from a tax under this chapter:
 - (a) if the corporation is an out-of-state business as defined in Section [53-2a-1202](#); and
 - (b) for income earned:
 - (i) during a disaster period as defined in Section [53-2a-1202](#); and
 - (ii) for the purpose of responding to a declared state disaster or emergency as defined in Section [53-2a-1202](#).
- (3) Notwithstanding any other provision in this chapter or [Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act](#), a person not otherwise subject to the tax imposed by this chapter or [Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act](#), is not subject to a tax imposed by Section [59-7-104](#), [59-7-201](#), [59-7-701](#), or [59-8-104](#), because of:
 - (a) that person's ownership of tangible personal property located at the premises of a printer's facility in this state with which the person has contracted for printing; or



- (b) the activities of the person's employees or agents who are:
 - (i) located solely at the premises of a printer's facility; and
 - (ii) performing services:
 - (A) related to:
 - (I) quality control;
 - (II) distribution; or
 - (III) printing services; and
 - (B) performed by the printer's facility in this state with which the person has contracted for printing.
- (4) Notwithstanding Subsection (1), an organization, company, authority, farmers' cooperative, or public agency exempt from this chapter under Subsection (1) is subject to [Part 8, Unrelated Business Income](#), to the extent provided in [Part 8, Unrelated Business Income](#).
- (5) Notwithstanding Subsection (1)(b), to the extent the income of an organization described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal Revenue Code, the organization's income is also taxable under this chapter.

Section 59-7-101 – Definitions

As used in this chapter:

- (17) (a) "Farmers' cooperative" means an association, corporation, or other organization that is:
 - (i) (A) an association, corporation, or other organization of farmers or fruit growers; or
 - (B) an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection (17)(a)(i)(A); and
 - (ii) organized and operated on a cooperative basis to:
 - (A) (I) market the products of members of the cooperative or the products of other producers; and
 - (II) return to the members of the cooperative or other producers the proceeds of sales less necessary marketing expenses on the basis of the quantity of the products of a



member or producer or the value of the products of a member or producer; or

- (B) (I) purchase supplies and equipment for the use of members of the cooperative or other persons; and
- (II) turn over the supplies and equipment described in Subsection [\(17\)\(a\)\(ii\)\(B\)\(I\)](#) at actual costs plus necessary expenses to the members of the cooperative or other persons.

- (b) (i) Subject to Subsection [\(17\)\(b\)\(ii\)](#), for purposes of this Subsection [\(17\)](#), the commission by rule, made in accordance with [Title 63G, Chapter 3, Utah Administrative Rulemaking Act](#), shall define:
 - (A) the terms "member" and "producer"; and
 - (B) what constitutes an association, corporation, or other organization that is similar to an association, corporation, or organization described in Subsection [\(17\)\(a\)\(i\)\(A\)](#).
- (ii) The rules made under this Subsection [\(17\)\(b\)](#) shall be consistent with the filing requirements under federal law for a farmers' cooperative.

