

AGRICULTURAL COOP AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig W. Buttars

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill clarifies the rights of withdrawing members from Agricultural Cooperative Associations to claim or receive assets.

Highlighted Provisions:

This bill:

▸ clarifies the rights of withdrawing members from Agricultural Cooperative Associations.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

3-1-11, as last amended by Chapter 70, Laws of Utah 2003

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **3-1-11** is amended to read:

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 shall 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 shall not be entitled to 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, 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 credit 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.