

1 **UNIFORM AGRICULTURE COOPERATIVE ASSOCIATION**

2 **ACT AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David P. Hinkins**

6 House Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions relating to agricultural cooperative associations.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ modifies provisions relating to powers of agricultural cooperative associations; and
- 14 ▶ prohibits an agricultural cooperative association from unilaterally voiding or

15 terminating a patronage refund.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 **AMENDS:**

22 **3-1-9**, as last amended by Laws of Utah 2010, Chapter 378

23 **3-1-11**, as last amended by Laws of Utah 2010, Chapter 378

24

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

26 Section 1. Section **3-1-9** is amended to read:

27 **3-1-9. Powers.**



28 (1) An association formed under this act, or an association which might be formed
29 under this act and which existed at the time this act took effect, shall have power and capacity
30 to act possessed by natural persons and may do each and everything necessary, suitable, or
31 proper for the accomplishment of any one or more of the purposes, or the attainment of any one
32 or more of the objects herein enumerated or conducive to or expedient for the interests or
33 benefit of the association, and may exercise all powers, rights, and privileges necessary or
34 incident thereto, including the exercise of any rights, powers, and privileges granted by the
35 laws of this state to corporations generally, excepting such as are inconsistent with the express
36 provisions of this act.

37 (2) Without limiting or enlarging the grant of authority contained in Subsection (1), it
38 is hereby specifically provided that every such association shall have authority:

39 (a) to act as agent, broker, or attorney in fact for its members and other producers, and
40 for any subsidiary or affiliated association, and otherwise to assist or join with associations
41 engaged in any one or more of the activities authorized by its articles, and to hold title for its
42 members and other producers, and for subsidiary and affiliated association to property handled
43 or managed by the association on their behalf;

44 (b) to make contracts and to exercise by its board or duly authorized officers or agents,
45 all such incidental powers as may be necessary, suitable or proper for the accomplishment of
46 the purposes of the association and not inconsistent with law or its articles, and that may be
47 conducive to or expedient for the interest or benefit of the association;

48 (c) to make loans or advances to members or producer-patrons or to the members of an
49 association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire,
50 endorse, discount, or sell any evidence of debt, obligation or security;

51 (d) to establish and accumulate reasonable reserves and surplus funds and to abolish
52 the same; also to create, maintain, and terminate revolving funds or other similar funds which
53 may be provided for in the bylaws of the association;

54 (e) to own and hold membership in or shares of the stock of other associations and
55 corporations and the bonds or other obligations thereof, engaged in any related activity; or, in
56 producing, warehousing or marketing any of the products handled by the association; or, in
57 financing its activities; and while the owner thereof, to exercise all the rights of ownership,
58 including the right to vote thereon;

59 (f) to acquire, hold, sell, dispose of, pledge, or mortgage, any property which its
60 purposes may require;

61 (g) to borrow money without limitation as to amount, and to give its notes, bonds, or
62 other obligations therefor and secure the payment thereof by mortgage or pledge;

63 (h) to deal in products of, and handle machinery, equipment, supplies and perform
64 services for nonmembers to an amount not greater in annual value than such as are dealt in,
65 handled or performed for or on behalf of its members, but the value of the annual purchases
66 made for persons who are neither members nor producers may not exceed 15 per centum of the
67 value of all its purchases. Business transacted by an association for or on behalf of the United
68 States or any agency or instrumentality thereof, shall be disregarded in determining the volume
69 or value of member and nonmember business transacted by such association;

70 (i) if engaged in marketing the products of its members, to hedge its operations;

71 (j) to have a corporate seal and to alter the same at pleasure;

72 (k) to continue as a corporation for the time limited in its articles, and if no time limit
73 is specified then perpetually;

74 (l) to sue and be sued in its corporate name;

75 (m) to conduct business in this state and elsewhere as may be permitted by law; ~~and~~

76 (n) to dissolve and wind up[-]; and

77 (o) to hold a patronage refund for the benefit of the association until the association
78 distributes the refund to the patron in accordance with the bylaws of the association.

79 Section 2. Section **3-1-11** is amended to read:

80 **3-1-11. Certificates of and termination of membership -- Dividends and**
81 **distribution of reserves -- Preferred stock -- Certificates of interest -- Unclaimed credits.**

82 (1) No certificate for membership or stock shall be issued until fully paid for, but
83 bylaws may provide that a member may vote and hold office prior to payment in full for his
84 membership or stock.

85 (2) Dividends in excess of eight per centum per annum on the actual cash value of the
86 consideration received by the association may not be paid on common stock or membership
87 capital, but dividends may be cumulative if so provided in the articles or bylaws.

88 (3) (a) (i) Savings in excess of dividends and additions to reserves and surplus shall be
89 distributed on the basis of patronage.

90 (ii) An association:

91 (A) may not unilaterally void or terminate a declared patronage refund to a patron,
92 including a refund or portion of a refund retained by the association in a revolving fund; and

93 (B) shall disburse the patronage refund to the patron in accordance with the
94 association's bylaws.

95 (b) The bylaws may provide that any distribution to a nonmember, who is eligible for
96 membership, may be credited to that nonmember until the amount of the distribution equals the
97 value of a membership certificate, or a share of the association's common stock.

98 (c) The distribution credited to the account of the nonmember may be transferred to the
99 membership fund at the option of the board, if, after two years, the amount is less than the
100 value of the membership certificate or a share of common stock.

101 (4) (a) The bylaws shall provide the time and manner of settlement of membership
102 interests with members who withdraw from the association or whose membership is otherwise
103 terminated.

104 (b) Provisions for forfeiture of membership interests may be made in the bylaws.

105 (c) After the termination of the membership, for whatever cause, the withdrawing
106 member shall exercise no further control over the facilities, assets, or activities of the
107 association. The withdrawing member may not claim or receive any assets of the association
108 except as follows:

109 (i) undistributed patronage allocated to the withdrawing member may be paid to the
110 withdrawing member pursuant to the association's bylaws;

111 (ii) the withdrawing member may be reimbursed for the par value of membership or
112 stock in the association pursuant to the association's articles, bylaws, and membership
113 agreement; and

114 (iii) the withdrawing member shall receive any distributions to which the member is
115 entitled pursuant to Subsection 3-1-20(3)(d).

116 (5) (a) An association may issue preferred stock to members and nonmembers.

117 (b) Preferred stock may be redeemed or retired by the association on the terms and
118 conditions as are provided in the articles or bylaws and printed on the stock certificates.

119 (c) Preferred stockholders may not vote, but no change in their priority or preference
120 rights shall be effective until the written consent of the holders of a majority of the preferred

121 stock has been obtained.

122 (d) Payment for preferred stock may be made in cash, services, or property on the basis
123 of the fair value of the stock, services, and property, as determined by the board.

124 (6) (a) The association may issue to each member a certificate of interest evidencing
125 the member's interest in any fund, capital investment, or other assets of the association.

126 (b) Those certificates may be transferred only to the association, or to other purchasers,
127 as approved by the board of directors, under the terms and conditions provided for in the
128 bylaws.

129 (7) (a) As used in this Subsection (7), "reasonable effort" means:

130 (i) a letter to a member's or former member's last-known address, a listing of
131 unclaimed credits in an association publication, and the posting of a list of unclaimed credits at
132 the association's principal place of business; and

133 (ii) publishing a list of the unclaimed credits exceeding \$25 each, or greater, in a
134 newspaper of general circulation in the area where the association's principal offices are
135 located.

136 (b) The association may retain revolving certificates of interest described in this
137 Subsection (7) as an exception to the provisions of Title 67, Chapter 4a, Unclaimed Property
138 Act, if:

139 (i) the board of directors of the association determines to revolve the certificates and
140 the certificates remain unclaimed by the association's members or former members for five
141 years after the credit is declared;

142 (ii) the association is authorized to retain those credits by its bylaws;

143 (iii) the board of directors of the association approves the retention; and

144 (iv) before retaining the credits, the association makes a reasonable effort to locate and
145 communicate the issuance of the credits to the members or former members.

146 (c) (i) The board of directors may either add the unclaimed credits as a contribution to
147 the capital fund, or use them to establish an agricultural educational program as described in
148 Subsection (7)(c)(ii).

149 (ii) If the board of directors chooses to use the unclaimed credits to establish an
150 agricultural educational program, it shall establish an agricultural educational program to:

151 (A) provide scholarships for low income and worthy students to colleges and

- 152 universities;
- 153 (B) provide funding for director training and education;
- 154 (C) provide funds for cooperative education programs in secondary or higher education
- 155 institutions; or
- 156 (D) provide other educational opportunities.
- 157 (iii) The board of directors may not distribute unclaimed credits to current patrons of
- 158 the association.
- 159 (iv) Upon dissolution of an association, the board of directors shall report and remit
- 160 unclaimed credits to the Division of Unclaimed Property.
- 161 (d) (i) Each association that applies credits under Subsection (7)(c) during a calendar
- 162 year shall file an annual report with the State Treasurer by April 15 of the following year.
- 163 (ii) The report shall specify:
- 164 (A) the dollar amount of credits applied during the year;
- 165 (B) the dollar amount of credit paid to claimants during the year; and
- 166 (C) the aggregate dollar amount of credits applied since January 1, 1996.
- 167 (e) At any time after the association retains credits under this Subsection (7), the
- 168 association shall pay the members, former members, or their successors in interest, the value of
- 169 the credit, without interest, if the members, former members, or their successors in interest:
- 170 (i) file a written claim for payment with the association; and
- 171 (ii) surrender the certificate issued by the association that evidences the credit.

Legislative Review Note
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Office of Legislative Research and General Counsel