

**AGRICULTURAL COOPERATIVES  
AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Leonard M. Blackham**

**This act modifies the Agricultural Cooperative Associations Act to provide for one-member associations and allows for proportionate voting in cooperative associations based on patronage. This act allows for dividends exceeding 8% per annum on preferred, nonvoting stock. This act provides for the judicial dissolution of cooperative associations in certain circumstances.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 3-1-3, as last amended by Chapter 204, Laws of Utah 1994
- 3-1-10, as last amended by Chapter 202, Laws of Utah 1994
- 3-1-11, as last amended by Chapter 9, Laws of Utah 1996
- 3-1-13, as last amended by Chapter 204, Laws of Utah 1994

ENACTS:

- 3-1-20.1, Utah Code Annotated 1953
- 3-1-20.2, Utah Code Annotated 1953
- 3-1-20.3, Utah Code Annotated 1953
- 3-1-20.4, Utah Code Annotated 1953

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

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

**3-1-3. Qualifications of incorporators.**

(1) Five or more individuals may form an association if they are:

- (a) at least 18 years of age; and
- (b) engaged in agriculture.

(2) [~~Two~~] One or more associations of individuals engaged in agriculture referred to in

Subsection (1) may form an association.

Section 2. Section **3-1-10** is amended to read:

**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.

~~[(2)]~~ (3) A stockholder may not hold more than one share of the common voting stock.

~~[(3)]~~ (4) (a) Under the terms and conditions prescribed in the bylaws, a member shall lose his or her membership if ~~[he]~~ that member no longer qualifies for membership under this section.

(b) Despite termination of membership under Subsection ~~[(3)]~~ (4)(a), the former member shall remain subject to any liability ~~[incurred by him]~~ he or she incurs while a member of the association.

~~[(4)]~~ (5) A member is not personally liable for any debt or liability of the association.

~~[(5)]~~ (6) (a) (i) A member or stockholder is ~~[only]~~ 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. 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 [~~or preferred~~] 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 [~~such~~] that nonmember until the amount [~~thereof~~] 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 [~~such~~] 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.

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

(b) Preferred stock may be redeemed or retired by the association on [~~such~~] the terms and conditions as [~~may be~~] 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 ~~[from time to time]~~ issue to each member a certificate of interest evidencing ~~[his]~~ 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 ~~[such]~~ other ~~[purchaser as may be]~~ purchasers, as approved by the board of directors, ~~[upon such]~~ under the terms and conditions ~~[as shall be]~~ 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) ~~[As]~~ The association may retain revolving certificates of interest described in this Subsection (7) as an exception [from] to the provisions of Title 67, Chapter 4a, Unclaimed Property Act, [the association may retain certificates of interest described in this Subsection (7) that are called for revolving by] 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 [if]:

~~[(i)]~~ (ii) the association is authorized to retain those credits by its bylaws;

~~[(ii)]~~ (iii) the board of directors of the association approves the retention; and

~~[(iii)]~~ (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 [any] other educational [~~opportunity as declared by the board of directors~~] 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 [~~next~~] following year.

(ii) The report shall [~~identify~~] 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.

Section 4. Section **3-1-13** is amended to read:

**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 ~~his~~ a successor is elected.

(c) If an association has ~~only two~~ 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 5. Section **3-1-20.1** is enacted to read:

**3-1-20.1. Grounds for judicial dissolution.**

(1) An association may be dissolved in a proceeding by the attorney general if it is established that the association:

(a) obtained its articles of incorporation through fraud; or

(b) has continued to exceed or abuse the authority conferred upon it by law.

(2) An association may be dissolved in a proceeding brought by a shareholder if it is established that:

(a) the directors are deadlocked in the management of the association affairs, the members are unable to break the deadlock, irreparable injury to the association is threatened or being suffered, or the business and affairs of the association can no longer be conducted to the advantage of the members generally, because of the deadlock;

(b) the directors, or those in control of the association, have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired on the election of their successors; or

(d) the association's assets are being misapplied or wasted.

(3) An association may be dissolved in a proceeding by a creditor if it is established that:

(a) the creditor's claim has been reduced to a judgment, the execution on the judgment has been returned unsatisfied, and the association is insolvent; or

(b) the association is insolvent and the association has admitted in writing that the creditor's claim is due and owing.

(4) An association may be dissolved in a proceeding by the association to have its voluntary dissolution continued under court supervision.

Section 6. Section **3-1-20.2** is enacted to read:

**3-1-20.2. Procedure for judicial dissolution.**

(1) (a) A proceeding by the attorney general to dissolve an association shall be brought in either the district court of the county in which the principal office or registered office of the association is situated, or the district court of Salt Lake County.

(b) A proceeding brought by any other party specified in Section 3-1-20.1 shall be brought in the district court of the county where the association's principal office is or, if it has no principal office in this state, where its registered office is or was last located.

(2) It is not necessary to make members parties to a proceeding to dissolve an association



unless relief is sought against them individually.

(3) A court, in a proceeding brought to dissolve an association, may issue injunctions, appoint a receiver or custodian pendent elite with all powers and duties the court directs, take other action required to preserve the association assets wherever located, and carry on the business of the association until a full hearing can be held.

Section 7. Section **3-1-20.3** is enacted to read:

**3-1-20.3. Receivership or custodianship.**

(1) (a) A court, in a judicial proceeding to dissolve an association, may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the association.

(b) The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian.

(c) The court, appointing a receiver or custodian, has exclusive jurisdiction over the association and all of its property wherever located.

(2) (a) The court may appoint an individual, or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian.

(b) The court may require the receiver or custodian to post bond, with or without securities, in an amount the court directs.

(3) (a) The court shall describe the powers of the receiver or custodian in its appointing order, which may be amended.

(b) The receiver:

(i) may dispose of all or any part of the assets of the association wherever located, at a public or private sale, if authorized by the court; and

(ii) may sue and defend in its own name as a receiver of the association in all courts of this state.

(c) The custodian may exercise all of the powers of the association, through or in place of its board of directors or officers, to manage the affairs of the association in the best interests of its members and creditors.

(4) During a receivership, the court may designate the receiver a custodian, and during a custodianship may designate the custodian a receiver, if the action is in the best interests of the association, its members, and its creditors.

(5) During the receivership or custodianship, the court may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's or receiver's counsel from the assets of the association or proceeds from the sale of the assets.

Section 8. Section **3-1-20.4** is enacted to read:

**3-1-20.4. Decree of dissolution.**

(1) (a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in Section 3-1-20.1 exist, it may enter a decree dissolving the association and specifying the effective date of the dissolution.

(b) The clerk of the court shall deliver a certified copy of the decree to the Division of Corporations and Commercial Code for filing.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the association's business and affairs in accordance with Section 3-1-20 and the giving of notice to its registered agent, or to the Division of Corporations and Commercial Code if it has no registered agent, and to claimants in accordance with said section.

(3) The court's order may be appealed as in other civil proceedings.