

1 **AGRICULTURAL COOPERATIVES**

2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Leonard M. Blackham**

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

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

12 AMENDS:

13 **3-1-3**, as last amended by Chapter 204, Laws of Utah 1994

14 **3-1-10**, as last amended by Chapter 202, Laws of Utah 1994

15 **3-1-11**, as last amended by Chapter 9, Laws of Utah 1996

16 **3-1-13**, as last amended by Chapter 204, Laws of Utah 1994

17 ENACTS:

18 **3-1-20.1**, Utah Code Annotated 1953

19 **3-1-20.2**, Utah Code Annotated 1953

20 **3-1-20.3**, Utah Code Annotated 1953

21 **3-1-20.4**, Utah Code Annotated 1953

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

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

24 **3-1-3. Qualifications of incorporators.**

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

26 (a) at least 18 years of age; and

27 (b) engaged in agriculture.



28 (2) [~~Two~~] One or more associations of individuals engaged in agriculture referred to in
29 Subsection (1) may form an association.

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

31 **3-1-10. Members -- Qualifications and liabilities -- Voting rights.**

32 (1) As used in this section, "patronage" means business or services transacted or
33 performed by a member or shareholder with an association.

34 [~~1~~] (2) (a) An association may only have as members or issue common stock to:

- 35 (i) current producers of agricultural products;
36 (ii) tenants and landlords receiving a share of the crop; and
37 (iii) cooperative associations of those producers.

38 (b) The incorporators named in the articles shall be members of the association, and
39 shall pay the same amount and in the same manner for their membership or stock as do other
40 members.

41 [~~2~~] (3) A stockholder may not hold more than one share of the common voting stock.

42 [~~3~~] (4) (a) Under the terms and conditions prescribed in the bylaws, a member shall
43 lose his or her membership if [~~he~~] that member no longer qualifies for membership under this
44 section.

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

48 [~~4~~] (5) A member is not personally liable for any debt or liability of the association.

49 [~~5~~] (6) (a) (i) A member or stockholder is [~~only~~] entitled to:

50 (A) one vote based on the amount of stock or membership capital owned; and
51 (B) additional votes, if the bylaws provide that a member or shareholder is entitled to
52 more than one vote based on actual patronage of the association.

53 (ii) A vote may not be cast by proxy, unless the member is a corporation, in which case
54 its vote may be cast by an authorized representative.

55 (b) (i) The bylaws of an association may provide that a member may vote by signed
56 ballot.

57 (ii) The member's signature on a ballot shall be notarized by a notary public before the
58 ballot can be counted in any election.

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

60 **3-1-11. Certificates of and termination of membership -- Dividends and**
61 **distribution of reserves -- Preferred stock -- Certificates of interest -- Unclaimed credits.**

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

65 (2) Dividends in excess of eight per centum per annum on the actual cash value of the
66 consideration received by the association shall not be paid on common [~~or preferred~~] stock or
67 membership capital, but dividends may be cumulative if so provided in the articles or bylaws.

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

70 (b) The bylaws may provide that any distribution to a nonmember, who is eligible for
71 membership, may be credited to [~~such~~] that nonmember until the amount [~~thereof~~] of the
72 distribution equals the value of a membership certificate, or a share of the association's
73 common stock.

74 (c) The distribution credited to the account of [~~such~~] the nonmember may be
75 transferred to the membership fund at the option of the board, if, after two years, the amount is
76 less than the value of the membership certificate or a share of common stock.

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

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

81 (c) After the termination of the membership, for whatever cause, the withdrawing
82 member shall exercise no further control over the facilities, assets, or activities of the
83 association.

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

85 (b) Preferred stock may be redeemed or retired by the association on [~~such~~] the terms
86 and conditions as [~~may be~~] are provided in the articles or bylaws and printed on the stock
87 certificates.

88 (c) Preferred stockholders shall not be entitled to vote, but no change in their priority or
89 preference rights shall be effective until the written consent of the holders of a majority of the

90 preferred stock has been obtained.

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

93 (6) (a) The association may ~~[from time to time]~~ issue to each member a certificate of
94 interest evidencing ~~[his]~~ the member's interest in any fund, capital investment, or other assets
95 of the association.

96 (b) Those certificates may be transferred only to the association, or to ~~[such]~~ other
97 ~~[purchaser as may be]~~ purchasers, as approved by the board of directors, ~~[upon such]~~ under the
98 terms and conditions ~~[as shall be]~~ provided for in the bylaws.

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

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

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

106 (b) ~~[As]~~ The association may retain revolving certificates of interest described in this
107 Subsection (7) as an exception [from] to the provisions of Title 67, Chapter 4a, Unclaimed
108 Property Act, [the association may retain certificates of interest described in this Subsection (7)
109 that are called for revolving by] if:

110 (i) the board of directors of the association determines to revolve the certificates and
111 the certificates remain unclaimed by the association's members or former members for five
112 years after the credit is declared ~~[if]~~;

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

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

115 ~~[(iii)]~~ (iv) before retaining the credits, the association makes a reasonable effort to
116 locate and communicate the issuance of the credits to the members or former members.

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

120 (ii) If the board of directors chooses to use the unclaimed credits to establish an

121 agricultural educational program, it shall establish an agricultural educational program to:

122 (A) provide scholarships for low income and worthy students to colleges and
123 universities;

124 (B) provide funding for director training and education;

125 (C) provide funds for cooperative education programs in secondary or higher education
126 institutions; or

127 (D) provide ~~[any]~~ other educational ~~[opportunity as declared by the board of directors]~~
128 opportunities.

129 (iii) The board of directors may not distribute unclaimed credits to current patrons of
130 the association.

131 (iv) Upon dissolution of an association, the board of directors shall report and remit
132 unclaimed credits to the Division of Unclaimed Property.

133 (d) (i) Each association that applies credits under Subsection ~~(7)~~(c) during a calendar
134 year, shall file an annual report with the State Treasurer by April 15 of the ~~[next]~~ following
135 year.

136 (ii) The report shall ~~[identify]~~ specify:

137 (A) the dollar amount of credits applied during the year;

138 (B) the dollar amount of credit paid to claimants during the year; and

139 (C) the aggregate dollar amount of credits applied since January 1, 1996.

140 (e) At any time after the association retains credits under this Subsection (7), the

141 association shall pay the members, former members, or their successors in interest, the value of
142 the credit, without interest, if the members, former members, or their successors in interest:

143 (i) file a written claim for payment with the association; and

144 (ii) surrender the certificate issued by the association that evidences the credit.

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

146 **3-1-13. Directors.**

147 (1) (a) (i) Except as provided in Subsection (1)(c), the business of the association shall
148 be managed by a board of not less than three directors.

149 (ii) At least two-thirds of the directors shall be members of the association, or officers,
150 directors, or members of a member association.

151 (b) A director shall hold office for the term for which he or she was named or elected

152 and until [~~his~~] a successor is elected.

153 (c) If an association has [~~only two~~] less than three associations of producers as its
154 members, the association may be managed by a board of two directors, each of whom shall be
155 an officer, director, or member of a member association.

156 (2) Directors shall be elected by the members at the first meeting of the members held
157 after the incorporation of the association.

158 (3) Subject to the provisions of this chapter, the articles₂ or bylaws₂ shall specify the:

- 159 (a) number;
- 160 (b) qualifications;
- 161 (c) terms of office;
- 162 (d) manner of election;
- 163 (e) time and place of meeting; and
- 164 (f) powers and duties of the directors.

165 (4) Unless otherwise provided in the articles or bylaws, a director shall be elected for a
166 term of one year.

167 (5) (a) (i) Unless otherwise provided in the articles or bylaws and except as provided in
168 Subsection (5)(b), a vacancy on the board₂ other than by expiration of term, shall be filled by
169 the remaining members of the board.

170 (ii) A director elected by the remaining members of the board shall serve until a
171 successor is elected by the members at the next annual meeting of the members₂ or at a special
172 meeting.

173 (b) (i) If the bylaws provide for the election of directors within districts, the board shall
174 call a special meeting of the members in the district to elect a person qualified to fill the
175 vacancy.

176 (ii) Unless otherwise provided in the articles or bylaws, a director elected by a district
177 shall serve until a successor is elected at the next regular meeting at which a director or
178 directors are to be elected.

179 (6) (a) If not restricted by the articles, the bylaws may provide that the:

- 180 (i) area in which the association has members shall be divided into districts; and
- 181 (ii) directors shall be elected within those districts.

182 (b) The directors may be elected either directly or by district delegates elected by the

183 members in that district.

184 (c) The bylaws shall specify, or authorize the board of directors to determine:

185 (i) the number of directors to be elected within each district;

186 (ii) the apportionment of the directors; and

187 (iii) the method of changing district boundaries.

188 (d) The bylaws may provide that primary elections shall be held in each district to
189 nominate its directors, and that the result of the primary elections may be:

190 (i) ratified at the next regular meeting of the association; or

191 (ii) considered to be the final election.

192 (7) (a) The bylaws may provide for an executive committee to be elected by the board
193 of directors from its members and may delegate to this committee the functions and powers of
194 the board.

195 (b) The executive committee shall be subject to the general direction and control of the
196 board.

197 Section 5. Section **3-1-20.1** is enacted to read:

198 **3-1-20.1. Grounds for judicial dissolution.**

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

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

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

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

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

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

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

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

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

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

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

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

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

224 **3-1-20.2. Procedure for judicial dissolution.**

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

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

231 (2) It is not necessary to make members parties to a proceeding to dissolve an
232 association unless relief is sought against them individually.

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

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

238 **3-1-20.3. Receivership or custodianship.**

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

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

244 (c) The court, appointing a receiver or custodian, has exclusive jurisdiction over the

245 association and all of its property wherever located.

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

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

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

252 (b) The receiver:

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

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

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

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

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

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

268 **3-1-20.4. Decree of dissolution.**

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

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

274 (2) After entering the decree of dissolution, the court shall direct the winding up and
275 liquidation of the association's business and affairs in accordance with Section 3-1-20 and the

276 giving of notice to its registered agent, or to the Division of Corporations and Commercial
277 Code if it has no registered agent, and to claimants in accordance with said section.
278 (3) The court's order may be appealed as in other civil proceedings.

Legislative Review Note
as of 1-29-03 8:02 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0142

Agricultural Cooperatives Amendments

10-Feb-03

9:00 AM

State Impact

No fiscal impact.

Individual and Business Impact

Provisions of this bill may facilitate business opportunities in agricultural cooperatives, but it is impossible to quantify any fiscal impact.

Office of the Legislative Fiscal Analyst