

IC 15-12

ARTICLE 12. AGRICULTURAL ASSISTANCE ORGANIZATIONS AND PROGRAMS

IC 15-12-1

Chapter 1. Agricultural Cooperatives

IC 15-12-1-1

Purpose; legislative declaration

Sec. 1. (a) The following are the purposes of this chapter:

- (1) To promote, foster, and encourage the intelligent and orderly production and marketing of agricultural products through cooperation.
- (2) To eliminate speculation and waste.
- (3) To make the distribution of agricultural products between producer and consumer as direct as can be efficiently done.
- (4) To stabilize the marketing of agricultural products.
- (5) To provide for the organization and incorporation of agricultural cooperative associations and societies.

(b) The general assembly recognizes the following:

- (1) That agriculture is characterized by individual production in contrast to the group or factory system that characterizes other forms of industrial production.
- (2) That the ordinary form of corporate organization permits industrial groups to combine for the purpose of group production and the ensuing group marketing.
- (3) That the public has an interest in permitting farmers to bring their industry to the high degree of efficiency and merchandising skill evidenced in the manufacturing industries.
- (4) That the public interest demands that the farmer be encouraged to attain a superior and more direct system of marketing as an alternative to the blind, unscientific, and speculative selling of crops.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-2

Application of definitions in IC 23-1

Sec. 2. The definitions in IC 23-1 apply to this chapter to the extent they do not conflict with the definitions in this chapter.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-3

"Agricultural products"

Sec. 3. As used in this chapter, "agricultural products" includes horticultural, viticultural, forestry, dairy, livestock, grain, poultry, bee, and any other farm product.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-4

"Association"

Sec. 4. As used in this chapter, "association" means any corporation organized under or governed by this chapter.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-5

"Member"

Sec. 5. As used in this chapter, "member" means the following:

- (1) With respect to a nonstock membership association, the term means those persons admitted in accordance with the bylaws of the association.
- (2) With respect to an association having capital stock, the term means the holders of voting stock of the association.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-6

"Person"

Sec. 6. As used in this chapter, "person" includes the following:

- (1) Individuals.
- (2) Firms.
- (3) Partnerships.
- (4) Business trusts.
- (5) Limited liability companies.
- (6) Corporations.
- (7) Executors.
- (8) Administrators.
- (9) Receivers.
- (10) Bodies politic or political subdivisions.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-7

Associations governed as nonprofit corporations

Sec. 7. An association organized under or governed by this chapter is a nonprofit corporation within the meaning of this chapter and for purposes of interpreting Indiana law concerning associations organized under or governed by this chapter.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-8

Eligibility to form an association

Sec. 8. The following may form an association under this chapter:

- (1) Five (5) or more persons engaged in the production of agricultural products.
- (2) Two (2) or more associations that:
 - (A) are:
 - (i) organized under or governed by this chapter; or
 - (ii) organized under any other Indiana law or under the laws of any other state or territory of the United States or

of the District of Columbia; and
(B) are operated on a cooperative basis for the mutual benefit of the associations' members, members and patrons, or patrons as producers or associations of producers.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-9

Authorized activities

Sec. 9. An association may be organized to engage in any activity in connection with the following:

- (1) Producing, marketing, or selling the agricultural products of the association's members and others.
- (2) Harvesting, preserving, drying, processing, canning, packing, grading, storing, handling, shipping, or use of agricultural products of the association's members and others.
- (3) Manufacturing or marketing the byproducts of agricultural products of the association's members and others.
- (4) Manufacturing, selling, or supplying machinery, equipment, or supplies to the association's members and others.
- (5) Financing activities described in subdivisions (1) through (4).
- (6) Performing or furnishing services of an economic or educational nature, on a cooperative basis for persons engaged in agriculture or in any one (1) or more of the activities specified in this section.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-10

Association; powers

Sec. 10. Each association incorporated under this chapter has the following powers:

- (1) To engage in any activity in connection with the following:
 - (A) Producing, marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, or use of any agricultural products produced or delivered to the association by the association's members or others.
 - (B) Manufacturing or marketing the byproducts of agricultural products produced or delivered to the association by the association's members or others.
 - (C) Manufacturing, producing, processing, procuring, purchasing, or supplying supplies, machinery, or equipment to the association's members or others.
 - (D) Financing any activities described in clauses (A) through (C).
 - (E) Performing or furnishing economic, educational, or other services.
 - (F) Any one (1) or more of the activities specified in this section.

- (2) To transact business with and perform services for nonmembers in an amount not greater in value than the total amount of business transacted with and services performed for members in the same fiscal year.
- (3) To borrow money without limitation as to the amount of corporate indebtedness or liability.
- (4) To act as the agent or representative of any member or members or others in any of the activities described in subdivisions (1) through (3).
- (5) To make advances to members and other persons.
- (6) To:
- (A) purchase or acquire;
 - (B) hold, own, and exercise all rights of ownership in;
 - (C) sell, transfer, or pledge; or
 - (D) guarantee the payment of dividends or interest on or the retirement or redemption of;
- shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing, handling, or marketing of any of the products handled by the association.
- (7) To establish and accumulate reserves and surplus.
- (8) To:
- (A) buy; or
 - (B) acquire, hold, and exercise all privileges of ownership over;
- real and personal property as may be necessary, convenient, or incidental to the conduct and operation of the business and activities of the association.
- (9) To:
- (A) establish, secure, own, and develop; and
 - (B) dispose of;
- patents, trademarks, and copyrights.
- (10) To:
- (A) do anything:
 - (i) necessary or proper for the accomplishment of any one (1) of the purposes or the performance of any one (1) or more of the activities listed in this section; or
 - (ii) conducive to or expedient for the interest or benefit of the association; and
 - (B) contract accordingly.
- (11) To exercise and possess the following:
- (A) All powers, rights, and privileges necessary for or incidental to:
 - (i) the purposes for which the association is organized; or
 - (ii) the activities in which the association is engaged.
 - (B) Any other rights, powers, and privileges granted by Indiana law or to for-profit or nonprofit corporations, except as are inconsistent with the express provisions of this chapter.

(12) To recover, after two (2) years, any unclaimed stocks, dividends, capital credits, patronage refunds, utility deposits, membership fees, account balances, or book equities:

(A) for which the owner cannot be found; and

(B) that are the result of distributable savings of the association returned to the members on a pro rata basis.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-11

Association; membership; issuance of stock

Sec. 11. (a) An association may under the terms and conditions prescribed in the bylaws adopted by the association admit as members or issue common and voting stock to any of the following:

(1) The individuals or political subdivisions of Indiana that meet the requirements of subsection (b).

(2) The associations that meet the requirements of subsection (c).

(b) To meet the requirements of this subsection, individuals or political subdivisions must be engaged in the production of agricultural products. For purposes of this section, a lessor or landlord of land used for the production of agricultural products or any individual devoting a substantial part of the individual's time to assisting others to produce agricultural products, whether employed by a farmer, an agricultural cooperative corporation, or an association, is considered to be engaged in the production of agricultural products. Except as otherwise provided in this section, the holders of common stock of an association limited by its articles of incorporation to one (1) or more particular agricultural services must be producers of agricultural products that use the articles or services to which the activities of the association are limited.

(c) An association:

(1) organized under or governed by this chapter or organized under or governed by the agricultural law of another state of the United States; or

(2) that complies with 7 U.S.C. 291 and 7 U.S.C. 292, whether incorporated in or outside the United States, and with acts amendatory or supplementary to 7 U.S.C. 291 and 7 U.S.C. 292;

may become a member or stockholder of any association or associations organized under this chapter. Any corporation, however organized, that is lawfully engaged in the production of agricultural products, either as owner, lessor, or lessee of land used for the production of agricultural products, may become a stockholder or member in any association that is organized under this chapter and for which more than one-half (1/2) of the value of the association's business consists of the patronage of individuals who are direct producers of agricultural products.

(d) A member of an association organized under this chapter that is not an individual may be represented by any individual authorized to do so in writing by the member.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-12

Articles of incorporation

Sec. 12. (a) The incorporators of an association to be formed under this chapter shall execute and file articles of incorporation setting forth the following:

- (1) The name of the proposed association.
- (2) The purpose or purposes for which it is formed.
- (3) The period during which it is to continue to exist, if the period is to be limited.
- (4) The post office address of its principal office and the name and post office address of its resident agents.
- (5) If organized without capital stock, whether the property rights and interest of the members are equal or unequal. If property rights and interest of the members are unequal, the articles of incorporation must set forth the provisions under and by which the property rights and interests of the respective members are to be determined and fixed.
- (6) The following information, if the association is organized with capital stock:
 - (A) The total number of shares that the association may issue.
 - (B) Whether all or part of the shares have a par value.
 - (C) If all or part of the shares have a par value, the number and par value of the shares.
 - (D) Whether all or part of the shares are without a par value.
 - (E) If all or part of the shares are without a par value, the number of shares without a par value.
 - (F) If the shares are to be divided into classes or kinds:
 - (i) the number and par value, if any, of the shares of each class; and
 - (ii) subject to the limitations provided in this chapter with respect to issuance of voting stock, either a statement of the relative rights, preferences, limitations, and restrictions of each class, or a provision expressly vesting authority in the board of directors to determine the relative rights, preferences, limitations, and restrictions of each class by resolution or resolutions adopted before the issuance of any shares of the specific class.
 - (G) If the shares of any class are to be issuable in series:
 - (i) descriptions of the several series; and
 - (ii) subject to the limitation provided in this chapter with respect to the issuance of voting stock, a statement of the relative rights, preferences, limitations, and restrictions of each series, or a provision expressly vesting authority in the board of directors to determine the relative rights, preferences, limitations, and restrictions of each series by resolution or resolutions adopted before the issuance of

- any of the shares of the specific series.
- (7) The number of directors constituting the initial board of directors of the association.
 - (8) The names and post office addresses of the first board of directors.
 - (9) The names and post office addresses of the incorporators.
 - (10) Any other provisions, consistent with Indiana laws, for the regulation of the business and conduct of the affairs of the association and for creating, defining, limiting, or regulating the powers of the following:
 - (A) The association.
 - (B) The directors.
 - (C) The members.
 - (D) The shareholders of any class or classes of shareholders.
- (b) The articles of incorporation must be:
- (1) prepared and signed in duplicate by the incorporators;
 - (2) acknowledged by at least one (1) of the incorporators before a notary public; and
 - (3) presented in duplicate to the secretary of state at the secretary of state's office and accompanied by the fees prescribed by this chapter.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-13

Presentation of articles of incorporation

Sec. 13. (a) Upon presentation of articles of incorporation that comply with the requirements of this chapter, if the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall do the following:

- (1) Endorse the secretary of state's approval upon the duplicate copies of the articles.
 - (2) When all fees have been paid as required by law:
 - (A) file one (1) copy of the articles in the secretary of state's office; and
 - (B) issue a certificate of incorporation to the incorporators.
 - (3) Return the certificate of incorporation, together with the remaining copy of the articles of incorporation bearing the endorsement of the secretary of state's approval, to the incorporators or their representative.
- (b) Upon the issuance of the certificate of incorporation by the secretary of state under subsection (a):
- (1) the corporate existence of the association begins;
 - (2) all subscriptions to membership, subscriptions for shares of the association, or subscriptions to membership and for shares of the association are considered to be accepted by the association; and
 - (3) the subscribers are considered to be members, shareholders, or members and shareholders of the association.
- (c) The certificate of incorporation issued by the secretary of state

under this section is conclusive evidence of the fact that the association has been incorporated and of the corporation's right to transact business and to incur indebtedness.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-14

Association; merging, consolidating, or dissolving association; amending articles of incorporation

Sec. 14. (a) Subject to subsections (b) and (c), an association may amend the association's articles of incorporation, merge or consolidate with one (1) or more other associations or corporations, effect special corporate transactions as described in IC 23-1, or dissolve by following the procedures specified in IC 23-1.

(b) An amendment to the articles of incorporation of an association organized under or governed by this chapter or an agreement of merger or consolidation to which an association organized under or governed by this chapter is a party may be adopted:

(1) by the affirmative votes of the majority of the members entitled to vote with respect to the amendment or agreement and voting at the meeting called for that purpose, if the voting rights of the members are equal; or

(2) by the affirmative votes of the majority of the votes cast by the members entitled to vote with respect to the amendment or agreement and voting at the meeting called for that purpose, if the voting rights of the members are not equal.

(c) A special corporate transaction or dissolution of an association organized under or governed by this chapter may be authorized:

(1) by the affirmative votes of three-fourths (3/4) of the members entitled to vote with respect to the transaction or dissolution and voting at the meeting called for that purpose, if the voting rights of the members are equal; or

(2) by the affirmative votes of three-fourths (3/4) of the votes cast by the members entitled to vote with respect to the transaction or dissolution and voting at the meeting called for that purpose, if the voting rights of the members are not equal.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-15

Bylaws; adoption and amendment; scope

Sec. 15. (a) Each association organized under or governed by this chapter shall, not more than thirty (30) days after the association's incorporation or after the association's acceptance of the requirements of this chapter, adopt a code of bylaws.

(b) The power to adopt, make, alter, amend, or repeal the bylaws is vested in the board of directors, unless specifically provided in the articles of incorporation.

(c) The bylaws may contain any provisions for the regulation and management of the business and affairs of the association that are not

inconsistent with the articles of incorporation and the laws of this state, including provisions concerning the following:

- (1) The time and place of holding and the manner of calling and conducting meetings of members and directors.
- (2) The number of members that constitute a quorum at a meeting of the members.
- (3) The number of directors that constitute a quorum at a meeting of the directors.
- (4) The right of members to vote by proxy, by mail, or by delegates elected by members in their respective districts, or by any one (1) or more such methods.
- (5) The number of directors, their qualifications, the date, time, place, and manner of their election, and the length of their terms of office.
- (6) The powers, duties, tenure, and qualifications of officers of the association and the date, time, place, and manner of electing the officers.
- (7) The creation and appointment of executive and other committees, and the number of members of the committees and their powers.
- (8) The:
 - (A) amount of entrance, organization, and membership fees, if any;
 - (B) manner and method of collection of the fees; and
 - (C) purposes for which the fees may be used.
- (9) The:
 - (A) amount, if any, that each member is required to pay annually or from time to time to carry on the business of the association;
 - (B) charge, if any, to be paid by each member for services rendered by the association to the member; and
 - (C) time of payment and manner of collection of the amounts.
- (10) The requirements made or imposed on members to enter into contracts with the association for the marketing of the members' products or for the purchasing of the members' supplies, machinery, or equipment, or both.
- (11) The following:
 - (A) Qualifications for membership in the association and the conditions precedent to membership.
 - (B) The method, time, and manner in which a member can withdraw from membership.
 - (C) The conditions upon which and the time when the membership of any member ceases.
 - (D) The automatic suspension of the voting rights of a member when the member ceases to be eligible for membership in the association.
 - (E) The method, manner, and effect of the expulsion of a member.

(F) The manner of determining the value of a member's interest or shares:

- (i) when the member is expelled; or
- (ii) upon the member's death or withdrawal from membership.

(G) The manner in which the interest or shares of a member can be transferred or assigned.

(H) The time and manner in which a member's interest or shares may be redeemed by the association.

(12) Penalties for violation of the bylaws.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-16

Association; meetings; special meetings

Sec. 16. (a) Each association shall provide in the association's bylaws for one (1) or more regular meetings annually.

(b) The board of directors of an association may call a special meeting at any time.

(c) Ten percent (10%) of the members or stockholders of an association may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. If the requirements of this subsection are satisfied, the directors of the association shall call the special meeting.

(d) Notice of all meetings, together with a statement of the purposes of the meeting, shall be mailed to each member at least ten (10) days before the meeting. However, the association's bylaws may instead provide that the notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-17

Board of directors; management of association

Sec. 17. (a) The business and affairs of an association shall be managed by a board of directors of at least five (5) directors. Subject to this limitation, unless specifically provided in the articles of incorporation, the number of directors shall be fixed by the bylaws, except as to the number constituting the initial board of directors. The number constituting the initial board of directors shall be fixed by the articles of incorporation.

(b) The number of directors may be increased or decreased from time to time by amendment of the bylaws, but a decrease in the number of directors may not shorten the term of an incumbent director. In the absence of articles of incorporation or bylaws that fix the number of directors, the number of directors must be the same as stated in the articles of incorporation for the initial board of directors.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-18

Board of directors; election; terms

Sec. 18. Except as otherwise provided in this chapter, the directors:

- (1) shall be elected by the members at the annual meeting of the members; and
- (2) may, if provided in the bylaws, be elected for terms of office that expire at different times.

A term of office may not continue for longer than three (3) years. In the absence of a provision in the bylaws for terms of office, each director, except the first board of directors, shall be elected for a term of one (1) year and hold office until the director's successor is elected and qualified. The first board of directors, as named in the articles of incorporation, shall hold office until the first annual meeting of the members.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-19**Board of directors; districts; primary elections**

Sec. 19. The territory served by an association may be divided into districts and the directors elected according to districts. In this case, the bylaws must specify:

- (1) the number of directors to be elected in each district; and
- (2) the manner and method of reapportioning the directors and of redistricting the territory served by the association.

The bylaws may provide that primary elections shall be held in each district to elect the directors apportioned to the district and that the result of the primary elections may be ratified by the members at the next annual or special meeting of the members of the association or may be considered as final.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-20**Board of directors; appointment**

Sec. 20. One (1) or more directors may be appointed by any public official or commission or by the other directors elected by the members or their delegates. Directors appointed as provided in this section:

- (1) shall represent primarily the interest of the general public in the association, but have the same powers and rights as other directors; and
- (2) may not total more than one-fifth (1/5) of the entire number of directors.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-21**Board of directors; payment; restrictions**

Sec. 21. (a) An association may provide a fair remuneration for:

- (1) the time actually spent by the association's officers and directors in the association's service; and

(2) the service of the members of the association's executive committee and other committees.

(b) A director may not during the term of the director's office be a party to a contract for profit with the association differing in any way from the business relations accorded other members or patrons of the association.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-22

Executive committee; powers

Sec. 22. If the association's bylaws provide for an executive committee, all of the functions and powers of the board of directors may be delegated to the committee, subject to the general direction and control of the board.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-23

Board of directors; vacancies

Sec. 23. When a vacancy on the board of directors occurs, other than by expiration of term of office, the remaining members of the board may fill the vacancy by a majority vote of the remaining members, unless the bylaws provide for the election of directors by districts. If the bylaws provide for the election of directors by districts, the board of directors may call a special meeting of the members in that district to fill the vacancy or may fill the vacancy as in the case of any other vacancy. A director who is elected or appointed by the board of directors to fill a vacancy on the board shall serve until the next annual or special meeting of the members.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-24

Board of directors; eligibility

Sec. 24. (a) Each director must during the director's term of office be a citizen of the United States. Each director, other than a public director, must be engaged in or have a direct interest in the production of agricultural products.

(b) An association may provide in the association's bylaws that a person is not eligible for election as a director unless the person is a member or patron of the association.

(c) An association may provide in the association's bylaws that a person is not eligible for election as a director unless the person has paid any indebtedness owed by the person to the association.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-25

Board of directors; financial report; records

Sec. 25. (a) The board of directors shall require a report to be presented to the board, at intervals determined by the board but not less often than semiannually, showing:

- (1) the amount of indebtedness owed to the association by each director, officer, and employee at the close of the period; and
- (2) the amount of stock, membership capital, or credits for the purchase of stock or membership capital shown on the books of the association as belonging to each director, officer, and employee.

The board of directors shall take action with respect to any individual indebtedness to the association that is larger than permitted by the bylaws as is best for the association in the sound discretion of the board.

(b) The board of directors shall require a record of attendance to be kept and the secretary of the board to make a report at the annual meeting of members detailing the directors' attendance up to and including the last directors' meeting before the annual meeting, indicating:

- (1) the number of regular and special meetings of the board; and
- (2) the number of regular and of special meetings attended by each member of the board designated by name.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-26

Extension of credit

Sec. 26. (a) An association may provide in the association's bylaws limits within which the association may extend credit, either directly or indirectly, to any director, officer, or employee of the association.

(b) A person who is a director, officer, or employee of the association may not be extended credit on terms that are more favorable than the terms available to any other customer or member of the association.

(c) The provisions of this chapter:

- (1) concerning the extension of credit to any director, officer, or employee;
- (2) requiring the inclusion of information concerning the extension of credit to any director, officer, or employee in the association's annual reports to the secretary of state; and
- (3) providing penalties for failure to comply with those provisions;

apply only to associations in which more than twenty-five percent (25%) of the gross income arises directly from the purchasing of supplies for their members and others. An association with a lesser percentage of gross income arising from purchasing of supplies may adopt similar provisions in the association's articles of incorporation as originally filed or later amended. If adopted, the provisions apply in every respect to the association and to the association's directors, officers, and employees.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-27

Election of officers

Sec. 27. (a) The officers of an association must consist of a president, one (1) or more vice presidents, a secretary, a treasurer, and other officers that may be prescribed by the bylaws. Each officer shall be elected or appointed by the board of directors at the time, in the manner, and for the terms as the bylaws provide, subject to the following conditions:

(1) The president and one (1) vice president must be members of the board of directors.

(2) A vice president who is not a director may not succeed to or fill the office of president.

(b) Except for the offices of the president and secretary, any two (2) or more offices may be held by the same individual.

(c) The treasurer may be a bank or depository. If the treasurer is a bank or depository:

(1) the treasurer is considered to be a function of the board of directors but not an officer of the board of directors; and

(2) the secretary shall perform the usual accounting duties of the treasurer.

However, the funds of the association must be deposited only as and where authorized by the board of directors.

(d) The bylaws may provide for the election of the president and one (1) vice president by the members or their delegates at the annual meeting of the members.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-28

Membership certificates

Sec. 28. (a) A certificate of membership or a share or shares of voting stock may not be issued by an association until the membership fee or consideration for the share of stock has been paid in full. A promissory note may be accepted in full or partial payment for a share of stock or membership fee. However, the stock or membership certificate shall be held as security for the payment of the note. The acceptance of a note in full or partial payment of a share of stock or membership fee does not affect the member's right to vote if the member is not in default under the terms of the note.

(b) A member is not liable for the debts of the association to an amount exceeding the sum remaining unpaid on the member's membership fee or on the member's subscription or agreement to purchase a share or shares of stock, including any unpaid balance on any note given in payment.

(c) An association may provide in the association's articles of incorporation or bylaws that a member may not own more than a fixed amount or percentage of the association's membership capital or a fixed percentage or number of shares of the association's outstanding voting stock.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-29

Voting stock; votes; transfer

Sec. 29. (a) An association may provide in the association's articles of incorporation or bylaws that a member is not entitled to more than one (1) vote regardless of the amount of capital invested in or number of shares of voting stock owned by the member.

(b) The voting stock of or membership in an association may not be transferred to persons or associations that are not qualified to be members of an association organized under or governed by this chapter, and this restriction must be printed on every membership certificate and certificate of voting stock.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-30

Distribution of dividends

Sec. 30. (a) The net earnings or savings of an association from the association's marketing activities, purchasing activities, or marketing and purchasing activities that exceed the amounts needed to restore a deficit, to pay dividends on outstanding stock, or to establish or provide for additions to reserves or surplus, or both, must be distributed, unless otherwise provided by the bylaws, to the patrons of the association on a patronage basis. If provided in the bylaws, the distribution of the net earnings or savings from the marketing activities, purchasing activities, or marketing and purchasing activities that exceed the amounts needed to restore a deficit, to pay dividends on outstanding stock, or to establish or provide for additions to reserves or surplus, or both, may be made at different rates for members and nonmembers, or may be restricted only to members, or only to members and those patrons with whom the association has contracted to pay patronage refunds, but all the distributions must be made on a patronage basis.

(b) If the reserves or surplus of an association are distributed at any time, the reserves or surplus must be distributed on a patronage basis as provided by the bylaws of the association.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-31

Redemption of stock

Sec. 31. (a) An association organized with capital stock may, at any time, unless otherwise provided in the association's articles of incorporation or bylaws, and except when the debts of the association exceed fifty percent (50%) of the assets:

- (1) redeem, purchase, or acquire the association's outstanding common stock at the book value, as conclusively determined by the association's board of directors, but not to exceed par; and
- (2) pay for the stock in cash within one (1) year.

(b) An association organized with capital stock may, at any time, unless otherwise provided in its articles of incorporation or bylaws, redeem, purchase, or acquire the association's outstanding preferred

stock. However, an association may not redeem or purchase the association's outstanding preferred stock:

- (1) when the association is insolvent; or
- (2) when the redemption or purchase would render the association insolvent or would reduce the net assets of the association below the total amount payable to the holders of stock having prior or equal rights to the assets of the association upon involuntary dissolution.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-32

Issuance of various classes of stock

Sec. 32. (a) If the board of directors of an association, under authority expressly vested in the board by the articles of incorporation, adopts a resolution that determines and states the relative rights, preferences, limitations, or restrictions of any class or classes of shares, or of any series of any class or classes, the association may not issue any of such shares unless the association first presents in duplicate in the office of the secretary of state, accompanied by the fees prescribed by this chapter, a certificate signed by the secretary or assistant secretary, and verified under oath by the president or a vice president of the association, setting forth the resolution so adopted and the time and manner of its adoption.

(b) Upon presentation of a certificate under subsection (a), the secretary of state, if the secretary of state finds that the certificate conforms to law and to the articles of incorporation of the association:

- (1) shall endorse the secretary of state's approval on each copy of the certificate; and
- (2) when all fees have been paid as required by law, shall:
 - (A) file one (1) copy of the certificate in the secretary of state's office;
 - (B) issue the secretary of state's certificate of approval and filing; and
 - (C) forward to the association the secretary of state's certificate, together with the other copy of the certificate of the officers of the association bearing the endorsement of the secretary of state's approval.

After the secretary of state takes the actions under subdivisions (1) and (2), the association may issue the shares.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-33

Officers and director; charges; removal

Sec. 33. (a) A member of an association may bring charges against an officer or a director by filing the charges in writing with the secretary of the association, together with a petition that is signed by five percent (5%) of the members and that requests the removal of the officer or director.

(b) The removal of the officer or director shall be voted upon at the next regular or special meeting of the association. The association may by a vote of a majority of the members of the association remove the officer or director and fill the vacancy.

(c) The director or officer against whom the charges have been brought must:

- (1) be informed in writing of the charges before the meeting described in subsection (b); and
- (2) have an opportunity at the meeting to be heard in person or by counsel and to present witnesses.

The person or persons bringing the charges against the director or officer are entitled to the same opportunity to be heard in person or by counsel and to present witnesses.

(d) If the bylaws provide for the election of directors by districts with primary elections in each district, a petition for removal of a director must be signed by twenty percent (20%) of the members residing in the district from which the director was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. The director in question may be removed from office by a vote of the majority of the members of that district.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-34

Marketing contracts

Sec. 34. (a) An association and its members may make and execute marketing contracts requiring the members to sell, for any period that is not more than ten (10) years:

- (1) all or any specified part of the members' agricultural products; or
- (2) specified commodities;

exclusively to or through the association or any facilities to be created by the association.

(b) If a member contracts a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the association:

- (1) upon delivery; or
- (2) at any other specified time, if expressly and definitely agreed in the contract.

(c) A contract authorized under this section may provide that the association may:

- (1) sell or resell the products delivered by the association's members, with or without taking title to the products; and
- (2) pay over to the association's members the resale price, with or without pooling, actual or proportionate, after deducting all necessary selling, overhead, and other costs and expenses, including:

- (A) interest on preferred stock, not exceeding eight percent (8%) per year;

- (B) reserves for retiring the stock, if any;
- (C) other proper reserves;
- (D) interest not exceeding eight percent (8%) per year on common stock; and
- (E) any other deductions specified in the contract.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-35

Remedies for breach of contract

Sec. 35. (a) The bylaws or a marketing contract of an association may do the following:

- (1) Fix, as liquidated damages, specific amounts to be paid by the members or stockholders to the association upon the breach of any provision of the marketing contract regarding the sale, delivery, or withholding of products.
- (2) Provide that the contracting member will pay all costs, premiums for bonds, expenses, and fees if any action is brought upon the contract by the association.

A provision described in this subsection is valid and enforceable, and a clause providing for liquidated damages is enforceable and is not regarded as a penalty.

(b) If there is a breach or threatened breach of a marketing contract regarding the sale, delivery, or withholding of products by a member, the association is entitled to:

- (1) an injunction to prevent the further breach of the contract; and
- (2) a decree of specific performance of the contract.

(c) Pending the adjudication of an action under subsection (b) and upon:

- (1) filing a verified complaint showing the breach or threatened breach; and
- (2) filing a sufficient bond;

the association is entitled to a temporary restraining order and preliminary injunction against the member.

(d) Subsections (a), (b), and (c) are applicable to, and the rights and remedies described in subsections (a), (b), and (c) are available to, any corporation that is organized under any agricultural cooperative law of any other state of the United States and is admitted to do business in Indiana.

(e) A grower of agricultural products that signs a marketing agreement with a cooperative marketing association organized under this chapter is permitted to place crop mortgages on the grower's crops. However, the crop mortgages and other liens are subordinate to the right of the association to take delivery of any such crops covered by the marketing agreement. In such cases, if the mortgagee or lien holder serves proper notice on the association, the proportionate proceeds due or payable to that grower become subject to the mortgages or liens instead of the crops originally covered by the mortgages or liens. If any deficiency remains at the end of the

season, the grower is liable for the deficiency under the present practice, and the mortgagee or lienholder has the same rights against the grower for the deficiency as the grower possesses.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-36

Purchase of property or stock in another entity

Sec. 36. If an association that is organized under or governed by this chapter with capital stock purchases:

- (1) the stock;
- (2) any property; or
- (3) any interest in any property;

of any person, firm, corporation, or association, the association may discharge the obligations incurred in the purchase, wholly or in part, by exchanging for the acquired interest, shares of the association's capital stock to an amount that at par value would equal the fair market value of the stock or interest purchased, as determined by the board of directors. In that case, the transfer to the association of the stock or interest purchased must be equivalent to payment in cash for the shares of stock issued.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-37

Biennial report; contents; form; delivery

Sec. 37. (a) During April of every other year, each association organized or reorganized under this chapter shall prepare and file a biennial report setting forth the following information:

- (1) The name of the association and the state or country under whose law the association is incorporated.
- (2) The address of the association's registered office and the name of the association's registered agent at that office in Indiana.
- (3) The address of the association's principal office.
- (4) The names and business or residence addresses of the association's directors, secretary, and highest executive officer.

(b) The biennial report of each association must be:

- (1) made on a form prescribed and furnished by the secretary of state;
- (2) signed by any current officer of the association or, if the association is in the hands of a receiver or a trustee, by the receiver or trustee;
- (3) verified and affirmed subject to the penalties for perjury; and
- (4) filed in the office of the secretary of state, accompanied by the fees prescribed by law.

(c) Information in the biennial report must be current as of the date the biennial report is executed on behalf of the association.

(d) The first biennial report of the association must be delivered to the secretary of state in the second year following the calendar year in which the association was organized. Subsequent biennial reports

must be delivered to the secretary of state every second year following the year in which the last biennial report was filed.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-38

Disclosure of financial condition; offense

Sec. 38. (a) If, upon receipt of a biennial report delivered under section 37 of this chapter, the secretary of state determines or has reason to believe that the association filing the report is not disclosing the association's true financial condition or is violating this chapter, the secretary of state may require the association to disclose all material facts by:

- (1) submitting a verified audit bearing the certificate under oath of a qualified public accountant approved by the secretary of state;
- (2) replying to interrogatories; or
- (3) reporting under oath on any matters requested by the secretary of state.

(b) An officer or a director of an association who knowingly distributes, publishes, or files with the secretary of state a written report, certificate, or statement of the condition or business of the association that is false in any material respect commits a Level 6 felony.

As added by P.L.2-2008, SEC.3. Amended by P.L.158-2013, SEC.206.

IC 15-12-1-39

Application of other laws

Sec. 39. A law in conflict with this chapter may not be construed to apply to an association provided for in this chapter.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-40

Limitation on the use of the term "cooperative"

Sec. 40. A person, or a firm, a limited liability company, a corporation, or an association organized in Indiana after February 23, 1925, may not use the word "cooperative" as part of its corporate or other business name or title for cooperative activities of producers of agricultural products unless it has complied with this chapter.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-41

Membership of association in other corporations or associations

Sec. 41. An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any corporation or corporations, or association or associations, with or without capital stock, that are engaged in:

- (1) any activity in connection with the producing, marketing, selling, preserving, harvesting, drying, processing,

manufacturing, canning, packing, grading, storing, transportation, handling, or use of any:

(A) agricultural products; or

(B) byproducts of any agricultural products;

handled by the association or the association's patrons;

(2) any activity in connection with the manufacturing, assembling, selling, supplying, purchasing, hiring, transportation, or use of supplies, machinery, or equipment that the association or the association's patrons use; or

(3) the financing of any activities described in subdivision (1) or (2) or in performing or furnishing economic or educational service for persons engaged in agriculture.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-42

Joint activities with other associations

Sec. 42. (a) An association may, upon resolution adopted by the association's board of directors:

(1) enter into all necessary and proper contracts and agreements; and

(2) make all necessary and proper stipulations, agreements, and contracts and arrangements with any other cooperative corporation, association, or associations formed in Indiana or in any other state;

for the cooperative and more economical performance of all or any part of the association's business.

(b) Any two (2) or more associations may, by agreement between them:

(1) unite in employing and using; or

(2) separately employ and use;

the same personnel, methods, means, and agencies for carrying on and conducting the associations' respective businesses.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-43

Vote by existing cooperatives for governance under chapter

Sec. 43. (a) A corporation or an association organized under statutes in effect before February 23, 1925, may by a majority vote of its stockholders or members, elect to be governed by this chapter by:

(1) limiting its stockholders or membership; and

(2) adopting the other restrictions provided in this chapter.

(b) The corporation or association shall make out in duplicate a statement signed and sworn to by its directors specifying that the corporation or association has, by a majority vote of the stockholders or members:

(1) decided to accept the benefits of and be bound by this chapter; and

(2) authorized the changes.

Articles of incorporation must be filed as required in section 12 of this chapter, except that the articles of incorporation must be signed by the current members of the board of directors. The filing fee is the same as for filing an amendment to articles of incorporation.

As added by P.L.2-2008, SEC.3. Amended by P.L.86-2008, SEC.7.

IC 15-12-1-44

Breach of marketing contract; penalty; injunction

Sec. 44. A person or corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association:

- (1) organized under this chapter; or
- (2) organized under any agricultural cooperative law of any other state of the United States and admitted to do business in Indiana;

to breach the member's or stockholder's marketing contract with the association is liable to the aggrieved association in a civil suit in the penal sum of one hundred dollars (\$100) for each offense. In addition, the person or corporation shall pay to the association reasonable attorney's fees and all costs involved in the litigation or proceedings at law.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-45

Warehouse or elevator operator; breach of marketing contract; penalty; injunction

Sec. 45. (a) A person, firm, limited liability company, or corporation that:

- (1) operates a warehouse, an elevator, or other receiving place or deals in any agricultural products within Indiana; and
- (2) solicits, persuades, or permits any member of an association:
 - (A) organized under this chapter; or
 - (B) organized under any agricultural cooperative law of any other state of the United States and admitted to do business in Indiana;

to breach the member's marketing contract with the association by accepting or receiving the member's products for sale, for auction, or for display for sale, contrary to the terms of a marketing agreement of which the person, a member of the firm, the manager of the limited liability company, or an active officer or manager of the corporation has knowledge or notice;

is liable to the aggrieved association in a civil suit in the penal sum of one hundred dollars (\$100) for each offense, and the aggrieved association is entitled to an injunction against the warehouseman or other person to prevent further breaches and a multiplicity of actions on the breach.

(b) Pending the adjudication of an action under subsection (a) and upon filing:

- (1) a verified complaint showing the breach or threatened breach

of a marketing contract by reason of any acts described in subsection (a); and

(2) a sufficient bond or undertaking;

the aggrieved association is entitled to a temporary restraining order and a temporary injunction against the person, firm, limited liability company, or corporation. In addition, the warehouseman or other person, firm, limited liability company, or corporation shall pay to the association reasonable attorney's fees and all costs involved in the litigation or legal proceedings.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-46

Exemption from conspiracy and monopoly laws; legality of marketing contracts

Sec. 46. (a) An association that is organized under this chapter or that is organized under an agricultural cooperative law of another state and is admitted to do business in Indiana is not:

(1) a conspiracy or a combination in restraint of trade;

(2) an illegal monopoly; or

(3) an attempt to:

(A) lessen competition;

(B) fix prices arbitrarily; or

(C) create a combination or pool;

in violation of any Indiana law.

(b) The marketing contracts and agreements between an association described in subsection (a) and the association's members and any agreements authorized in this chapter are not:

(1) illegal;

(2) in restraint of trade; and

(3) contrary to any law enacted against pooling or combinations.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-47

Application of corporation laws; exceptions

Sec. 47. IC 23-1 and all powers and rights under IC 23-1 apply to associations organized under or governed by this chapter, except where IC 23-1 conflicts with or is inconsistent with this chapter.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-48

Secretary of state; fees

Sec. 48. (a) The secretary of state shall charge and collect for the benefit of the state the following fees:

(1) For filing with the secretary of state the articles of incorporation of an association organized or a corporation reorganized under this chapter, five dollars (\$5).

(2) For filing with the secretary of state any certificate not specified in this section, five dollars (\$5) each.

(3) For filing a biennial report, two dollars (\$2), to be paid

biennially.

(b) Fees collected under subsection (a) shall be deposited in the state general fund.

As added by P.L.2-2008, SEC.3. Amended by P.L.106-2008, SEC.48; P.L.119-2015, SEC.1.

IC 15-12-1-49

Foreign cooperative associations; application for admission

Sec. 49. (a) Any nonprofit cooperative association organized under the agricultural cooperative law of any state of the United States other than Indiana and not admitted to do business in Indiana before March 12, 1935, must submit the following to the secretary of state at the secretary of state's office before transacting any business in Indiana:

(1) A copy of the nonprofit cooperative association's articles of incorporation, with all amendments to the articles of incorporation. The copy of the nonprofit cooperative association's articles of incorporation must be authenticated by the proper officer of the state where the nonprofit cooperative association is incorporated.

(2) An application for admission, which must contain the same information as required in the articles of incorporation of an association seeking to be incorporated under this chapter, together with any additional information that the secretary of state may require, which must include a statement of assets and liabilities as of a date not earlier than thirty (30) days before the filing of the application for admission. The information shall be submitted in triplicate originals on forms prescribed by the secretary of state.

(3) The prescribed fees.

(b) An application submitted under subsection (a) must be signed and verified under oath by:

(1) the president or vice president; and

(2) the secretary or assistant secretary;

of the association.

(c) The fee for a filing under this section is ten dollars (\$10).

As added by P.L.2-2008, SEC.3. Amended by P.L.119-2015, SEC.2.

IC 15-12-1-50

Foreign cooperative associations; certificate of admission

Sec. 50. (a) If the secretary of state finds that an application for admission submitted under section 49 of this chapter conforms to law and that all patrons of the association who reside in Indiana will be entitled to receive substantially the same rights, benefits, and privileges from the association as though the association were incorporated under this chapter, the secretary of state shall:

(1) endorse the secretary of state's approval upon each of the triplicate copies; and

(2) if all fees required by law have been paid:

(A) file one (1) copy of the application for admission and an authenticated copy of the articles of incorporation of the association in the secretary of state's office; and

(B) issue to the association an original and a duplicate certificate of admission, accompanied by two (2) copies of the application bearing the endorsement of the secretary of state's approval.

(b) A certificate of admission issued under subsection (a) must set forth the following:

(1) The name of the association, the state where the association was incorporated, and the location of the association's principal office in that state.

(2) The character of business the association is authorized to transact in Indiana.

(3) The amount of the association's authorized capital stock, if any, and the amount of capital stock issued and outstanding.

(4) The amount of the fee paid for the association's admission.

(5) The address of the corporation in Indiana.

(6) The name and address of the association's resident agent in Indiana for service of legal process.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-51

Admitted foreign cooperative associations; rights and restrictions

Sec. 51. Any nonprofit cooperative association organized under the agricultural cooperative law of another state and admitted to do business in Indiana:

(1) may transact business as set forth in the certificate of admission issued to the association by the secretary of state;

(2) has the same rights, privileges, powers, and remedies at law or in equity possessed by an association incorporated under this chapter; and

(3) is subject to the same liabilities, restrictions, duties, and penalties imposed on an association incorporated under this chapter.

As added by P.L.2-2008, SEC.3.

IC 15-12-1-52

Governance of certificates of stock and membership

Sec. 52. Certificates of stock or of membership issued, transferred, redeemed, or canceled by an association are governed by this chapter and the articles of incorporation and bylaws of the association.

As added by P.L.2-2008, SEC.3.