

1 **Senate Bill No. 504**

2 (By Senators Miller, Williams and D. Hall)

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4 [Introduced March 12, 2013; referred to the Committee on
5 Agriculture and Rural Development; and then to the Committee on
6 the Judiciary.]
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11 A BILL to repeal §19-4-26 and §19-4-30 of the Code of West
12 Virginia, 1931, as amended; and to amend and reenact §19-4-1,
13 §19-4-2, §19-4-6, §19-4-10, §19-4-19, §19-4-21 and §19-4-29 of
14 said code, all relating to cooperative associations;
15 permitting three or more persons producing agricultural
16 products to form a profit or nonprofit cooperative
17 association; providing that certain credit union provisions
18 apply; permitting the association be managed by not fewer than
19 three directors; requiring cooperative associations file
20 annual reports with the Secretary of State; requiring the term
21 cooperative or its abbreviation be in the name of the
22 association; prohibiting a farmer's marketing association from
23 using the term cooperative or its abbreviation as part of its

1 name unless certain conditions are met; stating that the
2 business corporation or nonprofit corporation laws apply to
3 cooperatives; clarifying definitions; and clarifying articles
4 of incorporation and directors of cooperative associations.

5 *Be it enacted by the Legislature of West Virginia:*

6 That §19-4-26 and §19-4-30 of the Code of West Virginia, 1931,
7 as amended, be repealed; and that §19-4-1, §19-4-2, §19-4-6,
8 §19-4-10, §19-4-19, §19-4-21 and §19-4-29 of said code be amended
9 and reenacted, all to read as follows:

10 **ARTICLE 4. COOPERATIVE ASSOCIATIONS.**

11 **§19-4-1. Definitions.**

12 ~~The following words as used in this article, unless the~~
13 ~~context otherwise requires or a different meaning is specifically~~
14 ~~prescribed, shall have the following meanings~~ As used in this
15 article:

16 (a) "Agricultural products" mean horticultural, viticultural,
17 forestry, dairy, livestock, poultry, bee and any farm products, in
18 their natural form or processed;

19 (b) "Member" ~~actual members of associations without capital~~
20 ~~stock and holders of common stock in associations~~ means a member of
21 an association without capitol stock, and a holder of common stock
22 in an association organized with capital stock;

23 (c) ~~"Association,"~~ "Cooperative association" or "association"

1 means any corporation organized under ~~the provisions of this~~
2 article. ~~Such~~ Each association shall ~~be deemed nonprofit also~~
3 comply with the business corporation provisions of chapter
4 thirty-one-d or the nonprofit corporation provisions of chapter
5 thirty-one-e of this code.

6 **§19-4-2. Who may organize.**

7 ~~Five~~ Three or more persons engaged in the production of
8 agricultural products may form a ~~nonprofit,~~ cooperative association
9 ~~and/or agricultural credit association,~~ with or without capital
10 stock. ~~and five~~ Three or more cooperative associations may form an
11 agricultural credit association, ~~and/or cooperative association,~~
12 with or without capital stock, under ~~the provisions of this article~~
13 and in compliance with the credit union provisions of chapter
14 thirty-one-c of this code.

15 **§19-4-6. Articles of incorporation.**

16 Each association formed under this article ~~must~~ shall prepare
17 and file articles of incorporation, setting forth:

18 (a) The name of the association, which shall include the words
19 "cooperative," "co-operative," or "co-op," and words or
20 abbreviations designating a corporation;

21 (b) The purposes for which it is formed;

22 (c) The place where its principal business will be transacted;

23 (d) The period, if any prescribed, for the duration of the

1 corporation;

2 (e) The number of incorporators which shall not be less than
3 ~~five~~ three, the number of directors which shall not be less than
4 ~~five~~ three and may be any number in excess thereof, or it may be
5 set forth that the number of directors shall be fixed by the
6 bylaws;

7 (f) If organized without capital stock, whether the property
8 rights and interest of each member ~~be~~ are equal or unequal; and if
9 unequal, the general ~~rule or~~ rules applicable to ~~all members, or~~
10 the classes of members, ~~by which the~~ whose property rights and
11 interest, ~~respectively, of each member may and shall be~~ are
12 determined and fixed; and provision for the admission of new
13 members who ~~shall, or shall not be,~~ may be entitled to share in the
14 property of the association with the old members, in accordance
15 with ~~such~~ the general ~~rule or~~ rules. This provision ~~or paragraph~~ of
16 the articles of incorporation shall not be altered, amended, or
17 repealed except by the written consent or vote of three fourths of
18 the members;

19 (g) If organized with capital stock and authorized to issue
20 only one class of stock, the total number of shares of stock which
21 the association shall have authority to issue, ~~and~~ including: (1)
22 The par value of each of ~~such~~ the shares; or (2) a statement that
23 all ~~such~~ the shares are to be without par value; ~~or,~~

1 (h) If the association is ~~to be~~ authorized to issue more than
2 one class of stock, the total number of shares of all classes of
3 stock which the association ~~shall have authority to~~ may issue, and
4 including: (1) The number of shares of each class ~~thereof~~ that ~~are~~
5 ~~to~~ have a par value and the par value of each share ~~of each such~~ by
6 class; ~~and/or~~ (2) the number of ~~such~~ shares that are to be without
7 par value; and (3) a statement of ~~all or any of the designations~~
8 ~~and~~ the powers, preferences, ~~and~~ rights, ~~and~~ the qualifications,
9 limitations or restrictions ~~thereof, which~~ that are permitted by
10 ~~the provisions of~~ section thirteen of this article in respect of
11 any to a class or classes of stock of the association and the
12 ~~fixing of which~~ fixed by the articles of incorporation ~~is desired,~~
13 ~~and an express grant of such authority as it may then be desired to~~
14 ~~grant to the board of directors to fix~~ or by resolution or
15 ~~resolutions any thereof that may be desired but which shall not be~~
16 ~~fixed by such articles;~~ of the board of directors;

17 (i) The articles ~~must be subscribed by the incorporators and~~
18 ~~acknowledged by one of them before an officer authorized by the law~~
19 ~~of this state to take and certify acknowledgments of deeds and~~
20 ~~conveyances; and shall be~~ shall be signed, notarized and filed in
21 accordance with the provisions of the ~~general~~ business or nonprofit
22 corporation ~~law~~ laws of this state; ~~and, when so filed, such~~
23 ~~articles of incorporation, or certified copies thereof, shall be~~

1 ~~received in all the courts of this state and other places as prima~~
2 ~~facie evidence of the facts contained therein and of the due~~
3 ~~incorporation of such association;~~

4 ~~The Secretary of State shall provide suitable application~~
5 ~~blanks and supply them on request;~~

6 ~~(h) (j) The articles may also contain any provisions which the~~
7 ~~incorporators may choose to insert for the management of the~~
8 ~~business and for the conduct of the affairs of the association, and~~
9 ~~any provisions creating, managing, defining, limiting and/or or~~
10 ~~regulating the powers and affairs of the association, the~~
11 ~~directors, and the stockholders, or any class of the stockholders~~
12 ~~or, in the case of an association which is to have no capital~~
13 ~~stock, of the members of such the association. ~~Provided, That such~~~~
14 ~~provisions are not contrary to the laws of the state.~~

15 **§19-4-10. Directors.**

16 ~~(a) The affairs of the association shall be managed by a board~~
17 ~~of not less than ~~five~~ three directors, elected by the members or~~
18 ~~stockholders. ~~from their own number.~~~~

19 ~~(b) The bylaws may provide that the territory in which the~~
20 ~~association has members shall be divided into districts and that~~
21 ~~the directors be elected ~~according to such districts,~~ either~~
22 ~~directly or by district delegates elected by the members in that~~
23 ~~district. ~~In such a case the~~ The bylaws shall specify the number~~

1 of directors to be elected by each district, the manner ~~and the~~
2 ~~method or~~ of reapportioning the directors and the method of
3 redistricting the territory covered by the association. The bylaws
4 may provide that primary elections shall be held in each district
5 to elect the directors apportioned to ~~such~~ the districts and that
6 the results of all ~~such~~ the primary elections may be ratified ~~by~~
7 during the next regular meeting of the association or may be
8 considered final. ~~as to the association.~~

9 (c) The bylaws may provide that one or more directors may be
10 appointed by ~~any~~ a public official, ~~or~~ commission or by the other
11 directors. ~~selected by the members or their delegates.~~ ~~Such~~ These
12 public directors shall represent ~~primarily~~ the interest of the
13 general public in ~~such~~ the associations. The public directors ~~so~~
14 ~~appointed~~ need not be members or stockholders of the association,
15 but shall have the same powers and rights as other directors. ~~Such~~
16 The directors shall not number more than one fifth of the entire
17 number of directors.

18 (d) An association may provide a fair remuneration for the
19 time actually spent by its officers and directors in its service
20 and for the service of the members of its executive committee. No
21 director, during the term of his or her office, shall be a party to
22 a contract for profit with the association differing ~~in any way~~
23 from the ~~business relations~~ contractual terms accorded regular

1 members or holders of common stock of the association. ~~or others,~~
2 ~~or differing from terms generally current in that district.~~

3 (e) The bylaws may provide that no director, except the
4 president and secretary, shall occupy ~~any~~ a position in the
5 association on regular salary or substantially full-time pay.

6 (f) The bylaws may provide for an executive committee and may
7 allot to ~~such~~ the committee all the functions and powers of the
8 board of directors, subject to the general direction and control of
9 the board.

10 (g) When a vacancy on the board of directors occurs other than
11 by expiration of term, the remaining members of the board, by a
12 majority vote, shall fill the vacancy, unless the bylaws provide
13 for an election of directors by district. In ~~such a~~ that case the
14 board of directors shall immediately call a special meeting of the
15 members or stockholders in that district to fill the vacancy.

16 **§19-4-19. Annual reports.**

17 Each association formed under this article shall prepare an
18 annual report on forms ~~to be furnished by the dean of the college~~
19 ~~of agriculture at Morgantown, containing the name of the~~
20 ~~association, its principal place of business, and a general~~
21 ~~statement of its business operations during the fiscal year,~~
22 ~~showing the amount of capital stock paid up and the number of~~
23 ~~stockholders, if a stock association, or the number of members, if~~

1 ~~a nonstock association; and file one copy of such report with such~~
2 ~~dean as information for the sole use of such college, and one copy~~
3 ~~in the office of the secretary of the association, and the latter~~
4 ~~copy shall be open to inspection by members of the association at~~
5 ~~all times during office hours~~ provided by and filed with the
6 Secretary of State pursuant to the requirements of section two-a,
7 article one, chapter fifty-nine of this code.

8 **§19-4-21. Use of term "cooperative."**

9 (a) A cooperative association formed pursuant to this article
10 shall include the words "cooperative", "co-operative" or "co-op" in
11 the name, and the words or abbreviations designating a corporation.

12 ~~No person, firm, corporation or association, hereafter~~
13 ~~organized or hereafter applying to do business in this state as a~~

14 (b) A farmers' marketing association for the sale of farm products
15 shall be entitled to use the word "cooperative" is prohibited from
16 using the terms identified in subsection (a) of this section as
17 part of its corporate or other business name or title, unless it
18 has complied with the provisions of this article.

19 **§19-4-29. Application of business corporation laws; nonprofit**
20 **corporation laws.**

21 The provisions of the ~~general~~ business corporation laws in
22 chapter thirty-one-d or the nonprofit corporation laws of this
23 state in chapter thirty-one-e of this code and all powers and

1 rights thereunder shall apply to the associations organized under
2 this article and may be used by them, except ~~where such~~ when the
3 provisions are in conflict with or inconsistent with the express
4 provisions of this article.

(NOTE: The purpose of this bill is to permit three or more persons producing agricultural products to form a profit or nonprofit cooperative association. The bill requires that certain credit union provisions apply. The bill permits the association be managed by not fewer than three directors. The bill requires cooperative associations file annual reports with the Secretary of State. The bill requires the term "cooperative" or its abbreviation be in the name of the association unless certain conditions are met. The bill prohibits a farmer's marketing association from using the term "cooperative" or its abbreviation as part of its name. The bill states that the business corporation or nonprofit corporation laws apply to cooperatives. The bill clarifies definitions. The bill clarifies articles of incorporation and directors of cooperative associations.

The bill repeals §19-4-26 and §19-4-30.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)