

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 352

(By Senator Walters)

[Originating in the Committee on
Natural Resources;
reported March 1, 2015.]

A BILL to amend and reenact §19-4-1, §19-4-2, §19-4-3, §19-4-4, §19-4-5, §19-4-13, §19-4-16 and §19-4-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24A-1-3 of said code, all relating to cooperative associations; clarifying definitions; expanding scope of cooperative associations to goods and services, including recycling; limiting scope of recycling cooperatives; expanding membership of cooperative associations; and revising exemptions for motor carriers to allow nonprofit recycling cooperatives.

Be it enacted by the Legislature of West Virginia:

That §19-4-1, §19-4-2, §19-4-3, §19-4-4, §19-4-5, §19-4-13, §19-4-16 and §19-4-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24A-1-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 4. COOPERATIVE ASSOCIATIONS.

§19-4-1. Definitions.

1 As used in this article:

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

4 (b) "Goods and services" mean food and beverages, arts and crafts, woodworking and

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1 furniture-making, and recycling, composting and repurposing materials.

2 ~~(b)~~ (c) "Member" means a member of an association without capitol stock and a holder of
3 common stock in an association organized with capital stock;

4 ~~(e)~~ (d) "Cooperative association" or "association" means any corporation organized under
5 this article. Each association shall also comply with the requisite business corporation provisions
6 of chapter thirty-one-d or thirty-one-f of this code, or the nonprofit corporation provisions of chapter
7 thirty-one-e of this code.

8 Except in any wasteshed of the state in which one or more mixed waste resource recovery
9 facilities has been permitted, a recycling cooperative association may be organized as a nonprofit
10 corporation pursuant to chapter thirty-one-e of this code. Any such recycling cooperative association
11 is limited to owning or using one motor vehicle for the collection and transportation of recyclable
12 goods. The recyclable goods must be generated by members of the recycling cooperative association.

13 (e) "Qualified person" means a person who is engaged in the producing, preserving,
14 harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, utilizing,
15 marketing, financing, selling, distributing, shipping, procuring or providing of agricultural products,
16 or other goods and services, or the byproducts thereof.

17 (f) "Qualified activity" means those engaged in the producing, preserving, harvesting, drying,
18 processing, manufacturing, canning, packing, grading, storing, handling, utilizing, marketing,
19 financing, selling, distributing, shipping, procuring or providing of agricultural products, or other
20 goods and services, or the byproducts thereof.

21 **§19-4-2. Who may organize.**

22 Three or more qualified persons engaged in the production of agricultural products or the
23 provision of goods and services may form a cooperative association with or without capital stock.

24 Three or more cooperative associations may form an agricultural credit association, with or without
25 capital stock, under this article and in compliance with the credit union provisions of chapter
26 thirty-one-c of this code.

27 **§19-4-3. Purposes.**

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1 A cooperative association may be organized to engage in ~~any activity~~ one or more qualified
2 activities in connection with the marketing or selling of ~~the~~ agricultural products or the goods and
3 services of its members or those purchased from other persons; ~~or with the harvesting, preserving,~~
4 ~~drying, processing, canning, packing, grading, storing, handling, shipping or utilization thereof, or~~
5 ~~the manufacturing or marketing of the by-products thereof;~~ or in connection with the manufacturing,
6 selling or supplying to its members of machinery, equipment or supplies; or in securing and
7 disseminating market information; or in the financing directly, through agricultural credit
8 associations, and/or otherwise, the above-enumerated activities; or in any one or more of the
9 activities specified herein. An agricultural credit association may be organized hereunder to finance
10 qualified persons ~~engaged in the production of agricultural products and/or~~ or to finance any
11 cooperative association, or both, whether formed under the laws of this or any other state.

12 **§19-4-4. Powers.**

13 A cooperative association shall have the following powers:

14 (a) To engage in any qualified activity in connection with ~~the marketing, selling, preserving,~~
15 ~~harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling or~~
16 ~~utilization of any agricultural products~~ or goods and services provided; produced or delivered to it
17 ~~by its members or purchased or received by consignment from other persons, or the manufacturing~~
18 ~~or marketing of the by-products thereof;~~ or any activity in connection with the purchase, hiring or
19 use by its members of supplies, machinery or equipment; or in securing and disseminating market
20 information; or in the financing, directly, through agricultural credit associations, ~~and/or otherwise,~~
21 any ~~such~~ qualified activities; ~~or in any one or more of the activities specified in this section.~~
22 ~~Provided, however, That all~~ All transactions with nonmembers shall be on terms fixed by the
23 association and ~~such~~ nonmembers shall not otherwise participate in any benefits derived from such
24 transactions;

25 (b) To borrow money without limitation as to amount of corporate indebtedness or liability,
26 and to make advance payments and advances to members; to execute, issue, draw, make, accept,
27 endorse and guarantee, without limitation, promissory notes, bills of exchange, drafts, warrants,

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1 certificates, mortgages, and any other form of obligation or negotiable or transferable bills of any
2 kind; to become the surety, guarantor, maker, and/or endorser for accommodation or otherwise of
3 bills, notes, securities and other evidences of debt of any association or person, anything in any other
4 statutes or law of this state to the contrary notwithstanding;

5 (c) To act as the agent or representative of any member or members in any of the above-
6 mentioned activities;

7 (d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership
8 in, and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the
9 retirement or redemption of, shares of the capital stock or bonds of any corporation or association
10 engaged in any related activity or in the warehousing or handling or marketing of any of the products
11 handled by the association;

12 (e) To establish reserves and to invest the funds thereof in bonds or in such other property
13 as may be provided in the bylaws;

14 (f) To buy, hold and exercise all privileges of ownership over real or personal property as
15 may be necessary or convenient for the conduct and operation of any of the business of the
16 association, or incidental thereto;

17 (g) To establish, secure, own and develop patents, trademarks and copyrights;

18 (h) To do each and every thing necessary, suitable or proper for the accomplishment of any
19 one of the purposes or the attainment of any one or more of the subjects herein enumerated, or
20 conducive to or ~~expedient for~~ not contrary to the interest or benefit of the association; and to contract
21 accordingly; and, in addition, to exercise and possess all powers, rights and privileges necessary or
22 incidental to the purposes for which the association is organized or to the activities in which it is
23 engaged, and any other rights, powers, and privileges granted by the laws of this state to ordinary
24 corporations, except such as are inconsistent with the purposes of this article; and to do any such
25 thing anywhere. An agricultural credit association shall have all of the powers given to a cooperative
26 association under the provisions of subdivision (b), section four of this article, and in general shall
27 have power to do and perform any act or thing, not inconsistent with law, which may be appropriate

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1 to promote and attain the objects and purposes of such credit association.

2 **§19-4-5. Members.**

3 (a) Under the terms and conditions prescribed in the bylaws adopted by it, a cooperative
4 association may admit as members, or issue common stock to, only qualified persons, employees,
5 volunteers and persons engaged in qualified activities, including the production, sale, creation,
6 distribution, aggregation or cooperative marketing of the agricultural products or the goods and
7 services to be handled by or through the association, and any lessor or landlord who receives as rent
8 all or any part of ~~the~~ a crop raised on the leased premises; and under the terms and conditions
9 prescribed in the bylaws adopted by it, an agricultural credit association may admit any person as a
10 member.

11 (b) If a member of a nonstock association be other than a natural person, ~~such~~ the member
12 may be represented by an individual, associate, officer or manager or member thereof, duly
13 authorized in writing.

14 (c) One association organized hereunder may become a member or stockholder of any other
15 association or associations organized under this article or similar laws of any state.

16 **§19-4-13. Stock; membership certificate; voting; liability; limitations on transfer and**
17 **ownership.**

18 (a) When a member of an association established without capital stock has paid his or her
19 membership fee in full, he or she shall receive a certificate of membership. An association shall
20 have power to issue one or more classes of stock, or one or more series of stock within any class
21 thereof, any or all of which classes may be of stock with par value or stock without par value, with
22 such voting powers, full or limited, or without voting powers and in such series, and with such
23 designations, preferences and relative, participating, optional or other special rights, and
24 qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of
25 incorporation, or in any amendment thereto, or in the resolution or resolutions providing for the issue
26 of such stock adopted by the board of directors pursuant to authority expressly vested in it by the
27 provisions of the articles of incorporation or of any amendment thereto.

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1 **(b)** No association shall issue stock to a member until it has been fully paid for. The
2 promissory notes of the members may be accepted by the association as full or partial payment. The
3 association shall hold the stock as security for the payment of the note; but such retention as security
4 shall not affect the member's right to vote.

5 **(c)** No member shall be liable for the debts of the association to an amount exceeding the sum
6 remaining unpaid on his or her membership fee or his or her subscription to the capital stock,
7 including any unpaid balance on any promissory notes given in payment thereof.

8 **(d)** An association in its bylaws, may limit the amount of common stock which one member
9 may own. No member or stockholder shall be entitled to more than one vote, regardless of the
10 number of shares of common stock owned by him or her.

11 **(e)** Any association organized with stock under this article may issue preferred stock, with
12 or without the right to vote. Such stock may be sold to any person, member or nonmember, and may
13 be redeemable or retireable by the association on such terms and conditions as may be provided for
14 by the articles of incorporation and printed on the face of the certificate. The bylaws shall prohibit
15 the transfer of the common stock of the association to persons who are not qualified persons, or
16 organizations that are not engaged in qualified activities ~~not engaged in the production or cooperative~~
17 ~~marketing of the agricultural products~~ handled by the association, ~~and/or~~ or to persons or
18 organizations that are not members of credit associations financing such products; and such
19 restrictions shall be printed upon every certificate of stock subject thereto.

20 **(f)** Other kinds and classes of stock may be issued in compliance with the provisions of the
21 articles of incorporation, the terms of the bylaws, or special resolutions of the board of directors.

22 **(g)** The association may, at any time, as specified in the bylaws, except when the debts of the
23 association exceed fifty percent of the assets thereof, buy in or purchase its common stock at the
24 book value thereof, as conclusively determined by the board of directors, and pay for it in cash
25 within one year thereafter.

26 **§19-4-16. Marketing contract.**

27 The association and its members may take and execute marketing contracts, requiring the

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1 members to sell, for any period of time, not over twenty years, all or any specified part of their
2 agricultural products, goods and services or specified commodities exclusively to or through the
3 association, or any facilities to be created by the association. If they contract a sale to the association,
4 it shall be conclusively held that title to the products, goods and services passes absolutely and
5 unreservedly, except for recorded liens, to the association upon delivery, or at any other specified
6 time if expressly and definitely agreed in such contract. The contract may provide, among other
7 things, that the association may sell or resell the products, goods and services delivered by its
8 members, with or without taking title thereto, and pay over to its members the resale price, after
9 deducting all necessary selling, overhead and other costs and expenses, including interest or
10 dividends on stock, not exceeding eight percent per annum, and reserves for retiring the stock, if any;
11 and any other proper reserves; or any other deductions.

12 **§19-4-22. Interest in other corporations or associations; warehouse receipts as collateral.**

13 (a) An association may organize, form, operate, own, control, have an interest in, own stock
14 of, or be a member of any other corporation or corporations, with or without capital stock, and
15 engaged in ~~preserving, drying, processing, canning, packing, storing, financing, handling, shipping,~~
16 ~~utilizing, manufacturing, marketing or selling~~ qualified activities regarding the agricultural products,
17 goods and services handled by the association, or the by-products thereof.

18 (b) If such corporations are warehousing corporations, they may issue legal warehouse
19 receipts to the association against the commodities, goods and services delivered by it, or to any
20 other person, and such legal warehouse receipts shall be considered as adequate collateral to the
21 extent of the usual and current value of the commodity represented thereby. In case such warehouse
22 is licensed or licensed and bonded under the laws of this or any other state or the United States, its
23 warehouse receipt delivered to the association on commodities of the association or its members, or
24 delivered by the association or its members, shall not be challenged or discriminated against because
25 of ownership or control, wholly or in part, by the association.

26 **ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.**

27 **§24A-1-3. Exemptions from chapter.**

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1 The provisions of this chapter, except where specifically otherwise provided, do not apply
2 to:

3 (1) Motor vehicles operated exclusively in the transportation of United States mail or in the
4 transportation of newspapers: *Provided*, That the vehicles and their operators are subject to the
5 safety rules promulgated by the commission;

6 (2) Motor vehicles owned and operated by the United States of America, the State of West
7 Virginia or any county, municipality or county board of education, urban mass transportation
8 authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or
9 by any of their departments, and any motor vehicles operated under a contract with a county board
10 of education exclusively for the transportation of children to and from school or other legitimate
11 transportation for the schools as the commission may specifically authorize;

12 (3) Motor vehicles used exclusively in the transportation of agricultural or horticultural
13 products, livestock, poultry and dairy products from the farm or orchard on which they are raised or
14 produced to markets, processing plants, packing houses, canneries, railway shipping points and cold
15 storage plants, and in the transportation of agricultural or horticultural supplies to farms or orchards
16 where they are to be used: *Provided*, That the vehicles that are exempted by this subdivision and are
17 also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their
18 operators are subject to the safety and insurance rules promulgated by the commission;

19 (4) Motor vehicles used exclusively in the transportation of human or animal excreta;

20 (5) Motor vehicles used exclusively in ambulance service or duly chartered rescue squad
21 service;

22 (6) Motor vehicles used exclusively for volunteer fire department service;

23 (7) Motor vehicles used exclusively in the transportation of coal from mining operations to
24 loading facilities for further shipment by rail or water carriers: *Provided*, That the vehicles and their
25 operators are subject to the safety rules promulgated by the commission and the vehicles that are
26 exempted by this subdivision and are also operated by common carriers by motor vehicle or contract
27 carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the

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1 commission;

2 (8) Motor vehicles used by petroleum commission agents and oil distributors solely for the
3 transportation of petroleum products and related automotive products when the transportation is
4 incidental to the business of selling the products: *Provided*, That the vehicles and their operators are
5 subject to the safety rules promulgated by the commission and the vehicles that are exempted by this
6 subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor
7 vehicle, and their operators are subject to the insurance rules promulgated by the commission;

8 (9) Motor vehicles owned, leased by or leased to any person and used exclusively for the
9 transportation of processed source-separated recycled materials, generated by commercial,
10 institutional and industrial customers, transported free of charge or by a nonprofit recycling
11 cooperative association in accordance with subdivision (1), subsection (d), section one, article four,
12 chapter nineteen of this code from the customers to a facility for further processing: *Provided*, That
13 the vehicles and their operators shall be subject to the safety rules promulgated by the commission
14 and the vehicles that are exempted by this subdivision and are also operated by common carriers by
15 motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance
16 rules promulgated by the commission;

17 (10) Motor vehicles specifically preempted from state economic regulation of intrastate
18 motor carrier operations by the provisions of 49 U. S. C. §14501 as amended by title I, section 103
19 of the federal Interstate Commerce Commission Termination Act of 1995: *Provided*, That the
20 vehicles and their operators are subject to the safety regulations promulgated by the commission and
21 the vehicles that are exempted by this subdivision and are also operated by common carriers by
22 motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance
23 rules promulgated by the commission;

24 (11) Motor vehicles designated by the West Virginia Bureau of Senior Services for use and
25 operation by local county aging programs: *Provided*, That the vehicles and their operators are
26 subject to the safety rules promulgated by the commission;

27 (12) Motor vehicles designated by the West Virginia Division of Public Transit operated by

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1 organizations that receive federal grants from the federal transit administration: *Provided*, That the
2 vehicles and their operators are subject to the safety and insurance rules promulgated by the
3 commission.