

1 **ENROLLED**

2 **Senate Bill No. 504**

3 (BY SENATORS MILLER, WILLIAMS AND D. HALL)

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5 [Passed April 11, 2013; in effect ninety days from passage.]
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10 AN ACT to repeal §19-4-26 and §19-4-30 of the Code of West
11 Virginia, 1931, as amended; and to amend and reenact §19-4-1,
12 §19-4-2, §19-4-6, §19-4-10, §19-4-19, §19-4-21 and §19-4-29 of
13 said code, all relating to cooperative associations;
14 permitting three or more persons producing agricultural
15 products to form a profit or nonprofit cooperative
16 association; providing that certain credit union provisions
17 apply; permitting the association be managed by not fewer than
18 three directors; requiring cooperative associations file
19 annual reports with the Secretary of State; requiring the term
20 cooperative or its abbreviation be in the name of the
21 association; prohibiting a farmer's marketing association from
22 using the term cooperative or its abbreviation as part of its
23 name unless certain conditions are met; stating that the

1 business corporation or nonprofit corporation laws apply to
2 cooperatives; clarifying definitions; and clarifying articles
3 of incorporation and directors of cooperative associations.

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

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6 as amended, be repealed; and that §19-4-1, §19-4-2, §19-4-6,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

9 **ARTICLE 4. COOPERATIVE ASSOCIATIONS.**

10 **§19-4-1. Definitions.**

11 As used in this article:

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

15 (b) "Member" means a member of an association without capital
16 stock, and a holder of common stock in an association organized
17 with capital stock;

18 (c) "Cooperative association" or "association" means any
19 corporation organized under this article. Each association shall
20 also comply with the business corporation provisions of chapter
21 thirty-one-d or the nonprofit corporation provisions of chapter
22 thirty-one-e of this code.

23 **§19-4-2. Who may organize.**

1 Three or more persons engaged in the production of
2 agricultural products may form a cooperative association with or
3 without capital stock. Three or more cooperative associations may
4 form an agricultural credit association, with or without capital
5 stock, under this article and in compliance with the credit union
6 provisions of chapter thirty-one-c of this code.

7 **§19-4-6. Articles of incorporation.**

8 Each association formed under this article shall prepare and
9 file articles of incorporation, setting forth:

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

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

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

15 (d) The period, if any prescribed, for the duration of the
16 corporation;

17 (e) The number of incorporators which shall not be less than
18 three, the number of directors which shall not be less than three
19 and may be any number in excess thereof, or it may be set forth
20 that the number of directors shall be fixed by the bylaws;

21 (f) If organized without capital stock, whether the property
22 rights and interest of each member are equal or unequal; and if
23 unequal, the general rules applicable to the classes of members

1 whose property rights and interest are determined and fixed; and
2 provision for the admission of new members who may be entitled to
3 share in the property of the association with the old members, in
4 accordance with the general rules. This provision of the articles
5 of incorporation shall not be altered, amended, or repealed except
6 by the written consent or vote of three fourths of the members;

7 (g) If organized with capital stock and authorized to issue
8 only one class of stock, the total number of shares of stock which
9 the association shall have authority to issue, including: (1) The
10 par value of each of the shares; or (2) a statement that all the
11 shares are to be without par value;

12 (h) If the association is authorized to issue more than one
13 class of stock, the total number of shares of all classes of stock
14 which the association may issue, including: (1) The number of
15 shares of each class that have a par value and the par value of
16 each share by class; (2) the number of shares that are to be
17 without par value; and (3) a statement of the powers, preferences,
18 rights, qualifications, limitations or restrictions that are
19 permitted by section thirteen of this article in respect to a class
20 of stock fixed by the articles of incorporation or by resolution of
21 the board of directors;

22 (i) The articles shall be signed, notarized and filed in
23 accordance with the provisions of the business or nonprofit

1 corporation laws of this state;

2 (j) The articles may also contain any provisions managing,
3 defining, limiting or regulating the powers and affairs of the
4 association, the directors, the stockholders, or members of the
5 association.

6 **§19-4-10. Directors.**

7 (a) The affairs of the association shall be managed by a board
8 of not less than three directors, elected by the members or
9 stockholders.

10 (b) The bylaws may provide that the territory in which the
11 association has members shall be divided into districts and that
12 the directors be elected either directly or by district delegates
13 elected by the members in that district. The bylaws shall specify
14 the number of directors to be elected by each district, the manner
15 of reapportioning the directors and the method of redistricting the
16 territory covered by the association. The bylaws may provide that
17 primary elections shall be held in each district to elect the
18 directors apportioned to the districts and that the results of all
19 the primary elections may be ratified during the next regular
20 meeting of the association or may be considered final.

21 (c) The bylaws may provide that one or more directors may be
22 appointed by a public official, commission or by the other
23 directors. These public directors shall represent the interest of

1 the general public in the associations. The public directors need
2 not be members or stockholders of the association, but shall have
3 the same powers and rights as other directors. The directors shall
4 not number more than one fifth of the entire number of directors.

5 (d) An association may provide a fair remuneration for the
6 time actually spent by its officers and directors in its service
7 and for the service of the members of its executive committee. No
8 director, during the term of his or her office, shall be a party to
9 a contract for profit with the association differing from the
10 contractual terms accorded regular members or holders of common
11 stock of the association.

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

15 (f) The bylaws may provide for an executive committee and may
16 allot to the committee all the functions and powers of the board of
17 directors, subject to the general direction and control of the
18 board.

19 (g) When a vacancy on the board of directors occurs other than
20 by expiration of term, the remaining members of the board, by a
21 majority vote, shall fill the vacancy, unless the bylaws provide
22 for an election of directors by district. In that case the board
23 of directors shall immediately call a special meeting of the

1 members or stockholders in that district to fill the vacancy.

2 **§19-4-19. Annual reports.**

3 Each association formed under this article shall prepare an
4 annual report on forms provided by and filed with the Secretary of
5 State pursuant to the requirements of section two-a, article one,
6 chapter fifty-nine of this code.

7 **§19-4-21. Use of term "cooperative."**

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

11 (b) A farmers' marketing association for the sale of farm
12 products is prohibited from using the terms identified in
13 subsection (a) of this section as part of its corporate or other
14 business name or title, unless it has complied with this article.

15 **§19-4-29. Application of business corporation laws; nonprofit**
16 **corporation laws.**

17 The provisions of the business corporation laws in chapter
18 thirty-one-d or the nonprofit corporation laws in chapter
19 thirty-one-e of this code and all powers and rights thereunder
20 shall apply to the associations organized under this article and
21 may be used by them, except when the provisions are in conflict
22 with or inconsistent with the express provisions of this article.