

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2013**



**ENROLLED**

**Senate Bill No. 504**

(BY SENATORS MILLER, WILLIAMS AND D. HALL)

[PASSED APRIL 11, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

**E N R O L L E D**

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AN ACT to repeal §19-4-26 and §19-4-30 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-4-1, §19-4-2, §19-4-6, §19-4-10, §19-4-19, §19-4-21 and §19-4-29 of said code, all relating to cooperative associations; permitting three or more persons producing agricultural products to form a profit or nonprofit cooperative association; providing that certain credit union provisions apply; permitting the association be managed by not fewer than three directors; requiring cooperative associations file annual reports with the Secretary of State; requiring the term cooperative or its abbreviation be in the name of the association; prohibiting a farmer's marketing association from using the term cooperative or its abbreviation as part of its name unless certain conditions are met; stating that the business corporation or nonprofit corporation laws apply to cooperatives; clarifying definitions; and clarifying articles of incorporation and directors of cooperative associations.

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

That §19-4-26 and §19-4-30 of the Code of West Virginia, 1931, as amended, be repealed; and that §19-4-1, §19-4-2, §19-4-6, §19-4-10, §19-4-19, §19-4-21 and §19-4-29 of said code be amended and reenacted, all to read as follows: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,  
3       viticultural, forestry, dairy, livestock, poultry, bee and any  
4       farm products, in their natural form or processed;

5       (b) “Member” means a member of an association without  
6       capitol stock, and a holder of common stock in an association  
7       organized with capital stock;

8       (c) “Cooperative association” or “association” means any  
9       corporation organized under this article. Each association  
10      shall also comply with the business corporation provisions of  
11      chapter thirty-one-d or the nonprofit corporation provisions  
12      of chapter thirty-one-e of this code.

### **§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  
3       or without capital stock. Three or more cooperative  
4       associations may form an agricultural credit association, with  
5       or without capital stock, under this article and in compliance  
6       with the credit union provisions of chapter thirty-one-c of this  
7       code.

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

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

3 (a) The name of the association, which shall include the  
4 words “cooperative,” “co-operative,” or “co-op,” and words  
5 or abbreviations designating a corporation;

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

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

9 (d) The period, if any prescribed, for the duration of the  
10 corporation;

11 (e) The number of incorporators which shall not be less  
12 than three, the number of directors which shall not be less  
13 than three and may be any number in excess thereof, or it  
14 may be set forth that the number of directors shall be fixed by  
15 the bylaws;

16 (f) If organized without capital stock, whether the  
17 property rights and interest of each member are equal or  
18 unequal; and if unequal, the general rules applicable to the  
19 classes of members whose property rights and interest are  
20 determined and fixed; and provision for the admission of new  
21 members who may be entitled to share in the property of the  
22 association with the old members, in accordance with the  
23 general rules. This provision of the articles of incorporation  
24 shall not be altered, amended, or repealed except by the  
25 written consent or vote of three fourths of the members;

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

31 (h) If the association is authorized to issue more than one  
32 class of stock, the total number of shares of all classes of  
33 stock which the association may issue, including: (1) The  
34 number of shares of each class that have a par value and the  
35 par value of each share by class; (2) the number of shares that  
36 are to be without par value; and (3) a statement of the powers,  
37 preferences, rights, qualifications, limitations or restrictions  
38 that are permitted by section thirteen of this article in respect  
39 to a class of stock fixed by the articles of incorporation or by  
40 resolution of the board of directors;

41 (i) The articles shall be signed, notarized and filed in  
42 accordance with the provisions of the business or nonprofit  
43 corporation laws of this state;

44 (j) The articles may also contain any provisions  
45 managing, defining, limiting or regulating the powers and  
46 affairs of the association, the directors, the stockholders, or  
47 members of the association.

#### **§19-4-10. Directors.**

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

4 (b) The bylaws may provide that the territory in which  
5 the association has members shall be divided into districts  
6 and that the directors be elected either directly or by district  
7 delegates elected by the members in that district. The bylaws  
8 shall specify the number of directors to be elected by each  
9 district, the manner of reapportioning the directors and the  
10 method of redistricting the territory covered by the  
11 association. The bylaws may provide that primary elections  
12 shall be held in each district to elect the directors apportioned  
13 to the districts and that the results of all the primary elections

14 may be ratified during the next regular meeting of the  
15 association or may be considered final.

16 (c) The bylaws may provide that one or more directors  
17 may be appointed by a public official, commission or by the  
18 other directors. These public directors shall represent the  
19 interest of the general public in the associations. The public  
20 directors need not be members or stockholders of the  
21 association, but shall have the same powers and rights as  
22 other directors. The directors shall not number more than one  
23 fifth of the entire number of directors.

24 (d) An association may provide a fair remuneration for  
25 the time actually spent by its officers and directors in its  
26 service and for the service of the members of its executive  
27 committee. No director, during the term of his or her office,  
28 shall be a party to a contract for profit with the association  
29 differing from the contractual terms accorded regular  
30 members or holders of common stock of the association.

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

34 (f) The bylaws may provide for an executive committee  
35 and may allot to the committee all the functions and powers  
36 of the board of directors, subject to the general direction and  
37 control of the board.

38 (g) When a vacancy on the board of directors occurs  
39 other than by expiration of term, the remaining members of  
40 the board, by a majority vote, shall fill the vacancy, unless  
41 the bylaws provide for an election of directors by district. In  
42 that case the board of directors shall immediately call a  
43 special meeting of the members or stockholders in that  
44 district to fill the vacancy.

**§19-4-19. Annual reports.**

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

**§19-4-21. Use of term “cooperative.”**

1        (a) A cooperative association formed pursuant to this  
2        article shall include the words “cooperative”, “co-operative”  
3        or “co-op” in the name, and the words or abbreviations  
4        designating a corporation.

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

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

1        The provisions of the business corporation laws in  
2        chapter thirty-one-d or the nonprofit corporation laws in  
3        chapter thirty-one-e of this code and all powers and rights  
4        thereunder shall apply to the associations organized under  
5        this article and may be used by them, except when the  
6        provisions are in conflict with or inconsistent with the  
7        express provisions of this article.

The Joint Committee on Enrolled Bills hereby certifies that  
the foregoing bill is correctly enrolled.

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*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....

Day of ....., 2013.

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*Governor*