

Senate Bill No. 504

(By Senators Miller, Williams and D. Hall)

[Introduced March 12, 2013;
referred to the Committee on Agriculture and Rural Development;
and then to the Committee on the Judiciary.]

A BILL 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That §19-4-26 and §19-4-30 of the Code of West Virginia, 1931, as amended, be repealed; and that §19-4-1, §19-4-2, §19-4-6, §19-4-10, §19-4-19, §19-4-21 and §19-4-29 of said code be amended and reenacted, all to read as follows: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 ~~The following words as used in this article, unless the~~
2 ~~context otherwise requires or a different meaning is~~
3 ~~specifically prescribed, shall have the following meanings As~~
4 ~~used in this article:~~

5 (a) “Agricultural products” mean horticultural,
6 viticultural, forestry, dairy, livestock, poultry, bee and any
7 farm products, in their natural form or processed;

8 (b) “Member” ~~actual members of associations without~~
 9 ~~capital stock and holders of common stock in associations~~
 10 means a member of an association without capitol stock, and
 11 a holder of common stock in an association organized with
 12 capital stock;

13 (c) ~~“Association,”~~ “Cooperative association” or
 14 “association” means any corporation organized under the
 15 ~~provisions of this article. Such~~ Each association shall be
 16 ~~deemed nonprofit also comply with the business corporation~~
 17 provisions of chapter thirty-one-d or the nonprofit
 18 corporation provisions of chapter thirty-one-e of this code.

§19-4-2. Who may organize.

1 ~~Five~~ Three or more persons engaged in the production of
 2 agricultural products may form a ~~nonprofit~~, cooperative
 3 association ~~and/or agricultural credit association~~, with or
 4 without capital stock. ~~and five~~ Three or more cooperative
 5 associations may form an agricultural credit association,
 6 ~~and/or cooperative association~~, with or without capital stock,
 7 under ~~the provisions of this article~~ and in compliance with

8 the credit union provisions of chapter thirty-one-c of this
9 code.

§19-4-6. Articles of incorporation.

1 Each association formed under this article ~~must~~ shall
2 prepare 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 ~~five~~ three, the number of directors which shall not be
13 less than ~~five~~ three and may be any number in excess thereof,
14 or it may be set forth that the number of directors shall be
15 fixed by the bylaws;

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

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

35 (h) If the association is ~~to be~~ authorized to issue more
36 than one class of stock, the total number of shares of all
37 classes of stock which the association ~~shall have authority to~~
38 may issue, and including: (1) The number of shares of each
39 class ~~thereof that are to~~ have a par value and the par value of
40 each share ~~of each such~~ by class; ~~and/or~~ (2) the number of
41 ~~such~~ shares that are to be without par value; and (3) a
42 statement of ~~all or any of the designations and the powers,~~
43 preferences, ~~and rights, and the~~ qualifications, limitations or
44 restrictions ~~thereof, which~~ that are permitted by ~~the~~
45 ~~provisions of~~ section thirteen of this article in respect of any
46 to a class or classes of stock of the association and the fixing
47 ~~of which~~ fixed by the articles of incorporation is ~~desired, and~~
48 an express grant of such authority as it may then be desired
49 ~~to grant to the board of directors to fix~~ or by resolution or
50 resolutions any thereof that may be desired but which shall
51 not be fixed by such articles; of the board of directors;

52 (i) The articles ~~must be subscribed by the incorporators~~
53 ~~and acknowledged by one of them before an officer~~

54 ~~authorized by the law of this state to take and certify~~
55 ~~acknowledgments of deeds and conveyances, and shall be~~
56 shall be signed, notarized and filed in accordance with the
57 provisions of the ~~general~~ business or nonprofit corporation
58 law laws of this state; and, when so filed, such articles of
59 incorporation, or certified copies thereof, shall be received in
60 all the courts of this state and other places as prima facie
61 evidence of the facts contained therein and of the due
62 incorporation of such association;

63 The Secretary of State shall provide suitable application
64 blanks and supply them on request;

65 ~~(h)~~ (j) The articles may also contain any provisions which
66 the incorporators may choose to insert for the management of
67 the business and for the conduct of the affairs of the
68 association, and any provisions creating, managing, defining,
69 limiting ~~and/or~~ or regulating the powers and affairs of the
70 association, the directors, ~~and~~ the stockholders, or any class
71 of the stockholders or, in the case of an association which is
72 to have no capital stock, of the members of such the

73 association. *Provided*, ~~That such provisions are not contrary~~
74 ~~to the laws of the state.~~

§19-4-10. Directors.

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

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 ~~according to such districts,~~
7 either directly or by district delegates elected by the members
8 in that district. ~~In such a case the~~ The bylaws shall specify
9 the number of directors to be elected by each district, the
10 manner ~~and the method or~~ of reapportioning the directors and
11 the method of redistricting the territory covered by the
12 association. The bylaws may provide that primary elections
13 shall be held in each district to elect the directors apportioned
14 to ~~such~~ the districts and that the results of all ~~such~~ the
15 primary elections may be ratified ~~by~~ during the next regular

16 meeting of the association or may be considered final. ~~as to~~
17 ~~the association.~~

18 (c) The bylaws may provide that one or more directors
19 may be appointed by ~~any~~ a public official, ~~or~~ commission or
20 by the other directors. ~~selected by the members or their~~
21 ~~delegates.~~ ~~Such~~ These public directors shall represent
22 primarily the interest of the general public in ~~such~~ the
23 associations. The public directors ~~so appointed~~ need not be
24 members or stockholders of the association, but shall have
25 the same powers and rights as other directors. ~~Such~~ The
26 directors shall not number more than one fifth of the entire
27 number of directors.

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

35 of the association. ~~or others, or differing from terms generally~~
36 ~~current in that district.~~

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

40 (f) The bylaws may provide for an executive committee
41 and may allot to ~~such~~ the committee all the functions and
42 powers of the board of directors, subject to the general
43 direction and control of the board.

44 (g) When a vacancy on the board of directors occurs
45 other than by expiration of term, the remaining members of
46 the board, by a majority vote, shall fill the vacancy, unless
47 the bylaws provide for an election of directors by district. In
48 ~~such a~~ that case the board of directors shall immediately call
49 a special meeting of the members or stockholders in that
50 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 ~~to be furnished by the dean of the~~

3 ~~college of agriculture at Morgantown, containing the name of~~
4 ~~the association, its principal place of business, and a general~~
5 ~~statement of its business operations during the fiscal year,~~
6 ~~showing the amount of capital stock paid up and the number~~
7 ~~of stockholders, if a stock association, or the number of~~
8 ~~members, if a nonstock association; and file one copy of such~~
9 ~~report with such dean as information for the sole use of such~~
10 ~~college, and one copy in the office of the secretary of the~~
11 ~~association, and the latter copy shall be open to inspection by~~
12 ~~members of the association at all times during office hours~~
13 provided by and filed with the Secretary of State pursuant to
14 the requirements of section two-a, article one, chapter
15 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 ~~No person, firm, corporation or association, hereafter~~
6 ~~organized or hereafter applying to do business in this state as~~
7 ~~a~~ (b) A farmers' marketing association for the sale of farm
8 ~~products shall be entitled to use the word "cooperative" is~~
9 prohibited from using the terms identified in subsection (a)
10 of this section as part of its corporate or other business name
11 or title, unless it has complied with ~~the provisions of this~~
12 article.

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

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