

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 352**

4 (By Senator Walters)

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6 [Originating in the Committee on Natural Resources;
7 reported February 19, 2015.]
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11 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
12 §19-4-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24A-
13 1-3 of said code, all relating to cooperative associations; clarifying definitions; expanding
14 scope of cooperative associations to goods and services, including recycling; limiting scope
15 of recycling cooperatives; expanding membership of cooperative associations; and revising
16 exemptions for motor carriers to allow nonprofit recycling cooperatives.

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

18 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
19 Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24A-1-3 of said
20 code be amended and reenacted, all to read as follows:

21 **ARTICLE 4. COOPERATIVE ASSOCIATIONS.**

22 **§19-4-1. Definitions.**

23 As used in this article:

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

26 (b) "Goods and services" mean food and beverages, arts and crafts, woodworking and
27 furniture-making, and recycling, composting and repurposing materials.

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

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

7 **(1)** A recycling cooperative association shall be organized as a nonprofit corporation pursuant
8 to chapter thirty-one-e of this code. If using a noncertificated motor vehicle, the recycling
9 cooperative association is limited to owning or using one motor vehicle for the collection and
10 transportation of recyclable goods. The recyclable goods must be generated by members of the
11 recycling cooperative association.

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

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

20 **§19-4-2. Who may organize.**

21 Three or more qualified persons engaged in the production of agricultural products or the
22 provision of goods and services may form a cooperative association with or without capital stock.
23 Three or more cooperative associations may form an agricultural credit association, with or without
24 capital stock, under this article and in compliance with the credit union provisions of chapter
25 thirty-one-c of this code.

26 **§19-4-3. Purposes.**

27 A cooperative association may be organized to engage in ~~any activity~~ one or more qualified
28 activities in connection with the marketing or selling of ~~the~~ agricultural products or the goods and

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

10 **§19-4-4. Powers.**

11 A cooperative association shall have the following powers:

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

23 (b) To borrow money without limitation as to amount of corporate indebtedness or liability,
24 and to make advance payments and advances to members; to execute, issue, draw, make, accept,
25 endorse, and guarantee, without limitation, promissory notes, bills of exchange, drafts, warrants,
26 certificates, mortgages, and any other form of obligation or negotiable or transferable bills of any
27 kind; to become the surety, guarantor, maker, and/or endorser for accommodation or otherwise of
28 bills, notes, securities, and other evidences of debt of any association or person, anything in any other

1 statutes or law of this state to the contrary notwithstanding;

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

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

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

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

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

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

26 **§19-4-5. Members.**

27 (a) Under the terms and conditions prescribed in the bylaws adopted by it, a cooperative
28 association may admit as members, or issue common stock to, only qualified persons, employees,

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

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

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

12 **§19-4-13. Stock; membership certificate; voting; liability; limitations on transfer and**
13 **ownership.**

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

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

28 (c) No member shall be liable for the debts of the association to an amount exceeding the sum

1 remaining unpaid on his or her membership fee or his or her subscription to the capital stock,
2 including any unpaid balance on any promissory notes given in payment thereof.

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

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

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

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

21 **§19-4-16. Marketing contract.**

22 The association and its members may take and execute marketing contracts, requiring the
23 members to sell, for any period of time, not over twenty years, all or any specified part of their
24 agricultural products, goods and services or specified commodities exclusively to or through the
25 association, or any facilities to be created by the association. If they contract a sale to the association,
26 it shall be conclusively held that title to the products, goods and services passes absolutely and
27 unreservedly, except for recorded liens, to the association upon delivery, or at any other specified
28 time if expressly and definitely agreed in such contract. The contract may provide, among other

1 things, that the association may sell or resell the products, goods and services delivered by its
2 members, with or without taking title thereto, and pay over to its members the resale price, after
3 deducting all necessary selling, overhead and other costs and expenses, including interest or
4 dividends on stock, not exceeding eight percent per annum, and reserves for retiring the stock, if any;
5 and any other proper reserves; or any other deductions.

6 **§19-4-22. Interest in other corporations or associations; warehouse receipts as collateral.**

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

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

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

21 **§24A-1-3. Exemptions from chapter.**

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

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

27 (2) Motor vehicles owned and operated by the United States of America, the State of West
28 Virginia or any county, municipality or county board of education, urban mass transportation

1 authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or
2 by any of their departments, and any motor vehicles operated under a contract with a county board
3 of education exclusively for the transportation of children to and from school or other legitimate
4 transportation for the schools as the commission may specifically authorize;

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

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

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

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

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

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

28 (9) Motor vehicles owned, leased by or leased to any person and used exclusively for the

1 transportation of processed source-separated recycled materials, generated by commercial,
2 institutional and industrial customers, transported free of charge or by a nonprofit recycling
3 cooperative association in accordance with subdivision (1), subsection (d), Section one, article four,
4 chapter nineteen of this code, from the customers to a facility for further processing: *Provided*, That
5 the vehicles and their operators shall be subject to the safety rules promulgated by the commission
6 and the vehicles that are exempted by this subdivision and are also operated by common carriers by
7 motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance
8 rules promulgated by the commission;

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

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

19 (12) Motor vehicles designated by the West Virginia division of public transit operated by
20 organizations that receive federal grants from the federal transit administration: *Provided*, That the
21 vehicles and their operators are subject to the safety and insurance rules promulgated by the
22 commission.