

ENROLLED
COMMITTEE SUBSTITUTE
FOR
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FOR

Senate Bill No. 352

(Senator Walters, *original sponsor*)

[Passed March 13, 2015; in effect ninety days from passage]

AN ACT 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" means horticultural, viticultural, forestry, dairy, livestock, poultry,
3 bee and any farm products in their natural form or processed.

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

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

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

4 (d) "Cooperative association" or "association" means any corporation organized under this
5 article. Each association shall also comply with the requisite business corporation provisions of
6 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 within a thirty-five mile radius of a facility that has been permitted and classified by
9 the West Virginia Department of Environmental Protection as a mixed waste processing resource
10 recovery facility, a recycling cooperative association may be organized as a nonprofit corporation
11 pursuant to chapter thirty-one-e of this code. Any such recycling cooperative association is limited
12 to owning or using one motor vehicle for the collection and transportation of recyclable goods. The
13 recyclable goods must be generated by members of the recycling cooperative association.

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

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

22 **§19-4-2. Who may organize.**

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

28 **§19-4-3. Purposes.**

1 A cooperative association may be organized to engage in one or more qualified activities in
2 connection with the marketing or selling of agricultural products or the goods and services of its
3 members or those purchased from other persons; or in connection with the manufacturing, selling
4 or supplying to its members of machinery, equipment or supplies; or in securing and disseminating
5 market information; or in the financing directly, through agricultural credit associations, and/or
6 otherwise, the above-enumerated activities; or in any one or more of the activities specified herein.

7 An agricultural credit association may be organized hereunder to finance qualified persons or to
8 finance any cooperative association, or both, whether formed under the laws of this or any other
9 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 any agricultural products or goods
13 and services provided; or any activity in connection with the purchase, hiring or use by its members
14 of supplies, machinery or equipment; or in securing and disseminating market information; or in the
15 financing, directly, through agricultural credit associations any qualified activities. All transactions
16 with nonmembers shall be on terms fixed by the association and nonmembers shall not otherwise
17 participate in any benefits derived from such transactions;

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

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

27 (d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership
28 in, and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the

1 retirement or redemption of, shares of the capital stock or bonds of any corporation or association
2 engaged in any related activity or in the warehousing or handling or marketing of any of the products
3 handled by the association;

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

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

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

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

21 **§19-4-5. Members.**

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

1 (b) If a member of a nonstock association be other than a natural person, the member may
2 be represented by an individual, associate, officer or manager or member thereof, duly authorized
3 in writing.

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

6 **§19-4-13. Stock; membership certificate; voting; liability; limitations on transfer and**
7 **ownership.**

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

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

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

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

28 (e) Any association organized with stock under this article may issue preferred stock, with

1 or without the right to vote. Such stock may be sold to any person, member or nonmember, and may
2 be redeemable or retireable by the association on such terms and conditions as may be provided for
3 by the articles of incorporation and printed on the face of the certificate. The bylaws shall prohibit
4 the transfer of the common stock of the association to persons who are not qualified persons, or
5 organizations that are not engaged in qualified activities handled by the association, or to persons
6 or organizations that are not members of credit associations financing such products; and such
7 restrictions shall be printed upon every certificate of stock subject thereto.

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

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

14 **§19-4-16. Marketing contract.**

15 The association and its members may take and execute marketing contracts, requiring the
16 members to sell, for any period of time, not over twenty years, all or any specified part of their
17 agricultural products, goods and services or specified commodities exclusively to or through the
18 association, or any facilities to be created by the association. If they contract a sale to the association,
19 it shall be conclusively held that title to the products, goods and services passes absolutely and
20 unreservedly, except for recorded liens, to the association upon delivery, or at any other specified
21 time if expressly and definitely agreed in such contract. The contract may provide, among other
22 things, that the association may sell or resell the products, goods and services delivered by its
23 members, with or without taking title thereto, and pay over to its members the resale price, after
24 deducting all necessary selling, overhead and other costs and expenses, including interest or
25 dividends on stock, not exceeding eight percent per annum, and reserves for retiring the stock, if any;
26 and any other proper reserves; or any other deductions.

27 **§19-4-22. Interest in other corporations or associations; warehouse receipts as collateral.**

28 (a) An association may organize, form, operate, own, control, have an interest in, own stock

1 of, or be a member of any other corporation or corporations, with or without capital stock, and
2 engaged in qualified activities regarding the agricultural products, goods and services handled by the
3 association, or the by-products thereof.

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

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

13 **§24A-1-3. Exemptions from chapter.**

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

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

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

25 (3) Motor vehicles used exclusively in the transportation of agricultural or horticultural
26 products, livestock, poultry and dairy products from the farm or orchard on which they are raised or
27 produced to markets, processing plants, packing houses, canneries, railway shipping points and cold
28 storage plants, and in the transportation of agricultural or horticultural supplies to farms or orchards

1 where they are to be used: *Provided*, That the vehicles that are exempted by this subdivision and are
2 also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their
3 operators are subject to the safety and insurance rules promulgated by the commission;

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

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

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

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

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

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

1 (10) Motor vehicles specifically preempted from state economic regulation of intrastate
2 motor carrier operations by the provisions of 49 U. S. C. §14501 as amended by Title I, Section 103
3 of the federal Interstate Commerce Commission Termination Act of 1995: *Provided*, That the
4 vehicles and their operators are subject to the safety regulations promulgated by the commission and
5 the vehicles that are exempted by this subdivision and are also operated by common carriers by
6 motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance
7 rules promulgated by the commission;

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

11 (12) Motor vehicles designated by the West Virginia Division of Public Transit operated by
12 organizations that receive federal grants from the Federal Transit Administration: *Provided*, That
13 the vehicles and their operators are subject to the safety and insurance rules promulgated by the
14 commission.