
WEST VIRGINIA CODE CHAPTER 19
ARTICLE 4

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§19-4-1. Definitions.

As used in this article:

- (a) "Agricultural products" means horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products in their natural form or processed.
- (b) "Goods and services" means food and beverages, arts and crafts, woodworking and furniture-making, and recycling, composting and repurposing materials.
- (c) "Member" means a member of an association without capital stock and a holder of common stock in an association organized with capital stock.
- (d) "Cooperative association" or "association" means any corporation organized under this article. Each association shall also comply with the requisite business corporation provisions of chapter 31D or 31F of this code, or the nonprofit corporation provisions of chapter 31E of this code.

Except within a 35 mile radius of a facility that has been permitted and classified by the West Virginia Department of Environmental Protection as a mixed waste processing resource recovery facility, a recycling cooperative association may be organized as a nonprofit corporation pursuant to chapter thirty-one-e of this code. The recyclable goods must be generated by members of the recycling cooperative association and shall be limited to recyclable goods not collected by a certified waste motor carrier as defined pursuant to §24A-1-2 of this code in the same area the recycling cooperative is located. If a motor carrier receives a certificate of need to serve the same area with the same services as the cooperative, then the cooperative shall cease providing those services.
- (e) "Qualified person" means a person who is engaged in the producing, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, utilizing, marketing, financing, selling, distributing, shipping, procuring or providing of agricultural products, or other goods and services, or the by-products thereof.
- (f) "Qualified activity" means those engaged in the producing, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, utilizing, marketing, financing, selling, distributing, shipping, procuring or providing of agricultural products, or other goods and services, or the by-products thereof.

§19-4-2. Who may organize.

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

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§19-4-3. Purposes.

A cooperative association may be organized to engage in one or more qualified activities in connection with the marketing or selling of agricultural products or the goods and services of its members or those purchased from other persons; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in securing and disseminating market information; or in the financing directly, through agricultural credit associations, and/or otherwise, the above-enumerated activities; or in any one or more of the activities specified herein. An agricultural credit association may be organized hereunder to finance qualified persons or to finance any cooperative association, or both, whether formed under the laws of this or any other state.

§19-4-4. Powers.

A cooperative association shall have the following powers:

- (a) To engage in any qualified activity in connection with any agricultural products or goods and services provided; or any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in securing and disseminating market information; or in the financing, directly, through agricultural credit associations any qualified activities. All transactions with nonmembers shall be on terms fixed by the association and nonmembers shall not otherwise participate in any benefits derived from such transactions;
- (b) To borrow money without limitation as to amount of corporate indebtedness or liability, and to make advance payments and advances to members; to execute, issue, draw, make, accept, endorse and guarantee, without limitation, promissory notes, bills of exchange, drafts, warrants, certificates, mortgages, and any other form of obligation or negotiable or transferable bills of any kind; to become the surety, guarantor, maker, and/or endorser for accommodation or otherwise of bills, notes, securities and other evidences of debt of any association or person, anything in any other statutes or law of this state to the contrary notwithstanding;
- (c) To act as the agent or representative of any member or members in any of the above-mentioned activities;
- (d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing of any of the products handled by the association;
- (e) To establish reserves and to invest the funds thereof in bonds or in such other property as may be provided in the bylaws;
- (f) To buy, hold and exercise all privileges of ownership over real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto;
- (g) To establish, secure, own and develop patents, trademarks and copyrights;
- (h) To do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the subjects herein enumerated, or conducive to or not contrary to the interest or benefit of the association; and to contract accordingly; and, in addition, to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, and any other rights, powers, and privileges granted by the

laws of this state to ordinary corporations, except such as are inconsistent with the purposes of this article; and to do any such thing anywhere. An agricultural credit association shall have all of the powers given to a cooperative association under the provisions of subdivision (b), section four of this article, and in general shall have power to do and perform any act or thing, not inconsistent with law, which may be appropriate to promote and attain the objects and purposes of such credit association.

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§19-4-5. Members.

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

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

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

§19-4-6. Articles of incorporation.

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

- (a) The name of the association, which includes the words "cooperative," "co-operative," or "co-op," and words or abbreviations designating a corporation;
- (b) The purposes for which it is formed;
- (c) The place where its principal business will be transacted;
- (d) The period, if any prescribed, for the duration of the corporation;
- (e) The number of incorporators which is not less than three, the number of directors which is not less than three and any number in excess of those minimums, or it may be set forth that the number of directors will be fixed by the bylaws;
- (f) If organized without capital stock, whether the property rights and interest of each member are equal or unequal; and if unequal, the general rules applicable to the classes of members whose property rights and interest are determined and fixed; and provision for the admission of new members who may be entitled to share in the property of the association with the old members, in accordance with the general rules. This provision of the articles of incorporation may not be altered, amended or repealed except by the written consent or vote of three fourths of the members;
- (g) If organized with capital stock and authorized to issue only one class of stock, the total number of shares of stock which the association has authority to issue, including: (1) The par value of each of the shares; or (2) a statement that all the shares are to be without par value;
- (h) If the association is authorized to issue more than one class of stock, the total number of shares of all classes of stock which the association may issue, including: (1) The number of shares of each class that have a par value and the par value of each share by class; (2) the number of shares that are to be without par value; and (3) a statement of the powers, preferences, rights, qualifications, limitations or restrictions that are permitted by section thirteen of this article in respect to a class of stock fixed by the articles of incorporation or by resolution of the board of directors;
- (i) The articles shall be signed and filed in accordance with the provisions of the business or nonprofit corporation laws of this state;
- (j) The articles may also contain any provisions managing, defining, limiting or regulating the powers and affairs of the association, the directors, the stockholders or members of the association.

§19-4-7. Amendments to articles of incorporation.

The articles of incorporation may be altered or amended at any regular meeting or any special meeting called for that purpose. An amendment must first be approved by two thirds of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation, when so adopted, shall be filed in accordance with the provisions of the general corporation laws of this state.

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§19-4-8. Bylaws.

Each association incorporated under this article, must, within thirty days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this article. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such bylaws. Each association, under its bylaws, may provide for any or all of the following matters:

- (a) The time, place and manner of calling and conducting its meetings;
- (b) The number of stockholders or members constituting a quorum;
- (c) The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form, and effect of such votes;
- (d) The number of directors constituting a quorum; and, if authority therefor is given in the articles of incorporation, the total number of directors;
- (e) The qualifications, compensation, duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof;
- (f) Penalties for violation of the bylaws;
- (g) The amount of entrance, organization and membership fees, if any; the manner and method of collecting the same; and the purposes for which they may be used;
- (h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;
- (i) The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of the shares of common stock; the conditions upon which and time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association; the mode, manner and effect of the expulsion of a member; the manner of determining the value of a member's interest, and provision for its purchase by the association, at its option, upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors, or at the election of the board, such property interests may be sold at public auction to the association itself, or to any person eligible to membership in such association and the

proceeds of such sale paid over to the personal representative of such deceased member, or to the member withdrawing or expelled, as the case may be.

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§19-4-9. General and special meetings.

In its bylaws, each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time; and ten percent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting: Provided, however, That the bylaws may require instead that such notice may be given as provided by this section, namely, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty- nine of this code, and the publication area for such publication shall be the county in which the principal place of business of the association is located.

§19-4-10. Directors.

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

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

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

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

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

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

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

§19-4-11. Officers.

The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and a treasurer, who need not be directors or members of the association; and they may combine the two latter offices and designate the combined office as secretary-treasurer; or unite both functions and titles in one person. The treasurer may be a bank or any depository, and, as such, shall not be considered an officer, but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as and where authorized by the board of directors.

§19-4-12. Officers, employees and agents to be bonded.

Every officer, employee and agent handling funds or negotiable instruments or property of or for any association created hereunder shall be required to execute and deliver adequate bonds for the faithful performance of his duties and obligations.

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

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

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

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

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

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

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

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

in cash within one year thereafter.

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§19-4-14. Removal of officer or director.

Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by five percent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty percent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director; and by a vote of the majority of the members of that district the director in question shall be removed from office.

§19-4-15. Referendum.

Upon demand of one third of the entire board of directors, made immediately and so recorded, at the same meeting at which the original motion was passed, any matter of policy that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; and a special meeting may be called for the purpose.

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§19-4-16. Marketing contract.

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

§19-4-17. Remedies for breach of contract.

The bylaws or the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products, and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case the association shall prevail in any action brought by it upon the contract; and any such provisions shall be valid and enforceable in the courts of this state; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association may be entitled to a temporary restraining order and preliminary injunction against the member.

In any action upon such marketing agreement, it shall be presumed as between the parties that the landowner, landlord or lessor claiming therein so to be is able to control the delivery of products produced on his land by tenants or others, whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landowner, landlord or lessor of such marketing agreement; and in such actions the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landowner, landlord or lessor.

§19-4-18. Purchasing property of other associations, persons, firms or corporations.

Whenever an association, organized under this article with preferred capital stock, shall purchase the stock of any property, or any interest in any property, or any person, firm or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

§19-4-19. Annual reports.

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

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§19-4-20. Conflicting laws not to apply; exemptions.

Any provisions of law which are in conflict with this article shall be construed as not applying to the association herein provided for.

Any exemptions whatsoever under any and all existing laws applying to agricultural products in the possession or under the control of the individual producer shall apply similarly and completely to such products delivered by its former members, in the possession or under the control of the association.

§19-4-21. Use of term "cooperative."

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

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

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

(a) An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in qualified activities regarding the agricultural products, goods and services handled by the association, or the by-products thereof.

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

§19-4-23. Contracts and agreements with other associations.

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using, or may separately employ and use, the same personnel, methods, means and agencies for carrying on and conducting their respective business.

§19-4-24. Rights and remedies apply to similar associations of other states.

Any corporation or association heretofore or hereafter organized under generally similar laws of another state shall be allowed to carry on any proper activities, operations and functions in this state upon compliance with the general regulations applicable to foreign corporations desiring to do business in this state, and all contracts made by or with such associations, which could be made by any association incorporated hereunder, shall be legal and valid and enforceable in this state with all of the remedies set forth in this article.

§19-4-25. Associations heretofore organized may adopt provisions of article.

Any corporation or association organized in this state under previously existing statutes may, by a majority vote of its stockholders or members, be brought under the provisions of this article by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors to the effect that the corporation or association has, by a majority vote of the stockholders or members, decided to accept the benefits and be bound by the provisions of this article and has authorized all changes accordingly. Articles of incorporation shall be filed as required in section six, except that they shall be signed by the members of the then board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

Where any association may be incorporated under this article, all contracts made prior to April eighteenth, nineteen hundred and twenty-three, by or on behalf of such association by the promoters thereof in anticipation of its becoming incorporated under the laws of this state, whether or not such contracts be made by or in the name of some corporation organized elsewhere, and when they would have been valid if entered into subsequent to such date, shall be held valid as if made after such date.

§19-4-26.

Repealed.

Acts, 2013 Reg. Sess., Ch. 1.

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§19-4-27. Liability as to delivery of products in violation of marketing agreements.

Any person who solicits, persuades or permits any member of any association organized hereunder to breach his marketing contract with the association or one association with another, by accepting or receiving such member's products for sale or for auction or for display for sale, contrary to the terms of any marketing agreement of which such person has knowledge or notice, shall be liable to the association aggrieved in a civil suit for damages therefor. Courts of equity shall have jurisdiction to enjoin further breaches of such contract.

§19-4-28. Associations to be deemed not in restraint of trade.

No association organized under this article and complying with the terms thereof shall be deemed to be a conspiracy or a combination in restraint of trade or an illegal monopoly or an attempt to lessen competition or to fix prices arbitrarily; nor shall the marketing contract and agreements between the association and its members or any agreements authorized in this article be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

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

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

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§19-4-30.

Repealed.

Acts, 2013 Reg. Sess., Ch. 1.

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