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WEST VIRGINIA LEGISLATURE
OFFICE WEST VIRGINIA
SECRETARY OF STATE

EIGHTY-SECOND LEGISLATURE

REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 352

(SENATOR WALTERS, *ORIGINAL SPONSOR*)

[PASSED MARCH 13, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 352

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[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" mean horticultural,
3 viticultural, forestry, dairy, livestock, poultry, bee and any
4 farm products in their natural form or processed;

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

8 (c) "Member" means a member of an association without
9 capital stock and a holder of common stock in an association
10 organized with capital stock;

11 (d) "Cooperative association" or "association" means any
12 corporation organized under this article. Each association
13 shall also comply with the requisite business corporation
14 provisions of chapter thirty-one-d or thirty-one-f of this code,
15 or the nonprofit corporation provisions of chapter
16 thirty-one-e of this code.

17 Except within a thirty-five mile radius of a facility that
18 has been permitted and classified by the West Virginia
19 Department of Environmental Protection as a mixed waste
20 processing resource recovery facility, a recycling cooperative
21 association may be organized as a nonprofit corporation
22 pursuant to chapter thirty-one-e of this code. Any such
23 recycling cooperative association is limited to owning or
24 using one motor vehicle for the collection and transportation

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25 of recyclable goods. The recyclable goods must be generated
26 by members of the recycling cooperative association.

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

33 (f) "Qualified activity" means those engaged in the
34 producing, preserving, harvesting, drying, processing,
35 manufacturing, canning, packing, grading, storing, handling,
36 utilizing, marketing, financing, selling, distributing, shipping,
37 procuring or providing of agricultural products, or other
38 goods and services, or the byproducts thereof.

§19-4-2. Who may organize.

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

§19-4-3. Purposes.

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

9 credit associations, and/or otherwise, the above-enumerated
10 activities; or in any one or more of the activities specified
11 herein. An agricultural credit association may be organized
12 hereunder to finance qualified persons or to finance any
13 cooperative association, or both, whether formed under the
14 laws of this or any other state.

§19-4-4. Powers.

1 A cooperative association shall have the following
2 powers:

3 (a) To engage in any qualified activity in connection with
4 any agricultural products or goods and services provided; or
5 any activity in connection with the purchase, hiring or use by
6 its members of supplies, machinery or equipment; or in
7 securing and disseminating market information; or in the
8 financing, directly, through agricultural credit associations
9 any qualified activities. All transactions with nonmembers
10 shall be on terms fixed by the association and nonmembers
11 shall not otherwise participate in any benefits derived from
12 such transactions;

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

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

26 (d) To purchase or otherwise acquire, and to hold, own
27 and exercise all rights of ownership in, and to sell, transfer or
28 pledge, or guarantee the payment of dividends or interest on,
29 or the retirement or redemption of, shares of the capital stock
30 or bonds of any corporation or association engaged in any
31 related activity or in the warehousing or handling or
32 marketing of any of the products handled by the association;

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

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

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

42 (h) To do each and every thing necessary, suitable or proper
43 for the accomplishment of any one of the purposes or the
44 attainment of any one or more of the subjects herein
45 enumerated, or conducive to or not contrary to the interest or
46 benefit of the association; and to contract accordingly; and, in
47 addition, to exercise and possess all powers, rights and
48 privileges necessary or incidental to the purposes for which the
49 association is organized or to the activities in which it is
50 engaged, and any other rights, powers, and privileges granted
51 by the laws of this state to ordinary corporations, except such as
52 are inconsistent with the purposes of this article; and to do any
53 such thing anywhere. An agricultural credit association shall
54 have all of the powers given to a cooperative association under
55 the provisions of subdivision (b), section four of this article, and
56 in general shall have power to do and perform any act or thing,
57 not inconsistent with law, which may be appropriate to promote
58 and attain the objects and purposes of such credit association.

§19-4-5. Members.

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

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

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

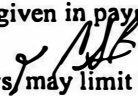
§19-4-13. Stock; membership certificate; voting; liability; limitations on transfer and ownership.

1 (a) When a member of an association established without
2 capital stock has paid his or her membership fee in full, he or
3 she shall receive a certificate of membership. An association
4 shall have power to issue one or more classes of stock, or one
5 or more series of stock within any class thereof, any or all of
6 which classes may be of stock with par value or stock without
7 par value, with such voting powers, full or limited, or without
8 voting powers and in such series, and with such designations,
9 preferences and relative, participating, optional or other
10 special rights, and qualifications, limitations or restrictions

11 thereof, as shall be stated and expressed in the articles of
12 incorporation, or in any amendment thereto, or in the
13 resolution or resolutions providing for the issue of such stock
14 adopted by the board of directors pursuant to authority
15 expressly vested in it by the provisions of the articles of
16 incorporation or of any amendment thereto.

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

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

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

33 (e) Any association organized with stock under this
34 article may issue preferred stock, with or without the right to
35 vote. Such stock may be sold to any person, member or
36 nonmember, and may be redeemable or retireable by the
37 association on such terms and conditions as may be provided
38 for by the articles of incorporation and printed on the face of
39 the certificate. The bylaws shall prohibit the transfer of the
40 common stock of the association to persons who are not
41 qualified persons, or organizations that are not engaged in
42 qualified activities handled by the association, or to persons
43 or organizations that are not members of credit associations

44 financing such products; and such restrictions shall be printed
45 upon every certificate of stock subject thereto.

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

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

§19-4-16. Marketing contract.

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

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

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

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

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

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

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

7 (2) Motor vehicles owned and operated by the United
8 States of America, the State of West Virginia or any county,

9 municipality or county board of education, urban mass
10 transportation authority established and maintained pursuant
11 to article twenty-seven, chapter eight of this code, or by any
12 of their departments, and any motor vehicles operated under
13 a contract with a county board of education exclusively for
14 the transportation of children to and from school or other
15 legitimate transportation for the schools as the commission
16 may specifically authorize;

17 (3) Motor vehicles used exclusively in the transportation
18 of agricultural or horticultural products, livestock, poultry
19 and dairy products from the farm or orchard on which they
20 are raised or produced to markets, processing plants, packing
21 houses, canneries, railway shipping points and cold storage
22 plants, and in the transportation of agricultural or
23 horticultural supplies to farms or orchards where they are to
24 be used: *Provided*, That the vehicles that are exempted by
25 this subdivision and are also operated by common carriers by
26 motor vehicle or contract carriers by motor vehicle, and their
27 operators are subject to the safety and insurance rules
28 promulgated by the commission;

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

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

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

35 (7) Motor vehicles used exclusively in the transportation
36 of coal from mining operations to loading facilities for further
37 shipment by rail or water carriers: *Provided*, That the
38 vehicles and their operators are subject to the safety rules
39 promulgated by the commission and the vehicles that are
40 exempted by this subdivision and are also operated by

41 common carriers by motor vehicle or contract carriers by
42 motor vehicle, and their operators are subject to the insurance
43 rules promulgated by the commission;

44 (8) Motor vehicles used by petroleum commission agents
45 and oil distributors solely for the transportation of petroleum
46 products and related automotive products when the
47 transportation is incidental to the business of selling the
48 products: *Provided*, That the vehicles and their operators are
49 subject to the safety rules promulgated by the commission
50 and the vehicles that are exempted by this subdivision and are
51 also operated by common carriers by motor vehicle or
52 contract carriers by motor vehicle, and their operators are
53 subject to the insurance rules promulgated by the
54 commission;

55 (9) Motor vehicles owned, leased by or leased to any
56 person and used exclusively for the transportation of
57 processed source-separated recycled materials, generated by
58 commercial, institutional and industrial customers,
59 transported free of charge or by a nonprofit recycling
60 cooperative association in accordance with subdivision (1),
61 subsection (d), section one, article four, chapter nineteen of
62 this code from the customers to a facility for further
63 processing: *Provided*, That the vehicles and their operators
64 shall be subject to the safety rules promulgated by the
65 commission and the vehicles that are exempted by this
66 subdivision and are also operated by common carriers by
67 motor vehicle or contract carriers by motor vehicle, and their
68 operators are subject to the insurance rules promulgated by
69 the commission;

70 (10) Motor vehicles specifically preempted from state
71 economic regulation of intrastate motor carrier operations by
72 the provisions of 49 U. S. C. §14501 as amended by title I,
73 section 103 of the federal Interstate Commerce Commission
74 Termination Act of 1995: *Provided*, That the vehicles and

75 their operators are subject to the safety regulations
76 promulgated by the commission and the vehicles that are
77 exempted by this subdivision and are also operated by
78 common carriers by motor vehicle or contract carriers by
79 motor vehicle, and their operators are subject to the insurance
80 rules promulgated by the commission;

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

86 (12) Motor vehicles designated by the West Virginia
87 Division of Public Transit operated by organizations that
88 receive federal grants from the federal transit administration:
89 *Provided*, That the vehicles and their operators are subject to
90 the safety and insurance rules promulgated by the
91 commission.

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

Mark R. Hayward
.....
Chairman Senate Committee

John B. Hill
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clark S. Barnes
.....
Clerk of the Senate

Stephen D. Harris
.....
Clerk of the House of Delegates

Neill P. Holcomb
.....
President of the Senate

James M. Moran
.....
Speaker of the House of Delegates

The within *is approved* this the *20th*
Day of *March*, 2015.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 23 2015

Time 10:51 AM