WEST VIRGINIA LEGISLATURE
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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.]
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.

As used in this article:

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

(b) “Goods and services” mean 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 thirty-one-d or thirty-one-f of this code, or the nonprofit corporation provisions of chapter thirty-one-e of this code.

Except within a thirty-five 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. Any such recycling cooperative association is limited to owning or using one motor vehicle for the collection and transportation
of recyclable goods. The recyclable goods must be generated
by members of the recycling cooperative association.

(c) "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 byproducts 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 byproducts 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.

§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
§ 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.
§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.

§19-4-13. 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.

§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.
§19-4-22. 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.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

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

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

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

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

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

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

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

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

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

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

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

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

(12) Motor vehicles designated by the West Virginia Division of Public Transit operated by organizations that receive federal grants from the federal transit administration: Provided, That the vehicles and their operators are subject to the safety and insurance rules promulgated by the commission.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the ... Day of ... 2015.

[Signature]
Governor