

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 673

An Act to amend and reenact §§ 13.1-301, 13.1-307, and 13.1-308 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 13.1 an article numbered 3, consisting of sections numbered 13.1-346 through 13.1-355, relating to worker cooperatives.

[H 55]

Approved April 6, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-301, 13.1-307, and 13.1-308 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 13.1 an article numbered 3, consisting of sections numbered 13.1-346 through 13.1-355, as follows:

§ 13.1-301. Organization of cooperative associations; purposes; name; par value stock required.

A. Any number of persons, not less than five, may, under the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 ~~of this title~~ or Article 3 (§ 13.1-818 et seq.) of Chapter 10 ~~of this title~~, associate themselves together as a cooperative association, society, company or exchange, for the purpose of (i) conducting any housing, agricultural, fishing, dairy, mercantile, merchandise, brokerage, water, sewer, manufacturing, service or mechanical business on the cooperative plan or (ii) representing or providing financing for cooperative associations, societies, companies, or exchanges organized pursuant to the laws of this Commonwealth or any other state, provided that the word "cooperative" shall be included as a part of the name. Except for a cooperative association organized to conduct business as a water or sewer company, no cooperative association organized under this article shall conduct any business in this Commonwealth as a public service company or exercise any privileges of such company.

B. The provisions of Chapter 9 (§ 13.1-601 et seq.) ~~and Chapter~~ or 10 (§ 13.1-801 et seq.) ~~of this title~~, as the case may be, shall apply to cooperative associations created under this section or subject to the provisions of this article, except so far as the same are in conflict with the following sections of this article which shall be applicable only to such cooperative associations, and except that no stock cooperative association shall issue stock without nominal or par value.

C. *To the extent that the application of the provisions of this article to any worker cooperative established under Article 3 (§ 13.1-346 et seq.) conflicts with the provisions of Article 3, the provisions of Article 3 shall control.*

§ 13.1-307. Permissible limitation of stock ownership or voting rights.

Any cooperative association may, either in its charter or by bylaws, provide and require that no membership or share of its stock shall be issued to or owned by any person not a member of a nonstock corporation or nonstock corporations named or designated in such charter or bylaws, or may in like manner provide that memberships or shares of its stock may be issued to or owned by persons not members of such designated nonstock corporation or nonstock corporations, but that when so owned such stock shall have no voting power. *The provisions of this section shall not apply to any worker cooperative established under Article 3 (§ 13.1-346 et seq.).*

§ 13.1-308. Limitation of use of "cooperative" in corporate name.

A. No corporation or association organized or doing business for profit in this Commonwealth shall be entitled to use the term "cooperative" as part of its corporate or other business name or title, unless it has complied with the provisions of this article or of Article 2 (§ 13.1-312 et seq.) or 3 (§ 13.1-346 et seq.) of this chapter or of Chapter 9.1 (§ 56-231.15 et seq.) or ~~Chapter~~ 16 (§ 56-485 et seq.) of Title 56 or of any other statute providing for cooperative corporations or associations now existing or hereafter enacted; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder or member of any corporation or association legally organized under any law giving it the right to use the word cooperative as a part of its corporate or business name.

B. Subsection A shall not apply to a corporation or association, domestic or foreign, whose purpose is to promote housing opportunities or to represent, coordinate and further the purposes of groups organized to construct, operate, or promote housing, and such corporation or association may use the term "cooperative" as part of its corporate or other business name or title.

Article 3.

Worker Cooperatives.

§ 13.1-346. Definitions.

As used in this article:

"Collective reserve account" means an account on the corporate books representing the worker cooperative's entire net book value minus balances in any other equity accounts.

"Member" means an individual who has been accepted for membership in, and owns a membership

share issued by, a worker cooperative.

"Membership fee" means an initial payment, if required by the articles of incorporation or bylaws of the worker cooperative, made by a worker to a worker cooperative as a condition of becoming a member.

"Patronage" means the amount of work performed for a worker cooperative, measured in accordance with criteria set forth in the articles of incorporation or bylaws of the worker cooperative.

"Worker" means an individual employed by a worker cooperative.

"Worker cooperative" means a corporation incorporated under the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 that has elected to be governed by this article.

§ 13.1-347. Formation of worker cooperative; purpose.

A. Any corporation incorporated under Article 3 (§ 13.1-618 et seq.) of Chapter 9 may elect to be governed as a worker cooperative in accordance with the provisions of this article by so stating in its articles of incorporation or articles of amendment filed in accordance with § 13.1-710. The offering of an employee stock ownership plan governed by 26 U.S.C. § 401 by a corporation incorporated under Article 3 (§ 13.1-618 et seq.) of Chapter 9 to its employees shall not be considered an election to be governed as a worker cooperative.

B. A worker cooperative may be formed for any lawful purpose, provided that it shall be organized and shall conduct its business primarily for the mutual benefit of its members.

§ 13.1-348. Name.

A. A worker cooperative may include the word "cooperative" or "co-op" in its corporate name.

B. No person hereafter commencing business in the Commonwealth may use the phrase "worker cooperative," "worker co-op," "employee cooperative," or "employee co-op" as a part of its corporate name unless it has elected to be governed as a worker cooperative in accordance with this article.

§ 13.1-349. Application of other laws.

Except as otherwise provided in this article, worker cooperatives shall be governed by Article 1 (§ 13.1-301 et seq.) and Chapter 9 (§ 13.1-601 et seq.).

§ 13.1-350. Revocation of election to be governed as worker cooperative; limitation on mergers.

A. A worker cooperative may revoke its election to be governed as a worker cooperative under this article by a vote of two-thirds of the members and through filing appropriate articles of amendment in accordance with § 13.1-710.

B. When any worker cooperative revokes its election in accordance with subsection A, the articles of amendment shall provide for conversion of membership shares and internal capital accounts or their conversion to securities or other property in a manner consistent with Chapter 9 (§ 13.1-601 et seq.).

C. A worker cooperative may not merge with another corporation other than a worker cooperative. Two or more worker cooperatives may merge in accordance with Article 12 (§ 13.1-715.1 et seq.) of Chapter 9.

§ 13.1-351. Qualifications of members; membership shares.

A. The articles of incorporation or bylaws of a worker cooperative shall establish qualifications for membership and procedures for acceptance and termination of members.

B. A worker cooperative's qualifications and procedures shall require, among such other provisions established in its articles of incorporation or bylaws, that:

1. No individual may be accepted as a member unless the individual is employed by the worker cooperative on a full-time or part-time basis at the time of acceptance;

2. Not fewer than two-thirds of the employees of any worker cooperative shall be individuals who are members of the worker cooperative; and

3. No person may own more than one membership share issued by the worker cooperative.

C. An individual accepted as a member shall cease to be a member upon termination of employment with the worker cooperative except that the articles of incorporation or the bylaws may provide that an individual who retires from employment may continue to be a member of the worker cooperative without voting rights subject to terms and conditions as may be provided in the articles of incorporation or bylaws. The articles of incorporation or the bylaws shall require that (i) a retired member's membership share shall be converted to another class of shares that has no voting power and (ii) nonvoting shares may only be acquired by the conversion of membership shares to another class of shares without voting power upon their owner's retirement or upon such other event specified in the worker cooperative's articles of incorporation or bylaws.

D. A worker cooperative shall issue a class of voting shares designated as membership shares. Each member of a worker cooperative shall be issued a membership share upon payment of a membership fee, the amount of which shall be determined from time to time by the board of directors. Each member shall own only one membership share. Only members employed by the worker cooperative may own a membership share. The redemption price of membership shares shall be determined by reference to internal capital accounts established as set forth in § 13.1-354.

E. Members of a worker cooperative shall have all the rights and responsibilities of shareholders of a corporation organized under Chapter 9 (§ 13.1-601) except as otherwise provided in this article. No member shall be personally liable for any debt or liability of the worker cooperative.

§ 13.1-352. Voting rights.

A. No shares other than membership shares shall be given voting rights in a worker cooperative.

B. The power to amend or repeal bylaws of a worker cooperative shall be in the members only, except to the extent that directors are authorized to amend or repeal the bylaws.

C. Voting on amendments to the articles of incorporation of a worker cooperative shall be limited to the members qualified to vote membership shares.

D. Each member with a membership share shall have one vote in any matter requiring voting by shareholders.

§ 13.1-353. Net earnings or losses; apportionment, distribution, and payment.

A. The net earnings or losses of a worker cooperative shall be apportioned and distributed at such times and in such manner as the articles of incorporation or bylaws shall specify.

B. Net earnings declared as patronage allocations with respect to a period of time, and paid or credited to members, shall be apportioned among the members in accordance with the ratio that each member's patronage during the period involved bears to total patronage by all members during that period.

C. The apportionment, distribution, and payment of net earnings required by subsection B may be in cash, credits, written notices of allocation, or shares without voting rights issued by the worker cooperative.

§ 13.1-354. Internal capital accounts; redemption of shares; collective reserve account.

A. A worker cooperative shall establish through its articles of incorporation or bylaws a system of internal capital accounts to reflect the book value and to determine the redemption price of membership shares, nonvoting shares, and written notices of allocation. As used in this section, "written notice of allocation" means a written instrument that discloses to a member the stated dollar amount of such member's patronage allocation and the terms for payment of that amount by the worker cooperative.

B. The articles of incorporation or bylaws of a worker cooperative may permit the periodic redemption of written notices of allocation and nonvoting shares and shall provide for recall and redemption of the membership share upon termination of membership in the cooperative.

C. The articles of incorporation or bylaws may provide for the worker cooperative to pay or credit interest on the balance in each member's internal capital account.

D. The articles of incorporation or bylaws may authorize assignment of a portion of retained net earnings and net losses to a collective reserve account. Earnings assigned to the collective reserve account may be used for any and all corporate purposes as determined by the board of directors.

E. A worker cooperative may issue nonvoting shares to members and nonmembers. Nonvoting shares may be redeemed or retired by the worker cooperative on such terms and conditions as may be provided in the articles of incorporation or bylaws. Payment for nonvoting shares may be made in cash, services, or property as determined by the board.

F. Any worker cooperative issuing shares under this article may accept registrations of such shares in the names of two or more persons, payable to any one of them, or to any one of them or the survivor, and any person so named, whether the others be living or not, may accept dividend payments and withdraw from the association and receive the amount payable on withdrawal in the same manner and on the same terms as are allowed by law and the articles of incorporation and bylaws in case of any other member or shareholder, and the receipt or acceptance of dividends or amounts payable on withdrawal by the person so paid shall be a valid and sufficient release and discharge of the association for any payment so made.

§ 13.1-355. Internal capital accounting.

A. The entire net book value of a worker cooperative shall be reflected in internal capital accounts, one for each member, and a collective reserve account.

B. A worker cooperative shall credit the paid-in membership fee and additional paid-in capital of a member to the member's internal capital account and shall also record the apportionment of retained net earnings or net losses to the members in accordance with patronage by appropriately crediting or debiting the internal capital accounts of members. The collective reserve account in an internal capital account cooperative shall reflect any paid-in capital, net losses, and retained net earnings not allocated to individual members.

C. The balances in all the internal capital accounts and collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of the balances is equal to the net book value of the worker cooperative.