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## HOUSE BILL NO. 2126

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking  
on January 31, 1997)

(Patron Prior to Substitute—Delegate Clement)

*A BILL to amend and reenact § 13.1-852.1 of the Code of Virginia, relating to nonstock corporations; member or director agreements.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 13.1-852.1 of the Code of Virginia is amended and reenacted as follows:**

§ 13.1-852.1. Member or director agreements.

A. An agreement among the members or the directors of a corporation that complies with this section is effective among the members or directors and the corporation, even though it is inconsistent with one or more of the other provisions of this chapter in that it:

1. Eliminates the board of directors or restricts the discretion or powers of the board of directors;

2. Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

3. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among them, including use of weighted voting rights or director proxies;

4. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any member, director, officer or employee of the corporation, or among any of them;

5. Transfers to one or more members, directors or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or members;

6. Requires dissolution of the corporation at the request of one or more of its members or directors, in the case of a corporation that has no members or in which the members have no voting rights, or upon the occurrence of a specified event or contingency; or

7. Otherwise governs the exercise of corporate power or the management of the business and affairs of the corporation or the relationship among the members, the directors and the corporation, or among any of them and is not contrary to public policy.

B. An agreement authorized by this section shall be:

1. a. Set forth in the articles of incorporation or bylaws and approved by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement; or

b. Set forth in a written agreement that is signed by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the agreement;

2. Subject to amendment only by all persons who are members or, if there are no members or the corporation's members do not have voting rights, by all persons who are directors at the time of the amendment, unless the agreement provides otherwise; and

3. If the agreement is set forth in the articles of incorporation or bylaws, the agreement shall be valid for an unlimited duration unless otherwise amended by the members or the directors, as the case may be. If the agreement is set forth in a written agreement, the agreement shall be valid for ten years, unless the agreement provides otherwise.

C. The existence of a membership agreement authorized by this section shall be noted conspicuously on the front or back of each certificate evidencing membership, if any. The failure to note the existence of the agreement on the certificate shall not affect the validity of the agreement or any action taken pursuant to it.

D. An agreement authorized by this section shall cease to be effective when the corporation has more than ~~thirty-five~~ 300 members of record. If the agreement authorized by this section ceases to be effective for any reason, the board of directors may adopt an amendment to the articles of incorporation or bylaws, without member action, in the case of a corporation that has members, to delete the agreement and any references to it.

E. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

F. The existence or performance of an agreement authorized by this section shall not be a ground for

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60 imposing personal liability on any member for the acts or debts of the corporation even if the agreement  
61 or its performance treats the corporation as if it were a partnership or results in a failure to observe the  
62 corporate formalities otherwise applicable to matters governed by the agreement.

63 G. Incorporators or subscribers for memberships may act as members or directors with respect to an  
64 agreement authorized by this section if no members have been elected or appointed or, in the case of a  
65 corporation that has no members, no directors are elected or holding office when the agreement was  
66 made.

67 H. No action taken pursuant to this section shall change any requirement to file articles or other  
68 documents with the Commission or affect the rights of any creditors or other third parties.