

# VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

## CHAPTER 63

*An Act to amend and reenact §§ 6.1-225.2, 6.1-225.14, 6.1-225.16, 6.1-225.23, 6.1-225.27 and 6.1-225.53 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.1-225.23:1, relating to credit unions; membership.*

[S 1019]

Approved March 9, 1999

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

**1. That §§ 6.1-225.2, 6.1-225.14, 6.1-225.16, 6.1-225.23, 6.1-225.27 and 6.1-225.53 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.1-225.23:1 as follows:**

§ 6.1-225.2. Definitions.

When used in this chapter, unless the context requires a different meaning, the following terms shall have the following meanings:

"Capital" means the sum of share accounts, reserves, and undivided earnings of a credit union.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of the Bureau of Financial Institutions of the State Corporation Commission of Virginia.

"Corporate credit union" means a credit union whose field of membership consists primarily of other credit unions.

"Credit union" means a cooperative, nonprofit corporation, organized under the laws of this Commonwealth and authorized to do business under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at fair and reasonable rates of interest, providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition, and conducting any other business, engaging in any other activity, and providing any other service that may be of benefit to its members, consistent with the provisions of this chapter and any regulations adopted by the Commission under this chapter.

*"Household" means those persons who are related by blood, marriage or other recognized family relationship and who live in the same house or other place of residence.*

*"Immediate family" includes means the persons related by blood or marriage as well as foster and adopted children in a household who are so related and also includes, regardless of their place of residence, the children, grandchildren, grandparents, parents, siblings and spouse of a person.*

"Insuring organization" means an organization that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share accounts in the credit unions shall be protected or guaranteed against loss up to a specified limit for each account, such as the National Credit Union Administration Share Insurance Fund, a corporation organized under the Virginia Credit Union Share Insurance Act or any other share insurance provider approved by the Commission.

"Member," with respect to a credit union, or "credit union member," means any person, corporation, association, partnership, society, firm, trust, or other legal entity holding a share account in accordance with standards specified by the credit union. *The word "member" may also be used to refer to an individual or other entity that is included within a group or a community, or to an individual who is part of a household or family.*

"Reserves" means the total of allowances for loan losses, regular, special, and any other type of funds held in reserve.

"Share account" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union, including balances designated as shares, share certificates, share draft accounts, or other names. Ownership of a share account confers membership and voting rights as set forth in the credit union bylaws and represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution.

"Shares" means the interest of a member having an account in the credit union, and shall be subordinate to all other obligations of the credit union.

§ 6.1-225.14. Certificate of authority.

Before it begins to do any business, an organizing credit union shall apply for and obtain from the Commission a certificate of authority. An application, accompanied by a fee of \$300, shall be made on a form prescribed by the Commission. The Commission shall issue such a certificate if it finds that:

1. The credit union has been formed for no purpose other than the conduct of a legitimate credit union business;

2. The moral fitness, financial responsibility, and other qualifications of the proposed officers and

directors are such as to command the confidence of the members;

3. *The field of membership of the proposed credit union complies with § 6.1-225.23, and all other applicable provisions of law have been complied with; and*

4. *Share accounts in the credit union will be insured by an approved insuring organization; and*

5. *Establishment of the proposed credit union is economically advisable. In reaching a decision on whether the establishment of a credit union is economically advisable, the Commission shall give consideration to 12 C.F.R. § 701.1, which incorporates the National Credit Union Administration's Interpretive Ruling and Policy Statement 99-1 as it pertains to economic advisability.*

The Commission may issue a certificate on condition that the credit union shall not begin to do business until it is actually issued insurance of accounts by such an insuring organization.

A credit union that is not so insured shall not receive funds or sell any shares.

§ 6.1-225.16. Amendments to articles of incorporation and bylaws.

The articles of incorporation or the bylaws may be amended as provided in the articles and bylaws, as the case may be, subject to §§ 13.1-886, 13.1-892, and 13.1-893. Amendments to the articles of incorporation shall be accomplished as provided in §§ 13.1-888 and 13.1-889. Proposed amendments to bylaws shall be submitted to the Commissioner, who shall approve or disapprove proposed amendments within thirty days. A bylaw amendment shall be effective upon its approval by the Commissioner. *However, no amendment to the articles of incorporation or bylaws that would expand the field of membership of a credit union shall be effective until such amendment has been approved by the Commissioner. When any such change in bylaws or articles of incorporation is proposed, the Commissioner may extend the period for approval as he may deem necessary for as much as an additional thirty days.*

§ 6.1-225.23. Membership defined; field of membership.

A. The membership of a credit union shall consist of the incorporators, employees of such credit union, and other persons within the ~~common bond~~ *field of membership* set forth in the bylaws as have: (i) been fully admitted into membership, (ii) paid any required entrance fee or annual membership fee, or both, (iii) subscribed for one or more shares, (iv) paid the initial installment thereon, and (v) complied with such other requirements as the articles of incorporation or bylaws specify.

B. Credit union membership shall be limited to persons ~~having a specified common bond of interest, members of their immediate families, within a specified field of membership, individuals within the immediate family or household of such persons, associations of such persons, other credit unions and employees of the credit union. The field of membership specified shall be composed of one of the following:~~

1. *A single group having a common bond of occupation or association.*

2. *More than one group, each of which has a common bond of occupation or association, and each of which does not exceed 3,000 members at the time it is proposed to be included in a multiple common-bond credit union. However, the 3,000-member limitation shall not apply if the Commission determines that an exception on the grounds provided in subsection (d) (2) or (d) (3) of § 101 of the Credit Union Membership Access Act (12 U.S.C. § 1759) is appropriate. In making any determination under this provision, the Commission shall give consideration to the National Credit Union Administration guidelines.*

3. *Those persons or organizations within a well-defined local community, neighborhood or rural district.*

*The Commission shall in its discretion determine whether such a proposed field of membership constitutes a "well-defined local community, neighborhood or rural district." However, the Commission shall give consideration to the definition of the term that has been adopted by the National Credit Union Administration and become legally effective.*

C. ~~A member who leaves the field of membership may be permitted to retain membership in the credit union under such reasonable standards as may be established by~~ *Except as the board of directors may provide to the contrary in the bylaws with respect to termination of membership, once a person or entity becomes a member of a credit union in accordance with this chapter, that person or entity may remain a member of that credit union until the person or entity chooses to withdraw from the credit union.*

D. The board of directors may expel from the credit union any member who: (i) has not carried out his obligations to the credit union; (ii) has been convicted of a criminal offense; (iii) neglects or refuses to comply with the provisions of this chapter or of the bylaws; (iv) neglects to pay his debts, or otherwise causes financial loss to the credit union; or (v) has deceived the credit union with regard to the use of borrowed money. However, no member shall be so expelled until he has been informed in writing of the charges against him, and an opportunity has been given to him, after reasonable notice, to be heard.

E. Members of the credit union shall not be personally liable for payment of the debts of the credit union.

F. ~~The surviving spouse of a deceased credit union member and the blood or adoptive relative of either of them and their spouses may become members shall be eligible to become a member of the~~

*credit union to which the deceased member belonged; otherwise, no individual shall be eligible for membership in a credit union on the basis of their relationship to another person who is eligible for membership in the credit union, unless the individual is a member of the immediate family or household of such person. However, the board of directors of a credit union may provide in the bylaws for a less inclusive policy governing membership by virtue of relationship to another person, and such policy shall be effective.*

G. Societies, associations, organizations, partnerships, and corporations composed of persons who are eligible for membership may be admitted to membership in the same manner and under the same conditions as such persons.

H. Any person or entity that was a member of a credit union as of July 1, 1999, may remain a member of the credit union after that date, and any group that was included in the field of membership of a credit union on that date may remain within the field of membership of that credit union after that date. The successor of an entity that was a member or was eligible for membership in a credit union or for inclusion in a field of membership on July 1, 1999, retains the status of its predecessor.

**§ 6.1-225.23:1. Expansion of field of membership.**

*When practicable and consistent with reasonable safety-and-soundness standards, the Commission shall encourage the formation of a separately chartered credit union instead of adding a new group to the field of membership of an existing credit union. However, if the Commission finds that the formation of a separate credit union by a group desiring such services is not practicable, or is not consistent with reasonable safety-and-soundness standards, it may authorize the group to be included in the field of membership of a state credit union that is located within reasonable proximity, if the Commission finds, based on the information it compiles, that the credit union proposed to be expanded:*

*1. Is adequately capitalized and will continue to have insurance on its members' shares and other accounts;*

*2. Has not engaged in any materially unsafe or unsound practice in the year preceding its application to expand; and*

*3. Has the management, administrative and financial resources to serve the additional group effectively. However, the Commission shall not authorize the proposed inclusion of a new group unless it finds that any potential harm to another insured credit union or its members which would likely result from the proposed expansion is clearly outweighed in the public interest by the probable beneficial effects of the proposed expansion in meeting the convenience and needs of the members of the group proposed to be included.*

**§ 6.1-225.27. Voluntary merger.**

A. A credit union organized under this chapter may merge, with the approval of the Commission ~~and without regard to common bond~~, with one or more other credit unions, state or federal. In any case in which the surviving credit union will be a Virginia state-chartered credit union, a merger application, accompanied by an application fee of \$300, shall be filed with the Commission. The Commission shall approve the application if *the Commission finds that:*

*1. The common bond of interest specified in the bylaws of the credit union which is to survive the merger is amended to include the common bond of interest specified in the bylaws of both credit unions field of membership of the credit union which is proposed to result from the merger satisfies the requirements of § 6.1-225.23 B;*

*2. The Commission finds that the plan of merger will promote the best interests of the members of the credit unions; and*

*3. The members of the merging credit unions have approved the plan of merger in accordance with applicable laws and regulations. Notwithstanding subdivision A 5 of § 13.1-895, the members of a Virginia credit union may authorize a plan of merger by vote of at least a majority of all votes cast thereon at an annual or special meeting at which a quorum is present. Notwithstanding the terms of § 13.1-895, in a merger where a Virginia state-chartered credit union will be the surviving resulting credit union, the adoption of the plan of merger by the board of directors of that credit union shall be sufficient approval of the plan, and approval of the plan of merger by the members of that credit union shall not be required. Notice of the meeting may be given in a manner prescribed in the articles of incorporation or bylaws, notwithstanding the terms of § 13.1-842 relating to the manner of notice. A federal credit union merging with a state credit union may give notice to its members as prescribed by federal regulation.*

B. 1. If the Commission finds that the requirements of subsection A of this section have been met and all required fees have been paid, it shall approve the merger and issue a certificate of merger, which shall be admitted to record in its office and in the office for the recording of deeds in the city or county in which the registered office of each credit union is located. However, no such further recordation shall be required in the City of Richmond, County of Chesterfield or the County of Henrico.

2. Upon the issuance of the certificate of merger the provisions of § 13.1-897, mutatis mutandis, shall become effective.

C. For the purposes of this section, a member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy. A member may appoint a proxy to vote

or otherwise act for him by signing an appointment form. An appointment of a proxy becomes effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form or the appointment is revoked by the member.

§ 6.1-225.53. Loan limit.

No loan may be made to a member if, upon making the loan, the member would be indebted to the credit union on loans to such member in an aggregate amount which would exceed ten percent of its share accounts and reserve fund, or the maximum amount as authorized by its bylaws, whichever is less. *The aggregate amount of a credit union's "member business loans," as defined in 12 C.F.R. § 701.21 (h), shall not exceed the limit prescribed for insured credit unions by subsection (a) of § 107A of the Federal Credit Union Act (12 U.S.C. § 1757 a), taking into account also the provisions of subsections (b) through (d) of that section.*