

ASSEMBLY BILL NO. 432—ASSEMBLYMAN FRIERSON

MARCH 25, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Establishes provisions governing worker cooperative corporations. (BDR 7-1026)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets *[omitted material]* is material to be omitted.

AN ACT relating to business entities; establishing provisions governing worker cooperative corporations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes various provisions relating to nonprofit cooperative corporations and cooperative associations. (Chapter 81 of NRS) **Sections 2-31** of this bill establish provisions relating to worker cooperative corporations.

Section 11 of this bill authorizes a private corporation to elect to be governed as a worker cooperative corporation. **Section 11** requires that such a worker cooperative corporation be governed by chapter 78 of NRS unless such provisions conflict with **sections 2-31**.

Section 12 of this bill sets forth various requirements for the articles of incorporation or bylaws of a worker cooperative corporation with regards to membership in a worker cooperative corporation, and **sections 15 and 16** of this bill establish requirements for the expulsion, termination or suspension of a member as well as remedies for a member whose membership was expelled, terminated or suspended. **Section 13** of this bill also establishes the qualifications and duties of directors of a worker cooperative corporation.

Section 14 of this bill provides for a worker cooperative corporation to issue membership shares and other capital stock. **Section 14** also specifies the respective rights of members and stockholders as related to such membership shares and stock.

Sections 17-24 of this bill establish requirements relating to meetings of the worker cooperative corporation and notice requirements for such meetings. **Section 25** of this bill authorizes the board of directors to distribute ballots for the purpose of member voting and prescribes the requirements governing such voting procedures.

Sections 26-28 of this bill authorize a worker cooperative corporation to declare patronage dividends from net earnings and authorize a worker cooperative corporation to set up a series of internal capital accounts, divisible reserve accounts and indivisible reserve accounts.



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Section 29 of this bill authorizes a worker cooperative corporation to act as an internal capital account cooperative.

Section 30 of this bill authorizes a corporation to revoke its election to be governed as a worker cooperative corporation and provides the procedure for such a revocation. **Section 31** of this bill prohibits a worker cooperative corporation from merging with another corporation unless the merger is with another worker cooperative corporation under certain circumstances.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 81 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 31, inclusive, of this act.

Sec. 2. *The Legislature hereby finds and declares that a worker cooperative:*

1. Has the purpose of creating and maintaining sustainable jobs and generating wealth.

2. Is essential to:

(a) Improving the quality of life of the members of the worker cooperative;

(b) Dignifying human work;

(c) Allowing democratic self-management of employees; and

(d) Promoting community and local development in this State.

Sec. 3. *As used in sections 2 to 31, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 10, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. "Member" means a natural person who:

1. Has been accepted for membership in a worker cooperative; and

2. Owns a membership share issued by a worker cooperative.

Sec. 5. "Membership share" means a single class of stock that has unlimited voting rights issued by a worker cooperative to a member.

Sec. 6. "Patronage" means the amount of work performed by a member measured in accordance with the articles of incorporation and bylaws of a worker cooperative.

Sec. 7. "Patronage dividend" means a dividend or distribution of net income made on the basis of patronage.

Sec. 8. "Quorum" means a simple majority of the members.

Sec. 9. "Worker cooperative" means a corporation which has elected to be governed by the provisions of sections 2 to 31, inclusive, of this act.



1 **Sec. 10.** *“Written notice of allocation” means a written*
2 *instrument which discloses to a member the stated dollar amount*
3 *of his or her patronage dividend and the terms for payment of that*
4 *amount by a worker cooperative to the member.*

5 **Sec. 11.** 1. *A corporation formed pursuant to chapter 78 of*
6 *NRS may elect to be governed as a worker cooperative under the*
7 *provisions of sections 2 to 31, inclusive, of this act and such an*
8 *election must be stated in the articles of incorporation of the*
9 *corporation or in an amendment to the articles of incorporation of*
10 *the corporation filed pursuant to chapter 78 of NRS.*

11 2. *The provisions of chapter 78 of NRS govern a worker*
12 *cooperative established pursuant to sections 2 to 31, inclusive, of*
13 *this act, except to the extent that the provisions of chapter 78 of*
14 *NRS are inconsistent with sections 2 to 31, inclusive, of this act.*

15 **Sec. 12.** 1. *The articles of incorporation or bylaws of a*
16 *worker cooperative must establish:*

17 (a) *The qualifications for membership, including, without*
18 *limitation, that a member must be employed by the worker*
19 *cooperative on a full- or part-time basis; and*

20 (b) *The method of acceptance, expulsion, termination and*
21 *suspension of members.*

22 2. *At least 51 percent of the members of a worker cooperative*
23 *must be employees of the worker cooperative.*

24 3. *An authorized and voluntary leave of absence from a*
25 *worker cooperative by a member of the worker cooperative must*
26 *not revoke the membership status of the member.*

27 4. *Members shall have all the rights and responsibilities of a*
28 *stockholder of a corporation pursuant to chapter 78 of NRS.*

29 **Sec. 13.** 1. *A majority of the directors on the board of*
30 *directors of a worker cooperative must be members.*

31 2. *The board of directors shall meet with the members not*
32 *less than annually.*

33 3. *A majority vote of the members shall override any decision*
34 *by the board of directors, unless the articles of incorporation or*
35 *bylaws of the worker cooperative require a larger percentage of*
36 *the vote to override such a decision.*

37 4. *A meeting in which the members will vote whether to*
38 *override a decision of the board of directors must be called by at*
39 *least 5 percent of the members.*

40 **Sec. 14.** 1. *Each member shall own one membership share,*
41 *and only members may own such shares.*

42 2. *Membership shares:*

43 (a) *Must be issued for a fee determined by the board of*
44 *directors of the worker cooperative.*

45 (b) *Must not be considered a security.*



3. *Except as otherwise provided in subsection 4:*

(a) *No shares of the corporation other than membership shares may be given voting power in a worker cooperative.*

(b) *The power to amend or repeal the bylaws of a worker cooperative may only be given to the members.*

4. *An amendment that adversely affects the rights of the holders of corporate shares other than membership shares may not be adopted without the vote of such shareholders pursuant to chapter 78 of NRS.*

Sec. 15. 1. *An expulsion, termination or suspension of a member which deviates from the procedural requirements of this section is void and without effect.*

2. *An expulsion, termination or suspension of a member must be performed in good faith and in a fair and reasonable manner.*

3. *A procedure for the expulsion, termination or suspension of a member is fair and reasonable if such a procedure is set forth in the articles of incorporation or bylaws of a worker cooperative and the procedure:*

(a) *Provides 15 days' notice of the expulsion, termination or suspension and such notice includes, without limitation, a reason for the expulsion, termination or suspension; and*

(b) *Gives the member an opportunity to be heard, orally or in writing, before a person or body authorized to make such a decision regarding the expulsion, termination or suspension not less than 5 days before the effective date of the expulsion, termination or suspension.*

4. *A court may determine that a procedure for the expulsion, termination or suspension of a member was fair and reasonable pursuant to subsection 2.*

5. *The notice pursuant to subsection 3 must be reasonably calculated to provide actual notice to a member. The notice may be served by first-class or registered mail sent to the last known address of the member as shown in the records of the worker cooperative.*

6. *A member who is expelled, terminated or suspended is liable for any services or benefits actually rendered, dues, assessments, fees or charges incurred before his or her expulsion, termination or suspension.*

Sec. 16. 1. *An action challenging an expulsion, termination or suspension of a member, including, without limitation, a claim alleging defective notice, pursuant to section 15 of this act must be commenced within 1 year after the date of the expulsion, termination or suspension.*



2. If a member is successful in his or her claim pursuant to subsection 1, a court may order any relief, including, without limitation, the reinstatement of a membership.

3. Unless a court finds that the member was expelled, terminated or suspended in bad faith in order to effect the outcome of a vote, a decision made by a vote of the members or the board of directors of a workers cooperative must not be set aside because a member was successful in his or her claim pursuant to subsection 1.

Sec. 17. 1. For a meeting during which members are required or permitted to vote, notice must be given, in writing, not less than 10 days or more than 90 days before the date of the meeting. Such notice must be provided to each member who, on the record date, is entitled to vote.

2. Except as otherwise provided in this subsection, if the notice pursuant to subsection 1 is provided by mail, such notice must be given not less than 20 days before the meeting. If the notice is mailed by first-class, registered or certified mail, such notice must be given not less than 10 days before the meeting.

3. If a member submits a written request to hold a special meeting to the chair of the board of directors, president, vice president or secretary of a worker cooperative, the special meeting must be held not less than 35 days and not more than 90 days after the receipt of such a request. The requesting member must not be a director of the board of directors.

4. If notice of a special meeting is not given within 20 days after a request is submitted pursuant to subsection 3:

(a) The member requesting the special meeting pursuant to subsection 3 may provide notice to the members in accordance with the requirements of subsection 3; or

(b) The member may request that a district court order service of the notice pursuant to subsection 3.

5. A district court shall provide a worker cooperative with an opportunity to be heard before the court makes an order pursuant to paragraph (b) of subsection 4.

Sec. 18. 1. Before a meeting consisting of only members, personal notice must be given to each member not less than 48 hours before the meeting. Such notice must be provided to each member who, on the record date, is entitled to vote.

2. Any decision made at a meeting held pursuant to subsection 1 may be vetoed by a member who:

(a) Was not present at the meeting; and

(b) Did not receive 48 hours' notice,



1 ↪ unless a majority of the members or another percentage of the
2 members as specified in the articles of incorporation or the bylaws
3 of the worker cooperative were present at the meeting.

4 **Sec. 19.** Notice of a meeting given pursuant to section 17 or
5 18 of this act must include, without limitation:

6 1. The place, date and time of the meeting;

7 2. A description of the general nature of the matters before
8 the board of directors or members, as applicable;

9 3. If a director is to be elected, the names of each of the
10 candidates for such a position; and

11 4. If applicable, information regarding the electronic or video
12 transmission of the meeting.

13 **Sec. 20.** 1. Except as otherwise provided in section 18 of
14 this act, notice may be provided by:

15 (a) Personal service;

16 (b) Electronic transmission;

17 (c) Mail; or

18 (d) Any other means of written communication.

19 2. An affidavit executed by a secretary, assistant secretary or
20 transfer agent of a worker cooperative attesting that notice was
21 served in accordance with sections 17 to 22, inclusive, of this act
22 shall be deemed prima facie evidence that proper notice was given
23 by the worker cooperative.

24 **Sec. 21.** 1. Except as otherwise provided in subsection 2,
25 notice of a meeting given by mail or through other written
26 communication pursuant to section 20 of this act must be
27 addressed to a member at his or her last known address as
28 provided in the records of the worker cooperative.

29 2. If there is no known address of a member in the records:

30 (a) The worker cooperative must use the address of the
31 principal place of business of the worker cooperative; or

32 (b) The notice must be published, one time, in a newspaper of
33 general circulation in the county in which the principal place of
34 business of the worker cooperative is located.

35 3. If a mailed notice of a meeting is returned by the United
36 States Postal Service as being undeliverable to an address of a
37 member, all future such notices shall be deemed to have been duly
38 given unless the member makes a written demand to the worker
39 cooperative for a copy of the notice, at which time the notice must
40 be provided by the worker cooperative to the member if the
41 demand was made within 1 year after the original notice was
42 returned as undeliverable.

43 **Sec. 22.** Notice of a meeting may not be given by electronic
44 transmission pursuant to section 20 of this act if:



1 1. A worker cooperative is unable to deliver two consecutive
2 notices to the member by electronic transmission; or

3 2. A secretary, assistant secretary, transfer agent or any other
4 person knows that the notice is unable to be delivered by electronic
5 transmission.

6 **Sec. 23.** 1. Unless otherwise provided by the articles of
7 incorporation or bylaws of a worker cooperative, when a meeting
8 is adjourned to another time or place, notice of the adjournment
9 need not be given to the members of the original meeting if the
10 time and place that the meeting will commence is announced
11 before the adjournment.

12 2. If an adjournment pursuant to subsection 1 is taken for
13 more than 45 days, or if a new record date is set after an
14 adjournment, notice of the adjournment must be given in
15 accordance with sections 17 to 23, inclusive, of this act to each
16 member entitled to vote.

17 3. At the commencement of the adjourned meeting, the
18 worker cooperative may transact any business that would have
19 been transacted at the original meeting.

20 **Sec. 24.** 1. Any business transacted at a meeting that does
21 not meet the notice requirements pursuant to sections 17 to 23,
22 inclusive, of this act is valid if:

23 (a) There was a quorum of the members present at the
24 meeting; and

25 (b) Each member not present at such a meeting:

26 (1) Was provided a written waiver of the notice;

27 (2) Consented to the holding of the meeting without his or
28 her presence; or

29 (3) Approved the minutes of the meeting in writing.

30 2. The attendance of a person at a meeting constitutes waiver
31 of the notice pursuant to subsection 1 unless the person objects at
32 the beginning of the meeting to the transaction of business at the
33 meeting on the basis of improper notice pursuant to sections 17 to
34 23, inclusive, of this act.

35 3. A written waiver of notice is not required to include a
36 provision for each item of business to be transacted at a meeting
37 unless otherwise specified by the articles of incorporation or
38 bylaws of the worker cooperative.

39 **Sec. 25.** 1. Unless otherwise prohibited by the articles of
40 incorporation or bylaws of a worker cooperative, the board of
41 directors of the worker cooperative may authorize the distribution
42 of a written ballot to every member entitled to vote at a meeting.

43 2. A ballot distributed pursuant to subsection 1 must:

44 (a) Set forth any proposed action to be taken at the meeting;



(b) Provide an opportunity for the member to approve or disapprove of any action; and

(c) State that unless the ballot is revoked by a member, the ballot will be counted if received by the worker cooperative on or before the time of the meeting.

3. A ballot may be revoked by a member pursuant to subsection 2 by the physical appearance and casting of a vote of the member at the meeting.

4. For the purposes of the subject matter of a written ballot, an unrevoked ballot is equivalent to the physical presence of a member at the meeting for purposes of determining a quorum.

5. If cumulative voting is permitted by the articles of incorporation or bylaws of a worker cooperative and the distribution of ballots is not prohibited pursuant to subsection 1, a ballot may be distributed for the election of a director.

Sec. 26. 1. The net earnings and losses of a worker cooperative must be apportioned and distributed at the time and in the manner specified by the articles of incorporation or bylaws of the worker cooperative.

2. Any net earnings declared as patronage dividends and paid to members must be apportioned among the members in the proportion of the patronage of each member during a given period of time to the total patronage by all members during that period of time.

3. The apportionment, distribution and payment of net earnings pursuant to this section may be in cash, credits, written notices of allocation or corporate shares issued by the worker cooperative.

Sec. 27. The articles of incorporation or bylaws of a worker cooperative may:

1. Establish a system of internal capital accounts to reflect the book value of the worker cooperative and to determine the redemption price of membership shares, corporate shares and written notices of allocation.

2. Permit the periodic redemption of written notices of allocation and corporate shares and may provide for recall and redemption of membership shares upon termination of membership in the worker cooperative unless the redemption would result in the liability of a director of the worker cooperative.

3. Authorize the worker cooperative to pay or credit interest on the balance of the internal capital account of each member.

4. Authorize the assignment of a portion of retained net earnings and net losses to a collective reserve account. Such assigned earnings may be used for any corporate purpose determined by the board of directors of the worker cooperative.



Sec. 28. 1. A worker cooperative may use:

(a) A divisible reserve account; or

(b) An indivisible reserve account.

2. An account used pursuant to subsection 1 may be used to pay the expenses of a worker cooperative, including, without limitation, wages.

3. Upon the dissolution or sale of a worker cooperative, an indivisible reserve account of the worker cooperative must be allocated to an indivisible reserve account of another worker cooperative or nonprofit corporation.

Sec. 29. 1. The articles of incorporation or bylaws of a worker cooperative may establish the worker cooperative as an internal capital account cooperative.

2. Each member of an internal capital account cooperative shall have one vote.

3. An internal capital account cooperative shall:

(a) Credit the membership fee and additional capital paid by a member to the internal capital account of that member; and

(b) Record the apportionment of retained net earnings or losses to the members in accordance with patronage by appropriately crediting or debiting the internal capital account of each member.

4. The capital reserve account in an internal capital account cooperative must reflect any capital, net losses and retained net earning not allocated to individual members.

5. The balances in every internal capital account and collective reserve account, if applicable, must 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.

6. As used in this section, "internal capital account cooperative" means a worker cooperative whose entire net book value is reflected in internal capital accounts, one for each member, and a collective reserve account.

Sec. 30. 1. A worker cooperative may revoke its election to be governed as a worker cooperative pursuant to section 11 of this act:

(a) In a manner as provided by the articles of incorporation or bylaws of the worker cooperative, but by not less than a majority vote of the members; and

(b) Through a certificate of amendment filed pursuant to chapter 78 of NRS.

2. A worker cooperative that revokes its election pursuant to subsection 1 shall, in its certificate of amendment, provide for the conversion of membership shares and internal capital accounts or



1 *their conversion to securities or other property in a manner*
2 *consistent with chapter 78 of NRS.*

3 **Sec. 31.** 1. *A worker cooperative that has not revoked its*
4 *election pursuant to section 11 of this act shall not consolidate or*
5 *merge with another corporation unless such a corporation is also*
6 *a worker cooperative.*

7 2. *Two or more worker cooperatives may merge in a manner*
8 *consistent with chapters 78 and 92A of NRS.*

