

**REPORT OF THE
VIRGINIA CODE COMMISSION ON**

**The Revision Of
Chapter 4 of Title 6.1
Of The Code of Virginia**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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TABLE OF CONTENTS

Introduction and Summary

Proposed Revision

Appendix I: Outline of Proposed Chapter 4.01

Appendix II: Memorandum from Credit Union League

Appendix III: Comparative Tables

Appendix IV: Commission Members

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OF THE CODE OF VIRGINIA TO THE GOVERNOR AND THE
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Introduction and Summary

House Joint Resolution No. 309, approved by the Virginia General Assembly in 1989, requested the Virginia Code Commission to undertake a revision of Chapter 4 of Title 6.1 of the Code of Virginia. The many changes made by the General Assembly to Virginia's credit union laws since the adoption of the Code of 1950 made it appropriate to reexamine the chapter as a whole, to better organize, simplify and structure the provisions of the chapter, and generally improve the clarity of the law.

The requested revision has been completed, and has resulted in a recodification of Chapter 4 of Title 6.1 as Chapter 4.01 of Title 6.1. The proposed revision consists of fourteen articles and sixty-three sections. A more detailed outline of proposed Chapter 4.01 is contained in Appendix I. A copy of the proposed revision, as approved by the Code Commission, follows this report. Drafting Notes following each section of the proposed text explain the changes.

In revising present Chapter 4 of Title 6.1 the Commission was guided by several goals:

- Simplification of language wherever possible;
- Substitution of commonly used terms for archaic language;
- Alphabetical arrangement of terms in a new definitional section;
- Comporting outdated industry practices and procedures to modern practice and procedure;
- Organizing the Act into articles to provide easier access to the Act;
- Enumerating powers of credit unions rather than continue to rely upon implied powers;
- Clarifying powers and duties of board of directors, credit and supervisory committees and establishing loan officer procedure.

A more detailed summary of the proposal reviewed by the Code Commission, the background for the need of the revision and an explanation of the changes reviewed by the Code Commission is contained in Appendix II.

Consideration was given to include within the proposed revision provisions to allow state chartered credit unions to include in their membership groups with common bonds, if located in the same geographical area, as allowed by federal law. However, the Code Commission felt that

this proposal was a substantive change to existing law and would be more properly addressed in a separate piece of legislation introduced to accomplish such a change. For the same reasons the Code Commission decided not to include within the revision a proposal which would make a minor the sole owner of his share account free from the control of others.

During its deliberations the Commission was assisted by Eugene H. Farley, Jr., President of the Virginia Credit Union League, and Reginald N. Jones, counsel to the Virginia Credit Union League, who was the chief draftsman of the revision of Chapter 4 of Title 6.1. The Commission would like to thank them for their hard work and helpful counsel.

Respectfully submitted,

Dudley J. Emick, Jr. (Chairman)

J. Samuel Glasscock (Vice Chairman)

E. M. Miller, Jr. (Secretary)

Russell M. Carneal

Joseph V. Gartlan, Jr.

H. Lane Kneeler

John Wingo Knowles

Theodore V. Morrison, Jr.

William F. Parkerson, Jr.

A. L. Philpott

PROPOSED REVISION

1 to various states: Texas, California, North Carolina, Kentucky, West
2 Virginia, and Section 101 (12 U.S.C. & 1752) Fed. Credit Union Act
3 (FCUA).

4 "Immediate family" includes persons related by blood or marriage
5 as well as foster and adopted children.

6 Drafting Note: Section 6.1-198(3) refers to "members of their
7 families" in referring to persons having a common bond in qualifying
8 for membership in a credit union. Current Virginia law is similar to
9 the MCUA. Many states define "immediate family" and the recommended
10 definition is similar to that of North Carolina and most states with a
11 definition in their credit union act.

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

20 "Member" means any person, corporation, association, partnership,
21 society, firm, trust or other legal entity holding a share account in
22 accordance with standards specified by the credit union.

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

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

1 Drafting Note: Definition from MCUA clarifies that share ownership
2 confers membership, voting rights, and an interest in capital of the
3 credit union.

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

7 Drafting Note: Defined in § 6.1-196. Corrects current law to include
8 the interest of a member who has a share draft account which is
9 not a "savings" account.

1

2

Article 2.

3

Supervision and Regulation.

4

§ ~~6.1-220-6.1-225.3~~. ~~Supervision and examination-regulation~~

5

by Commission ~~report-penalty~~. ~~Corporations-Credit unions~~

6 organized under the provisions of this chapter shall be subject to

7 ~~such-the~~ supervision and ~~examination-as-regulation~~ of the Commission8 ~~may,-in-its-discretion,-deem-necessary~~. Every ~~such-corporation~~ shall9 ~~make-a-report-of-condition-to-the-Commission-at-the-close-of-business-~~10 ~~on-December-31-of-each-year~~. ~~These-reports-shall-be-signed-by-the-~~11 ~~president-and-the-treasurer-or-secretary,-or-by-a-majority-of-the-~~12 ~~members-of-the-supervisory-committee,-and-they-shall-make-such-other-~~13 ~~reports-as-the-Commission-shall-at-any-time-demand~~. Any ~~such-~~14 ~~corporation-which-neglects,-willfully-fails,-or-refuses-to-make-any-~~15 ~~report-called-for-shall-be-subject-to-a-fine-of-up-to-\$100-per-day,-to~~16 ~~a-maximum-of-\$10,000,-for-each-day-such-neglect,-willful-failure,-or-~~17 ~~refusal-continues~~. The Commission shall impose such a fine unless the18 ~~imposition-thereof-be-excused-for-good-cause-shown,-upon-petition-by-~~19 ~~the-offending-credit-union~~. The Commission may adopt regulations to20 implement the provisions of this chapter.21 Before promulgating any regulation, the Commission shall give22 reasonable notice of its content and shall afford interested parties23 an opportunity to present evidence and be heard, in accordance with24 the Rules of Practice and Procedure of the Commission.

25 Drafting Note: As in current law, establishes that state-chartered
 26 credit unions shall be supervised and regulated by the Commission.
 27 The word "examination" has been changed to "regulation" to more
 28 properly reflect the role of the Commission. The stricken provisions
 29 have been relocated within Article 2.

The last sentence is added to specifically authorize the Commission to

1 promulgate regulations to implement the Act.

2 § ~~6-1-221-6.1-225.4~~. Examinations.--Each credit union shall be
 3 examined as often as the Commission deems such an examination to be i
 4 the ~~shareholders'~~ interest ~~--Such of its members.~~ An examination
 5 shall be conducted at least twice in every three-year period. The
 6 examiners shall be given free access to all books, papers, securities
 7 ~~and~~ other sources of information in respect to such ~~corporation-~~
 8 ~~credit union~~. For the purpose of making such examination ~~the~~
 9 Commission may subpoena and examine personally witnesses ~~on under~~
 10 oath, whether such witnesses are members of the ~~corporation-credit~~
 11 ~~union~~ or not, and may require the production of any documents, whether
 12 such documents are documents of the ~~corporation-credit union~~ or not.

13 All expenses incident to any special examination which may be
 14 necessary ~~may be ordered to~~ shall be paid by the credit union so
 15 examined.

16 Drafting Note: Does not change present examination requirement of at
 17 least two examinations every three years or as often as necessary to
 18 protect a member's interest. No substantive change.

19 § ~~6-1-221-1-6.1-225.5~~. Fees for examination, supervision ~~and~~
 20 regulation.--In order to defray the costs of the examination described
 21 in § ~~6-1-221-6.1-225.4~~ and of supervision and regulation by the
 22 Commission, every credit union shall pay an annual fee, to be
 23 calculated in accordance with a schedule set by the Commission. Such
 24 schedule shall bear a reasonable relationship to the total assets of
 25 various individual credit unions, to the actual cost of their
 26 respective examinations, and to other factors relating to their
 27 supervision and regulation. Fees shall be assessed pursuant to this
 28 section on or before ~~March 1, 1982, and before~~ March 1 each year
 29 thereafter-. All fees so assessed shall be paid by the credit union to

1 the state treasury on or before March 31 following the assessment.

2 Drafting Note: Combines old fee sections for examination and
3 supervision and regulation in same section and updates without any
4 substantive change.

5 § ~~6.1-222-6.1-225.6~~. ~~Failure to make reports or pay charges-~~
6 ~~Reports to the Commission .-- A. No later than March 31 of each~~
7 ~~year, every credit union shall report to the Commission regarding its~~
8 ~~condition as of the close of business on the preceding December 31.~~
9 ~~These reports shall be signed by the president or the chairman and the~~
10 ~~treasurer or secretary, or by the majority of the members of the~~
11 ~~supervisory committee, and every credit union shall make such other~~
12 ~~reports as the Commissioner shall at any time demand.~~

13 ~~In the event that B.~~ If any credit union shall neglect or
14 ~~refuse neglects or refuses~~ to make its reports as provided in this
15 chapter for more than fifteen days, or ~~in the event that any such~~
16 ~~corporation shall fail if~~ any credit union fails to pay such charges
17 as are required under this chapter, including any charges for delay in
18 filing reports, ~~it shall be subject to a fine of up to \$100 per day,~~
19 ~~to a maximum of \$5,000 or~~ the Commission shall give notice to such
20 ~~corporation-credit union~~ of its intention to revoke the certificate
21 of ~~approval authority~~ of such ~~corporation-credit union~~ for such
22 neglect or failure ~~, and if,~~ If such neglect or failure continues
23 for fifteen days after such notice, then the Commission may revoke or
24 suspend the ~~license certificate of authority~~ of the ~~corporation-~~
25 ~~credit union~~. ~~And, in~~ In such event, the Commission may, in its
26 discretion, (i) close such ~~corporation-credit union~~ and take
27 possession of its property and business until such time as it may see
28 fit to allow the ~~corporation-credit union~~ to resume business ~~, or may-~~
29 (ii) proceed to finally liquidate such business ~~, as may seem proper.~~

1 Drafting Note: Penalty for failure to make reports required by State
 2 Corporation Commission ("SCC") for a period of fifteen days or pay
 3 charges due to SCC. Upon notice to credit union, the SCC can revoke
 4 or suspend certificate of authority. Same as current § 6.1-222.

5 ~~§-6.1-200.2.---Amendment-of-powers-by-regulation-of-~~
 6 ~~Commission.---A.---In-addition-to-the-powers-specifically-granted-to-~~
 7 ~~credit-unions-by-the-provisions-of-this-chapter,--the-Commission-may-by~~
 8 ~~appropriate-regulation-amend-the-powers-of-state-credit-unions-so-as-~~
 9 ~~to-allow-them-to-have-powers-at-least-comparable-to-those-granted-to-~~
 10 ~~federal-credit-unions-engaged-in-business-in-this-Commonwealth-or-to-~~
 11 ~~effect-the-purposes-of-this-chapter.---Such-regulations-shall-be-~~
 12 ~~effective-upon-their-adoption,--and-shall-continue-in-effect-until-~~
 13 ~~amended-or-revoked-by-the-Commission-or-superseded-by-action-of-the-~~
 14 ~~General-Assembly-of-Virginia.---~~

15 ~~B.---1.---§ 6.1-225.7. Cease and desist order; right to hearing.---~~
 16 A. The Commissioner may issue and serve upon a credit union an order
 17 to cease and desist from any-one or more unsafe or unsound praetice-
 18 practices or ~~a-violation-violations~~ if, in the opinion of the
 19 Commissioner, a credit union (i) is engaging or has engaged, or there
 20 is reasonable cause to believe is about to engage, in an unsafe or
 21 unsound practice ~~in-the-operation-of-the-credit-union-~~; or (ii) is
 22 violating or has violated, or there is reasonable cause to believe is
 23 about to violate, this chapter or any other applicable law, regulation
 24 or order. An order to cease and desist shall contain a statement of
 25 the facts constituting the alleged violations or unsafe or unsound
 26 praetice-or-violation-practices or violations, and ~~it-the order may~~
 27 require, in terms that may be mandatory or otherwise, a credit union,
 28 its officers, directors, employees or agents to cease and desist
 29 from such praetice-practices or violation-violations. ~~Such-The~~
 30 order shall specify the effective date thereof and shall contain a

1 notice to the credit union of its ~~rights-right~~ to ~~request~~-a hearing
 2 on such order in accordance with Rules 3:4 and 5:6 of the "Rules of
 3 Practice and Procedure of the State Corporation Commission."

4 ~~2.-When-the-B.~~ If an unsafe or unsound practice or violation
 5 specified in such-the order to cease and desist, or any continuation
 6 thereof, is likely to prejudice the interest of the members of the
 7 credit union, the Commissioner may issue his-an order effective
 8 immediately. An order to cease and desist shall remain in effect until
 9 it is withdrawn by the Commissioner or is terminated by the Commission
 10 after a hearing on the matter. A request for hearing under this
 11 section shall be given expeditious treatment on the docket of the
 12 Commission, and the Commission need not allow for ten days' notice to
 13 the parties.

14 Drafting Note: This section is taken from subdivisions B1 and B2 of
 15 current § 6.1-200.2. SCC given authority to order a credit union to
 16 cease certain unsafe or unsound practices. The procedure is
 17 established for an expedited hearing before the Commission. This
 18 section is identical to subdivisions D.1 and D.2 of § 6.1-194.83 for
 19 savings and loans.

20 § 6.1-225.8. Powers of Commission in case of nonobservance of
 21 law, noncompliance with orders, insufficient reserves or insolvency,
 22 etc.--If the Commission finds that (i) a credit union is in violation
 23 of some law or regulation applicable to it, (ii) a credit union is
 24 being operated in an unsafe or unsound manner, (iii) a credit union
 25 has failed to comply with a lawful order of the Commissioner, (iv) the
 26 reserve of the credit union fails to meet the requirements set forth
 27 in § 6.1-225.58, or (v) a credit union is, or is about to become,
 28 insolvent, it shall give immediate notice of its finding to the
 29 officers and directors of the credit union. If necessary to conserve
 30 the assets of the credit union or protect the interests of the members

1 of the credit union, the Commission may, after reasonable notice to
2 the credit union and an opportunity for it to be heard:

3 1. Close the credit union for a period not exceeding sixty days.
4 which period may be extended for additional like periods as the
5 Commission may deem necessary:

6 2. Require the officers and directors of the credit union to
7 liquidate outstanding loans:

8 3. Require that all lawful orders of the Commission be complied
9 with:

10 4. Require the credit union to make reports daily or otherwise
11 as to the results achieved in carrying out its orders:

12 5. Temporarily suspend the right of such credit union to receive
13 any further investment in its payments into share accounts:

14 6. Grant the right to suspend or limit withdrawals against share
15 accounts for such period as the Commission may deem necessary:

16 7. Appoint a conservator to take charge of the credit union and
17 operate it pending further action by the Commission.

18 If the Commission determines that a credit union is insolvent and
19 that a receiver should be appointed for a credit union, the Commission
20 may close the doors of the credit union, take charge of the books,
21 assets and affairs of the credit union, and apply to any court in the
22 Commonwealth having jurisdiction to appoint receivers for the
23 appointment of a receiver to take charge of the credit union's
24 business and assets. A credit union shall be deemed insolvent when
25 the current value of its assets is less than the current value of the
26 sum of its share accounts and liabilities.

27 Drafting Note: This section provides new powers to the Commission
28 when a credit union fails to operate in a safe and sound manner, fails
29 to comply with order of SCC or the law, or is or is about to become

1 insolvent, has insufficient reserves or is in violation of some law or
 2 regulation. "Insolvent" is currently defined in subsection E of §
 3 6.1-200.4. (Similar to subsections A and B of § 6.1-194.83)

4 § ~~6.1-223.1-6.1-225.9~~. Penalties for violation of orders of
 5 Commission ; removal of official.--The Commission may impose, enter
 6 judgment for, and enforce by its process, a fine of not more than
 7 \$10,000 against any credit union or against any of its directors,
 8 officers , or employees for knowingly or willfully violating any
 9 lawful order of the Commission ~~; and~~. The Commission may remove
 10 from office , in accordance with the procedure set forth in §
 11 6.1-194.84, any director or officer who a second time violates any
 12 such order but in all cases the defendant shall have an opportunity to
 13 be heard and to introduce evidence, and the right to appeal as
 14 provided by law or who knowingly continues to violate any law
 15 relating to credit unions or knowingly continues an unsafe or unsound
 16 practice in conducting the business of a credit union .

7 Drafting Note: Section same as § 6.1-223.1 except may remove an
 18 official on first offense rather than getting a free bite at the
 19 apple. SCC amendment eliminates right of appeal language from
 20 statute.

21 § ~~6.1-200.4--6.1-225.10~~. Merger-Supervisory merger or
 22 transfer of assets of insolvent credit unions.--A. If the Commission
 23 shall find that a credit union incorporated pursuant to this chapter
 24 is insolvent ~~or~~, that an emergency exists, and that its merger into
 25 another credit union incorporated pursuant to this chapter or a
 26 federal credit union incorporated pursuant to the laws of the United
 27 States and authorized to do business as a credit union in the
 28 Commonwealth of Virginia is desirable for the protection of its
 29 members, and if the board of directors of both credit unions shall
 30 approve a plan of merging such insolvent state credit union into
 31 another state credit union or a federal credit union, compliance with

1 § 13.1-895 shall be dispensed with as to both credit unions and the
2 approval of the Commission of such plan of merger shall be the
3 equivalent of approval by more than two-thirds of the members of both
4 credit unions for all purposes of Article 11 (§ 13.1-894 et seq.) and
5 Article 12 (§ 13.1-899 et seq.) of Chapter 10 of Title 13.1.

6 B. If the Commission finds that a state credit union is
7 insolvent, that the acquisition of its assets by another state credit
8 union or a federal credit union is in the best interests of its
9 members, and that an emergency exists, it may, with consent of the
10 board of directors of both credit unions as to the terms and
11 conditions of such transfer, including the assumption of all or
12 certain liabilities, enter an order transferring some or all of the
13 assets of such insolvent state credit union to such other state or
14 federal credit union and no compliance with the provisions of §§
15 13.1-899 and 13.1-900 shall be required.

16 C. In the case either of such a merger or of such a sale of
17 assets, the Commission shall provide that prompt notice of its
18 findings of insolvency and of the merger or sale of assets be sent to
19 the members of record of the insolvent state credit union for the
20 purpose of providing such members an opportunity to challenge the
21 finding that the state credit union is insolvent. The relevant books
22 and records of such insolvent credit union shall be preserved and be
23 made available to such members for a period of thirty days after such
24 notice is sent. The Commission's finding of insolvency shall become
25 final if a hearing before the Commission is not requested by any such
26 member within such thirty-day period.

27 D. If, after such hearing provided in subsection C of this
28 section, the Commission finds that such state credit union was

1 solvent, it shall rescind its order entered pursuant to subsection A
 2 or subsection B of this section and the merger or transfer of assets
 3 shall be rescinded. After such hearing, however, if the Commission
 4 finds that such state credit union was insolvent, its order shall be
 5 final.

6 ~~E. For the purposes of this section, the word "insolvent" shall~~
 7 ~~mean that the current value of liabilities is in excess of the current~~
 8 ~~value of assets.~~

9 ~~F. E.~~ Notwithstanding the provisions of ~~§ 6.1-198(3)~~
 10 subsection B of § 6.1-225.23, or any other provisions of this
 11 chapter, the Commission may order a merger pursuant to subsection A of
 12 this section or a sale of assets pursuant to subsection B of this
 13 section. The continuing credit union, upon approval of the Commission,
 14 ~~may shall~~ amend its bylaws to incorporate the specified common bond
 15 of interest of the insolvent credit union.

16 E. The Commission may authorize a financial institution whose
 17 deposits are insured by a federal agency to purchase any of the assets
 18 of or assume any of the liabilities of a credit union which is
 19 insolvent or in danger of insolvency, provided, that prior to
 20 exercising this authority the Commission shall use every reasonable
 21 effort to effect a merger or consolidation with or purchase and
 22 assumption by another credit union and has been advised by the
 23 insuring organization that it cannot effect a merger, consolidation or
 24 other disposition of the insolvent credit union acceptable to the
 25 Commission.

26 Drafting Note: Section 6.1-200.4 was adopted in 1982 and amended in
 27 1985 to give the Commission the power to force a merger or sale of
 28 assets when a credit union becomes insolvent or an emergency exists.
 29 It only allows mergers between state and federal credit unions. A
 30 procedure for challenging the Commission's actions is provided. This

1 does not allow mergers with out-of-state credit unions. FCUA allows
 2 purchase of credit union assets by FDIC or FSLIC insured institutions
 3 if a credit union merger partner cannot be found. [Section 205 (h)
 4 (i)] This does not address requirement for consent of insuring agent
 5 The Commission will take that into consideration in its approval of
 6 the merger. No change from current § 6.1-200.4 except that insolvency,
 7 definition shifted to § 6.1-225.8 and SCC added language in subsection
 8 F that will allow Commission to effect a sale of assets to any
 9 federally insured financial institution if a credit union cannot be
 10 found for a merger or consolidation and the insuring organization
 11 cannot effect a merger or consolidation acceptable to the Commission.

12 ~~§ 6.1-200.5~~ 6.1-225.11 Consolidation or
 13 merger.--Notwithstanding the provisions of ~~§ 6.1-198-(3)~~ subsection B
 14 of § 6.1-225.23, two credit unions may consolidate or merge, subject
 15 to the approval of the Commission, when the Commission finds that an
 16 emergency exists and that the merger or consolidation will promote the
 17 best interests of the members.

18 Drafting Note: This section, while appearing very similar to §
 19 6.1-225.23, is distinguishable because it allows the Commission to
 20 consolidate or merge credit unions without board approval as required
 21 by current § 6.1-200.4 (new § 6.1-225.24). No change in law.

22 ~~§ 6.1-223~~ 6.1-225.12 ~~Effect of violation of chapter or~~
 23 ~~insolvency-Involuntary dissolution~~ .--In the event ~~that it appear to~~
 24 the Commission determines that ~~any such corporation a credit union is~~
 25 violating any provisions of this chapter, it may, after a hearing or
 26 an opportunity for a hearing has been given to such ~~corporation-~~
 27 credit union, direct that it discontinue the illegal methods or
 28 practices ~~mentioned-described~~ in the order. If any credit union is
 29 insolvent, or has failed or refused to comply with the provisions of
 30 this chapter, the Commission may take possession of the business and
 31 property of such ~~corporation-credit union~~ and retain such possession
 32 until such time as it may permit such ~~corporation-credit union~~ to
 33 resume business, or until its affairs are finally liquidated under
 34 order of the Commission; or the Commission may apply to any court in
 35 this Commonwealth having jurisdiction to appoint receivers for the

1 appointment of a receiver to take charge of the business and assets
2 and to wind up the affairs and business of any such ~~corporation-~~
3 credit union. Such receiver when appointed shall become and be
4 assignee of the assets of such ~~corporation-credit union~~ .

5 Drafting Note: Virginia is one of 43 states that provides for
6 involuntary liquidation by supervisory authority. No substantive
7 change.

1

2

Article 3.

3

Formation of Credit Union.

4

§ ~~6.1-196-6.1-225.13~~. Incorporation ~~of "shares" and "short-term-~~

5

~~savings shares" defined; shares subordinate to other obligations. --~~

6

A. ~~Five or more natural persons residents of the Commonwealth who~~

7

~~are of legal age and share a common bond referred to in subsection B~~

8

~~of § 6.1-225.23 may establish~~, pursuant to the provisions of the

9

Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), ~~establish a~~

10

corporation for the purpose of ~~accumulating and investing the savings-~~

11

~~of its members; making loans to members for provident purposes and-~~

12

conducting business as a credit union as herein provided in this

13

chapter. Every corporation organized under this chapter shall

14

include in the corporate name the words "credit union" as well as some

15

other distinguishing word or words.

16

B. ~~Credit unions hereafter incorporated pursuant to this chapter~~

17

~~and credit unions heretofore incorporated shall hereafter be subject~~

18

to the provisions of the Virginia Nonstock Corporation Act except as

19

may otherwise herein be provided in this chapter.

20

~~As used in this chapter, the word "shares" means the interest of-~~

21

~~a member having a savings account in the credit union; and the words-~~

22

~~"short-term savings shares" mean a savings account which by its terms-~~

23

~~will be withdrawn in less than twelve months from the date on which-~~

24

~~the account is opened. --~~

25

~~The shares of members shall be debt obligations of a credit union~~

26

~~subordinate to all other obligations of the credit union. --~~

27

Drafting Note: Changes require Virginia residents to organize a

28

credit union. Remaining language extracted because it is in the

29

definitional section. The provision stating that "members' shares are

1 debt obligations of the credit union subordinate to other obligations"
2 is put in definition of "shares."

3 § 6.1-225.14. Certificate of authority.--Before it begins to do
4 any business, an organizing credit union shall apply for and obtain
5 from the Commission a certificate of authority An application,
6 accompanied by a fee of \$300, shall be made on a form prescribed by
7 the Commission. The Commission shall issue such a certificate if it
8 finds that:

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

11 2. The moral fitness, financial responsibility, and other
12 qualifications of the proposed officers and directors are such as to
13 command the confidence of the members;

14 3. All applicable provisions of law have been complied with; and

15 4. Share accounts in the credit union will be insured by an
16 approved insuring organization.

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

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

22 Drafting Note: Replaces current §§ 6.1-197 and 6.1-200.1 with a list
23 of requirements that must be met in order to receive a certificate of
24 authority to commence business as a credit union. Allows for a
25 conditional certificate while share insurance is pending.

26 § ~~6.1-198~~-6.1-225.15. Contents of bylaws; amendments to bylaws
27 generally.--The bylaws of every a credit union shall specify:

28 ~~{1}-The date of the annual meeting or that the date thereof shall~~
29 ~~be as set from time to time by the board of directors, which meeting-~~
30 ~~shall be held each calendar year, and the requirements as to notice of~~

1 ~~all-meetings-of-members;-~~

2 1. The name of the credit union;

3 2. The purpose for which it was formed;

4 3. The time of the annual meeting of the members of the credit
 5 union, or a provision that the board of directors may set the time for
 6 the meeting. Such a meeting shall be held each calendar year. Notice
 7 of all meetings shall be given in a manner prescribed in the bylaws,
 8 subject to compliance with § 13.1-842;

9 ~~(2)-4. The number of directors, which shall not be less than~~
 10 ~~five, the powers, authority and the duties of the directors, the~~
 11 ~~maximum compensation and the authority, duties and maximum compensation~~
 12 of all officers;

13 ~~(3)-5. The conditions and qualifications for membership, which~~
 14 ~~shall limit the membership to persons having a specified common bond~~
 15 ~~of interest, members of their families, associations of such persons,~~
 16 ~~other credit unions and employees of the credit union;~~

17 ~~(4)-6. The number of members of the credit committee, if any,~~
 18 and of the supervisory committee, with their respective powers-
 19 authorities and duties;

20 ~~(5)-7. The conditions upon which shares may be issued,~~
 21 ~~transferred to another member, or withdrawn;~~

22 ~~(6)-[Repealed.]~~

23 ~~(7)-Whether the corporation shall have the power to borrow;~~

24 ~~(8)-[Repealed.]~~

25 ~~(9)-8. The conditions upon which loans may be made and repaid;~~

26 ~~(10)-The method of receipting for money paid in on account of~~
 27 ~~shares or loans;~~

28 ~~(11)-9. The manner of effecting the forfeiture of a member's~~

1 shares when a member's share account balance is below the amount
 2 established by the bylaws and remains below such amount for a period
 3 of two years;

4 ~~(12)-10.~~ The manner in which dividends shall be determined and
 5 paid out; and

6 ~~(13)-11.~~ The manner in which remaining assets are to be
 7 distributed in the event of dissolution after all distributions
 8 required by ~~subdivisions~~ ~~subdivision~~ A 1, A-2 and A-3 of § 13.1-907
 9 ~~have~~ ~~has~~ been made ~~---~~; and

10 12. The manner in which bylaws may be amended.

11 Drafting Note: No major substantive changes includes references to
 12 Nonstock Corporation Act. In subdivision 4 a change was made to
 13 indicate that there is no longer a requirement to have a credit
 14 committee if membership allows the board of directors to serve as a
 15 credit committee.

16 ~~§ 6.1-199.---When amendments operative.---The bylaws when so-~~
 17 ~~approved and filed shall be the bylaws of the corporation and no-~~
 18 ~~amendments shall be operative unless the same shall conform to the-~~
 19 ~~provisions of this chapter and be approved by the Commission.---~~

20 § 6.1-225.16. Amendments to articles of incorporation and
 21 bylaws.---The articles of incorporation or the bylaws may be amended as
 22 provided in the articles and bylaws, as the case may be, subject to §§
 23 13.1-886, 13.1-892, and 13.1-893. Amendments to the articles of
 24 incorporation shall be accomplished as provided in §§ 13.1-888 and
 25 13.1-889. Proposed amendments to bylaws shall be submitted to the
 26 Commissioner, who shall approve or disapprove proposed amendments
 27 within thirty days. A bylaw amendment will be effective upon its
 28 approval by the Commissioner.

29 Drafting Note: Proposed changes to § 6.1-199 are to include articles
 30 of incorporation in this process. Virginia is one of seven states
 31 that establish process for bylaws only. A few states require 2/3 or

1 3/4 vote of members to amend. Some states don't require supervisory
 2 approval. § 13.1-886 provides that unless the board requires a
 3 greater vote or the articles of incorporation provide for a greater or
 4 lesser vote, any proposed amendment of the articles of incorporation
 5 shall be approved by more than two-thirds of all the votes cast on tl
 6 amendment, and in no event can the required vote be less than a
 7 majority of all votes cast at a meeting at which a quorum exists.

8 The bylaws may be amended or repealed by the board except to the
 9 extent that the articles of incorporation or the Nonstock Corporation
 10 Act reserves this power to the members or the members have expressly
 11 provided that the board may not amend or repeal a particular bylaw.

12 See MCUA § 2.32; Virginia Code §§ 13.1-886, 13.1-892, and 13.1-893.

13 § 6.1-225.17. Bylaws amended by Commission.-- Any bylaw may be
 14 amended by the Commission by order entered on its order book and
 15 certified to the credit union. Before entering any such order the
 16 Commission shall notify the credit union of the proposed amendment and
 17 afford it an opportunity to be heard ~~thereon~~.

18 Drafting Note: No substantive change.

19 § 6.1-225.18. Fiscal year.--The fiscal year of every credit
 20 union shall end at the close of business on December 31.

21 Drafting Note: This is the same language as existing § 6.1-209, first
 22 sentence. Remaining language in § 6.1-209 is in membership article.

23 § ~~6.1-224~~-6.1-225.19. Unlawful use of words "credit union."--
 24 ~~The use by~~ It shall be unlawful for any unauthorized person,
 25 ~~copartnership partnership,~~ association, or corporation ~~,-except-~~
 26 ~~corporations formed under the provisions of this chapter and or~~
 27 associations or corporations whose membership or constituency consists
 28 exclusively of credit unions or members of credit unions, ef-to use
 29 any name or title which contains the words "credit union ~~,-~~." A
 30 violation of the provisions of this section shall be a Class 1
 31 ~~misdemeanor ,-and-punishable-by-a-fine-of-not-less-than-\$10-ner-more-~~
 32 ~~than-\$100-for-each-day-of-the-illegal-use-of-such-name,-~~and may be
 33 enjoined by any court having equity jurisdiction over the party-

1 unauthorized user.

2 Drafting Note: Amends only to classify misdemeanor as Class 1. No
3 other substantive change.

4 § 6.1-225.20. Establishing, moving, closing offices.--A. A
5 credit union may maintain service facilities at locations other than
6 its main office if the maintenance of such offices is reasonably
7 necessary to serve its members, subject to the approval of the
8 Commission. An application to establish such a facility, accompanied
9 by a fee of \$200, shall be made on a form prescribed by the
10 Commission. The Commission shall approve the establishment of the
11 proposed service facility if it appears that the interest of the
12 members will be served thereby and that such establishment will not
13 impair the financial condition of the applicant or any other credit
14 union.

15 B. A credit union may change the location of its principal
16 office or a branch office, and may close any such office, provided it
17 gives at least thirty days' prior written notice thereof to the
18 Commissioner in such form as he may prescribe. A credit union shall
19 notify the Commissioner in writing within ten days after it
20 establishes, relocates, or closes any office.

21 Drafting Note: Commission requested significant change from current
22 law which allows a credit union to change its place of business on
23 written notice to and approval of the Commission.

24 Proposed change requires application on SCC form and prior approval to
25 establish a branch office. Establishes a shareholder's interest test.
26 Requires thirty days' written notice to move or close a credit union
27 office. Also, must notify Commissioner within ten days after it
28 establishes, relocates, or closes any office.

29 All changes were requested by the SCC.

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Article 4.

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Powers.

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~~§ 6.1-200. Powers generally. The credit union may receive the savings of its members in payment for shares and short-term savings shares, may loan to its members and may undertake such other activities relating to the purposes of the credit union as its charter or bylaws may authorize, not inconsistent with the provisions of this chapter.~~

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§ 6.1-225.21. General powers. In addition to the powers specified or implied elsewhere in this chapter or in the laws of this Commonwealth, a credit union may:

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1. Enter into contracts.

2. Sue and be sued.

3. Adopt, use, and display a corporate seal.

4. Receive savings from and make loans and extend lines of credit to its members.

5. Individually or jointly with other credit unions acquire, lease as lessor or lessee, hold, assign, pledge, exchange, repair, mortgage, hypothecate, sell, discount, or otherwise dispose of property or assets, either in whole or in part, as necessary or incidental to its operations including such property or assets obtained as a result of defaults under obligations owing to it.

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6. Borrow from any source provided that a credit union shall notify and obtain prior approval of the Commissioner if the total borrowings will exceed fifty percent of the credit union's outstanding shares. In no event shall the borrowings exceed ninety percent of the credit union's outstanding shares.

1 7. Sell all or substantially all of its assets or purchase all
2 or substantially all of the assets of another credit union subject to
3 the approval of the Commission.

4 8. Offer related financial services, including, but not limited
5 to, electronic fund transfers, share draft accounts, safe deposit
6 boxes, leasing of tangible personal property to its members, and
7 correspondent arrangements with other financial institutions.

8 9. Hold membership in other credit unions organized under this
9 or other acts, and in associations and organizations controlled by or
10 fostering the interest of credit unions, including a central liquidity
11 facility organized under state or federal law.

12 10. Contract with any licensed insurance company or society to
13 insure the lives of its members to the extent of their loans and share
14 accounts, in whole or in part, and to pay all or a portion of the
15 premium therefore.

16 11. Engage in activities or programs as requested by any
17 governmental authority, subject to the approval of the Commissioner.

18 12. Invest its funds, operate a business, manage or deal in
19 property when such actions are reasonably necessary to avoid loss on a
20 loan or investment previously made or an obligation previously created
21 in good faith. Such property or business is not to be held or
22 operated by the credit union for a period longer than reasonably
23 required to protect the interest of the credit union unless
24 specifically authorized by the Commissioner.

25 13. Make contributions to any nonprofit civic, charitable or
26 service organizations.

27 14. Undertake such other activities relating to the purposes of
28 the credit union as its charter or bylaws may authorize, provided such

1 activities are not inconsistent with this chapter.

2 Drafting Note: Current law does not enumerate the powers for state
3 credit unions. Subdivisions 1-3 and 5-12 are from Model Act and
4 similar to twenty states, and Fed. Act. Subdivision 4 is from
5 existing Virginia law similar to Fed. Act. Subdivision 6 is similar
6 current law in § 6.1-201. Model Act states fifty percent of "capital
7 and deposits" rather than "outstanding shares." Subdivision 8 should
8 allow leasing programs, e.g., auto leasing. Subdivision 13 is a catch
9 all similar to present Virginia law.

10 § ~~6-1-200-2-6,1-225,22~~. Amendment of powers by ~~regulation-of-~~
11 Commission.-- A.--In addition to the powers specifically granted to
12 credit unions by the provisions of this chapter, the Commission may by
13 appropriate regulation amend the powers of state credit unions so as
14 to allow them to have powers at least comparable to those granted to
15 federal credit unions engaged in business in this Commonwealth or to
16 effect the purposes of this chapter. Such regulations shall be
17 effective upon their adoption, and shall continue in effect until
18 amended or revoked by the Commission or superseded by action of the
19 General Assembly of Virginia. The requirement of a public hearing
20 shall not automatically apply to regulations promulgated under this
21 section, but the Commission may hold such a hearing as it deems
22 appropriate.

23 ~~B.-1.-The-Commissioner-may-issue-and-serve-upon-a-credit-union-an~~
24 ~~order-to- cease-and-desist-from-any-unsafe-or-un-sound-practice-or-a-~~
25 ~~violation-if,-in-the-opinion-of-the-Commissioner,-a-credit-union-(i)-~~
26 ~~is-engaging-or-has-engaged,-or-there-is-reasonable-cause-to-believe-is~~
27 ~~about-to-engage,-in-an-unsafe-or-un-sound-practice-in-the-operation-of-~~
28 ~~the-credit-union;-or-(ii)-is-violating-or-has-violated,-or-there-is-~~
29 ~~reasonable-cause-to-believe-is-about-to-violate,-this-chapter-or-any-~~
30 ~~other-applicable-law,-regulation-or-order.--An-order-to- cease-and-~~
31 ~~desist-shall-contain-a-statement-of-the-facts-constituting-the-alleged~~

~~1 unsafe or unsound practice or violation and it may require, in terms~~
~~2 that may be mandatory or otherwise, a credit union, its officers,~~
~~3 directors, employees or agents to cease and desist from such practice~~
~~4 or violation. Such order shall specify the effective date thereof and~~
~~5 shall contain a notice to the credit union of its rights to request a~~
~~6 hearing on such order in accordance with Rules 3+4 and 5+6 of the~~
~~7 "Rules of Practice and Procedure of the State Corporation Commission."~~
~~8 2. When the unsafe or unsound practice or violation specified in~~
~~9 such order to cease and desist, or any continuation thereof, is likely~~
~~10 to prejudice the interest of the members of the credit union, the~~
~~11 Commissioner may issue his order effective immediately. An order to~~
~~12 cease and desist shall remain in effect until it is withdrawn by the~~
~~13 Commissioner or is terminated by the Commission after a hearing on the~~
~~14 matter. A request for hearing under this section shall be given~~
~~expeditious treatment on the docket of the Commission and the~~
~~16 Commission need not allow for ten days' notice to the parties.~~

17 Drafting Note: This is a federal parity provision. More than forty
 18 states have a "wild card" statute which authorizes the regulator by
 19 appropriate regulation to amend the powers of state credit unions to
 20 have powers at least comparable to those granted to federal credit
 21 unions doing business in the state. A sentence has been added giving
 22 the SCC the option to waive the notice period required by the Rules of
 23 Practice and Procedure of the Commission. Competitive disadvantages
 24 to state credit unions created by broader powers granted federal
 25 credit unions can be minimized as well as reducing the incentive to
 26 convert to a federal charter (current § 6.1-200.2A). Section
 27 6.1-200.2 incorporates cease and desist power of Commission and has
 28 been moved to § 6.1-225.7.

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Article 5.

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Membership

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~~§ 6.1-204. Qualifications of members, officers, etc. Every~~

~~member of a credit union must be a shareholder and shall satisfy such~~

~~other prerequisites for membership as the bylaws may specify. Every~~

~~officer, director and committee member must be a member of the credit~~

~~union.~~

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§ 6.1-225.23. Membership defined; common bond. --A. The

membership of a credit union shall consist of the incorporators,

employees of such credit union, and other persons within the common

bond 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, associations of such persons, other credit unions and

employees of the credit union.

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 the board of directors.

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

1 loss to the credit union; or (v) has deceived the credit union with
 2 regard to the use of borrowed money. However, no member shall be so
 3 expelled until he has been informed in writing of the charges against
 4 him, and an opportunity has been given to him, after reasonable
 5 notice, to be heard.

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

8 E. The surviving spouse of a deceased member and the blood or
 9 adoptive relative of either of them and their spouses may become
 10 members.

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

5 Drafting Note: A. Virginia law currently does not have a membership
 .6 section or definition (§ 6.1-204); proposed subsection A establishes
 17 qualifications for membership in statute rather than as specified in
 18 bylaws.

19 B. Virginia law currently similar to Model Act without word
 20 "immediate" before family.

21 C. Similar to Texas and Georgia and about 25 states which provide for
 22 some retention of membership. Virginia and 23 states do not address.

23 D. Similar to Texas.

24 E. Florida statute.

25 F. Surviving spouse provision from Connecticut and Maine. Blood or
 26 adoptive relatives and their spouses included in field of membership.

27 G. Taken from Georgia act.

28 § ~~6-1-209-6.1-225.24~~. Fiscal-year; Membership meetings;

29 voting.-- The fiscal-year-of-every-credit-union-shall-end-at-the-

30 close-of-business-on-December-31;--A. The annual meeting and any

1 special meeting of the credit union shall be held in accordance with

1 the bylaws.

2 B. At all meetings of members a member shall have but one vote
 3 Except as hereinafter provided, no member may vote by proxy, but a
 4 member may vote by absentee ballot, mail, or other method if the
 5 bylaws so provide. A society, association, ~~co~~partnership-partnership
 6 or corporation, having membership in the credit union may be
 7 represented by one person authorized by such society, association,
 8 ~~co~~partnership-partnership or corporation to so represent it ;-
 9 provided that at- At any meeting called for the purpose of amending
 10 the articles of incorporation or dissolving the ~~co~~operation-credit
 11 union any member may vote thereon by proxy. A member may vote by
 12 absentee ballot if the bylaws of the credit union so provide.--

13 C. The board of directors may establish a minimum age, not
 14 greater than eighteen years of age, as a qualification of eligibility
 15 to vote at meetings of the members, to hold office, or both.

16 Drafting Note: The fiscal year provision of § 6.1-209 has been
 17 removed from this section on meetings of members and voting rights.
 18 (See § 6.1-225.15). A. This section should be read in conjunction
 19 with § 6.1-225.12.

20 B. Provides more flexibility in exercising right to vote by allowing
 21 absentee or mail ballots or other methods provided in bylaws. Change
 22 "co-partnership" to partnership and "corporation" to credit union.

23 C. Also allows the board to establish a minimum age of not more than
 24 18 to be able to vote or hold office. Provision from Model Act - 5
 25 states' minimum age is 16; 4 states have set 18; some leave it to
 26 bylaws and about 25 have not addressed issue. [See MCUA § 4.60;
 27 Virginia Code § 6.1-209]

28 § 6.1-225.25. Special meetings.--A. The supervisory committee
 29 by a majority vote may call a meeting of the members to consider any
 30 violation of this chapter, the credit union's articles of
 31 incorporation or bylaws or any practice of the credit union deemed by
 32 the supervisory committee to be unsafe or unauthorized.

1 B. The bylaws may also prescribe the manner in which a special
2 meeting of the members may be called by the members or by the board of
3 directors.

4 Drafting Note: This section is taken from the current § 6.1-213
5 (Powers and duties of supervisory committee) to incorporate all
6 meetings of members in one section. Wording has been changed in form,
7 but essentially no substantive change. For consistency the word
8 "shareholders" has been changed to "members," "in the opinion of the
9 committee" changed to "deemed by the supervisory committee" and
10 "unsafe and unauthorized" put in the disjunctive, not conjunctive, by
11 stating "unsafe or unauthorized." Allows majority of supervisory
12 committee to call a meeting of the members.

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Article 6.

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Share Insurance.

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~~§ 6.1-200.1. Insurance required. Any credit union whose shares and short-term savings shares are not insured on or before July 1, 1976, by a state or federal agency up to the limits of the insurance provided thereby or under a plan of share insurance acceptable to and approved by the Commission shall not thereafter receive the savings of its members or issue thereto any other debt obligations of the credit union.~~

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§ 6.1-225.26. Insurance of shares. Every credit union authorized to do business in this Commonwealth shall insure its members' shares with an approved insuring organization. A credit union which has been denied a commitment for insurance or fails to maintain insurance upon its shares shall either dissolve or merge with another credit union which is insured by such an insuring organization.

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Drafting Note: This section establishes a continuing requirement for share insurance as in current law. (See MCUA § 6.60; Va. Code § 6.1-200.1)

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Article 7.

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Change in Corporate Status; Mergers, Dissolutions, and Conversions.

4

§ ~~6.1-200.3~~ 6.1-225.27. Voluntary merger.--A. Two-credit-

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~~unions incorporated pursuant to this chapter may merge and a federal-~~

6

~~credit union may merge into a state credit union, subject to the~~

7

~~approval of the Commission. In either case, a merger application,~~

8

~~accompanied by the prescribed application fee, shall be filed with the~~

9

~~Commission.--A credit union organized under this chapter may merge,~~

10

~~with the approval of the Commission, without regard to common bond~~

11

~~with one or more other credit unions, state or federal. In any case~~

12

~~in which the surviving credit union will be a Virginia state-chartered~~

13

~~credit union, a merger application, accompanied by an application fee~~

14

~~of \$300, shall be filed with the Commission. The Commission shall~~

15

~~approve the application if:~~

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1. The common bond of interest specified in the bylaws of the

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credit union which is to survive the merger is amended to include the

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common bond of interest specified in the bylaws of both credit unions;

19

~~2.--The board of directors of each credit union adopts a plan of-~~

20

~~merger setting forth its terms and conditions;--~~

21

~~3.--Notwithstanding the provisions of subdivision 5 of subsection-~~

22

~~A of § 13.1-895, the plan of merger so adopted is approved by at least~~

23

~~a majority of all the votes cast on the plan at an annual or special-~~

24

~~meeting of the members of each credit union.--Notice of the date,--~~

25

~~time, and place of such a meeting shall be given to each member--~~

26

~~entitled to vote not less than twenty-five nor more than sixty days--~~

27

~~before the meeting in the manner prescribed by the articles of--~~~~incorporation or the bylaws of the credit union.--The notice shall--~~

~~1 contain or be accompanied by a copy of the plan of merger or a summary~~
~~2 of it and shall state that the purpose, or one of the purposes, of the~~
~~3 meeting is to consider the plan; and~~

4 ~~4.---2.~~ The Commission finds that the plan of merger will
5 promote the best interests of the members of the credit unions ~~---~~
6 and

7 3. The members of the merging credit unions have approved the
8 plan of merger in accordance with applicable laws and regulations.
9 Notwithstanding subdivision A.5 of § 13.1-895, the members of a
10 Virginia credit union may authorize a plan of merger by vote of at
11 least a majority of all votes cast thereon at an annual or special
12 meeting at which a quorum is present. Notice of the meeting may be
13 given in a manner prescribed in the articles of incorporation or
14 bylaws, the terms of § 13.1-842 relating to the manner of notice
15 notwithstanding. A federal credit union merging with a state credit
16 union may give notice to its members as prescribed by federal
17 regulation.

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

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

28 C. For the purposes of this section, a member entitled to vote

1 may vote in person or, unless the articles of incorporation or bylaws
2 otherwise provide, by proxy. A member may appoint a proxy to vote or
otherwise act for him by signing an appointment form. An appointment
4 of a proxy becomes effective when received by the secretary or other
5 officer or agent authorized to tabulate votes. An appointment is
6 valid for eleven months unless a different period is expressly
7 provided in the appointment form or the appointment is revoked by the
8 member.

9 Drafting Note: This section was rewritten in 1988. Section 13.1-895
10 is the Nonstock Corporation Act section which sets forth the procedure
11 for adoption of plan by members which requires two-thirds votes cast.
12 Section 13.1-897 sets forth the effect of a merger, e.g., how real
13 estate is owned, responsibility for liabilities and effect on pending
14 proceedings. The new subsection A allows interstate mergers. Current
15 law provides for merger of two Virginia state-chartered credit unions
16 subject to the approval of the Commission. This does not change the
17 current law. Federally chartered credit unions can merge without
18 regard to common bond under the rules and regulations of the NCUA.
19 [See FCUA § 120 (12 U.S.C. 1766) and § 205(h)(i) (12 U.S.C. 1785) in
20 the case of insolvency or threatened insolvency.]

The amendments will allow the merger of a state-chartered credit union
with another credit union regardless of state or federal charter. If
23 the surviving credit union will be a Virginia state-chartered credit
24 union, an application must be approved by the Commission.

25 The amendment to subsection A.3 allows the federally chartered credit
26 union in a merger with a Virginia state-chartered credit union to give
27 notice of the plan of merger in accordance with the requirements for a
28 federally chartered credit union and not the state law.

29 § 6.1-225.28. Voluntary dissolution.--A. A credit union may
30 dissolve in accordance with the provisions of Article 13 (§ 13.1-902
31 et seq.) of Chapter 10 of Title 13.1. Within ten days after the board
32 of directors votes to recommend dissolution to the members, the board
33 shall notify the Commissioner and the insuring organization of that
34 fact in writing, setting forth the reasons for the proposed
35 dissolution.

36 B. The dissolving credit union shall also notify the

1 Commissioner of the result when the members have voted on the proposal
2 to dissolve, and shall file with the Commissioner a copy of the
3 certificate of dissolution and the certificate of termination of
4 corporate existence of the credit union within ten days of the
5 issuance of each.

6 Drafting Note: Virginia is one of two states without a voluntary
7 dissolution statute. We probably have relied upon the provisions of
8 the Nonstock Corporation Act. This section incorporates the nonstock
9 act provisions and requires certain notices to the Commissioner.

10 § ~~6-1-200-6.1-225.29~~ Conversion of federal credit union to
11 state credit union.--A credit union, organized under the laws of the
12 United States and authorized to do business in this Commonwealth, may
13 convert to a credit union organized under the laws of this
14 Commonwealth by the following procedure:

15 1. The directors of the federal credit union shall organize a
16 corporation under this chapter and the Virginia Nonstock Corporation
17 Act (§ 13.1-801 et seq.) for the ~~purposes~~ purpose set forth in §
18 ~~6-1-196-6.1-225.13~~.

19 2. The new corporation shall apply for a certificate of authority
20 to do business as a credit union as provided in § ~~6-1-197-6.1-225.14~~

21
22 3. The federal credit union shall follow the procedures set forth
23 in § 125 (a) (12 U.S.C. § 1771) of the Federal Credit Union Act, as it
24 now exists or may hereafter be amended, for conversion.

25 4. Upon completion of the requirements of the Federal Credit
26 Union Act, the authorized officers of the federal credit union shall
27 execute a certificate setting forth the procedures followed, the
28 number of members eligible to vote and the number voting in favor of
29 the plan of conversion and file said certificate with the Commission.

1 5. When the Commission has been satisfied that all of the
2 requirements of this section have been complied with, and that the
3 criteria of § ~~6-1-197-6.1-225.14~~ have been met, the Commission shall
4 authorize the state-chartered credit union to commence business as of
5 the date it ceases to be a federal credit union. The successor
6 state-chartered credit union shall be vested with all of the assets
7 and shall continue to be responsible for all of the obligations of the
8 federal credit union to the same extent as though the conversion had
9 not taken place.

10 Drafting Note: The Virginia statute is more extensive than Model Act
11 and Fed. where certain details are left to regulations to implement
12 statutes. Nearly all states and FCUA grant a right to convert
13 charters. Corrects only cross-references.

14 § ~~6-1-200-7~~ ~~6.1-225.30~~ Conversion of state credit union to
15 federal credit union.--A state credit union may convert to a federal
16 credit union by the following procedure:

17 1. At any meeting of the members called and held in accordance
18 with the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) to
19 consider such action, the members by an affirmative vote of those
20 holding and voting two-thirds of the votes present in person or by
21 proxy, may resolve to convert the credit union into a federal credit
22 union.

23 2. A copy of the minutes of the meeting duly certified by the
24 authorized officer of the credit union shall be transmitted to the
25 Commission.

26 3. The state credit union shall take such action as is necessary
27 under § 125 (b) (12 U.S.C. § 1771) of the Federal Credit Union Act
28 as it now exists or may hereafter be amended, to make it a federal
29 credit union.

1 4. It shall file with the Commission a certified copy of the
2 organization certificate approved by the National Credit Union
3 Administration Board.

4 5. Upon receipt of the organization certificate the state credit
5 union shall become a federal credit union which shall be vested with
6 all of the assets and shall continue to be responsible for all of the
7 obligations of the state credit union to the same extent as though the
8 conversion had not taken place.

9 Drafting Note: Current § 6.1-200.7 provides procedure for conversion
10 of state credit union to federal. The amendment to subdivision 1
11 clarifies that the notice to members of the federal credit union may
12 be given in the manner prescribed in the bylaws of the federal credit
13 union.

1

2

Article 8.

3

Direction of Affairs.

4 ~~§-6.1-210.--Election-of-board-of-directors.--Annually-the-members~~
5 ~~of-each-credit-union-shall-elect-a-board-of-directors-of-not-less-than~~
6 ~~five-members.--In-the-discretion-of-the-members-the-board-of-directors-~~
7 ~~as-such-may-also-be-the-credit-committee.--Except-as-herein-specified,-~~
8 ~~no-member-of-the-board-of-directors-shall-be-a-member-of-the-credit-~~
9 ~~committee-or-the-supervisory-committee,-nor-shall-one-person-be-a-~~
10 ~~member-of-more-than-one-of-such-committees.--~~

11 ~~§-6.1-211.--Election-of-officers,-powers-and-duties-of-directors,-~~
12 ~~compensation-of-members-of-board-or-committees.--At-their-first-~~
13 ~~meeting-following-the-annual-meeting,-the-board-of-directors-shall-~~
14 ~~elect-from-their-number-officers-provided-for-in-the-bylaws-of-the-~~
15 ~~credit-union.--The-offices-of-secretary-and-treasurer-may,-if-the-~~
16 ~~bylaws-so-provide,-be-held-by-one-person.--~~

17 ~~The-board-of-directors-shall-have-the-general-management-of-the-~~
18 ~~affairs,-funds-and-records-of-the-corporation,-shall-meet-as-often-as-~~
19 ~~may-be-necessary,-and-it-shall-be-the-duty-of-the-directors:-~~(1)~~-to-~~
20 ~~act-upon-applications-for-membership-and-upon-the-expulsion-of-a-~~
21 ~~member,-~~(2)~~-to-fix-the-amount-of-the-blanket-surety-bond-which-shall-~~
22 ~~be-required-of-each-official,-committee-member-or-employee-of-the-~~
23 ~~credit-union,-the-surety-on-the-bond-to-be-a-surety-company-licensed-~~
24 ~~to-do-business-in-Virginia,-and-the-amount-thereof-to-be-approved-by-~~
25 ~~the-Commission,-~~(3)~~-to-determine-from-time-to-time-the-rate-of-~~
26 ~~interest-which-shall-be-charged-on-loans-and-to-prescribe-the-~~
27 ~~conditions-under-which-interest-refunds,-if-any,-may-be-made,-~~(3a)~~-to-~~
~~fix-the-amount,-if-any,-that-may-be-charged-for-initial-and-annual-~~

1 membership fees; ~~(4) to fix the maximum amount of shares which may be~~
2 held by, and the maximum amount which may be lent to, any one member;
3 ~~(5) to declare dividends; (6) to determine the manner in which~~
4 dividends shall be paid on shares issued or withdrawn during a
5 dividend period; ~~(6a) to appoint a supervisory committee of not less~~
6 than three members; ~~(6b) to appoint a credit committee of not less~~
7 than three members unless the members determine that the board of
8 directors shall serve as the credit committee; ~~(7) to fill vacancies~~
9 in the board of directors, in the supervisory committee or in the
10 credit committee until the election or appointment, as the case may
11 be, and qualification of successors; ~~(7a) to remove any member of the~~
12 board of directors failing to attend regular meetings of the board
13 without cause for three consecutive months or otherwise failing to
14 perform any of the duties devolving upon him as a director; ~~(7b) to~~
15 remove any member of the credit committee failing to attend three
16 consecutive regular meetings of the credit committee without cause or
17 otherwise failing to perform any of the duties devolving upon him as a
18 credit committee member; ~~(7c) to suspend any member of the supervisory~~
19 committee failing to attend regular meetings of the supervisory
20 committee without cause or otherwise failing to perform any of the
21 duties devolving upon him as a supervisory committee member, provided
22 that the members shall decide at a meeting held not less than seven
23 nor more than twenty one days after such suspension if such suspended
24 committee member shall be removed from or restored to the supervisory
25 committee; ~~(8) to have charge of the investment of the funds of the~~
26 corporation; and ~~(9) to perform such other duties as the members may~~
27 from time to time authorize; --

28 No member of the board of directors shall receive any

~~1 compensation for his services as a member of such board. The members
2 of the credit or supervisory committee of any credit union having
3 assets in excess of \$50,000 may receive for their services, as such
4 members, such compensation as the board of directors may determine. --
5 Health, accident and term life insurance protection for a director or
6 committee member shall not be considered compensation. Directors and
7 committee members while on official business of the credit union, may
8 be reimbursed for necessary expenses incidental to performing the
9 business of the credit union. --~~

10 § 6.1-225.31. Board of directors; number; election; term;
11 appointment of supervisory and credit committee. --A. The board of
12 directors shall have the authority and responsibility for directing
13 the business affairs, funds, and records of the credit union.

14 B. The board shall consist of an odd number of directors, at
15 least five in number, to be elected by and from the members. After
16 the election of the initial board at the organizational meeting, the
17 election of the board shall be held at the annual meeting or at such
18 other time as the bylaws provide.

19 C. A director shall be elected for a term of not less than one
20 year nor more than four years, as provided in the bylaws, provided
21 that if the term is more than one year, the bylaws shall establish
22 terms of office so that an approximately equal number of directors
23 shall be elected each year. A director, unless removed from office,
24 shall hold office until a successor is elected and qualified.

25 Directors may serve more than one term. Any vacancy on the board of
26 directors shall be filled until the next annual election by
27 appointment by the remainder of the directors.

28 D. The board of directors at its first meeting following the

1 annual election shall appoint (i) a supervisory committee from the
2 membership which shall consist of an odd number, not less than three,
3 and (ii) a credit committee from the membership which shall consist of
4 an odd number, not less than three, or in lieu thereof, appoint one or
5 more loan officers and, in such instances, duties and responsibilities
6 of the credit committee shall be carried out by a loan officer or
7 officers. The members may authorize and direct the board of directors
8 to serve as the credit committee. No member of the board of directors
9 or the credit committee shall serve on the supervisory committee and
10 no member of the board of directors or the supervisory committee shall
11 serve on the credit committee unless authorized by the provisions of
12 this section. The terms for the members of both committees shall be
13 as provided in the bylaws.

14 Drafting Note: The first sentence is new to expressly provide that the
15 board of a credit union is the body primarily responsible to the
16 members for the direction for the business affairs, finances and
17 records of credit union. The second and third sentences state that
18 the board shall have not less than five directors (who must be
19 members), and that they are elected at the annual meeting unless the
20 bylaws provide different manner of election. The additions to current
21 Virginia law are: (a) odd number of directors, (b) directors must be
22 members, and (c) election takes place at annual meeting or as
23 otherwise specified in bylaws of credit union. Current Virginia law
24 simply requires annual elections. Most states (N.C., Wisc.) elect at
25 annual meeting; however, Virginia only requires annual elections and
26 not at annual meeting. Fla. "in the manner prescribed in the bylaws";
27 Colorado "at annual meeting or by other proper balloting within 30
28 days before and 20 days after the annual meeting." There also has
29 been added a clarification that the "initial board" is elected at the
30 organizational meeting. Virginia is the only state in which the
31 statutes do not address the term for which directors are elected. The
32 proposal is for a one- to four-year term as set forth in bylaws,
33 thereby giving each credit union flexibility to choose method. It
34 does require staggered terms if the term of office is more than one
35 year. Directors are elected to serve until a successor is elected and
36 qualified (See Ga. and Ill.). The next to last sentence will allow a
37 director to serve more than one term (Texas). The last sentence
38 provides for filling vacancies [FCUA § 111 (a)]. The board has the
39 duty to appoint the supervisory and credit committee (§ 6.1-211 (6b)).
40 FCUA allows one director, other than a compensated director (formerly
41 the treasurer), to be appointed to the supervisory committee. Section
42 6.1-210 does not allow and is not a proposed change. Consistent with

1 MCUA § 5.12 and many states, appointments must come from the
2 membership, consist of not less than 3 members and serve a term as set
3 in bylaws. Also included is option from FCUA § 114 (12 U.S.C. §
4 1761c) and Virginia Code § 6.1-212 to appoint loan officers to approve
5 loans. A difference in the proposed section is to allow the board to
6 appoint loan officers in lieu of having a credit committee. Sections
7 6.1-210 and 6.1-211 (b) allow members to determine if the board will
8 serve as the credit committee. Current Virginia Code § 6.1-212
9 contemplates the credit committee appointing the loan officer and
10 continuing to function as an appellate review committee when loan
11 applications are rejected. Section 6.1-211 (6a) provides for board to
12 appoint a supervisory committee of not less than three members and
13 (6b) provides for a credit committee of not less than three members
14 unless the members determine that the board shall serve as a credit
15 committee.

16 § 6.1-225.32. Board of directors; election of officers.--A. At
17 its first meeting after the annual election, the board of directors
18 shall elect from its own number an executive officer, who may be
19 designated as chairman of the board or president; a vice chairman of
20 the board or one or more vice presidents; a secretary and a treasurer.
21 The same member may simultaneously hold more than one office in the
22 credit union, if the bylaws so provide. They shall also elect any
23 other officers that are specified in the bylaws.

24 B. The terms of the officers shall be one year or until their
25 successors are elected and qualified.

26 C. The duties of the officers shall be as prescribed in the
27 bylaws.

28 D. The board of directors shall appoint (i) a chief operating
29 officer of the credit union to be in active charge of its operations
30 and (ii) a financial officer. The chief operating officer may also
31 serve as the financial officer.

32 E. A credit union may use any other title it chooses for
33 officers, so long as such titles are not misleading.

34 Drafting Note: At the beginning of the article is current Virginia
35 law (§ 6.1-211). The MCUA §§ 5.40 and 5.50, FCUA § 112 and many
6 states including North Carolina, Maryland, Florida, etc., provide for
7 the election of board officers and an executive committee. FCUA § 112

1 does not list titles of officers. The amendments allow flexibility in
2 the designation of board officers, e.g., chairman of the board or
3 president, establishes the term of office as one year, and requires
4 the designation of a chief operating officer and a financial officer
5 who shall give a bond with surety.

6 § 6.1-225.33. Executive committee.--The board of directors may
7 appoint from its own number an executive committee, consisting of not
8 less than three directors, which may be authorized to act for the
9 board in all respects, subject to such conditions and limitations as
10 are prescribed by the board and § 13.1-869(d).

11 Drafting Note: Virginia is one of 16 states without an executive
12 committee statute. Proposal similar to MCUA § 5.50, N.C., Fla., Ky.,
13 Wisc., and FCUA § 113(13).

14 § 6.1-225.34. Meetings of directors.--The board of directors and
15 the executive committee shall meet as often as the bylaws prescribe.

16 Drafting Note: Section 6.1-211 states that board "shall meet as often
17 as may be necessary." This draft includes the executive committee of
18 the board and requires the bylaws to prescribe when each shall meet.

19 § 6.1-225.35. Compensation of officials.--No member of the board
20 of directors shall receive any compensation for his services as a
21 member of such board. The members of the credit or supervisory
22 committee may receive for their services, as such members, such
23 compensation as the board of directors may determine. Health,
24 accident, and term life insurance protection for a director or
25 committee member shall not be considered compensation. Directors and
26 committee members, while on official business of the credit union, may
27 be reimbursed for necessary expenses incidental to performing the
28 business of the credit union.

29 Drafting Note: This is current law in Virginia found in the last
30 subdivision of § 6.1-211. The last sentences were added in 1988 to
31 allow reimbursed expenses and protection for board members in the form
32 of insurance. FCUA §§ 111 and 112 allow only one board officer to be
33 compensated and no compensation to remaining board members or member
34 of a committee but reasonable insurance shall not be considered
35 "compensation." Most credit unions compensate at least one or more
36 officers. (See N.C., Kansas, California.). Eliminates the \$50,000

1 threshold for compensation of members serving on the credit or
2 supervisory committee.

3 § ~~6-1-211-6.1-225.36~~. Election of officers, powers and
4 duties of directors ; compensation of members of board or committees
5 .-- At their first meeting following the annual meeting, the board of
6 directors shall elect from their number officers provided for in the
7 bylaws of the credit union.--The offices of secretary and treasurer--
8 may, if the bylaws so provide, be held by one person.--

9 The board of directors shall have the general management of the
10 affairs, funds and records of the corporation, shall meet as often as
11 may be necessary, and it shall be the duty of the directors:--

12 ~~(1)-to~~ In addition to any other duties set forth in this
13 chapter, the board of directors shall have the following powers and
14 duties:

15 1. To act upon applications for membership and upon the
16 expulsion of a member . The board of directors may appoint one or
17 more membership officers to act upon applications for membership. A
18 record of membership officer's approval or denial of membership shall
19 be available to the board of directors for inspection. A person
20 denied membership by a membership officer may appeal the denial to the
21 board ;

22 Drafting Note: FCUA § 113(1) and several states provide alternative
23 of a membership officer; federal credit unions require that officer to
24 come from non-compensated member of board. Many state credit unions
25 appoint from membership (Col., Fla., N.C.).

26 ~~(2)-to fix the amount of the blanket surety bond which shall be~~
27 ~~required of each official, committee member or employee of the credit~~
28 ~~union, the surety on the bond to be a surety company licensed to do~~
29 ~~business in Virginia, and the amount thereof to be approved by the~~
30 ~~Commission;~~ 2. To purchase and maintain fidelity bond coverage, in

1 accordance with any rules and regulations of the Commission:

2 ~~(3)-to-3.~~ To determine from time to time the rate-rates of
3 interest which shall be charged on loans and to prescribe the
4 conditions under which interest refunds ~~,--if-any,--may-will~~ be made;

5 ~~(3a)-to-4.~~ To fix the amount, if any, that may be charged for
6 initial and annual membership fees;

7 ~~(4)-to-fix-5.~~ To determine the maximum amount of shares which
8 may be held by, and the maximum amount which may be lent-loaned to,
9 any one member;

10 ~~(5)-to-6.~~ To declare dividends on share accounts ;

11 ~~(6)-to-7.~~ To determine the manner in which dividends shall be
12 paid on shares issued or withdrawn during a dividend period; ~~(6a)-to-~~
13 ~~appoint-a-supervisory-committee-of-not-less-than-three-members;-(6b)-~~
14 ~~to-appoint-a-credit-committee-of-not-less-than-three-members-unless-~~
15 ~~the-members-determine-that-the-board-of-directors-shall-serve-as-the-~~
16 ~~credit-committee;-~~

17 ~~(7)-to-8.~~ To fill vacancies ~~in-the-board-of-directors,-~~ in the
18 supervisory committee or in the credit committee until the election or
19 appointment, as the case may be, and qualification of successors;

20 ~~(7a)-to-9.~~ To remove any member of the board of directors
21 failing to attend regular meetings of the board without good cause
22 shown for three consecutive months or otherwise failing to perform any
23 of the duties devolving upon him as a director;

24 ~~(7b)-to-10.~~ To remove any member of the credit committee
25 failing to attend three consecutive regular meetings of the credit
26 committee without good cause shown or otherwise failing to perform any
27 of the duties devolving upon him as a credit committee member;

28 ~~(7c)-to-11.~~ To suspend any member of the supervisory committee

1 failing to attend regular meetings of the supervisory committee
 2 without cause or otherwise failing to perform any of the duties
 3 devolving upon him as a supervisory committee member, provided that
 4 the members shall decide at a meeting held not less than ~~seven-ten~~
 5 ~~nor more than twenty-one-twenty-five~~ days after such suspension if
 6 such suspended committee member shall be removed from or restored to
 7 the supervisory committee;

8 Drafting Note: This is old subsection (7c) of § 6.1-212.
 9 Legislatures have been reluctant to give board the right to remove
 10 members of supervisory committee without certain safeguards since the
 11 supervisory committee provides certain checks and balances with the
 12 board. Many states allow suspension of supervisory committee members
 13 by board. (North Carolina and Maine do, Florida does not; Arkansas
 14 and Minnesota like current Virginia statute.)

15 ~~(8)-to-12.~~ To have charge of the investment of the funds of the
 16 ~~corporation and credit union, except that the board of directors may~~
 17 ~~designate an investment committee or any qualified individual to have~~
 18 ~~charge of making investments pursuant to written policies established~~
 19 ~~by the board of directors;~~

20 Drafting Note: Corporation changed to credit union for consistency.
 21 Last clause authorizing an investment committee consistent with MCUA
 22 § 5.56(7); FCUA § 113(6); N.C. and Florida. Many states exclude loans
 23 to members from board directed investments. (Col., Md., Mich., Pa.,
 24 N.C.)

25 13. To establish policy on loans to members, which policy shall
 26 provide that the rates, terms, and conditions on any loan or line of
 27 credit either made to, or endorsed or guaranteed by (i) an official,
 28 (ii) an immediate family member of an official, or (iii) any
 29 individual having a common ownership, investment, or other pecuniary
 30 interest in a business enterprise with an official or with an
 31 immediate family member of an official shall not be more favorable
 32 than the rates, terms, and conditions for comparable loans or lines of
 33 credit to other credit union members;

1 14. To designate a depository or depositories for the funds of
 2 the credit union;

3 15. To authorize the acquisition or conveyance of real property.

4 16. To authorize the employment and compensation of the
 5 president or person named by the board to manage the affairs of the
 6 credit union;

7 17. To make adequate provisions for reserves; and

8 ~~(9)-to-~~18. To perform such other duties as the members may from
 9 time to time authorize.

10 ~~No member of the board of directors shall receive any~~
 11 ~~compensation for his services as a member of such board. The members~~
 12 ~~of the credit or supervisory committee of any credit union having~~
 13 ~~assets in excess of \$50,000 may receive for their services, as such~~
 14 ~~members, such compensation as the board of directors may determine.~~
 15 ~~Health, accident and term life insurance protection for a director or~~
 16 ~~committee member shall not be considered compensation. Directors and~~
 17 ~~committee members while on official business of the credit union, may~~
 18 ~~be reimbursed for necessary expenses incidental to performing the~~
 19 ~~business of the credit union.~~

20 Drafting Note: Amendment to (1) allows board to appoint a membership
 21 officer and establishes the right of appeal to the board if membership
 22 is denied. Amendment is similar to FCUA 113(1) and several state
 23 acts.

24 Amendment to (2) simply requires the board to purchase a blanket
 25 fidelity bond as required by the Commissioner.

26 Amendment to (3) "rate" changed to "rates" because there is more than
 27 one rate of interest at any one time because of different types of
 28 share accounts.

29 There is no change to (3a) regarding the charge for a membership fee,
 30 if any.

31 No substantive change to (4).

1 Amendment to (5) added term "share accounts" which represents all of
2 the types of accounts in a credit union.

3 No change to (6).

Subdivisions (6a) and (6b) moved to § 6.1-225.31.

5 Amended (7) because filling vacancies on board is in § 6.1-225.31.C.

6 Amendments to (7a), (7b) and (7c) are not substantive, just using some
7 conforming language.

8 Amendment to (8) allows the board to designate a committee or an
9 individual to make investment decisions pursuant to board policies.

10 Adds subdivision 13 requiring the board to establish policies for
11 loans to members which shall include provisions stating that an
12 official of the credit union will not get favorable rates, terms or
13 conditions on their loans.

14 Adds subdivision 14 to require that board designate the depository for
15 its funds.

16 Adds subdivision 15 to authorize the conveyance of property.

17 Adds subdivision 16 to authorize board to employ and compensate a
18 manager.

19 Add subdivision 17 to require board to make provisions for reserves.

No change to (9).

21 § ~~6.1-212~~, 6.1-225.37, Credit committee or loan officer to
22 ~~approve loans or advances; review of applications disapproved by loan~~
23 ~~officer or credit committee; meetings officers; appeal.~~ -- A. The
24 credit committee of ~~such a~~ credit union shall approve every loan or
25 advance made by the ~~corporation credit union~~ to members, ~~except that~~
26 ~~the credit committee unless it is replaced by a loan officer, as~~
27 ~~provided in subsection D of § 6.1-225.31.~~

28 B. If the credit committee has not been replaced by action of
29 the board of directors, it may appoint and delegate to loan officers
30 the authority to approve or disapprove loan applications, subject to
31 the written policies prescribed by the board of directors. The
32 approval of an application by the credit committee shall be by a

1 majority of the committee who are present at the meeting at which it
2 is considered, provided a majority of the full committee is present.

3 C. All applications disapproved by a loan officer may, upon
4 request of the applicant, be reviewed by the credit committee ~~and the~~
5 ~~The~~ approval of a majority of the credit committee who are present
6 at the meeting when such review is undertaken shall be required to
7 reverse the loan officer's decision ~~provided a~~. A majority of the
8 full committee ~~is shall be present at such review~~. No individual
9 shall have the authority to disburse funds of the credit union for any
10 loan for which the application has been approved by him in his
11 capacity as a loan officer. A member whose application was disapproved
12 by a loan officer or the credit committee may appeal such action to
13 the board of directors.

14 D. The credit committee shall meet as often as the business of
15 the credit union may require to consider applications for loans or to
16 review the work of the loan officers, as the case may be. Reasonable
17 notice of each such meeting shall be given to each member of the
18 committee.

19 Drafting Note: The amendments to A and B provide option for a loan
20 officer in lieu of credit committee. Present law (§ 6.1-212) requires
21 a credit committee, unless the members decide that board of directors
22 should be the credit committee (§ 6.1-210). The credit committee can
23 appoint loan officers to do its work. As credit unions have become
24 larger it becomes more difficult for credit committees consisting of
25 volunteers to act promptly and with appropriate scrutiny of each
26 application. The loan officer approach is one possible solution.
27 This provides a safeguard for allowing a member to appeal an adverse
28 loan action to board of directors.

29 ~~§ 6.1-213. Powers and duties of supervisory committee, audit and~~
30 ~~report. The supervisory committee of such credit union shall inspect~~
31 ~~the securities, cash and accounts of the corporation. At any time the~~
32 ~~supervisory committee, by unanimous vote, may, if it deems such action~~

~~1 necessary to the proper conduct of the credit union, suspend any~~
~~2 officer or director or any member of the credit committee and shall,~~
~~3 if any such officer, director or member of the committee be so~~
~~4 suspended, call the members together to act on such suspension as~~
~~5 hereinafter provided. The members at such meeting may sustain such~~
~~6 suspension and remove such officer permanently or may reinstate such~~
~~7 officer. By a majority vote they may call a meeting of the~~
~~8 shareholders to consider any violation of this chapter or of the~~
~~9 bylaws, or any practice of the corporation which, in the opinion of~~
~~10 the committee, is unsafe and unauthorized. Within seven days after the~~
~~11 suspension of the credit committee, or any member thereof, or of any~~
~~12 director or officer, the supervisory committee shall cause notice to~~
~~13 be given of a special meeting of the members to take action relative~~
~~14 to such suspension.--~~

~~15 The supervisory committee shall make or cause to be made at least~~
~~16 once in each calendar year a thorough audit of the receipts,~~
~~17 disbursements, income, assets and liabilities of the corporation for~~
~~18 the twelve calendar months next preceding the month in which the audit~~
~~19 is commenced, and shall make a full report thereon to the directors.--~~
~~20 Such report shall be read at the next annual meeting of the members~~
~~21 and shall be filed and preserved with the records of the corporation.--~~
~~22 Such committee shall make or cause to be made such supplementary~~
~~23 audits as it may deem necessary or as may be ordered by the~~
~~24 Commission.--~~

~~25 § 6.1-225.38. Supervisory committee; suspension and removal of~~
~~26 officials.--The supervisory committee:~~

~~27 1. Shall make or cause to be made an annual audit of the credit~~
~~union and shall submit a report of that audit to the board of~~

1 directors and a summary of the report to the members at the next
 2 annual meeting of the credit union;

3 2. Shall make or cause to be made such supplementary audits an
 4 verification of members' accounts as it deems necessary or as may be
 5 ordered by the board of directors, and submit such report to the board
 6 of directors; and

7 3. May by unanimous vote suspend any officer of the credit union
 8 or any member of the credit committee or of the board of directors,
 9 until the next meeting of members, which shall be held not less than
 10 ten nor more than twenty-five days after any such suspension, at which
 11 meeting such suspension shall be acted upon by the members,

12 Drafting Note: This replaces current § 6.1-213. It provides for an
 13 annual audit by the supervisory committee and a report to the board as
 14 under current law. New language requires a summary of the audit
 15 report to be submitted to the members at the next annual meeting in
 16 lieu of reading the entire report. There is no change in requiring
 17 supplementary audits, but adds "and verification of members' accounts"
 18 as deemed necessary or ordered by the board. This section provides a
 19 procedure for supervisory committee to suspend officers, directors,
 20 and credit committee members and to call a meeting to have such perso..
 21 permanently removed. Some acts and MCUA allow suspension by
 22 two-thirds vote and don't require unanimous vote as in Virginia. This
 23 section is taken from 115 (12 U.S.C. § 176ld) of the FCUA. This does
 24 not provide for board's removal of supervisory committee members with
 25 subsequent approval of members.

26 § ~~6.1-213~~ ~~1-6.1-225.39~~. Special audit.--The ~~Commissioner~~
 27 ~~Commissioner~~ may require a credit union to have an independent audit
 28 made of its books, records, and methods of operation, by a certified
 29 public accountant or other qualified person or firm approved by the
 30 ~~Commissioner-Commissioner~~, whenever it appears to the ~~Commissioner~~
 31 ~~Commissioner~~ that the system of internal controls pertaining to such
 32 credit union is not adequate, or that such credit union is engaging in
 33 ~~dangerously-unsafe or~~ unsound practices, or that the financial
 34 condition of such credit union makes such an audit necessary.

1 Drafting Note: This is former § 6.1-213.1. Changes authority to
2 require such audit from the Commission to the Commissioner.

3 § ~~6.1-204-6.1-225.40~~. Qualifications of members, officers,
4 etc.-- ~~Every member of a credit union must be a shareholder and shall~~
5 ~~satisfy such other prerequisites for membership as the bylaws may~~
6 ~~specify.~~ Every officer, director and committee member ~~must shall~~ be
7 a member of the credit union.

8 Drafting Note: No change to second sentence.

1

2

Article 9.

3

Accounts.

4

5

6

§ 6.1-225.41. Share accounts.--A. Every credit union may issue shares to and maintain share accounts for any member qualified pursuant to the credit union's bylaws.

Drafting Note: Establishes authority to issue shares to members.

8

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B. Shares and share accounts may be withdrawn for payment to the account holder or to third parties in such manner and in accordance with such procedures as may be established by the board of directors.

Drafting Note: Establishes right of withdrawal for payment to third party. From MCUA § 6.26(1) and similar to Ky., Kansas, and N.J. Somewhat similar language authorizing share draft or transactional accounts is set forth in FCUA § 107 (6)(c) and in 12 states and with some variation in 12 additional states.

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C. Shares and share accounts shall be subject to any withdrawal notice requirement which may be imposed in the credit union bylaws.

Drafting Note: Allows bylaws to establish notice requirement for withdrawal. See MCUA § 6.26(2). Similar to Ky. and Md. Several states establish specific number of days notice in state act.

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§ ~~6.1-206-6.1-225.42~~. Payment for shares; transfers; lien on shares.--Shares shall be paid for in money. ~~Shares shall not be transferable except to the account of another member or to a federal agency or a corporation organized pursuant to the Virginia Credit Union Share Insurance Act (§ 6.1-226.1 et seq.)~~, upon payment by such agency or corporation of a claim based upon such shares.--Shares may be subscribed to, paid for, and transferred in such manner as the bylaws prescribe. The credit union shall have a lien on the shares including share accounts of a member in his individual, joint, or trust accounts and upon any dividends payable thereon as security for all debts and obligations owed ~~by him to it~~, and for any loan

1 endorsed by such member to the credit union.

2 Drafting Note: Requires shares to be purchased for cash and not
3 exchanged for goods or services. The last sentence continues the
4 statutory lien on shares in Virginia, but expands provisions to
5 include loans endorsed by a member. There has been some erosion by a
6 federal case in Kansas regarding federal tax liens. (Check U.C.C. §
7 9-31 for creation of a super lien protected by Federal Tax Lien Act.)

8 § ~~6.1-219-6.1-225.43~~. Dividends.-- A. At such intervals and
9 for such periods as the bylaws provide and after provision for the
10 required reserves, the board of directors may declare dividends on
11 shares-share accounts from the undivided earnings or other funds set
12 aside for dividends. ~~If the bylaws permit the opening of more than~~
13 ~~one class of share account, dividends may be declared at varying rates~~
14 ~~upon each class.--~~

15 B. Dividends may be paid at different rates on different types
16 of share accounts and at different rates and maturity dates in the
17 case of share certificates.

18 C. Dividend credit may be accrued on shares as authorized by the
19 board of directors.

20 D. The rates of dividends and terms of payment may be declared
21 in advance by the board of directors.

22 E. ~~No~~In no event shall a dividend ~~shall~~ be paid, if, after
23 the payment thereof, the liabilities of the credit union would exceed
24 its assets.

25 Drafting Note: This section allows different rates for different
26 types of share accounts and share certificates and allows for
27 dividends to be declared in advance. Dividends would be paid from
28 undivided earnings after providing for the reserves required by
29 statute. The period for dividends being declared can be established
30 by bylaws, thus allowing a credit union to pay dividends from the
31 first of the month on funds received by the tenth.

32 § 6.1-225.44. Ascertaining value of assets.-- In ascertaining
33 the value of the assets of a credit union, a loan delinquent for more

1 than two but less than six months shall be valued at ninety percent of
 2 the unpaid balance; a loan delinquent for six months but less than
 3 twelve months shall be valued at seventy-five percent of the unpaid
 4 balance; and a loan delinquent for twelve months or more shall be
 5 treated as of no value.

6 Drafting Note: No change.

7 § ~~6.1-207-6.1-225.45~~. ~~Share-of-minors-Minors' accounts~~.--

8 Shares of a credit union may be issued in the name of a minor, and
 9 such shares may be withdrawn by such minor, and in such case payments
 10 made on such withdrawals shall be valid.

11 Drafting Note: No change.

12 § ~~6.1-207-6.1-225.46~~. Individual retirement accounts
 13 ~~established under Federal Employee Retirement Security Act, etc.~~--
 14 ~~To the extent allowed by federal law a~~ A credit union may act as
 15 trustee or custodian (i) of individual retirement accounts establish
 16 with ~~it the credit union~~ for the benefit of its members under the
 17 Federal Employee Retirement Security Act of 1974, as amended from time
 18 to time : (ii) pension funds of self-employed individuals or of a
 19 company or organization sponsoring the credit union; or (iii) other
 20 similar retirement or pension plans . Contributions thereto and
 21 earnings thereon may be accepted and retained in accordance with ~~said-~~
 22 that act but ~~must shall~~ be invested in shares of the credit union.

23 If the credit union bylaws so provide such accounts may be established
 24 for the benefit of members in the names of other trustees or
 25 custodians who are qualified to serve as such under the laws of this
 26 Commonwealth and ~~said that act~~. ~~The lien given by § 6.1-206, shall-~~
 27 ~~not attach to shares held in such accounts.~~--

28 Drafting Note: The proposed changes will broaden the authority of

1 credit unions to serve as trustee or custodian of self-employed
 2 pension plans (SEPs), profit sharing plans or accounts under ERISA of
 3 1974. Removes the exclusion of such plans from the statutory lien
 4 credit unions have on share accounts. (See § 6.1-207.1(i).)

5 § ~~6.1-207.2-6.1-225.47~~. Acceptance of money under Virginia
 6 Uniform ~~Gifts-Transfers~~ to Minors Act.--If the custodian or the minor
 7 is a member of the credit union, the credit union may accept money
 8 paid to it pursuant to the Virginia Uniform Transfers to Minors Act (§
 9 31-37 et seq.) for credit to an account in the name of the custodian
 10 or custodians as provided in such act.

11 Drafting Note: Other than correcting title of section, no change.

12 § ~~6.1-208.3-6.1-225.48~~. ~~Balance-due-Accounts of deceased or~~
 13 ~~incompetent person + payment to personal representation, guardian,~~
 14 ~~ete---~~--A credit union may pay any share balance due a deceased
 15 person or any person under a disability to the personal
 16 representative, guardian, curator, or committee of such person upon a
 17 ~~letter-of-qualification-as-such-personal-representative, guardian,~~
 18 ~~curator-or-committee-issued-by-any-court-of-competent-jurisdiction-of-~~
 19 ~~this-Commonwealth-proper proof of the appointment and qualification~~
 20 ~~of such fiduciary, and such.~~ Such ~~letter-qualification~~ shall be
 21 sufficient authority for making such payment. A credit union making
 22 such payment shall no longer be liable for the amount so paid to any
 23 person ~~whomsoever~~. The presentation of a duly certified letter or
 24 certificate of qualification as personal representative, or other
 25 fiduciary, guardian, curator, or committee shall be conclusive proof
 26 of the jurisdiction of the court issuing the same.

27 A credit union which has received no written notice and does not
 28 have actual notice that a member is deceased or has been adjudicated
 29 incompetent, may pay or deliver shares in such member's account in
 0 accordance with the provisions of the account contract without

1 liability to any person for the amounts so paid.

2 Drafting Note: Updates terms and adds protection for credit union
3 when not aware of death or disability of member with a joint account
4 (See § 6.1-208.3.). Second paragraph from § 6.1-194.57; also see §
5 6.1-70.

6 § ~~6.1-208.4-6.1-225.49~~. ~~Balance due deceased person, payment-~~
7 Payment of small balances to spouses, distributees or other
8 persons.--When the share balance of a deceased person upon whose
9 estate there ~~shall have has~~ been no qualification does not exceed
10 \$5,000 it shall be lawful for the credit union, after sixty days
11 from the death of such person, to pay such balance to his or her
12 spouse, and if none, to the distributees of the decedent or other
13 persons entitled thereto under the laws of this Commonwealth. The
14 receipt therefor shall be a full discharge and acquittance of the
15 credit union as to all persons whomsoever for the amount so paid.
16 ~~Provided, such~~ Such balance or any part thereof shall not exceed
17 the amount given a priority by § 64.1-157 after thirty days from the
18 death of such person, and upon, Upon the written request of the
19 spouse, or if there ~~be is~~ none, ~~then,~~ the distributees of the
20 decedent or other persons entitled thereto under the laws of the
21 Commonwealth the balance may be paid to the funeral director or
22 mortuary handling the funeral of such decedent and a, A receipt of
23 the payee shall be a full and final release of the credit union for
24 the amount so paid.

25 Drafting Note: No change. Comparable to §§ 6.1-71 and 6.1-194.58.
26 (See § 6.1-208.4.)

27 § ~~6.1-208.5-6.1-225.50~~. Application of §§ ~~6.1-208.3 and~~
28 ~~6.1-208.4-6.1-225.48 and 6.1-225.49~~ to federal credit unions.--The
29 provisions of §§ ~~6.1-208.3 and 6.1-208.4-6.1-225.48 and 6.1-225.49~~
30 shall apply to federal credit unions operating in this Commonwealth +

1 the extent that the same are not inconsistent with any federal law
2 applicable to such credit unions.

Drafting Note: Only change is reference to code sections. (See §
4 6.1-208.5.)

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Article 10.

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Loans.

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§ 6.1-225.51. Purpose and condition of loans.--A credit union may lend to its members for such purposes and upon such conditions as the bylaws may prescribe. The board of directors shall establish written policies with respect to granting loans and extending lines of credit, including the terms, conditions, and acceptable forms of security.

10 Drafting Note: Current § 6.1-198(9) simply states that bylaws shall
11 specify conditions for making loans. Proposal follows MCUA in
12 flexible provision to allow the board to create a loan policy that
13 fits the credit union, its resources, and its members. (MCUA § 710)

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§ 6.1-225.52. Other charges.--A. In addition to interest charged on loans, a credit union may charge members all reasonable expenses in connection with making, closing, disbursing, extending, collecting, or renewing loans.

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B. In accordance with the bylaws, a credit union may assess charges to members for failure to meet in a timely manner their obligations to the credit union.

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Drafting Note: Allows credit union to assess late charges and charge fees for expenses of services rendered to a member. Subsection B addresses the assessment of late charges, etc. See § 6.1-330.80.

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~~§ 6.1-217-6.1-225.53. Loans-generally-Loan limit.-- A.--No loan may be made to an individual-a member if, upon making the loan, he-the member would be indebted to the credit union on loans to him-such member in an aggregate amount which would exceed ten percent of its outstanding-shares-share accounts and reserve fund, or the maximum amount as authorized by its bylaws, whichever is less. If-the borrower-or-endorser-is-a-member-of-the-credit-committee-the-loan-must~~

1 ~~be approved by the supervisory committee instead of by the credit~~
 2 ~~committee; however, where such loan is fully secured by shares, such~~
 3 ~~loan may be approved by the credit committee.--~~

4 ~~B. No loan shall be made to an individual who is not a member of~~
 5 ~~the credit union. If the credit committee should knowingly approve~~
 6 ~~such a loan, its members shall be jointly and severally liable to the~~
 7 ~~credit union for the immediate repayment thereof.--~~

8 Drafting Note: No substantive change from current ten percent
 9 limitation. MCUA--ten percent of "total assets"; FCUA--ten percent of
 10 "unimpaired capital and surplus"; Cal.--ten percent of "shares." (See
 11 § 6.1-217.)

12 § ~~6.1-217-6.1-225.54~~. Loans generally to members of credit
 13 committee; nonmember loans.--A. ~~No loan may be made to an individual~~
 14 ~~if, upon making the loan, he would be indebted to the credit union on~~
 15 ~~loans to him in an aggregate amount which would exceed ten percent of~~
 16 ~~its outstanding shares and reserve fund, or the maximum amount as~~
 17 ~~authorized by its bylaws, whichever is less.--~~If the borrower or
 18 endorser is a member of the credit committee, or a member of the board
 19 of directors if the board is serving as the credit committee, the loan
 20 ~~must shall~~ be approved by the supervisory committee or a loan officer
 21 instead of by the credit committee; however, where such loan is fully
 22 secured by shares, such loan may be approved by the credit committee.

23 B. No loan shall be made to an individual or entity who is not a
 24 member of the credit union. If the credit committee or loan officer
 25 should knowingly approve such a loan, ~~its the members of the credit~~
 26 committee shall be jointly and severally liable, or in the case of a
 27 loan officer, he shall be individually liable, to the credit union for
 28 the immediate repayment thereof.

29 Drafting Note: The amendments to subsection A include restrictions on
 approval of loans to board members, if the board also serves as the

1 credit committee. In such event, the loan would be approved by the
2 supervisory committee or a loan officer. The amendment to subsection
3 B establishes the same liability for a loan officer who knowingly
4 approves a loan for a nonmember.

5 § 6.1-225.55. Lines of credit.--Notwithstanding the requiremen
6 of § 6.1-225.37, the credit committee or a loan officer may approve an
7 application for a line of credit. When a line of credit has been
8 approved, advances may be made as requested without further loan
9 application or approval if the aggregate outstanding balance on all
10 advances does not exceed the limit specified.

11 Drafting Note: Some refer to this as a self-replenishing line of
12 credit. It allows open-end loan plans, e.g., credit cards.

13 § 6.1-225.56. Cooperative loans.--A credit union may originate
14 loans to credit union members jointly with other credit unions, credit
15 union organizations, or other financial institutions pursuant to
16 written policies established by the board of directors which shall
17 include the limitation set forth in § 6.1-225.53. A credit union
18 which originates such a loan shall retain at least a ten percent
19 interest in such loan.

Article 11.

Investments.

~~§ 6-1-216-6.1-225.57. Investment of funds Authorized~~

~~investments.~~ --The funds of a credit union, not used in loans to members, may be invested in the following ways only:

~~(1) Lent to members of the credit union;~~

Drafting Note: This change places more emphasis on the primary duty of credit unions to invest their funds in loans to members. Many credit unions refer to investment of capital (deposits) reserves and surplus rather than just "funds." FCUA and MCUA use term "funds" as in Virginia.

~~(2)-1. Lent Loans~~ to other insured credit unions to the extent permitted in the bylaws;

~~(3) Deposited in banks in which the accounts are insured by the Federal Deposit Insurance Corporation;~~

~~(4)-2. Invested In shares, share accounts, or deposits of other insured credit unions~~ to the extent authorized in its bylaws, but not to exceed twenty-five percent of outstanding shares and reserve fund, in shares of other insured credit unions;

3. In shares or deposits of any corporate credit union provided such investments are specifically authorized by the board of director making the investment;

Drafting Note: Old (10).

4. In federally insured banks and savings institutions;

Drafting Note: Old (3) and (6) dropping the FDIC and FSLIC reference

~~(5) Invested in-5. In the capital stock of the National Credit Union Central Liquidity Facility or any central liquidity facility established under the laws of the Commonwealth, in obligations of United States, of the Commonwealth of Virginia or any political~~

1 ~~subdivision or agency of the Commonwealth of Virginia, including~~
2 ~~revenue bonds;~~

3 6. In obligations of the United States and securities fully
4 guaranteed as to principal and interest thereby;

5 7. In obligations of the Commonwealth of Virginia and any
6 political subdivision thereof, including but not limited to, revenue
7 bonds;

8 Drafting Note: Old (6).

9 ~~(6) Invested in savings accounts of any savings and loan~~
10 ~~association whose accounts are insured by the Federal Savings and Loan~~
11 ~~Insurance Corporation;~~

12 ~~(7) Invested in 8. In such stock, securities, obligations, or~~
13 ~~other investments as may be approved from time to time by the~~
14 ~~Commission;~~

15 ~~(8) Invested in the 2. In real estate, office building~~
16 ~~buildings, equipment, and furnishings of the credit union provided~~
17 ~~that the aggregate investment in all such fixed assets shall not~~
18 ~~exceed five percent of the total of the members' shares share~~
19 ~~accounts without the prior written authorization of the Commissioner~~
20 ~~of Financial Institutions;~~

21 ~~(9) Invested to the extent authorized in its bylaws in the~~
22 ~~purchase of stock and other securities or obligations of a service~~
23 ~~corporation or corporations in an amount not to exceed five percent of~~
24 ~~outstanding shares and reserve fund. Such credit union may not invest~~
25 ~~in any such service corporation unless it uses or intends to use the~~
26 ~~services of such service corporation. For the purposes of this~~
27 ~~section, a "service corporation" is defined as one engaged primarily~~
28 ~~in rendering services to two or more credit unions. The Commission may~~

~~allow such investment to exceed five percent of the outstanding shares and reserve fund upon good cause shown; and~~

~~(10) Notwithstanding any other provisions of this section, invested in shares or deposits of any central credit union provided such investments are specifically authorized by the board of directors of the credit union making the investment.--~~

10. In shares, stock, deposits in, loans, or other obligations of any organization, corporation, or association, if (i) the membership or ownership, as the case may be, of such organization, corporation, or association is primarily confined or restricted to credit unions or organizations of credit unions and (ii) the purpose for which such organization, corporation, or association is organized is to strengthen or advance the development of credit unions or credit union organizations; provided such investment by any credit union all not exceed five percent of the credit union's outstanding shares and reserves without the prior approval of the Commissioner;

Drafting Note: Allows credit union to invest in a credit union service organization which can furnish essential services to the credit union.

11. In deposits in, loans to, or shares of any Federal Reserve Bank; and

Drafting Note: Conforms to legislation allowing financial institutions other than banks access to the Federal Reserve.

12. In cooperative loans with other credit unions or credit union organizations; provided such investment shall not exceed ten percent of outstanding shares and reserves of the investing credit union.

Drafting Note: This provision allows credit unions to join together to invest in a loan which may be larger than any one credit union may want to invest in. The proposed section is similar to the MCUA § 7.40 and the FCUA § 107 (5)(E).

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Article 12.

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Reserves.

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~~§ 6.1-218-6.1-225.58 . Reserve fund-Transfer to regular~~

5

~~reserves; special reserves.~~ A--At the end of each accounting

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period, as provided in the bylaws, whether a dividend is to be paid or

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not, the gross earnings of the credit union shall be determined. From

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this amount, there shall be set aside sums as a regular reserve in

9

accordance with the following schedule:

10

1. A credit union in operation for more than four years and

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having assets of \$500,000 or more shall set aside (i) ten percent of

12

gross income until the regular reserve shall equal four percent of the

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total of outstanding loans and risk assets, then (ii) five percent of

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gross income until the regular reserve shall equal six percent of the

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total of outstanding loans and risk assets.

16

2. A credit union in operation less than four years or having

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assets less than \$500,000 shall set aside (i) ten percent of the gross

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income until the regular reserve shall equal seven and one-half

19

percent of the total of outstanding loans and risk assets, then (ii)

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five percent of gross income until the regular reserve shall equal ten

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percent of the total of outstanding loans and risk assets.

22

3. Whenever the regular reserve falls below the stated percent of

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the total of outstanding loans and risk assets, it shall be

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replenished by regular contributions in such amounts as may be needed

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to maintain the stated reserve goals.

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4. The Commission may increase or decrease the stated reserve

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requirement when in its opinion such an increase or decrease is

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necessary or desirable.

5. In addition to such regular reserve, special reserves shall be established when found by the board of directors of the credit union ~~or~~ by the Commission to be necessary to protect the interest of members.

6. Unless otherwise prohibited by the Commission, the board of directors of the credit union may establish additional, regular reserves when in its opinion such an increase is necessary or desirable.

Drafting Note: No change.

~~B.---§ 6.1-225.59. Use of reserves.---~~Losses may be charged to the reserve fund. Any sums recovered on items previously charged to it shall be credited to the reserve fund. No dividends shall be paid out of the reserve fund unless the fund, after such payment, exceeds the total amount required to be set aside in the regular reserve and special reserves of the credit union.

Drafting Note: No substantive change.

~~C.---§ 6.1-225.60. Risk assets defined.---~~For the purposes ~~of~~ purpose of establishing the reserves required by this ~~section-article~~, all assets except the following shall be considered risk assets:

1. Cash on hand;
2. Deposits and shares in federal or state banks, savings ~~and~~ ~~loan-associations-institutions~~, and credit unions;
3. Assets which are issued by, fully guaranteed as to principal and interest by, or due from the United States government, its agencies, the Federal National Mortgage Association, the Government National Mortgage Association, or the Commonwealth of Virginia or any political subdivision thereof;
4. Loans to other credit unions;

- 1 5. Insured student loans;
- 2 6. Loans insured under Title I of the National Housing Act (12
3 U.S.C. § 1703) by the Federal Housing Administration;
- 4 7. Shares or deposits in ~~central-corporate~~ credit unions
5 organized under the laws of this Commonwealth or the Federal Credit
6 Union Act;
- 7 8. Prepaid expenses;
- 8 9. Accrued interest on nonrisk investment;
- 9 10. Loans fully secured by a pledge of shares in the lending
10 credit union, equal to and maintained to at least the amount of the
11 loan outstanding;
- 12 11. Loans which are purchased from liquidating credit unions and
13 guaranteed by the Virginia Credit Union Share Insurance Corporation ~~of~~
14 ~~or~~ the National Credit Union Administration;
- 15 12. Investments in the ~~insuring organization and in the National~~
16 Credit Union Administration Central Liquidity Facility;
- 17 13. Furniture and equipment; ~~and-~~
- 18 14. Land and buildings ~~---~~;
- 19 15. ~~Investments with a maturity of three years or less; and~~
- 20 16. ~~In addition to subdivisions 1 through 16 of this section,~~
21 ~~such assets as the Commissioner may classify as not being risk assets~~
22 ~~for the purpose of this section.~~

23 Drafting Note: Virginia's reserve section was rewritten in 1986 and
24 is similar to the FCUA § 116(a) and (b). The MUA has adopted a
25 different approach which reflects the recommendations of the
26 Capitalization Commission. That approach keeps the formula for
27 reserving out of the statutes and allows for it to be set by
28 regulation. The Commissioner is directed to establish a reserve
29 schedule by regulation. Certain guidelines for the Commissioner are
30 set by statute by requiring that reserves be based on risk assets and
31 the transfer to reserves based on gross income of the credit union.
32 It also sets lower transfer to reserves requirement for credit unions
33 in operation more than a specified number of years and having assets

in excess of certain dollar amounts.

Virginia law allows board of directors to establish special reserves when necessary to protect the interest of members and additional regular reserves. Section 6.1-225.59 provides that losses may be charged to the reserve fund, and no dividends shall be paid therefrom unless an excess reserve would remain after such payment.

(See N.C. § 54-109.86; MCUA § 10-12.)

Drafting Note: This new section will allow a credit union to pool its resources with other credit unions, service organizations or other financial institutions to make loans to its members. Cooperative loans would enhance smaller credit unions' ability to make large loans to their members, such as in purchasing a residence with a long term loan. There is a ten percent limitation on loans to any one member and a requirement that the originating credit union must retain at least ten percent interest in such loan.

1

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Article 13.

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Out-of-State Credit Unions.

4

§ ~~6-1-208-6-6.1-225.61~~. Out-of-state credit unions.--A. A

5 credit union organized and doing business in another state may conduct

6 business as a credit union in Virginia with the approval of the

7 Commission. The Commission shall find that the out-of-state credit

8 union:

9

1. Is a credit union duly organized under the laws of another
10 state which would allow credit unions organized in this Commonwealth
11 to conduct business in that state;

12 2. Has share insurance for its members;

13 3. Reasonably needs to establish a place of business in this
14 Commonwealth to adequately serve its members in this Commonwealth;

15 4. Is examined and supervised by the supervisory authority of t
16 state in which the out-of-state credit union is organized; and

17 5. Has filed an application with the Commission to conduct such
18 business.

19 B. The out-of-state credit union shall:

20 1. Grant loans at rates of interest not in excess of the rates
21 permitted for credit unions organized under the laws of this
22 Commonwealth;

23 2. Comply with the same consumer protection provisions that
24 credit unions organized under the laws of this Commonwealth are
25 required to obey;

26 3. Designate and maintain a registered agent in this
27 Commonwealth;

28 4. Submit all examination reports from its supervisory agency t

1 the Commission;

2 5. Have any insurer of shares designate an agent for service of
3 process and agree that in the absence of such designation service may
4 be upon the clerk of the Commission; and

5 6. Inform the members of the credit union who use any facility
6 authorized pursuant to this section of the state where the
7 organization, supervision, and share insurance of the credit union
8 are, and of the fact that it is not regulated, supervised, or insured
9 by any agency of this Commonwealth.

0 C. Credit unions organized in this Commonwealth may establish
1 offices outside the Commonwealth upon approval of the Commission.

2 D. The Commission may suspend or revoke the authority of an
3 out-of-state credit union to do business in Virginia if the Commission
4 finds that such credit union is not in compliance with the
5 requirements of this section.

6 Drafting Note: Virginia adopted § 6.1-208.6 in 1985. Virginia
7 requires reciprocal authority, share insurance, reasonable need to
8 establish business in Virginia, examination and supervision by state's
9 supervisory authority where organized and must file application with
0 Commission. Also allows Virginia credit unions to open offices out of
1 state with approval of Commission. No change.

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Article 14.

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Miscellaneous.

4 § ~~6.1-223.2-6.1-225.62~~ . ~~Penalty for certain acts by officer,--~~
 5 ~~director, etc.--~~Offenses .--Any officer, director, employee, receiver
 6 or agent of a credit union who willfully does any of the following
 7 shall be guilty of a Class 6 felony:

8 1. With the intent to deceive, falsifies any book of account,
 9 report, statement, record or other document of a credit union
 10 whether by alteration, false entry, omission or otherwise;

11 2. Signs, issues, publishes or transmits to a government agency
 12 any book of account, report, statement, record or other document
 13 which he knows to be false;

14 3. By means of deceit, obtains a signature to a writing which is
 15 a subject of forgery;

16 4. With intent to deceive, destroys any credit union book of
 17 account, report, statement, record or other document; or

18 5. With the intent to defraud, shares or receives directly or
 19 indirectly any money ~~profit~~, property or benefits through any
 20 transaction of the credit union.

21 Drafting Note: No change.

22 § ~~6.1-225-6.1-225.63~~ . ~~Exemption of credit unions from payment--~~
 23 ~~of franchise tax--~~Taxation .--All credit unions organized under the
 24 laws of this Commonwealth and doing business purely as credit unions
 25 shall be exempt from the payment of any franchise tax.

26 Drafting Note: No change.

27 2. That Chapter 4 of Title 6.1 of the Code of Virginia, consisting of
 28 §§ 6.1-196 through 6.1-225, is repealed.

1 3. That whenever any section of Chapter 4 of Title 6.1 of this Code
2 is referenced in any other section of this Code such reference shall
3 be construed to apply to the new or renumbered section of Chapter 4.01
4 of Title 6.1 of this Code.

5 4. That the regulations of the State Corporation Commission in effect
6 on the effective date of this act shall continue in effect to the
7 extent that they are not in conflict with this act and shall be deemed
8 to be regulations promulgated in accordance with this act.

9 5. That the provisions of this Act shall become effective January 1,
10 1991.

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#

APPENDICES

1. Outline of Proposed Chapter 4.01.
2. Presentation by the Virginia Credit Union League.
3. Comparative Tables.
4. Members of the Virginia Code Commission.

APPENDIX I

CHAPTER 4.01

VIRGINIA CREDIT UNION ACT

Article 1. General Provisions.

New Section

Sec.

6.1-225.1 Short Title.
6.1-225.2 Definitions.

Article 2. Supervision and Regulation.

Sec.

6.1-225.3 Supervision and regulation by Commission.
6.1-225.4 Examinations.
6.1-225.5 Fees for examination, supervision and regulation.
6.1-225.6 Penalty for failure to make reports.
6.1-225.7 Cease and desist order; right to hearing.
6.1-225.8 Powers of Commission in case of nonobservance of law, etc.
6.1-225.9 Penalties for violation of orders of Commission.
6.1-225.10 Supervisory merger or transfer of assets.
6.1-225.11 Consolidation or merger.
6.1-225.12 Involuntary dissolution.

Article 3. Formation of Credit Union.

Sec.

6.1-225.13 Incorporation.
6.1-225.14 Certificate of authority.
6.1-225.15 Contents of bylaws; amendments to bylaws.
6.1-225.16 Amendments to articles of incorporation and bylaws.
6.1-225.17 Bylaws amended by Commission.
6.1-225.18 Fiscal year.
6.1-225.19 Unlawful use of words "credit union".
6.1-225.20 Establishing, moving, closing offices.

Article 4. Powers.

Sec.

6.1-225.21 General powers.
6.1-225.22 Amendment of powers by Commission.

Article 5. Membership.

- 6.1-225.23 Membership defined; common bond.
- 6.1-225.24 Membership meetings; voting.
- 6.1-225.25 Special meetings.

Article 6. Share Insurance.

- Sec.
- 6.1-225.26 Insurance of shares.

Article 7. Change in corporate status; mergers, dissolutions and conversions.

- Sec.
- 6.1-225.27 Voluntary merger.
- 6.1-225.28 Voluntary dissolution.
- 6.1-225.29 Conversion of federal credit union to state credit union.
- 6.1-225.30 Conversion of state credit union to federal credit union.

Article 8. Direction of affairs.

- Sec.
- 6.1-225.31 Board of directors; number; election; term; appointment of supervisory and credit committee.
- 6.1-225.32 Board of directors; election of officers.
- 6.1-225.33 Executive committee.
- 6.1-225.34 Meetings of directors.
- 6.1-225.35 Compensation of officials.
- 6.1-225.36 Powers and duties of directors.
- 6.1-225.37 Credit committee; loan officers; appeal.
- 6.1-225.38 Supervisory committee; suspension and removal of officials.
- 6.1-225.39 Special audit.
- 6.1-225.40 Qualification of officers, etc.

Article 9. Accounts

Sec.

- 6.1-225.41 Share accounts.
- 6.1-225.42 Payment for shares; transfers; liens on shares.
- 6.1-225.43 Dividends.
- 6.1-225.44 Ascertaining value of assets.
- 6.1-225.45 Minor accounts.
- 6.1-225.46 Individual retirement accounts, etc.
- 6.1-225.47 Acceptance of money under Virginia Uniform Transfers to Minors Act.
- 6.1-225.48 Accounts of deceased or incompetent person.
- 6.1-225.49 Payment of small balances to distributees or other persons.
- 6.1-225.50 Application of §§6.1-225.47 and 6.1-225.48 to federal credit unions.

Article 10. Loans.

Sec.

- 6.1-225.51 Purpose and condition of loans.
- 6.1-225.52 Other charges.
- 6.1-225.53 Loan limit.
- 6.1-225.54 Loans to members of credit committees; non-member loans.
- 6.1-225.55 Lines of credit.
- 6.1-225.56 Cooperative loans.

Article 11. Investments.

Sec.

- 6.1-225.57 Authorized investments.

Article 12. Reserves.

Sec.

- 6.1-225.58 Transfer to regular reserves; special reserves.
- 6.1-225.59 Use of reserves.
- 6.1-225.60 Risk assets defined.

Article 13. Out-of-State Credit Unions.

Sec.

- 6.1-225.61 Out-of-State Credit Unions.

Article 14. Miscellaneous.

Sec.

- 6.1-225.62 Offenses.
- 6.1-225.63 Taxation.

APPENDIX II

TO: Members of the Virginia Code Commission

FROM: Virginia Credit Union League, Eugene H. Farley, Jr.,
President, and Reginald N. Jones, counsel

RE: Recodification of Credit Union Law

DATE: December 19, 1989

Today we will be presenting to you a proposal to recodify the credit union law in Virginia by creating the Virginia Credit Union Act as Chapter 4, Title 6.1 of the Code of Virginia of 1950, as amended.

BACKGROUND

The idea for recodification was born out of the conversion of all state chartered credit unions from share insurance with the Virginia Credit Union Share Insurance Corporation ("VACUSIC") to National Credit Union Administration Share Insurance Fund ("NCUASIF") on December 31, 1987. On that date, through the cooperative effort of VACUSIC, the State Corporation Commission ("SCC"), the Virginia Credit Union League ("VCUL") and the National Credit Union Administration ("NCUA") and the approximately one hundred credit unions with state insurance of accounts,

Virginia became the first state to have all of its state insured credit unions convert to federal share insurance on the same day and without NCUASIF requiring the usual obligatory examination. This was a tribute to the safety and soundness of the Virginia credit unions and the regulatory respect the NCUA has for the Virginia Bureau of Financial Institutions ("BFI").

In the spring of 1988 in a meeting with Sidney A. Bailey, Commissioner of the Bureau of Financial Institutions, we discussed the feelings expressed by many state chartered credit union leaders that since they had lost their state insurance fund and had been forced to accept federal insurance, they might as well convert to a federal charter because it would cost less as a federal credit union and the Federal Credit Union Act provides a better operating environment than we have in Virginia. At that time, we recognized that the Virginia law was not organized and was in real need of modernization.

In the 1989 Session of the Virginia General Assembly, Delegate J. Samuel Glasscock and Speaker A. L. Philpott

co-patroned a bill which was merged into House Bill 309 authorizing a Code Commission study of the credit union laws in Virginia.

During the past nine months, representatives of the Bureau of Financial Institutions (namely, Commissioner Bailey, George T. Latham, Supervisor of Credit Union Regulations, and William F. Schutt, Senior Counsel to the Bureau of Financial Institutions), C. W. "Bill" Cramme, III, Senior Counsel for the Division of Legislative Services, and representatives of the Virginia Credit Union League have been involved in research and writing in preparation of the product before you.

In preparing the proposed recodification, we reviewed the state credit union acts in about twenty selected states, the Federal Credit Union Act ("FCUA"), and the Model Credit Union Act ("MCUA"). Through this process, we found that the Virginia Act was terribly disorganized, had not kept pace with many changes in the credit union movement and was woefully inadequate as compared to the credit union acts in the states surrounding Virginia.

To find a state that has made most of the changes we are seeking, one only needs to look to North Carolina. It would

probably be difficult to find any substantive changes we are suggesting that are not just a part of the federal law controlling the activities of federally chartered credit unions doing business in Virginia but has been the law in North Carolina for several years.

A draft proposal was delivered to Bill Cramme on October 11, 1989. A revised draft with Bill Cramme's recommendations incorporated was submitted to Commissioner Bailey and representatives of the BFI on October 19, 1989 for review and comment. Gene Farley and I met on November 14 and November 15, 1989 with Bill Schutt and George Latham. In those meetings we reached an agreement on numerous modifications and the BFI agreed to submit some specific proposals for parts of Article 2 (Supervision and Regulation), Article 3 (Formation of Credit Union) and Article 7 (Change in Corporate Status, Mergers, Dissolutions and Conversions). On December 13, 1989, we received the proposal from the BFI and immediately agreed to incorporate their recommendations into the proposed bill previously delivered to Bill Cramme at Legislative Services with the mutual understanding that the proposal is not yet

cast in stone and we will continue to note improvements acceptable to the Code Commission and the eventual patrons of the bill.

The draft could not be ready in time for review by representatives of other financial institutions. There have been informal discussions with Jack Edmonds, counsel, and Walter Ayers, President of the Virginia Bankers Association, as well as Mark Saur, President of the Virginia League of Savings Institutions, advising them some of the more significant proposals; however, they have not had the opportunity to review the proposal before you today. We intend to deliver a copy to representatives of other financial institutions immediately.

Highlights of the proposal are:

1. An organized Act entitled the "Virginia Credit Union Act," divided into articles to provide easier access to the Act and a definitional section.
2. Codification of certain existing and accepted practices to provide clearer direction for the regulators and credit unions.
3. Allows state chartered credit unions to include in

their membership groups with divergent common bonds if located in the same geographical area. (Section 6.1-225.15)

4. Article 4 enumerates the powers of a credit union rather than continue to rely upon implied powers.

5. Membership rights are defined in Article 5, Section 6.1-225.23, et seq.

6. Establishes procedures for loan officers to operate under the direction of the board and in lieu of a credit committee with a right of appeal for members receiving an adverse loan decision.

7. Clarifies the powers and duties of the board of directors of a credit union.

8. Defines ownership of a share account as an interest in the capital of the credit union.

9. Clarifies the interest of a minor in a share account.

10. Provides for cooperative loans with other credit unions and financial institutions.

11. Allows investment in credit union service organizations, with certain limitations, and in shares of the Federal Reserve Bank.

We look forward to reviewing the proposed recodification
in more detail with you.

Respectfully submitted,

Reginald N. Jones

RECODIFICATION OF CREDIT UNION LAW

REVIEW BY ARTICLE AND SECTION

Article 1. General Provisions.

§6.1-225.1. Short Title. - Creates a reference title for the Act.

§6.1-225.2. Definitions. - No definitional section in old Act. The definition of "credit union" is similar to that found in the Model Credit Union Act ("MCUA"), Federal Credit Union Act ("FCUA") and many states including North Carolina.

"Immediate family" is defined. Current law speaks of "members of their families" without definition. The proposed definition, we believe, codifies current practice. The FCUA does not define but we believe the proposed language follows the practice in most states and for federal credit unions.

"Insuring organization" definition allows an alternative to NCUA Share Insurance Fund if approved by the Commission.

"Shares" as defined will correct current law to include the interest of a member who has a share draft account which is not a "savings" account.

"Share account" includes all types of share accounts a member may hold to include savings and transactional accounts. Further, it clarifies that owning shares confers membership, voting rights, and an interest in the capital of the credit union.

Article. Supervision and Regulation.

§6.1-225.3. Supervision and regulation. - As in current law, establishes that state chartered credit unions shall be supervised and regulated by the Commission. The word "examination" has been changed to "regulation" to more properly reflect the role of the Commission. The stricken provisions have been relocated within Article 2.

The last sentence is added to specifically authorize the Commission to promulgate regulations to implement the Act.

[See §6.1-220]

§6.1-225.4. Examinations. - Does not change present examination requirement of at least two examinations every three years or as often as necessary to protect a member's interest. No substantive change.

[See § 6.1-221]

§6.1-225.5. Fees for examination, supervision and regulation. - Combined old fee sections for examination (§6.1-221) and supervision and regulation (§6.1-221.1) in same section and updated without any substantive change.

§6.1-225.6. Reports; penalty for failure to make a report. - Penalty for failure to make reports required by State Corporation Commission ("SCC") for a period of fifteen days or pay charges due to SCC, upon notice to credit union, the SCC can revoke or suspend certificate of authority. Same as current §6.1-222. [§6.1-222]

§6.1-225.7. Cease and desist authority. - SCC given authority to order a credit union to cease and desist certain unsafe or unsound practices. The procedure is established for an expedited hearing before the Commission. (Identical to §6.1-194.83.D.1. & 2 for savings and loans.) New section included in BFI proposals. [S&L Act §6.1-194.83.D.1 & 2; §6.1-200.2.B.]

§6.1-225.8. Powers of Commission in case of non-observance of the law, noncompliance with orders, insufficient reserves or insolvency, etc.

This section provides new powers to the Commission when a credit union fails to operate in a safe and sound manner, failed to comply with order of SCC or the law, or is or about to become insolvent, has insufficient reserves or is in violation of some law or regulation. (Similar to §6.1-194.83.A. & B.)

§6.1-225.9. Penalties for violation of orders of the Commission; removal of official. - Section same as §6.1-223.1 except may remove an official on first offense rather than getting a free bite at the apple. SCC amendment eliminated right of appeal language from statute.

§6.1-225.10. Supervisory merger or transfer of assets. - No change from current §6.1-200.4 except that insolvency definition shifted to definition section and SCC added language in subparagraph F that will allow Commission to effect a sale of assets to any federally insured financial institution if cannot find a credit union for a merger or consolidation. [§6.1-200.4]

§6.1-225.11. Consolidation or merger. - No change. [§6.1-200.5]

§ 6.1-225.12. Involuntary dissolution. - No substantive change.

Article 3. Formation of Credit Union.

§ 6.1-225.13. Incorporation. - Amendments require Virginia residents to organize a credit union. Remaining language extracted because it is in the definitional section.

[§ 6.1-196]

§ 6.1-225.14. Certificate of authority. - SCC proposal to replace current § 6.1-197 with a list of requirements that must be met in order to receive a certificate of authority to commence business as a credit union.

Allows for a conditional certificate while share insurance application is pending. [§ 6.1-197]

§ 6.1-225.15. Contents of bylaws; amendments to bylaws generally. -

(1) No substantive change but did include reference to notice section of Nonstock Corporate Act.

(3) Qualifications for membership changed from "a specified common bond of interest" to "groups having a common bond of occupation or association" or to groups

within a well-defined neighborhood, etc. (community based credit union), other credit unions and employees of the credit union. This is more restrictive than allowed by FCUA §109 (12 U.S.C. 1759).

(4) No longer required to have a credit committee if membership allows board of directors to serve as credit committee.

(11) Section A2 and A3 of §13.1-907 do not apply to a credit union's distribution of assets in dissolution.

(12) Added "The manner in which bylaws may be amended".

[6.1-198]

§ 6.1-225.16. Amendments to articles of incorporation and bylaws. - Statute refers to appropriate section in Nonstock Corporate Act for amendments. Amendments to bylaws must be approved or disapproved by the Commissioner within thirty (30) days of submission. Amendments are not effective until approved by the Commissioner. [§6.1-199]

§6.1-225.17. Bylaws; amendments by Commission. - No change. [§6.1-198]

§6.1-225.18. Fiscal year. - No change. [§6.1-209]

§6.1-225.19. Unlawful use of words "credit union". - Amended only to classify as a Class 1 misdemeanor. No other substantive change.

§6.1-225.20. Establishing, moving, closing offices. - Commission requested significant change from current law which allows a credit union to change its place of business on written notice to and approval of the Commission.

Proposed change requires application on SCC form and prior approval to establish a branch office. Establishes a shareholder's interest test. Requires thirty (30) days written notice to move or close a credit union office. Also, must notify Commissioner within ten (10) days after it establishes, relocates or closes any office.

All changes were requested by the SCC-BFI.

Article 4. Powers.

§6.1-225.21. General Powers. - Current law does not enumerate the powers for state chartered credit unions. It simply states that a credit union may receive savings, may loan to its members, and "may undertake such other

activities relating to the purposes of the credit union as its charter or bylaws may authorize".

The recodification approach is to enumerate the general powers of a credit union rather than relying upon an "implied power" theory.

Specific powers:

1. Receive savings from and make loans to its members.
2. Acquire, lease, etc. property necessary or incidental to its operation, including property or assets obtained as a result of a default.

3. Borrowing limitations from current act (6.1-201) remain unchanged, i.e., credit union must notify and obtain prior approval from the Commission if borrowings exceed fifty percent of credit union's outstanding shares and in no event shall borrowings exceed ninety percent of outstanding shares. [§ 6.1-201]

4. Offer related financial services, e.g., EFT, safe deposit boxes, leasing of automobiles, etc.

[§ 6.1-200 &
§ 6.1-201]

§6.1-225.22. "Wild card" section authorizing Commission by appropriate regulation to amend the powers of state chartered credit unions to have powers "at least comparable to those granted to federal credit unions doing business in Virginia". No change in current statute except that amendment offered to allow the SCC to waive the requirement of a public hearing when deemed appropriate by SCC.

[§6.1-200.2.A.]

§6.1-225.23. Membership defined; common bond. - Current law does not have a membership section or definition, it simply states that the conditions and qualifications for membership shall be in the bylaws. [§6.1-198(3)] Section 6.1-225.23 provides the criteria for membership; that member who leaves the field of membership may be permitted to retain membership if standards have been adopted by the board; board of directors right to expel from membership; that members are not liable for the debt of the credit union; the surviving spouse of a deceased member may become a member; and associations of members may become members of credit union, e.g., company union.

[§6.1-198(3)]

§ 6.1-225.24. Membership meetings; voting. - Provides more flexibility in exercising right to vote as a member of the credit union to include absentee and mail ballots and other methods approved in bylaws. Also allows the board of directors to establish a minimum age of not more than eighteen to be eligible to vote or hold office.

[§ 6.1-209]

§ 6.1-225.25. Special meetings. - Allows majority of supervisory committee to call a meeting of the members. No substantive change from § 6.1-213.

Article 6. Share Insurance.

§ 6.1-225.26. Insurance of shares. - As in § 6.1-200.1 of the current law, this section establishes the continuing requirement for existing credit unions to maintain share insurance or dissolve or merge with a credit union which is insured. This has been the law since 1974.

[§ 6.1-200.1]

Article 7. Changes in corporate status; mergers, dissolutions and conversions.

§ 6.1-225.27. Merger. - Current law provides for merger of two Virginia state chartered credit unions subject to the approval of the Commission. This does not change the current law. Federally chartered credit unions can merge without regard to common bond under the rules and regulations of the NCUA. [See FCUA §120 (12 U.S.C. 1766) and §205(h)(i) (12 U.S.C. 1785) in the case of insolvency or threatened insolvency.]

The amendments will allow the merger of a state chartered credit union with another credit union regardless of state or federal charter. If the surviving credit union will be a Virginia state chartered credit union an application must be approved by the Commission.

The amendment to subsection A.3. allows the federally chartered credit union in a merger with a Virginia state chartered credit union to give notice of the plan of merger in accordance with the requirements for a federally chartered credit union and not the state law.

The amendment to subsection A.5. requires the surviving credit union, if it is a credit union organized under the laws

of another state, to comply with the relevant provisions of this Act relating to out-of-state credit unions. (§6.1-225.61)

[§ 6.1-200.3]

§6.1-225.28. Voluntary dissolution. - Virginia is one of two states without a voluntary dissolution statute. We probably have relied upon the provisions of the Nonstock Corporate Act. This section incorporates the nonstock act provisions and requires certain notices to the Commissioner. [No existing section]

§6.1-225.29. Conversion of federal credit union to state credit union. - Current § 6.1-200.6 allows the conversion. The amendments are only to correct references.

[§6.1-200.6]

§6.1-225.30. Conversion of state credit union to federal credit union. - Current §6.1-200.7 provides procedure for conversion of state credit union to federal. The amendment to subsection 1 clarifies that the notice to members of the federal credit union may be given in the manner prescribed in the bylaws of the federal credit union. [§6.1-200.7]

Article 8. Direction of Affairs.

§6.1-225.31. Board of directors; number; election; term; appointment of supervisory and credit committee. - Subsection (1) makes it clear that the board of directors has the authority and responsibility to direct the credit union.

Subsection (2) provides for election of an odd number of directors annually and not necessarily at the annual meeting.

Subsection (3) establishes the term of directors from one to four years and staggered terms if elected for more than one year. Also provides for filling vacancies on the board.

Subsection (4) - current law requires board to appoint the supervisory and credit committees. The amendments allow loan officers to be appointed from outside the membership and the members to direct the board to serve as the credit committee and thereby eliminate the need for a credit committee. The law has not been changed regarding the appointment of a supervisory committee and the checks and balances between the board of directors and the supervisory committee. Also, if there is no credit committee

and the board delegates its power to approve or disapprove loans to a committee of the board, then any member shall have the right to appeal any adverse loan decision to the full board.

[§6.1-210, §6.1-211
6(a) & 6(b)]

§6.1-225.32. Board of directors; election of officers. - The amendments allow flexibility in the designation of board officers, e.g., Chairman of the board or president, establishes the term of office as one year, and requires the designation of a chief operating officer and a financial officer who shall give a bond with surety.

§6.1-225.33. Executive committee. - Virginia is one of a few states without authority for an executive committee. Proposal allows an executive committee of the board with authority to act for the board subject to limitations and is similar to the MCUA and the law in North Carolina.

[No current law]

§6.1-225.34. Meetings of directors. - Section amended to include the executive committee of the board and to require that the bylaws prescribe when each shall meet.

[§6.1-221]

§6.1-225.35. Compensation of officials. - The amendment eliminates the \$50,000 threshold for compensation of members serving on the credit or supervisory committee.

Virginia law does not allow members of the board of directors to be compensated for their services on the board.

[§6.1-211]

§6.1-225.36. Powers and duties of directors. - Amendment to (1) allows board to appoint a membership officer and establishes the right of appeal to the board if membership is denied. Amendment is similar to FCUA 113(1) and several state acts.

Amendment to (2) simply requires the board to purchase a blanket fidelity bond as required by the Commissioner.

Amendment to (3) "rate" changed to "rates" because there is more than one rate of interest at any one time because of different types of share accounts.

There is no change to (4) regarding the charge for a membership fee, if any.

No substantive change to (5).

Amendment to (6) added words "share accounts" which represents all of the types of accounts in a credit union.

No change to (7).

Amended (8) because filling vacancies on board is in §6.1-225.31(3).

Amendments to (9), (10) and (11) are not substantive, just using some conforming language.

Amendment to (12) allows the board to designate a committee or an individual to make investment decisions pursuant to board policies.

Amendment (13) adds subsection requiring the board to establish policies for loans to members which shall include provisions stating that an official of the credit union will not get favorable rates, terms or conditions on their loans.

Amendment (14) adds requirement that board designate the depository for its funds.

Amendment (15) authorizes the conveyance of property.

Amendment (16) authorizes board to employ and compensate a manager.

Amendment (17) requires board to make provisions for reserves.

No change to (18).

[§6.1-211]

§6.1-225.37. Credit committee; loan officers; appeal. -
The amendments to (1) and (2) provide option for a loan officer to approve loans in lieu of a credit committee.

There are no substantive changes in (3) and (4).

§ 6.1-212]

§6.1-225.38. Supervisory committee; supervision and removal of officers. - Rewording of § 6.1-213 provides for an annual audit by the supervisory committee and a report to the board as under current law. New language requires a summary of the audit report to be submitted to the members at the next annual meeting in lieu of reading the entire report. There is no change in requiring supplementary audits, but added "and verification of members' accounts" as deemed necessary or ordered by the board.

As in current law, the supervisory committee may suspend any officer, director or member of the credit committee until the next meeting of the members, which shall be set within seven to fourteen days of such suspension; at which time the members shall act upon the suspension. The current act required notice of the membership meeting be given within seven days.

This section parallels the FCUA §115 (12 U.S.C. 1761d); however, supervisory committee members cannot be removed by the board of directors as in many states and FCUA.

[§6.1-213]

§6.1-225.39. Qualification of officers, etc. -
No change in second sentence of §6.1-204 which requires membership as a prerequisite to holding office in a credit union.

§6.1-225.40. Audit. - Changed the authority to require an independent audit from the Commission to the Commissioner.

[§6.1-213.1]

Article 9. Accounts.

§6.1-225.41. Share accounts. - (1) establishes authority to issue shares to members;

(2) establishes the right of withdrawal for payment to the members or to third parties. (Taken from MCUA)

(3) will allow credit union to establish a withdrawal notice requirement. (From MCUA)

[§6.1-206]

§ 6.1-225.42. Payment for shares; transfers, liens on shares. - Amendment leaves it to the bylaws, which must be approved by the Commission, to prescribe how shares are subscribed to, paid for and transferred.

The statutory lien on shares has been clarified and expanded to include loans endorsed by a member.

[§ 6.1-206]

§ 6.1-225.43. Dividends. - Section was updated by providing for dividends on varying types of share accounts and share certificates and allow credit unions to declare a dividend in advance; however, a dividend cannot be paid if such dividend will render the credit union insolvent.

~~(3)~~ Allows credit union practice of paying dividends from the first of the month on all funds received by the tenth.

[§6.1-198 &
§6.1-219]

§6.1-225.44. Ascertaining the value of assets. -
No change from current §6.1-219.

§6.1-225.45. Minor accounts. - Current §6.1-207 allows shares to be issued to minors and states that withdrawals by minors are valid.

The revised section makes it clear that the minor is the sole owner free from the control of others, except creditors, and may be withdrawn by written order of the minor.

The parent or guardian cannot withdraw from the minor's account without the minor's approval.

[§ 6.1-207]

§6.1-225.46. Individual retirement accounts, etc. - Amendments allow a credit union to serve as trustee for self-employed pension plans ("SEPS") and other similar retirement plans similar to its current authority for IRAs. Also removes the exclusion of such plans from the statutory lien credit unions have on shares of members.

[§6.1-207.1]

§6.1-225.47. Acceptance of money under Virginia Uniform Transfer to Minors Act. - No change except correcting title to Act.

[§6.1-207.2]

§6.1-225.48. Accounts of deceased or incompetent persons. No substantive change except protection for credit union

paying shares in good faith without actual knowledge that the member is deceased.

[§6.1-208.3]

§6.1-225.49. Payment of small balances to distributees or other persons. - No change.

[§6.1-208.4]

§6.1-225.50. Application of §§6.1-225.48 and 6.1-225.49 to federal credit unions. - Only changes in code references.

Article 10. Loans.

§6.1-225.51. Purpose and condition of loans. - Amends §6.1-198(9) to allow credit union to adopt a loan policy that fits the credit union, its resources and its members. Language taken from MCUA.

[§6.1-198(9)]

§6.1-225.52. Other changes. - Amended language allows a credit union to assess late charges and to charge fees to the members creating expenses by the services required to serve the member and not spread the cost to all members in the form of lower dividends.

[No section]

§6.1-225.53. Loan limit. - No substantive change from current limitation that no more than ten percent of the outstanding share account and reserve fund may be loaned to one member and the bylaws may authorize less than ten percent.

6.1-225.54. Loans to members of credit committee; non-member loans. - Amendments to (1) include restrictions on approval of loans to board members, if the board also serves as the credit committee. In such event, the loan would be approved by the supervisory committee or a loan officer.

Amendment to (2) establishes the same liability for a loan officer who knowingly approves a loan for a non-member.

[§6.1-217]

§6.1-225.55. Lines of credit. - Deleted sentence unnecessary since borrower is no longer required to state the purposes for which advances are made.

§6.1-225.56. Cooperative loans. - New section which will allow a credit union to pool its resources with other credit unions, service organizations or other financial

institutions to make loans to its members. Cooperative loans would enhance smaller credit unions' ability to make large loans to its members, such as in purchasing a residence with a long term loan.

There is a ten percent limitation on loans to any one member and a requirement that the originating credit union must retain at least ten percent interest in such loan.

[No section]

Article 11. Investments.

§6.1-225.57. Authorized investments. - Credit unions primary emphasis is lending to its members. Funds not loaned to members may be invested in the enumerated investments. The amendments update terminology and added investment in a central liquidity facility established under the laws of Virginia, in obligations fully guaranteed by the United States, in common trust investments, in office buildings (with limitation as to five percent of share accounts without prior approval from the Commissioner), in a credit union service organization, in the shares of the Federal Reserve Bank and in cooperative loans.

[§ 6.1-216]

Article 12. Reserves.

§6.1-225.58. Transfer to regular reserves; special reserves. - No change.

§6.1-225.59. Use of reserves. - No substantive change.

[§6.1-218]

§6.1-225.60. Risk assets defined. Changed "central" credit union to "corporate" credit union and added common trust investments to the list of risk assets.

[§5.1-218]

Article 13. Out-of-state credit unions.

§6.1-225.61. Out-of-state credit unions. - Section 6.1-208 passed in 1985 and is not being amended.

Article 14. Miscellaneous.

§6.1-225.62. Offenses. - No change. [§6.1-223.2]

§6.1-225.63. Taxation. - No change. [§6.1-225]

APPENDIX III
COMPARATIVE TABLES

<u>Existing Section</u>	<u>New Section</u>
6.1-196	6.1-225.13
6.1-197	6.1-225.14
6.1-198	6.1-225.15
	6.1-225.17
	6.1-225.43
	6.1-225.51
6.1-199	6.1-225.16
6.1-200	6.1-225.21
6.1-200.1	6.1-225.14
	6.1-225.26
6.1-200.2	6.1-225.7
	6.1-225.22
6.1-200.3	6.1-225.27
6.1-200.4	6.1-225.10
6.1-200.5	6.1-225.11
6.1-200.6	6.1-225.29
6.1-200.7	6.1-225.30
6.1-201	6.1-225.21
6.1-203	6.1-225.20
6.1-204	6.1-225.23
	6.1-225.40
6.1-206	6.1-225.42
6.1-207	6.1-225.45
6.1-207.1	6.1-225.46
6.1-207.2	6.1-225.47
6.1-208.1	Repealed
6.1-208.3	6.1-225.48
6.1-208.4	6.1-225.49
6.1-208.5	6.1-225.50
6.1-208.6	6.1-225.61
6.1-209	6.1-225.18
	6.1-225.24
6.1-210	6.1-225.31
	6.1-225.32
6.1-211	6.1-225.31
	6.1-225.32
	6.1-225.34
	6.1-225.35
	6.1-225.36
6.1-212	6.1-225.36
	6.1-225.37
6.1-212.1	6.1-225.55
6.1-213	6.1-225.25
	6.1-225.38
6.1-213.1	6.1-225.39

Existing Section

New Section

6.1-216	6.1-225.57
6.1-217	6.1-225.53
	6.1-225.54
6.1-218	6.1-225.58
	6.1-225.59
	6.1-225.60
6.1-219	6.1-225.43
	6.1-225.44
6.1-220	6.1-225.3
6.1-221	6.1-225.4
	6.1-225.34
6.1-221.1	6.1-225.5
6.1-222	6.1-225.6
6.1-223	6.1-225.12
6.1-223.1	6.1-225.9
6.1-223.2	6.1-225.62
6.1-224	6.1-225.19
6.1-224.1	Repealed
6.1-225	6.1-225.63

COMPARATIVE TABLES

<u>New Section</u>	<u>Existing Section</u>
6.1-225.1	New
6.1-225.2	New
6.1-225.3	6.1-220
6.1-225.4	6.1-221
6.1-225.5	6.1-221.1
6.1-225.6	6.1-222
6.1-225.7	6.1-200.2
6.1-225.8	New
6.1-225.9	6.1-223.1
6.1-225.10	6.1-200.4
6.1-225.11	6.1-200.5
6.1-225.12	6.1-223
6.1-225.13	6.1-196
6.1-225.14	6.1-197
	6.1-200.1
6.1-225.15	6.1-198
6.1-225.16	6.1-199
6.1-225.17	6.1-198
6.1-225.18	6.1-209
6.1-225.19	6.1-224
6.1-225.20	6.1-203
6.1-225.21	6.1-200
6.1-225.22	6.1-200.2
6.1-225.23	6.1-204
6.1-225.24	6.1-209
6.1-225.25	6.1-213
6.1-225.26	6.1-200.1
6.1-225.27	6.1-200.3
6.1-225.28	New
6.1-225.29	6.1-200.6
6.1-225.30	6.1-200.7
6.1-225.31	6.1-210
	6.1-211
6.1-225.32	6.1-210
	6.1-211
6.1-225.33	New
6.1-225.34	6.1-211
	6.1-221
6.1-225.35	6.1-211
6.1-225.36	6.1-211
	6.1-212
6.1-225.37	6.1-212
6.1-225.38	6.1-213
6.1-225.39	6.1-213.1
6.1-225.40	6.1-204
6.1-225.41	6.1-206
6.1-225.42	6.1-206
6.1-225.43	6.1-198
	6.1-219

New Section

6.1-225.44
6.1-225.45
6.1-225.46
6.1-225.47
6.1-225.48
6.1-225.49
6.1-225.50
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6.1-225.62
6.1-225.63

Existing Section

6.1-219
6.1-207
6.1-207.1
6.1-207.2
6.1-208.3
6.1-208.4
6.1-208.5
6.1-198
New
6.1-217
6.1-217
6.1-212.1
New
6.1-216
6.1-218
6.1-218
6.1-218
6.1-208.6
6.1-223.2
6.1-225

APPENDIX IV

COMMISSION MEMBERS

Dudley J. Emick, Jr. (Chairman)

J. Samuel Glasscock (Vice Chairman)

E. M. Miller, Jr. (Secretary)

Russell M. Carneal

Joseph V. Gartlan, Jr.

H. Lane Kneedler

John Wingo Knowles

Theodore V. Morrison, Jr.

William F. Parkerson, Jr.

A. L. Philpott

COMMISSION STAFF

Research and Drafting
Division of Legislative Services

Ginny Brooks, Secretary

C. William Cramme, III, Deputy Director

Administrative and Clerical

Joan W. Smith, Virginia Code Commission Staff

Sandra Levin, Virginia Code Commission Staff

