

Substituted by the House, on motion of Mr. Bassett of Lynn, for a Bill further amending the corporate laws (House, No. 6035). May 4.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT PROVIDING FOR THE ESTABLISHING OF EMPLOYEE COOPERATIVE CORPORATIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Clause (12) of paragraph (a) of section 402 of
2 chapter 110A of the General Laws, as appearing in section 1 of
3 chapter 694 of the acts of 1972, is hereby amended by inserting after
4 the word "fifty-seven", in line 2, the words: — or organized under
5 chapter one hundred and fifty-seven A.

1 SECTION 2. Chapter 157 of the General Laws is hereby
2 amended by striking out section 8, as amended by section 32 of
3 chapter 750 of the acts of 1962, and inserting in place thereof the
4 following section: —

5 *Section 8.* Any person, partnership, association or corporation,
6 domestic or foreign, except employee cooperatives organized
7 under chapter one hundred and fifty-seven A and co-operative
8 banks and corporations organized under section ten, transacting
9 business for profit in the commonwealth under any name or title
10 containing the word "co-operative", unless the net earnings thereof
11 are distributed in a manner permitted for a co-operative corpora-
12 tion by this chapter, shall forfeit to the commonwealth not more
13 than ten dollars for every day or part thereof during which such
14 name or title is so used. Such forfeiture may be recovered by an
15 information brought in the supreme judicial or superior court by
16 the attorney general, at the relation of the state secretary. Upon
17 such information, the court may issue a temporary or permanent

18 injunction restraining such person, partnership, association or
19 corporation from doing business in the commonwealth, from so
20 using such name or title, and may make such other orders and
21 decrees as justice and equity may require.

1 SECTION 3. The General Laws are hereby amended by insert-
2 ing after chapter 157 the following chapter: —

3 CHAPTER 157A.

4 EMPLOYEE COOPERATIVE CORPORATIONS.

5 *Section 1.* This chapter shall be known and may be cited as the
6 Employee Cooperative Corporations Act.

7 *Section 2.* As used in this chapter the following words shall,
8 unless the context clearly requires otherwise, have the following
9 meanings:

10 “Employee cooperative”, a corporation which has duly elected
11 to be governed by the provisions of this chapter.

12 “Member”, a natural person who has been accepted for member-
13 ship in, and owns a membership share issued by an employee
14 cooperative.

15 *Section 3.* Any corporation organized under chapter one
16 hundred and fifty-six B may elect to be governed as an employee
17 cooperative by this chapter, by so stating in its articles of organiza-
18 tion or articles of amendment filed in accordance with said chapter
19 one hundred and fifty-six B.

20 An electing corporation shall be governed by all provisions of
21 said chapter one hundred and fifty-six B other than sections seven-
22 ty-eight to eighty-five, inclusive, except as otherwise provided in
23 this chapter.

24 *Section 4.* An employee cooperative may revoke its election
25 under this chapter by a vote of two-thirds of the members and
26 through articles of amendment duly filed in accordance with sec-
27 tion seventy-two of chapter one hundred and fifty-six B.

28 *Section 5.* An employee cooperative may include the word
29 “cooperative” or “co-op” in its corporate name.

30 *Section 6. (a)* The articles of organization or the by-laws shall
31 establish qualifications and the method of acceptance and termina-

32 tion of members. No person may be accepted as a member unless
33 employed by the employee cooperative on a full time or part time
34 basis.

35 (b) An employee cooperative shall issue a class of voting stock
36 designated as "membership shares." Each member shall own one
37 and only one membership share, and only members may own such
38 shares.

39 (c) Membership shares shall be issued for a "membership fee" as
40 shall be determined from time to time by the directors. Sections
41 twenty-four, twenty-five, twenty-eight and thirty of chapter one
42 hundred and fifty-six B shall not apply to membership shares.
43 Sections seventy-six and eighty-five to ninety-eight, inclusive of
44 said chapter one hundred and fifty-six B shall not apply to mem-
45 bership shares whose redemption price is determined by reference
46 to internal capital accounts as defined in section nine.

47 (d) Members of an employee cooperative shall have all the
48 rights and responsibilities of stockholders of a corporation organ-
49 ized under said chapter one hundred and fifty-six B, except as
50 otherwise provided in this chapter.

51 *Section 7. (a)* No capital stock other than membership shares
52 shall be given voting power in an employee cooperative, except as
53 otherwise provided in this chapter or in the articles of organization.

54 (b) Notwithstanding the provisions of section seventeen of
55 chapter one hundred and fifty-six B, the power to amend, or repeal
56 by-laws of an employee cooperative shall be in the member only,
57 except to the extent that directors are authorized to amend or
58 repeal the by-laws in accordance with said section seventeen.

59 (c) Sections seventy, seventy-one and seventy-four of said chap-
60 ter one hundred and fifty-six B shall be construed to limit voting on
61 any amendment of the articles of organization of an employee
62 cooperative to the members, except that amendments adversely
63 affecting the rights of stockholders as defined in section seventy-
64 seven of said chapter one hundred and fifty-six B may not be
65 adopted without the vote of such stockholders as provided in
66 section seventy-one of said chapter one hundred and fifty-six B.

67 *Section 8. (a)* The net earnings or losses of an employee coop-
68 erative shall be apportioned and distributed at such times and in

69 such manner as the articles of organization or by-laws shall specify.
70 Net earnings declared as patronage allocations with respect to a
71 period of time, and paid or credited to members, shall be appor-
72 tioned among the members in accordance with the ratio which each
73 member's patronage during the period involved bears to total
74 patronage by all members during that period. As used in this
75 chapter, "patronage" means the amount of work performed as a
76 member of an employee cooperative, measured in accordance with
77 the articles of organization and by-laws.

78 (b) The apportionment, distribution, and payment of net earn-
79 ings required by subsection (a) may be in cash, credits, written
80 notices of allocation, or capital stock issued by the employee
81 cooperative.

82 *Section 9.* (a) Any employee cooperatiave may establish its ar-
83 ticles of organization or by-laws a system of internal capital ac-
84 counts, to reflect the book value and to determine the redemption
85 price of membership shares, capital stock, and written notices of
86 allocation. As used in this chapter, "written notice of allocation"
87 means a written instrument which discloses to a member the stated
88 dollar amount of that member's patronage allocation and the
89 terms for payment of that amount by the employee cooperative.

90 (b) The articles of organization or by-laws of an employee
91 cooperative may permit the periodic redemption of written notices
92 of allocation and capital stock, and must provide for recall and
93 redemption of the membership share upon termination of mem-
94 bership in the cooperative. No redemption can be made if such
95 redemption would result in the liability of any director or officer of
96 the employee cooperative under section sixty-one of chapter one
97 hundred and fifty-six B.

98 (c) The articles of organization or by-laws may provide for the
99 employee cooperative to pay or credit interest on the balance in
100 each member's internal capital account.

101 (d) The articles of organization or by-laws may authorize as-
102 signment of a portion of retained net earnings and net losses to a
103 collective reserve account. Earnings assigned to the collective re-
104 serve account may be used for any and all corporate purposes as
105 determined by the board of directors.

106 *Section 10.* (a) An internal capital acocunt cooperative is an
107 employee cooperative whose entire net book value is reflected in

108 internal capital accounts, one for each member, and a collective
109 reserve account, and in which no persons other than members own
110 capital stock. In an internal capital account cooperative, each
111 member shall have one and only one vote in any matter requiring
112 voting by stockholders.

113 (b) An internal capital account cooperative shall credit the paid-
114 in membership fee and additional paid-in capital of a member to
115 the member's internal capital account, and shall also record the
116 apportionment of retained net earnings or net losses to the
117 members in accordance with patronage by appropriately crediting
118 or debiting the internal capital accounts of members. The collective
119 reserve account in an internal capital account cooperative shall
120 reflect any paid-in capital, net losses, and retained net earnings not
121 allocated to individual members.

122 (c) In an internal capital account cooperative, the balances in all
123 the individual internal capital accounts and collective reserve ac-
124 count, if any, shall be adjusted at the end of each accounting period
125 so that the sum of the balances is equal to the net book value of the
126 employee cooperative.

127 (d) Sections seventy-six and eighty-five to ninety-eight, inclu-
128 sive, of chapter one hundred and fifty-six B shall not apply to an
129 internal capital account cooperative.

130 *Section 11. (a)* When any employee cooperative revokes its
131 election in accordance with section four, the articles of amendment
132 shall provide for conversion of membership shares and internal
133 capital accounts or their conversions to securities or other property
134 in a manner consistent with chapter one hundred and fifty-six B.

135 (b) An employee cooperative which has not revoked its election
136 under this chapter may not consolidate or merge with another
137 corporation other than an employee cooperative. Two or more
138 employee cooperatives may consolidate or merge in accordance
139 with sections seventy-eight, eighty, eighty-one, eighty-four and
140 eighty-five of said chapter one hundred and fifty-six B.

