



MSBA Main Office
520 West Fayette Street
Baltimore, MD 21201
410-685-7878 | msba.org

Annapolis Office
200 Duke of Gloucester Street
Annapolis, MD 21401
410-269-6464 | msba.org

March 7, 2023

Senator William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: **MSBA Business Law Section Council**
Senate Bill 870 (Maryland Limited Worker Cooperative Association Act) --
FAVORABLE WITH AMENDMENTS

Dear Chair Smith and Fellow Committee Members:

The Business Law Section Council (the “Section Council”) of the Maryland State Bar Association (the “MSBA”) annually reviews proposed legislation that may have an effect on Maryland businesses. We are submitting this written testimony with respect to Senate Bill 870 (Maryland Limited Worker Cooperative Association Act) (the “Bill”). In general, the Bill would add a new Subtitle 6D to Title 5 of the Corporations and Associations Article (the “C&A Article”) of the Maryland Code to permit the creation of a new type of legal entity called a Limited Worker Cooperative Association.

We agree that cooperatives, including worker cooperatives, can serve an important function in the economy. Cooperatives come in many forms – from large multinational businesses (e.g., the outdoor outfitter REI) to farmers cooperatives like the Farmers Cooperative Association, Inc. in Frederick, which supplies feed and fertilizer among other products. Unfortunately, the C&A Article includes a hodge-podge of cooperative statutes that have developed over the years – Agricultural Cooperatives (Subtitle 5 of Title 5), Consumer Cooperatives (Subtitle 5A of Title 5), Electric Cooperatives (Subtitle 6 of Title 5), Transportation Cooperatives (Subtitle 6A of Title 5) and Housing Cooperatives (Subtitled 6B of Title 5).

Instead of adding to this list, we believe that a more comprehensive approach should be taken with respect to cooperatives so that there is one statute that can serve the needs of all persons who want to operate under the cooperative form of business (including cooperatives that are seeking outside capital with “investor members” as is the case with the Bill). In that regard, the Uniform Law Commission has adopted the Uniform Limited Cooperative Association Act (2006, Last Amended 2013) (the “ULCAA”). As described by the Uniform Law Commission (see the attached, including for information from the Uniform Law Commission regarding the ULCAA):

“The act contemplates the formation of various types of limited cooperative associations, including marketing, advertising, bargaining, processing, purchasing, real estate, and

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worker owned cooperatives; and a limited cooperative association under the act can be organized to pursue any lawful purpose.”

Of course, adopting the ULCAA in Maryland will take some time because, at a minimum, it would need to be conformed to Maryland terminology.

Regarding the Bill in particular, we believe that it lacks clarity in several important ways, which would need to be resolved in any amended bill. Among other things, the Bill does not appear to give fulsome consideration to some of the concepts identified by the ULCAA such as (while the Bill has some aspects of these, they are not comprehensive as in the ULCAA): voting provisions as between patron members and investor members; provisions regarding meetings of members; information rights of members; transfers of economic rights and security interest in economic rights of members; and provisions dealing with foreign limited cooperative associations.

Importantly, the Bill states that the Maryland Limited Liability Company Act “is applicable to Limited Worker Cooperative Associations, except to the extent that the Maryland Limited Liability Company Act expressly exempts cooperatives or is contrary or inconsistent with this subtitle.” We are concerned that this sort of generalized incorporation by reference without vetting how the Maryland Limited Liability Company Act would impact the expectation of parties to a limited worker cooperative could result in unanticipated and undesired results. In contrast, the ULCAA stands on its own without reference to other entity statutes.

The Section Council is in favor of the Bill, provided that it is amended to address the concerns discussed in this letter.

Very truly yours,



Penny Somer-Greif, Chair
MSBA Business Law Section Council

cc: MSBA



WHY YOUR STATE SHOULD ADOPT THE UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT (ULCAA) (2006) (LAST AMENDED 2013)

The "cooperative" as a business entity is an important tool for economic development and business transactions in both rural and urban settings. The industry encompasses many different forms of cooperatives organized by individuals or businesses uniting to meet their members' mutual interests by creating and using a jointly owned enterprise. In recent years, the federal government's interest in cooperatives has increased due to changes in farm subsidy programs, globalization pressures for larger and more flexible entities, and the utility and benefits of cooperatives as a business structure. Many states have considered revising their laws governing cooperatives, and several have enacted legislation to consolidate their special purpose cooperative statutes into a coherent, centralized statutory structure. However the law governing cooperatives in the states is in flux, and despite a growing and substantive trend toward broader, comprehensive, and more flexible governing statutes for cooperatives, there is a marked lack of uniformity in the structure and development of these statutes.

The Uniform Limited Cooperative Association Act (ULCAA), drafted and approved by the Uniform Law Commission in 2007 and amended in 2011 and 2013, addresses the need among the states for a centralized statutory scheme to govern cooperatives. The act is designed to promote both rural and urban development by creating the option of a statutorily-defined entity that combines traditional cooperative values with modern financing mechanisms and techniques. ULCAA recognizes a growing trend toward the "New Generation Cooperative" (NGC), which can include features not readily available under traditional law, such as legally binding delivery contracts and the opportunity for outside equity investment.

ULCAA creates an alternative business entity that is more flexible than most current cooperative laws allow, and provides a default template that encourages the use of tested cooperative principles for a broad range of entities and purposes. The act contemplates the formation of various types of limited cooperative associations, including marketing, advertising, bargaining, processing, purchasing, real estate, and worker owned cooperatives; and a limited cooperative association under the act can be organized to pursue any lawful purpose.

It was amended in 2011 and 2013 to harmonize, to the extent possible, the language in its provisions that are the same as similar provisions in the other uniform unincorporated entity acts.

The act contains the basic organizational and operational features of a limited cooperative association. Additional key highlights of ULCAA include:

- Authorizes both patron and investor members of the limited cooperative association.
- Establishes the nature of member rights as personal property interests. These rights include governance rights, financial rights, and the possible right or obligation to do business with the association.

- Authorizes marketing contracts between the limited cooperative association and third parties, which do not necessarily need to be patron members. The act addresses contract duration, title transfer issues within those contracts, and allows for enforceable security interests in the products, commodities, or goods delivered.
- States that member contributions may consist of tangible or intangible personal property, or any other benefit to the association (such as money, labor, services, promissory notes, agreements to contribute, and contracts to be performed) unless the organic rules provide otherwise.
- Allows the cooperative's board to determine the "value" of member contributions, in order to determine whether a member has met its obligation.
- Addresses the allocation of profits and losses between patron members, distribution methods, and allows for the creation or accumulation of capital reserves, reasonable reserves for specific purposes, including providing education and training, and information rights.
- Establishes an identical exemption from state securities laws for patron member that they would enjoy in similar cooperative associations under existing law.
- Addresses member dissociation and dissolution of the cooperative association, and mergers, interest exchange, conversion and domestication transactions.
- Confirms the right of a member to maintain a direct action to enforce the rights of that member and to maintain a derivative action to enforce an association's right where the association fails to or will not enforce that right.

ULCAA offers cooperatives and their members a statutory mechanism that embodies the traditional elements of cooperative associations, and recognizes the changing needs and trends that cooperatives face. It recognizes the varied purposes a cooperative can and should be used for, and provides flexibility in their organization and development. The act provides an effective vehicle for cooperatives to organize, develop, and thrive.

For more information on ULCAA, please contact Kari Bearman at (312) 450-6617 or by email at kbearman@uniformlaws.org.