

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 186

An Act to amend and reenact § 6.1-61 of the Code of Virginia, relating to limitations on obligations of borrowers.

[H 97]

Approved March 22, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-61 of the Code of Virginia is amended and reenacted as follows:

§ 6.1-61. Limitations on obligations of borrowers.

Subject to the exceptions hereinafter stated, the total obligations of any person, partnership (including, as hereinafter provided, the partners having a five percent or greater interest in either the income or capital thereof other than limited partners), association or corporation to any bank shall at no time exceed fifteen percent of the *sum of the capital and, surplus, and loan loss reserve* of such bank. For the purposes of this section the obligation of partners in the partnership and the partnership shall not be combined with each other except to the extent hereafter permitted. (1) If the purpose for which the obligation of any partner was incurred or utilized relates to the partnership or the purposes of the partnership, including acquisition of an interest in the partnership, such obligation shall be combined with the obligation of the partnership. (2) If the primary source of repayment of a partner's individual obligation is the partnership or funds therefrom, the obligation of the partnership shall be combined with the obligation of such partner, other than a limited partner or partner with less than five percent interest, and the limitation specified herein shall apply to the combined obligations of each such partner and the partnership. Except in the two instances specified in (1) and (2) of this paragraph, the individual liability of the partner shall not be treated as an obligation of the individual hereunder, nor shall the obligations of partner as individual guarantor on partnership obligations be treated as an obligation of the individual for purposes of computation hereunder when, in either case, the bank has a certificate of a responsible officer designated by the board of directors for this purpose stating that the responsibility of the partnership for each obligation has been evaluated and the bank is relying primarily upon such partnership for the payment of such indebtedness. For the purposes of this section there may be counted as part of the surplus (a) the undivided profits as of the date of the most recent call statement, and (b) capital notes and debentures, the issuance of which has been approved by the Commission, outstanding as of said date, and consisting of debt obligations subordinate to all other contractual liabilities of the bank.

The term "obligations" shall mean the direct liability of the maker or acceptor of the paper discounted with or sold to such bank and the liability of the endorser, drawer or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such bank, and shall include in the case of obligations of a corporation all obligations of all subsidiaries thereof in which such corporation owns or controls a majority interest. The term "obligation" shall include any liability of the bank under a letter of credit, other than a letter of credit arising out of transactions involving the importation or exportation of goods or the domestic shipment of goods, except to the extent (i) the bank has a binding participation of another bank, organized under the laws of this Commonwealth or another state or the United States, or a written commitment by another such bank to assume primary liability therefor, or (ii) such bank issuing the letter of credit has in its possession money on deposit to the credit of such customer or securities or assets readily convertible into cash with which to honor such letter of credit.

A. The following kinds of obligations shall not be subject to any limitation, except as expressly stated in subdivision A (7) of this section:

(1) Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values;

(2) Obligations arising out of the discount of commercial or business paper actually owned by the person, partnership, association, or corporation negotiating the same;

(3) Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment;

(4) Obligations in the form of banker's acceptances of other banks of the kind described in section thirteen of the Federal Reserve Act;

(5) Obligations of the United States, obligations of the Commonwealth of Virginia and of its political subdivisions, including sanitary or public facilities districts, obligations fully guaranteed or insured by a state or by a state authority for the payment of the obligation of which the faith and credit of the state is pledged, obligations issued by the Federal Home Loan Banks, first mortgage real estate loans which are insured by the Federal Housing Administrator, obligations guaranteed as to principal and interest by the

United States, loans in which the Small Business Administration or a federal reserve bank has definitely agreed or committed itself to participate, to the extent of such participation, obligations guaranteed by the Small Business Administration or Farmers Home Administration, to the extent of such guaranty, loans which the Federal Commodity Credit Corporation has definitely agreed to purchase, direct obligations of and obligations guaranteed by the Export-Import Bank and loans guaranteed by a federal guaranteeing agency, pursuant to the Defense Production Act of 1950, or bonds and notes of the Federal National Mortgage Association or bonds, debentures and other similar obligations of Federal Land Banks, Federal Intermediate Credit Banks, or Banks for Cooperatives issues pursuant to acts of Congress, obligations of the Federal Financing Bank, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, the National Credit Union Administration, Farm Credit Banks, the Government National Mortgage Association and the Commodity Credit Corporation, as well as time deposits in a Federal Home Loan Bank and repurchase agreements of obligations authorized by this subsection;

(6) Obligations of any person, partnership, association or corporation secured by not less than a like amount of bonds or notes or other evidences of indebtedness of the United States or of the Commonwealth of Virginia;

(7) Obligations as endorser or guarantor of installment consumer paper which carries a full or limited endorsement or guarantee of the person, partnership, association, or corporation transferring the same when the bank has a certificate of a responsible officer designated by its board of directors for that purpose stating that the responsibility of the maker of such obligation has been evaluated and the bank is relying primarily upon such maker for the payment of such obligation, in which case the limitations of this section as to the obligations of the maker shall be the sole applicable loan limitation. As used in this subdivision, the term "installment consumer paper" shall be deemed to include installment notes of up to ten years' duration for the purchase of unimproved real property;

(8) Obligations secured by the pledge or assignment of certificates of deposit or saving certificates of the lending bank, to the extent of the principal amount of such certificates so pledged or assigned.

B. The following kinds of obligations shall be subject to a limitation of thirty percent of such capital and surplus:

(1) Obligations as endorser or guarantor of notes, other than commercial or business paper excepted under subdivision A (2) of this section having a maturity of not more than six months, and owned by the person, partnership, or corporation endorsing and negotiating the same.

(2) Obligations of any person, partnership, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligations is not at any time less than 115 percent of the amount by which the obligations exceed fifteen percent of such capital and surplus.

(3) Obligations secured by bonds or notes of the United States, or bonds of the Commonwealth of Virginia or any of its political subdivisions, if the face value thereof is at least equal to the excess of the obligations over fifteen percent of such capital and surplus.

C. Nonrenewable obligations having not more than ten months to run consisting of notes or drafts secured by shipping documents, warehouse receipts or similar documents creating a security interest in readily marketable, nonperishable, staple commodities, insured to the extent that insurance is customarily required, shall be subject to a sliding scale limitation up to fifty percent of such capital, surplus and undivided profits. The sliding scale limitation shall be as follows: when the face amount of the obligation exceeds fifteen percent of such capital and surplus by any number of percentage points up to thirty-five, the market value of the security for the obligation must exceed the face amount of the obligation by at least the same number of percentage points.

D. The Commission shall promulgate necessary rules and regulations to require entities, which would otherwise be treated as separate entities, to be treated as related for the purposes of compelling reporting not more frequently than quarterly, to the Commission of the aggregate obligations of such parties to the bank. For the purposes of this subdivision, the Commission may treat as related parties, persons in the same household or which are the parents, grandparents, children or grandchild or grandchildren of each other whether or not in the same household. Any person owning as much as thirty-four percent of stock of a corporation or being an officer or director of such corporation may be treated as related to such corporation and any party having an interest in income or capital of a partnership may be treated as a related party.

All loans made by a bank in excess of fifteen percent of its capital and surplus shall be approved by the board of directors or the executive committee of the bank by resolution recorded in the minute book.

E. Notwithstanding the limitations in this section, the Commission may by rule or regulation authorize state banks to make loans to one borrower in such amounts as may be authorized under any lending limit laws applicable to national banks.