

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 910

An Act to amend and reenact § 6.1-5 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 2 of Title 6.1 an article numbered 3.2:1, consisting of sections numbered 6.1-32.30:1 through 6.1-32.30:7, relating to the Private Trust Company Act.

[H 2748]

Approved March 22, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-5 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 2 of Title 6.1 an article numbered 3.2:1, consisting of sections numbered 6.1-32.30:1 through 6.1-32.30:7, as follows:

§ 6.1-5. Who shall not do a banking or trust business.

No person, copartnership or corporation, except corporations duly chartered and already conducting the banking business or trust business in this Commonwealth under authority of the laws of this Commonwealth or the United States, or which shall hereafter be incorporated under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, and except banks which may be authorized, after July 1, 1995, to establish and operate one or more branches in this Commonwealth under Article 5.1 (§ 6.1-44.1 et seq.) or 5.2 (§ 6.1-44.15 et seq.) of this chapter, and except trust *companies* or institutions ~~which~~ *that* may be authorized to establish and operate one or more trust offices *or conduct business* in this Commonwealth under Article 3.1 (§ 6.1-32.1 et seq.), Article 3.2 (§ 6.1-32.11 et seq.), Article 3.2:1 (§ 6.1-32.30:1 et seq.) or Article 3.3 (§ 6.1-32.31 et seq.) of this chapter, shall engage in the banking business or trust business in this Commonwealth, and no foreign corporation, except as permitted in Chapter 14 (§ 6.1-390 et seq.) and Chapter 15 (§ 6.1-398 et seq.) of this title, shall do a banking or trust business in this Commonwealth. Nothing in this chapter, however, shall:

(1) Prevent a natural person from qualifying and acting as trustee, personal representative, guardian, conservator, committee or in any other fiduciary capacity,

(2) Prevent any person or copartnership or corporation from lending money on real estate and personal security or collateral, or from guaranteeing the payment of bonds, notes, bills and other obligations, or from purchasing or selling stocks and bonds, or

(3) Prevent any bank or trust company organized under the laws of this Commonwealth from qualifying and acting in another state or in the District of Columbia, as trustee, personal representative, guardian of a minor, conservator or committee or in any other fiduciary capacity, when permitted so to do by the laws of such other state or District.

Nothing in this section shall be construed to prevent banks or trust companies organized in this Commonwealth and chartered under the laws of the United States from transacting business in Virginia.

Article 3.2:1.

Private Trust Company Act.

§ 6.1-32.30:1. *Definitions.*

As used in this article:

"Designated relative" means the individual to or through whom the family members are related.

"Family" means a designated relative and family members of that designated relative.

"Family member" means the designated relative and:

1. Any individual within (i) the fifth degree of lineal kinship to the designated relative or (ii) the ninth degree of collateral kinship to the designated relative, for which purposes only a legally adopted individual shall be treated as a natural child of the adoptive parents;

2. The present or past spouse of the designated relative and of any individual qualifying as a family member under subdivision 1;

3. A trust established (i) by a family member or (ii) exclusively for the benefit of one or more family members;

4. A stock corporation, limited partnership or limited liability company, all of the capital stock, partnership interests, membership interests, or other equity interests of which are owned by one or more family members, their spouses qualifying under subdivision 2, their trusts qualifying under subdivision 3, or their estates qualifying under subdivision 5;

5. The estate of a family member; or

6. A charitable foundation or other charitable entity created by a family member.

"Degrees of kinship" means, with respect to two persons, (i) degrees of lineal kinship computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins and (ii) degrees of collateral kinship computed by commencing with one of the

persons and ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins, the total to represent the degree of such kinship.

"Fiduciary" means executor, administrator, conservator, guardian, committee, or trustee.

"Operating plan" means a plan that establishes the policies and procedures a private trust company will have in effect when the institution opens for business and thereafter (i) to ensure that trust accounts are handled in accordance with recognized standards of fiduciary conduct and (ii) to assure compliance with applicable laws and regulations.

"Person" means any individual, firm, corporation, partnership, limited liability company, association, trust, or legal or commercial entity or group of individuals, however organized.

"Private trust business" means acting as or performing the duties of a fiduciary in the regular course of its business for family members.

"Private trust company" means a corporation or limited liability company that is organized to engage in private trust business under this article with one or more family members and that does not transact business with the general public.

§ 6.1-32.30:2. Organization; minimum capital; notice to Bureau of Financial Institutions; control.

A. No person other than a corporation or limited liability company organized under the laws of this Commonwealth to engage exclusively in the private trust business shall act as a private trust company.

B. No person may act as a private trust company unless and until family members have subscribed for capital stock or interests, surplus and a reserve for operation in an amount equal to or in excess of \$500,000.

C. No person shall engage in business as a private trust company without first giving written notice to the Commission's Bureau of Financial Institutions. The notice shall identify (i) the designated relative whose relationship to other individuals determines whether the individuals are family members and (ii) the location of the principal office and additional office, if any, within the Commonwealth. The notice shall be accompanied by an operating plan and such other books, records, documents, or information as the Commissioner of Financial Institutions may require. The notice shall also certify that (a) all provisions of law have been complied with; (b) the private trust company is formed for no other reason than to engage in the private trust business; and (c) family members have subscribed for capital stock, surplus and a reserve for operation in an amount equal to or in excess of \$500,000.

D. All of the capital stock, membership interests, or other equity interests of a private trust company shall be and shall remain owned by, and under the voting control of, family members, including any spouses, trusts, stock corporations, limited partnerships, limited liability companies or estates qualifying under subdivisions 2, 3, 4 or 5 of the definition of "family member" set forth in § 6.1-32.30:1, of one or more families.

§ 6.1-32.30:3. Operation and powers.

Every private trust company shall have and shall conduct its business in accordance with an operating plan and in accordance with generally accepted fiduciary standards. A private trust company when engaging in a private trust business shall have the same rights, powers and privileges as set forth in § 6.1-17, including the power to act as executor under the last will and testament or administrator of the estate of any deceased family member.

§ 6.1-32.30:4. Reacquisition of shares or interests; dividends.

A private trust company shall not purchase, redeem or otherwise reacquire shares of stock or membership interests that the private trust company has issued, or declare a dividend or other distribution to its stockholders, members, or holders of equity interests, to the extent that such purchase, redemption, reacquisition, dividend or distribution shall cause the private trust company's paid-in capital, retained surplus and reserves to be reduced below \$500,000.

§ 6.1-32.30:5. Offices.

A. The office at which a private trust company begins business shall be designated initially as its principal office. The board of directors or managers of a private trust company may thereafter redesignate as the principal office another authorized office of the private trust company in the Commonwealth.

B. The board of directors or managers of a private trust company may designate, and from time to time redesignate, one additional office at which the private trust company may conduct business in the Commonwealth.

C. The private trust company shall notify the Commission's Bureau of Financial Institutions of any such redesignation of its principal office or designation or redesignation of an additional office not later than 30 days before its effective date and shall confirm to the Bureau of Financial Institutions any such designation or redesignation within 10 days of its occurrence.

§ 6.1-32.30:6. Directors or managers.

The affairs of every private trust company shall be directed by a board of directors if a corporation, and managers or board of directors if a limited liability company, which shall consist of not less than five nor more than twenty-five persons. At least one director or manager shall be a citizen of this

Commonwealth.

§ 6.1-32.30:7. Limitation on powers.

A. In the exercise of any power held by a private trust company in its capacity as a fiduciary, the private trust company shall have a duty not to exercise any power in such a way as to deprive the estate, trust or other entity for which it acts as a fiduciary of an otherwise available tax exemption, deduction or credit for tax purposes or deprive a donor of trust assets of a tax exemption, deduction or credit or operate to impose a tax upon a donor or other person as owner of any portion of the estate, trust or otherwise.

B. Without limitation to subsection A, no family member who is a stockholder or member or who otherwise holds an equity interest in, or is serving as a director, officer, manager, or employee of, a private trust company shall participate in or otherwise have a voice in any discretionary decision by the private trust company to distribute income or principal of any trust in order to discharge a legal obligation of the family member or for the family member's pecuniary benefit, unless:

1. The exercise of the discretion is limited by an ascertainable standard relating to the health, education, support, or maintenance of that family member;

2. The distribution is necessary for that family member's support, health or education; or

3. The instrument governing the administration of that trust clearly so provides.

C. "Tax" includes, but is not limited to, federal, state or local income, gift, estate, generation-skipping transfer, or inheritance tax.