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SENATE BILL NO. 1194

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 11, 2003)

(Patron Prior to Substitute—Senator Wagner)

A BILL to amend and reenact §§ 6.1-5 and 6.1-58.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.1-58.3, relating to banking; real estate brokerage business.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-5 and 6.1-58.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.1-58.3, 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 institutions which may be authorized to establish and operate one or more trust offices in this Commonwealth under 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.

Nothing in this section shall be construed to prevent a real estate broker as defined in § 54.1-2100 from owning or operating a bank provided that the requirements of this chapter are met.

§ 6.1-58.1. Investment in stock or securities of controlled subsidiary corporations.

A. A bank may acquire, own and hold the stock, securities or obligations of one or more controlled subsidiary corporations. Such investment in stock, securities or obligations together with any investment of the bank in stock, securities or obligations of a bank service corporation, shall not exceed in the aggregate fifty percent of the bank's capital stock and permanent surplus, without the permission of the State Corporation Commission, except that the foregoing limit shall not include, but shall be in addition to, investment in a real estate subsidiary as provided in § 6.1-59.1, investment in the stock, securities or obligations of a building corporation under § 6.1-57 and investment in controlled subsidiary corporations that are wholly owned by the bank.

B. 1. A controlled subsidiary corporation is defined as a corporation that is controlled by a bank organized under the laws of this Commonwealth, or by more than one bank, at least one of which is organized under the laws of this Commonwealth. For purposes of this section, "control" shall have the same meaning given that term by section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.).

2. Such controlled subsidiary corporation shall not be authorized (i) to receive deposits (except as hereafter provided); (ii) to engage in the trust business; or (iii) to conduct any business which is required under § 13.1-620 to be specifically stated in the articles of incorporation, except as may be authorized by subdivision 3.

3. Such controlled subsidiary corporation may engage in the business of credit card operations, leasing, safe deposit, factoring, credit bureaus, mortgage brokerage or servicing, data processing, international banking and finance, and any other function or business activity in which a bank might engage, except the receipt of deposits, or the trust business. Subject to the provisions of subdivision 2, and with the prior approval of the Commission and subject to such conditions as the Commission may impose, such controlled subsidiary corporation may also engage in any business that is authorized by

statute, regulation or official interpretation for a subsidiary of (i) a national bank or (ii) an out-of-state state bank as defined in § 6.1-44.2 *to the extent such activity is financial in nature, or incidental or complimentary to a financial activity, and is not otherwise prohibited by state law. However, a controlled subsidiary corporation transacting business as a real estate brokerage firm shall be governed by § 6.1-58.3 and subject to the provisions of this section.* Such controlled subsidiary corporation may charge and collect such finance charges and fees or interest rates as are authorized to banks by the laws of this Commonwealth or as otherwise authorized by Chapter 7.3 (§ 6.1-330.49 et seq.) of this title.

C. A controlled subsidiary corporation engaged solely in the business of international banking and finance, and subject to the regulation and supervision by the Board of Governors of the Federal Reserve System, shall not be prohibited from receiving deposits or from taking any other action which any such regulated international banking and finance institution is permitted to take.

D. The provisions of § 6.1-60.1, relating to investment of funds in shares of stock of another corporation shall be applicable to controlled subsidiary corporations, except that a controlled subsidiary corporation may acquire, own and hold stock in a subsidiary corporation if a bank would be permitted to directly acquire, own or hold the stock hereunder. The provisions of § 6.1-62 relating to loans to officers, directors or employees of the bank shall be applicable both to loans by the subsidiary to officers, directors or employees of the bank and to loans by the bank to officers, directors or employees of the subsidiary, with the approval of the board of directors of the bank only being required for purposes of § 6.1-62. The limitations of §§ 6.1-63, 6.1-64, 6.1-65, 6.1-65.1 and 6.1-66 as they relate to appraisal value, maximum term and amortization on loans secured by real estate shall be applicable to controlled subsidiary corporations. This subsection and subsection E of this section are subject to the proviso that the restrictions of §§ 6.1-60.1 through 6.1-66 are not intended to be imposed upon any controlled subsidiary which has no state banks as shareholders.

E. 1. The provisions of § 6.1-61 relating to limitation upon obligations of any one borrower shall apply to the total obligations of any borrower in the aggregate to the subsidiary corporation and to any bank or bank holding company owning stock securities or obligations of such subsidiary corporation. The loan limit of the subsidiary shall be computed by attributing to the subsidiary a pro rata share of the lending limit of each bank stockholder prorated in accordance with the percentage of stock owned by such bank or in the case of a subsidiary, any of the stock, securities or other obligations of which are owned by a bank holding company, the loan limits of the subsidiary shall be computed by attributing to the subsidiary a pro rata share of the lending limits of all bank subsidiaries of such holding company prorated in accordance with the percentage of stock owned by such holding company and all subsidiary banks thereof. In computing whether a bank or subsidiary (which is not wholly owned) is complying with its lending limit, the loans of the bank and the subsidiary to any common borrower shall be aggregated on a basis pro rata to the percentage of stock of the subsidiary owned by the bank.

2. Such controlled subsidiary corporation shall not otherwise be subject to the provisions of the Virginia Banking Act (§ 6.1-3 et seq.) except where it is expressly so provided.

F. A controlled subsidiary corporation shall be subject to audit and examination by the Commission whether or not it is an affiliate as defined in § 6.1-85. It shall pay such examination fees as shall be imposed under § 6.1-94 for the examination of trust departments. If upon examination, the Commission shall ascertain that the corporation is created or operated in violation of this section or that the manner of operation is detrimental to the business of the parent bank and its depositors, it may order the bank to dispose of all or part of its investment in such corporation upon such terms as the Commission may deem proper.

G. A controlled subsidiary may not merge or consolidate unless the surviving corporation is itself a controlled subsidiary corporation as defined herein, or unless as a result of such merger or consolidation the bank divests itself of all stock or other securities which are held pursuant to the authority herein granted.

H. The Commission shall have the same powers over controlled subsidiary corporations as it has over banks under §§ 6.1-100, 6.1-101, 6.1-103, 6.1-104 and 6.1-105, excepting those controlled subsidiary corporations which have no state banks as stockholders.

§ 6.1-58.3. Real estate brokerage business of controlled subsidiary.

A. *In addition to the types of business authorized in §§ 6.1-58.1 and 6.1-58.2, a controlled subsidiary corporation may be formed and licensed to transact business as a real estate brokerage firm in accordance with § 54.1-2106.1, provided such controlled subsidiary corporation transacts the real estate brokerage business and such services only in accordance with the specific provisions of this section. Such controlled subsidiary corporation shall be subject to the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 that are otherwise applicable to real estate brokerage companies transacting a comparable business.*

B. *A controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm and provide such services only upon the Commission's determination that the state bank making application to do so is in full compliance with applicable law. The investment of any bank*

in the stock, securities, or other obligations of a controlled subsidiary corporation shall only be approved by the Commission upon a determination by the Commission that: (i) the depositors of the bank are adequately protected from the risk of such ownership; and (ii) the ownership is a safe and sound investment for the bank in accordance with applicable law. Such determination shall include but not be limited to providing written notice to the Virginia Real Estate Board and receiving written confirmation from the Virginia Real Estate Board that the real estate brokerage firm, to be owned, and its brokers, are in good standing in accordance with the requirements of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

C. Further, a controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm only in compliance with the following:

1. The controlled subsidiary corporation, or a state bank that owns a controlled subsidiary corporation that engages in real estate brokerage, shall not:

a. Impose a requirement, orally or in writing, that a borrower shall contract for or enter into any other arrangement for real estate services with its affiliated real estate brokerage firm;

b. Impose a requirement, orally or in writing, that as a condition of approving a loan a borrower shall contract or enter into any other arrangement with its affiliated real estate brokerage firm;

c. Impose a requirement, orally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the Real Estate Settlement Procedures Act of 1974, Public 93-533, 88 Stat. 1724, and regulations promulgated thereunder;

d. Impose a requirement, orally or in writing, that a condition of providing real estate brokerage services is that the customer shall make application for a loan or any other arrangement for other services of the bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724, and regulations promulgated thereunder;

e. Offer or provide more favorable consideration, terms, or conditions for any financial products or services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage services with any particular real estate brokerage firm;

f. Offer or provide more favorable terms or conditions for any real estate brokerage services to induce or attempt to induce a person to apply for a loan or obtain any other services of a particular bank or any of its subsidiaries, affiliates, or service entities;

g. Conduct real estate brokerage activities in the same areas of a building where the bank routinely accepts retail deposits from the general public;

h. Conduct real estate brokerage activities in areas of a building that are identified as areas where banking activities occur;

i. Conduct banking activities in areas of the building that are identified as areas where real estate brokerage activities occur;

j. Make payment to its employees for any referrals of real estate brokerage business;

k. Use confidential credit and other financial information available from the bank for solicitation purposes by a real estate brokerage affiliate, without first having obtained the written consent of the customer;

l. Use or transfer from a bank to any affiliated real estate brokerage firm any financial information of or relating to any unaffiliated competing real estate brokerage firm that is an actual or prospective customer; or

m. Use, directly or indirectly, nonpublic customer information, held or obtained by the bank, for the purpose of soliciting real estate business, without first having obtained the written consent of the customer.

2. A state bank that makes a referral to its affiliated real estate brokerage firm shall clearly and conspicuously disclose in writing, in a separate document, to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to consult with, contract for, or enter into an arrangement for real estate brokerage services with its affiliated real estate brokerage firm.

3. A real estate brokerage firm that is affiliated with a bank shall clearly and conspicuously disclose in writing, in a separate document, before the time an agency agreement for real estate brokerage services is executed, that the person is not required to apply, contract for, or enter into any other arrangement for services of a particular bank or any of its subsidiaries, affiliates, or service entities.

4. The requirements of this section are in addition to the requirements of the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724, and regulations promulgated thereunder.

5. State banks owning and transacting business as real estate brokerage firms under this section are subject to the provisions of the Wet Settlement Act, Chapter 1.1 (§ 6.1-2.10 et seq.) of this title.

6. A state bank that acts as a mortgage broker, as defined in § 6.1-409, and that transacts business

183 *as a real estate brokerage through a controlled subsidiary corporation is subject to subdivision B 5 and*
184 *subsection C of § 6.1-422.*
185 *7. In the event of a violation of this section, the Commission may take such action as is authorized*
186 *in accordance with § 6.1-125, including issuance of an order requiring the state bank to cease and*
187 *desist the activity that violates this section and imposing penalties.*