

054190776

SENATE BILL NO. 1029

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 17, 2005)

(Patrons Prior to Substitute—Senators Newman and O'Brien [SB 974])

A *BILL to amend and reenact §§ 6.1-63 and 6.1-66 of the Code of Virginia, relating to bank loans secured by real estate.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-63 and 6.1-66 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-63. Limitation on amount of loans secured by real estate generally.

A. No bank shall make any loan secured by real estate when such loan together with all prior liens and encumbrances on such real estate exceeds fifty percent of the appraised value of the real estate securing such loan, unless such loan is (i) amortized by regular periodic payments of principal and interest, in equal or unequal amounts, due at least as regularly as annually in amounts which would pay the loan in full over a period of forty years and two months or less, or (ii) amortized by payments of principal due at least as regularly as annually, which are not less than three and one-half percent annually of the original principal of the loan and in either of such events, the amount of the loan, together with all prior liens or encumbrances on such real estate shall not exceed ninety, *exceeds* 90 percent of the appraised value of the real estate securing such loan.

B. The Commissioner of Financial Institutions may authorize, upon such terms and conditions deemed appropriate by him, investment in loans secured by real estate, providing for lesser payments during the early periods of maturity of such loans.

C. The appraisals necessitated by this section shall be required if the loan shall equal or exceed an amount established from time to time by the Commissioner of Financial Institutions who, in establishing such amount, shall take into consideration the requirements imposed on banks under applicable federal regulations. Such appraisals shall be in writing, signed by the appraisers, and shall be retained in the files of the bank, subject to examination of bank examiners. The appraisers so appointed shall be experienced persons competent to appraise real estate in the locality where the real estate is located.

D. Any bank may make loans secured by real estate that do not comply with the limitations and restrictions in this section if the total unpaid amount of ~~the loan~~ *such loans*, exclusive of the loans which subsequently comply with such limitations and restrictions, does not exceed ~~ten~~10 percent of the total amount of loans secured by real estate.

E. The provisions of this section relating to ratio of loan to appraised value, ~~amortization~~, and appraisal shall not relate to the case where:

1. The real estate security is taken solely as an abundance of caution on terms which are not more favorable than they would be in absence of such a lien on real estate;

2. A real estate security conveyance is taken by or ancillary to the assignment of lease obligations upon which the bank is relying primarily and prudently;

3. A subsequent transaction results from an existing extension of credit providing (i) that the borrower has performed satisfactorily, (ii) there is no advance of new money, except as formerly agreed, (iii) the credit standing of the borrower is not deteriorating, and (iv) there is no obvious and noticeable deterioration of marketing conditions or the physical assets which provide collateral security to the bank; or

4. A lien upon real estate is taken to secure a prior advance which was not secured by such real estate.

F. In cases where an appraisal by a state-certified or state-licensed appraiser is not required, under this or other sections of this chapter in a real estate-related financial transaction, the bank as a matter of prudence may take and preserve a reasonable appraisal, valuation or analysis of real estate or real property in connection with such transaction.

G. The State Corporation Commission may by order or regulation eliminate loans or specific categories of loans from the requirements of this section.

§ 6.1-66. Certain loans for home improvement purposes not considered loans secured by real estate.

Loans made to home owners for maintenance, repair, landscaping, modernization, alteration, improvement, furnishings and equipment to their homes, whether or not secured, shall not be considered as loans secured by real estate within the meaning of § 6.1-63, provided each such loan shall be payable in approximately equal monthly installments, shall not be for a term longer than ~~twelve~~2 years, and shall not exceed an amount specified in accordance with subsection C of § 6.1-63. Such home loans may otherwise be made under the provisions of §§ 6.1-63, 6.1-64 or § 6.1-65. If such loan is in excess of the amount specified under subsection C of § 6.1-63, unless the taking of real estate security is

60 solely in the abundance of caution and the terms are not more favorable than in the absence of such a
61 real estate lien, an appraisal as required by §§ 6.1-63, 6.1-64 or § 6.1-65 shall be required by the bank.