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HOUSE BILL NO. 1168

Offered January 17, 2012

A BILL to amend and reenact §§ 6.2-1001, 6.2-1014, and 6.2-1067 of the Code of Virginia, relating to multistate trust institutions; out-of-state trust institutions.

Patron—Merricks

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1001, 6.2-1014, and 6.2-1067 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-1001. Entities authorized to engage in trust business.

A. No entities, except (i) corporations duly chartered and already conducting trust business in the Commonwealth under authority of the laws of the Commonwealth or the United States, (ii) banks hereafter incorporated under the laws of the Commonwealth that are authorized to engage in the trust business through a separate trust department pursuant to Article 3 (§ 6.2-819 et seq.) of Chapter 8, (iii) corporations authorized to engage in the trust business in the Commonwealth under the banking laws of the United States, *including any national bank or federal savings bank described in clause (ii) of subsection B of § 6.2-1067*, (iv) a ~~national banking association, with or without an office in the Commonwealth and without compliance with the provisions of Article 4 (§ 6.2-1065 et seq.) of this chapter, that is supervised and regulated by the federal Comptroller of the Currency and is authorized by the Comptroller of the Currency to act as trustee, executor, or administrator, or in any other fiduciary capacity in the Commonwealth, pursuant to § 92a of the National Banking Act (12 U.S.C. § 21 et seq.) and the Comptroller of the Currency's regulations thereunder,~~ (v) trust companies authorized to establish and operate one or more trust offices or engage in trust business in the Commonwealth under Article 2 (§ 6.2-1013 et seq.) of this chapter, (vi) (v) trust subsidiaries authorized to engage in trust business under Article 3 (§ 6.2-1047 et seq.) of this chapter, (vii) (vi) multistate trust institutions authorized to engage in trust business under Article 4 (§ 6.2-1065 et seq.) of this chapter, (viii) (vii) private trust companies authorized to engage in trust business under Article 5 (§ 6.2-1074 et seq.) of this chapter, or (ix) (viii) savings institutions authorized to engage in the trust business pursuant to Article 6 (§ 6.2-1081 et seq.) of this chapter, shall engage in the trust business in the Commonwealth. No foreign corporation, except as permitted in Chapter 7 (§ 6.2-700 et seq.), shall engage in trust business in the Commonwealth.

B. Nothing in this chapter shall prevent:

1. A natural person from qualifying and acting as trustee, personal representative, guardian, conservator, committee, or in any other fiduciary capacity;

2. Any person from (i) lending money on real estate and personal security or collateral, (ii) guaranteeing the payment of bonds, notes, bills and other obligations, or (iii) purchasing or selling stocks and bonds;

3. Any bank or trust company organized under the laws of the Commonwealth from qualifying and acting in another state 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

4. An incorporated association that is authorized to sell burial association group life insurance certificates in the Commonwealth, as described in the definition of limited burial insurance authority in § 38.2-1800, the principal purpose of which is to assist its members in (i) financial planning for their funerals and burials and (ii) obtaining insurance for the payment, in whole or in part, for funeral, burial, and related expenses, from serving as trustee of a trust established pursuant to § 54.1-2822.

C. Nothing in this section shall be construed:

1. To prevent any bank or trust company organized in the Commonwealth and chartered under the laws of the United States from transacting business in the Commonwealth; or

2. 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.

D. Except as permitted by this chapter or by Article 3 (§ 6.2-819 et seq.) of Chapter 8, or by federal law in the case of a national banking association ~~described in clause (iv) of subsection A~~ *having its main office in the Commonwealth*, no entity shall qualify or act (i) as a personal representative of a deceased person; (ii) as a guardian for an infant or an incapacitated person; (iii) as a committee; (iv) as a conservator for an incapacitated person; (v) as a testamentary trustee, or trustee for any other trust if required by law to account to the commissioner of accounts of a circuit court in the Commonwealth; or (vi) in any other fiduciary capacity required to account to the commissioner of accounts of a circuit

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59 court in the Commonwealth.

60 § 6.2-1014. Certificate required.

61 No person shall engage in the trust business without first obtaining a certificate of authority from the
62 Commission; however, a bank or savings institution authorized under state or federal laws to engage in
63 the trust business or a trust subsidiary, including a national ~~banking association~~ bank described in clause
64 ~~(iv)~~ (ii) of subsection A B of § ~~6.2-1001~~ 6.2-1067, may engage in such business to the extent permitted
65 by law without obtaining a certificate under this article.

66 § 6.2-1067. Trust business of out-of-state trust institution.

67 A. An out-of-state trust institution that establishes or maintains one or more offices in the
68 Commonwealth under this article may conduct any activity at each such office that would be authorized
69 under the laws of the Commonwealth for a state trust institution to conduct at such an office.

70 B. An out-of-state trust institution may engage in a trust business ~~at an office~~ in the Commonwealth
71 ~~only~~ if it (i) maintains ~~(i)~~ (a) a trust office in the Commonwealth as permitted by this article or ~~(ii)~~ (b) a
72 branch in the Commonwealth, *or (ii) is a national bank or federal savings bank that is supervised and*
73 *regulated by the federal Comptroller of the Currency and is authorized to serve as trustee, as executor,*
74 *as administrator, or in another fiduciary capacity pursuant to § 92a of the National Bank Act (12 U.S.C.*
75 *§ 21 et seq.) or § 5(n) of the Home Owners' Loan Act (12 U.S.C. § 1461 et seq.).*