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HOUSE BILL NO. 2237

Offered January 14, 2013

A *BILL to amend the Code of Virginia by adding in Chapter 8 of Title 6.2 an article numbered 16, consisting of sections numbered 6.2-947 through 6.2-950, relating to privilege for voluntary regulatory self-assessments by banks.*

Patrons—Miller and Poindexter

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 8 of Title 6.2 an article numbered 16, consisting of sections numbered 6.2-947 through 6.2-950, as follows:

*Article 16.**Voluntary Regulatory Self-Assessments.***§ 6.2-947. Definitions.**

As used in this article, unless the context requires a different meaning:

"Bank" has the same meaning ascribed to the term in § 6.2-800 and includes any bank holding company, affiliates, and subsidiaries of a bank.

"Bank regulator" means any state, federal, or municipal governmental agency, bureau, commission, office, or other governmental entity charged with the regulation or supervision of a bank or the regulation or supervision of any activity in which a bank may be engaged. "Bank regulator" includes the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the Fair Trade Commission, and the Bureau.

"Self-assessment" means (i) a bank's voluntary, self-initiated internal assessment, audit, or review of the bank and its practices, policies, and procedures or (ii) a bank's voluntary, self-initiated assessment, audit, or review of the practices, policies, and procedures of a person acting under contract as the bank's service provider, including mortgage servicers and sub-servicers, credit and debit card processors, and providers of loan document systems.

"Self-assessment report" means any document, including any audit, report, finding, communication, or opinion or any draft of an audit, report, finding, communication, or opinion, prepared by internal personnel or by outside attorneys, accountants, or consultants as a part of or in connection with a self-assessment that is made in good faith, and which report is not published outside the bank unless publication is made to bank regulators or to third parties acting pursuant to an agreement or obligation to preserve its confidentiality. Such agreement or obligation to preserve confidentiality need not be in writing and may be evidenced by an indication of confidentiality on the face of any such self-assessment report, a verbal agreement regarding its confidentiality, or an attorney-client relationship.

§ 6.2-948. Privilege for self-assessment reports.

Except as otherwise provided in this article:

1. A self-assessment report is privileged and is not admissible in any legal or investigative action in any civil or administrative proceeding and is not subject to any discovery under the rules of civil procedure or administrative procedure; and

2. A self-assessment report that is protected by the self-assessment privilege created by this section shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and similar federal or state laws.

§ 6.2-949. Exceptions from self-evaluation privilege.

The self-assessment privilege established by § 6.2-948 shall not apply:

1. If the bank expressly waives the protections of the self-assessment privilege established by § 6.2-948, irrespective of whether the self-assessment was conducted or prepared by a private contractor hired by the bank;

2. If the court of record or a hearing officer, who shall be neutral and independent, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the self-assessment report was prepared to avoid disclosure of information in an investigative, administrative, or judicial proceeding that was underway at the time of its preparation, or for which the bank had been provided written notification that an investigation into a specific violation had been initiated, or it is found that the self-assessment report addresses a matter reasonably expected to have an imminent and substantial harm to bank customers or consumers; or

3. To information that is in the possession of a bank regulator obtained through observation,

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59 *sampling, examination, or otherwise and is subject to public disclosure under § 6.2-101.*

60 **§ 6.2-950. Effect on other privileges.**

61 *Nothing in this article limits, waives, or abrogates the scope or nature of any statutory or common*
62 *law privilege.*