

# VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

## CHAPTER 257

*An Act to amend and reenact §§ 6.2-912, 6.2-913, 6.2-926, and 6.2-1313 of the Code of Virginia, relating to financial institutions; insolvency.*

[H 433]

Approved March 9, 2018

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 6.2-912, 6.2-913, 6.2-926, and 6.2-1313 of the Code of Virginia are amended and reenacted as follows:**

**§ 6.2-912. Definition.**

As used in this article, "insolvent" or "insolvency" means incapable of meeting the current demands of creditors or having liabilities which, in total, exceed the book value of assets.

**§ 6.2-913. Closing bank; appointment of receiver.**

A. If (i) any bank, ~~upon its examination by the Commission, is found to be insolvent or approaching insolvency and no reasonable prospect for rehabilitation of the bank exists,~~ (ii) the Commission deems it necessary with respect to any bank for the protection of the public ~~interests~~ interest, or (iii) any bank has a ratio of tangible equity to total assets that is equal to or less than two percent, the Commission (a) may close immediately the doors of the bank without any notice and (b) by its duly appointed agent shall take charge of the books, assets, and affairs of the bank until the appointment of a receiver as provided by law.

B. If a bank has been closed by the Commission, the Commission may proceed (i) to have a receiver for the closed bank appointed in accordance with § 6.2-916 or (ii) as provided in Article 14 (§ 6.2-925 et seq.) of this chapter.

**§ 6.2-926. Appointment of FDIC as receiver.**

In any case where the Commission has closed and taken possession of a bank, the deposits in which are insured by the FDIC, the Commission may apply to ~~any court in the Commonwealth having jurisdiction to appoint receivers~~ the Circuit Court of the City of Richmond for the appointment of the FDIC as receiver. The court, if it finds that ~~to do so will be in the public interest,~~ may the FDIC is willing to accept the appointment, shall appoint the FDIC as receiver. Upon acceptance of the court's appointment of the FDIC as receiver, the FDIC shall not be required to post bond.

**§ 6.2-1313. Powers of Commission in case of nonobservance of law, noncompliance with orders, insufficient reserves, or approaching insolvency; appointment of receiver.**

A. If the Commission finds that (i) a credit union is in violation of a law or regulation applicable to it, (ii) a credit union is being operated in an unsafe or unsound manner, (iii) a credit union has failed to comply with a lawful order of the Commissioner, (iv) the reserve of the credit union fails to meet the requirements set forth in § 6.2-1377, or (v) a credit union is, or is about to become, insolvent, it shall give immediate notice of its finding to the officers and directors of the credit union. If necessary to conserve the assets of the credit union or protect the interests of the members of the credit union, the Commission may, after reasonable notice to the credit union and an opportunity for it to be heard, do any one or more of the following:

1. Close the credit union for a period not exceeding 60 days, which period may be extended for additional like periods as the Commission may deem necessary;
2. Require the officers and directors of the credit union to liquidate outstanding loans;
3. Require that all lawful orders of the Commission be complied with;
4. Require the credit union to make reports daily or otherwise as to the results achieved in carrying out its orders;
5. Temporarily suspend the right of such credit union to receive any further investment in its share accounts;
6. Grant the right to suspend or limit withdrawals against share accounts for such period as the Commission may deem necessary; and
7. Appoint a conservator to take charge of the credit union and operate it pending further action by the Commission.

B. If the Commission determines that (i) a credit union is ~~insolvent and that a receiver should be appointed~~ approaching insolvency and no reasonable prospect for rehabilitation of the credit union exists, (ii) the Commission deems it necessary with respect to any credit union for the protection of the public interest, or (iii) a credit union has a net worth ratio of less than two percent, the Commission may close the doors of the credit union *without any notice*, take charge of the books, assets, and affairs of the credit union, and apply to ~~any court in the Commonwealth having jurisdiction to appoint receivers~~ the Circuit Court of the City of Richmond for the appointment of a receiver to take charge of the credit

union's business and assets. ~~A credit union shall be deemed insolvent when~~ *In the case of a federally insured credit union, the court shall appoint the National Credit Union Administration Board as receiver if it finds that the National Credit Union Administration Board is willing to accept the appointment. In the case of a credit union that is not federally insured, the court shall appoint a receiver if it finds that to do so will be in the public interest.*

*C. As used in this article, "insolvent" or "insolvency" means that (i) a credit union is incapable of meeting the current demands of creditors or (ii) the current value of its a credit union's assets is less than the current value of the sum of its share accounts and liabilities.*