

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 353

An Act to amend and reenact §§ 6.1-194.41, 6.1-194.42, 6.1-194.46, 6.1-194.96, 6.1-194.97, 6.1-194.98, 6.1-194.103, 6.1-194.105, 6.1-194.106 and 6.1-194.150 of the Code of Virginia, and to repeal §§ 6.1-194.100, 6.1-194.101 and 6.1-194.108 of the Code of Virginia, relating to banking and finance; interstate activities; savings institutions.

[H 1080]

Approved April 5, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-194.41, 6.1-194.42, 6.1-194.46, 6.1-194.96, 6.1-194.97, 6.1-194.98, 6.1-194.103, 6.1-194.105, 6.1-194.106 and 6.1-194.150 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-194.41. Foreign savings institutions; certificate of authority.

A. A foreign savings institution shall not transact a savings institution business in the Commonwealth unless it first receives from the Commission a certificate of authority to do so.

B. A foreign savings institution may apply to the Commission for a certificate of authority by paying the filing fee prescribed by the Commission and filing an application which shall include:

1. A copy of its articles of incorporation and bylaws certified as a true copy by the public officer having custody of the original articles and bylaws;

2. Evidence satisfactory to the Commission that its accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency satisfactory to the Commissioner; and

3. Such other information as the Commission may require.

C. The Commission shall issue a certificate of authority to the foreign savings institution when:

1. The Commissioner has examined the application of the institution and investigated and determined that the institution meets the requirements of § 6.1-194.12;

2. The Commissioner has verified the financial status of the institution by conducting such examination of its assets and its records as the Commission shall deem appropriate for the purpose of ascertaining whether they meet the requirements of this chapter with regard to state associations;

3. The Commissioner is satisfied that the institution is in sound financial condition, and that it is conducting its business, and will conduct its business in the Commonwealth, in a manner consistent with the laws of the Commonwealth; and

4. The Commissioner is satisfied that the laws, regulations or administrative actions of the state or territory where the principal office of the applicant is located do not prohibit or unfairly impede a state association *or state savings bank (as defined in § 6.1-194.110)* from transacting business in such state or territory.

D. In meeting the requirements set out in subdivisions 1, 2 and 3 of subsection C of this section, the Commissioner may rely on examinations, audits and other information provided by the federal and state supervisory authorities charged with the responsibility of regulating and supervising savings institutions in the state where the applicant's principal place of business is located. Prior to issuing a certificate of authority to the foreign savings institution, the Commission shall enter into cooperative agreements with the appropriate regulatory authorities for the periodic examination of the foreign savings institution. The Commission may accept reports of examination and other records from such authorities in lieu of conducting its own examinations.

~~E. No foreign mutual savings institution shall be authorized to transact a savings institution business in the Commonwealth unless at least eighty percent of the deposits of such foreign savings institution were initially deposited in offices of the savings institution located in a geographic region consisting of the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, and the District of Columbia. No foreign stock savings institution shall be authorized to conduct a savings institution business in the Commonwealth except as a result of the acquisition of a state stock association under the provisions of Article 11 (§ 6.1-194.96 et seq.) of this chapter. No foreign savings institution which is a subsidiary as defined in § 6.1-194.96, of a savings institution holding company, shall be authorized to conduct a savings institution business in the Commonwealth unless (i) such savings institution is a subsidiary of a Virginia savings institution holding company, as defined in § 6.1-194.96, or (ii) such foreign savings institution is a subsidiary of a regional savings institution holding company, as defined in § 6.1-194.96, and has acquired a Virginia savings institution pursuant to the provisions of Article 11 (§ 6.1-194.96 et seq.) of this chapter.~~

§ 6.1-194.42. When operation of foreign savings institution in Commonwealth is prohibited.

When the laws, regulations or administrative actions of another state or territory of the United States prohibit or unfairly impede a state association *or state savings bank (as defined in § 6.1-194.110)* from

transacting business in such state or territory, then the savings institutions of such other state or territory are prohibited from transacting business in the Commonwealth.

§ 6.1-194.46. Revocation of certificate of authority of foreign savings institution.

A. The Commission may revoke a certificate of authority of a foreign savings institution if:

1. The institution fails to conduct its business in the Commonwealth in a manner consistent with the laws of the Commonwealth;
2. The affairs of the institution are in an unsafe condition;
3. The institution refuses to comply with the orders of the Commission or refuses to comply with a request by the Commissioner to review the books and records of the institution; or
4. The institution fails to pay any fees or taxes imposed by the laws of the Commonwealth.

B. The Commission may also revoke the certificate of authority of a foreign savings institution at any time that the Commission determines that the state or territory where the principal place of business of the foreign savings institution is located has enacted or amended its laws or regulations, or taken administrative action, so as to prohibit or unfairly impede a state association *or state savings bank (as defined in § 6.1-194.110)* from transacting business in such state or territory.

§ 6.1-194.96. Definitions.

As used in this article and in Article 5 (§ 6.1-194.41 et seq.) of this chapter, unless a different meaning is required by the context, the following words or phrases shall have the following meanings:

"Acquire" means:

1. The merger or consolidation of one stock savings institution with another stock savings institution or of a savings institution holding company with another savings institution holding company;
2. The acquisition by a savings institution holding company or savings institution of direct or indirect ownership or control of voting shares of another savings institution holding company or a savings institution, if, after such acquisition, the savings institution holding company or savings institution making the acquisition will directly or indirectly own or control more than twenty-five percent of any class of voting shares of the other savings institution holding company or savings institution;
3. The direct or indirect acquisition by a savings institution holding company or by a savings institution of all or substantially all of the assets of another savings institution holding company or of another savings institution; or
4. Any other action that would result in direct or indirect control by a savings institution holding company or by a savings institution of another savings institution holding company or another savings institution.

"Savings institution" shall have the same meaning as set forth in § 6.1-194.2.

"Savings institution holding company" shall have the same meaning as set forth in subsection A of § 6.1-194.87.

"Principal place of business of a savings institution" shall be the state in which the largest amount of the deposits of the savings institution is located at the end of the last calendar year.

"Principal place of business of a savings institution holding company" shall be the state in which the largest amount of the deposits of the holding company's subsidiaries is located as of the end of the last calendar year.

"Region" means the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia, and the District of Columbia (which for the purposes of this article shall be considered a state).

"Regional Out-of-state savings institution" means a savings institution:

1. That is organized under the laws of the United States or of one of the states in the region other than Virginia; and
2. At least eighty percent of whose deposits were initially deposited in offices located in states within the region *Whose principal place of business is located in a state other than Virginia.*

"Regional Out-of-state savings institution holding company" means a savings institution holding company:

1. that has its principal place of business in a state within the region other than Virginia; .
2. Whose financial institution subsidiaries located outside the region hold not greater than twenty percent of the total deposits held by all of its financial institution subsidiaries; and
3. That is not controlled by a savings institution holding company other than a regional savings institution holding company.

"State" includes the District of Columbia.

"Subsidiary" with respect to a savings institution holding company means:

1. Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such savings institution holding company, or is held by it with power to vote;
2. Any company the election of a majority of whose directors is controlled in any manner by such savings institution holding company; or
3. Any company with respect to the management or policies of which such savings institution holding company has the power, directly or indirectly, to exercise a controlling influence, as determined

by the Commission, after notice and opportunity for hearing.

"Virginia savings institution" means a savings institution that:

1. Is organized under the laws of this Commonwealth or of the United States; and
2. Has deposit-taking offices located only in this Commonwealth.

"Virginia savings institution holding company" means a savings institution holding company:

1. That has its principal place of business in this Commonwealth;
2. Whose financial institution subsidiaries located outside ~~the region~~ *Virginia* hold not greater than twenty percent of the total deposits held by all of its financial institution subsidiaries; and
3. That is not controlled by a savings institution holding company other than a Virginia savings institution holding company.

§ 6.1-194.97. Acquisitions by out-of-state savings institution holding company.

A. Any ~~regional~~ savings institution holding company that does not have a Virginia savings institution subsidiary, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, may acquire a Virginia savings institution holding company or a Virginia savings institution with the approval of the Commission. ~~A regional~~ *Such* savings institution holding company shall submit to the Commission an application for approval of such acquisition, which application may be approved in the event:

1. The Commission determines that the laws of the state in which the ~~regional~~ savings institution holding company making the acquisition has its principal place of business do not prohibit or unfairly impede a Virginia savings institution holding company meeting the criteria in this article from acquiring savings institutions or savings institution holding companies in that state;

2. The Commission determines that the laws of the state in which the ~~regional~~ savings institution holding company making the acquisition has its principal place of business permit such ~~regional~~ savings institution holding company to be acquired by the Virginia savings institution holding company or Virginia savings institution sought to be acquired. For purposes of this subsection, a Virginia savings institution shall be treated as if it were a Virginia savings institution holding company;

3. The Commission determines either that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years or that all of the savings institution subsidiaries of the Virginia savings institution holding company sought to be acquired have been in existence and continuously operating for more than two years. The Commission may approve the acquisition by a ~~regional~~ *such* savings institution holding company of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; and

4. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution holding company of a savings institution or savings institution holding company in the state where ~~the regional~~ *such* savings institution holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or savings institution holding company in such state by a savings institution holding company all the savings institution subsidiaries of which are located in that state.

B. ~~A regional~~ *An out-of-state* savings institution holding company that has a Virginia savings institution subsidiary, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, may acquire any Virginia savings institution or Virginia savings institution holding company with the approval of the Commission. ~~The regional~~ *Such* savings institution holding company shall submit to the Commission an application for approval of such acquisition, which application may be approved in the event:

1. The Commission determines either that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years or that all of the savings institution subsidiaries of the Virginia savings institution holding company sought to be acquired have been in existence and continuously operating for more than two years.

The Commission may approve the acquisition by a ~~regional~~ *such* savings institution holding company of all or substantially all of the shares of the savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; and

2. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution holding company of a savings institution or a savings institution holding company in the state where ~~the regional~~ *such* savings institution holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or a savings institution holding company in such state by a savings institution holding company all the savings institution subsidiaries of which are located in that state.

§ 6.1-194.98. Acquisitions by out-of-state savings institution.

A. Any ~~regional~~ *out-of-state* savings institution, insured by the Federal Deposit Insurance Corporation

or other federal insurance agency, may acquire a Virginia savings institution holding company or a Virginia savings institution with the approval of the Commission. ~~A regional~~ Such savings institution shall submit to the Commission an application for approval of such acquisition, which application may be approved in the event:

1. The Commission determines that the laws of the state in which the ~~regional~~ savings institution making the acquisition has its principal place of business do not prohibit or unfairly impede a Virginia savings institution meeting the criteria in this article from acquiring savings institutions or savings institution holding companies in that state;

2. The Commission determines that the laws of the state in which the ~~regional~~ savings institution making the acquisition has its principal place of business permit such ~~regional~~ savings institution to be acquired by the Virginia savings institution holding company or Virginia savings institution sought to be acquired;

3. The Commission determines that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years or that all of the Virginia savings institution subsidiaries of the Virginia savings institution holding company sought to be acquired have been in existence and continuously operating for more than two years. The Commission may approve the acquisition by a ~~regional~~ savings institution of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; and

4. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution of a savings institution or savings institution holding company in the state where the ~~regional~~ savings institution making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or savings institution holding company in such state by a savings institution located in that state.

B. ~~A regional~~ An *out-of-state* savings institution, insured by the Federal Deposit Insurance Corporation or other federal insurance agency, that has previously acquired a Virginia savings institution or Virginia savings institution holding company may acquire any additional Virginia savings institution or Virginia savings institution holding company with the approval of the Commission. ~~The regional~~ Such savings institution shall submit to the Commission an application for approval of such acquisition, which application may be approved in the event:

1. The Commission determines that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years. The Commission may approve the acquisition by a ~~regional~~ savings institution of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; and

2. The Commission makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution of a savings institution or a savings institution holding company in the state where the ~~regional~~ savings institution making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or a savings institution holding company in such state by a savings institution located in that state.

§ 6.1-194.103. Periodic reports; interstate agreements.

The Commission shall have the authority to examine any ~~regional~~ *out-of-state* savings institution holding company owning a Virginia savings institution and each of its Virginia or non-Virginia savings institution or nonsavings institution subsidiaries and shall require reports of each ~~regional~~ savings institution holding company subject to this chapter. Such reports shall be filed under oath with such frequency and in such scope and detail as may be appropriate for the purpose of assuring continuing compliance with the provisions of this chapter.

Prior to approving an acquisition under the provisions of this article, the Commission shall enter into cooperative agreements with the appropriate regulatory authorities for the periodic examination of any ~~regional~~ savings institution holding company that has a Virginia savings institution subsidiary or any subsidiary of such holding company and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The Commission may enter into joint actions with other regulatory authorities having concurrent jurisdiction over any ~~regional~~ savings institution holding company that has a Virginia savings institution subsidiary or may take such actions independently to carry out its responsibilities under this chapter, assure the safety and soundness of any Virginia savings institution, and assure compliance with the provisions of this chapter and the applicable savings institution laws of this Commonwealth.

§ 6.1-194.105. Notice of intent to acquire out-of-state savings institution.

A Virginia savings institution, a Virginia savings institution holding company or a ~~regional~~ *an out-of-state* savings institution holding company owning subsidiaries which conduct a savings institution business in the Commonwealth shall file with the Commission notice of its intention to acquire a ~~savings~~ *financial* institution outside Virginia, together with such information as the Commission may

request. The Commission shall within thirty days or an extended period not exceeding fifteen days, disapprove such acquisition if it determines that the acquisition could affect detrimentally the safety or soundness of a Virginia savings institution. The Commission may approve such acquisition prior to the expiration of the thirty-day period if it determines that the acquisition will not affect detrimentally the safety or soundness of such Virginia savings institution.

§ 6.1-194.106. Nonseverability.

~~It is the purpose of this article to facilitate orderly development of savings institution organizations that have savings institution offices in more than one state within the region.~~ It is not the purpose of this article to authorize acquisitions of Virginia savings institution holding companies or Virginia savings institutions by savings institutions or savings institution holding companies that do not have their principal place of business in this Commonwealth ~~on any basis other than only~~ as expressly provided in this article. Therefore, notwithstanding the provisions of § 6.1-194.89, if any portion of this article pertaining to the terms and conditions for and limitations upon acquisition of Virginia savings institution holding companies and Virginia savings institutions by savings institutions and savings institution holding companies that do not have their principal place of business in this Commonwealth is determined to be invalid for any reason by a final nonappealable order of any Virginia or federal court of competent jurisdiction, then this article shall be void and of no further effect from the effective date of such order. However, any transaction that has been lawfully consummated pursuant to this article prior to a determination of invalidity shall be unaffected by such determination.

§ 6.1-194.150. Merger, consolidation or transfer of assets of insolvent or financially unstable state savings bank; notice and hearing; final order; priorities; examinations of resulting institutions.

A. If the Commission finds (i) that any state savings bank is insolvent or that, in its opinion, the financial stability of a state savings bank is threatened, (ii) that the merger or consolidation of such state savings bank into another savings institution or into a bank is desirable for the protection of the stockholders or depositors of such savings bank and that such merger or consolidation is in the public interest, and (iii) that an emergency exists, and if the board of directors of such state savings bank shall approve a plan of merger or consolidation of such savings bank into another savings institution or bank, compliance with the requirements of § 13.1-718 or § 13.1-895 shall be dispensed with as to such savings bank and the approval by the Commission of such plan of merger or consolidation shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such savings bank for all purposes of Article 12 (§ 13.1-716 et seq.) of Chapter 9 of Title 13.1 or the approval of two-thirds of the members for all purposes of Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title 13.1.

B. If the Commission finds (i) that a state savings bank is insolvent or that, in its opinion, the financial stability of a state savings bank is threatened, (ii) that the acquisition of the assets and liabilities of such savings bank by another savings institution or by a bank is in the best interests of the stockholders or depositors of such savings bank and that such acquisition of the assets and liabilities is in the public interest, and (iii) that an emergency exists, it may, with the consent of the board of directors of both institutions as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets and liabilities of such savings bank to such other savings institution or bank, and no compliance with the provisions of §§ 13.1-723, 13.1-724, 13.1-899, or § 13.1-900 shall be required, nor shall § 13.1-730 be applicable to such transfer.

C. In the case of either such a merger or consolidation or of such a transfer of assets and liabilities, the Commission shall provide that prompt notice of its findings and plan of merger, consolidation or transfer of assets and liabilities, be sent to the stockholders of record of such insolvent savings bank or savings bank threatened with financial instability for the purpose of providing such shareholders an opportunity to challenge the findings of the Commission and the plan of merger, consolidation or transfer of assets and liabilities. The relevant books and records of such savings bank shall remain intact and be made available to such shareholders or members for a period of thirty days after such notice is sent. The Commission's findings and plan of merger, consolidation or transfer of assets and liabilities shall become final if a hearing before the Commission is not requested by any such shareholder in a written request delivered to the Commission within fifteen days after the notice specified by this section is sent. Any such request for a hearing shall contain a statement of the specific grounds for such shareholder's challenge to the Commissioner's findings and plan of merger, consolidation or transfer of assets and liabilities.

D. If, after such hearing provided in subsection C of this section, the Commission finds that good cause has been shown for the reversal or modification of its initial findings, or for rescission or modification of its initial plan for merger, consolidation or transfer of assets and liabilities, the Commission shall enter its final order accordingly. But if, after such hearing, the Commission affirms its original findings and plan for merger, consolidation or transfer of assets and liabilities, its order shall be final.

E. Notwithstanding any other provision of law, any institution resulting from a merger, a consolidation or a transfer of assets and liabilities under the provisions of this section shall have the

right to retain and operate all offices of the savings bank so merged, consolidated or acquired which were in operation at the time of such merger, consolidation or acquisition. This section shall not be construed to allow the establishment of additional branches by any institution resulting from such merger, consolidation or transfer than would otherwise be allowed by the laws of the Commonwealth.

F. For the purposes of this section, the word insolvent means that the current book value of liabilities is in excess of the current book value of assets.

G. For the purposes of this section, the term savings bank, bank, or savings institution shall mean institutions incorporated or established under the laws of (i) the Commonwealth, (ii) the United States, (iii) any other state of the United States, (iv) a territory of the United States, or (v) the District of Columbia, which institutions' deposits are insured as required by this title for the issuance of a certificate of authority to do business.

H. The Commission shall authorize transactions under this section according to the following priorities:

1. First, between financial institutions of the same type located within the Commonwealth;
2. Second, between financial institutions of different types located within the Commonwealth;
3. Third, between financial institutions of the same type including depository institutions located outside the Commonwealth; and
4. Fourth, between financial institutions of different types including depository institutions located outside the Commonwealth.

I. ~~In considering transactions involving financial institutions located outside the Commonwealth, the Commission shall give priority to plans of merger, consolidation or asset acquisition involving financial institutions located in the Region as defined in § 6.1-194.96.~~

J. Any institution resulting from a transaction authorized by this section whose main office is located outside of the Commonwealth shall, as a condition of being able to do business in this Commonwealth, allow the Commission to examine such institution from time to time as the Commission deems necessary. In conducting such examinations, the Commission shall have all of the powers provided by this title relating to the examination of financial institutions.

K. The provisions of Article 5 (§ 6.1-194.41 et seq.) and Article 11 (§ 6.1-194.96 et seq.) of this chapter shall not apply to merger, consolidations, and acquisitions authorized by the provisions of this section.

2. That §§ 6.1-194.100, 6.1-194.101, and 6.1-194.108 of the Code of Virginia are repealed.