

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 524

An Act to amend and reenact §§ 6.1-32.11, 6.1-32.18, 6.1-32.20 and 6.1-32.28 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 6.1-32.14:1 and 6.1-32.14:2, relating to banking and finance; Trust Company Act; affiliated trust companies authorized.

[S 573]

Approved April 9, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-32.11, 6.1-32.18, 6.1-32.20 and 6.1-32.28 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 6.1-32.14:1 and 6.1-32.14:2 as follows:

§ 6.1-32.11. Definitions.

As used in this article:

"Affiliated trust company" means a trust company of which five percent or more of any class of its capital stock is owned, directly or indirectly, by a trust company holding company.

"Agent" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act (§ 13.1-501 et seq.).

"Broker-dealer" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Commission" means the State Corporation Commission of the Commonwealth of Virginia.

"Fiduciary" means executor, administrator, conservator, guardian, committee, or trustee.

"Investment advisor" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Investment advisor representative" shall have the same meaning assigned to that term in § 13.1-501 of the Virginia Securities Act.

"Investment company" shall have the same meaning assigned to that term in the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq.

"Operating plan" means a plan of an affiliated trust company which establishes (i) the procedures such company will have in effect to ensure that no agent, broker-dealer, investment advisor, investment advisor representative, or investment company exercises improper influence over the investment activities it undertakes pursuant to its fiduciary responsibilities; (ii) how the fees, commissions or other compensation, by whatever name it may be called, which each trust will pay for the investment of its funds will be fair and reasonable; (iii) how any decision by such company to permit compensation for the investment of the funds it holds in trust on any basis other than a fixed percentage of the dollar amount of funds held in a trust will be made only if such compensation is in the best interest of the beneficiaries; and (iv) any other provision or information required by the Commission.

"Trust business" means the holding out by a person or legal entity to the public at large by advertising, solicitation or other means that the person or legal entity is available to act as a fiduciary in the Commonwealth of Virginia or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business.

"Trust company" means a corporation, including an affiliated trust company, authorized to engage in the trust business under this article with powers expressly restricted to the conduct of general trust business.

"Trust company holding company" means a corporation which owns, directly or indirectly, five percent or more of any class of capital stock of a broker-dealer, investment advisor or investment company and also owns five percent or more of any class of capital stock of a trust company. A trust company holding company shall not be deemed a financial institution holding company for any purpose under this title unless it owns more than five percent of the voting shares of a financial institution other than an affiliated trust company or of another financial institution holding company.

§ 6.1-32.14:1. Operating plan required.

A. An application from an affiliated trust company for a certificate shall include an operating plan. An affiliated trust company shall conduct its trust business in accordance with its operating plan. An operating plan may be amended from time to time if such amendment is filed with the Commission sixty days or more before its effective date and the Commission does not object to the amendment prior to its effective date or if the Commission approves the amendment prior to the expiration of sixty days. If the Commission finds that the operating plan of an affiliated trust company does not adequately protect the interests of settlors or beneficiaries of trusts, the Commission may, upon prior written notice to the affiliated trust company stating the reasons the operating plan is deemed inadequate, require the affiliated trust company to submit, within a reasonable time stated in the notice, amendments to the operating plan. No amendment to an operating plan may be given effect in a way that would materially

prejudice any interest in an existing trust estate or impair the terms of an existing trust instrument.

B. If any proposed amendment to an operating plan is objected to by the Commission within sixty days of filing, the affiliated trust company may obtain a hearing in accordance with the rules of the Commission.

§ 6.1-32.14:2. Certain transactions prohibited.

An affiliated trust company shall not, during the underwriting period, purchase from an affiliated broker-dealer, for any trust account or for its own account, any security that is being underwritten by that broker-dealer, other than investment grade fixed-income securities. An affiliated trust company may not purchase for any trust account or for its own account any security that is issued by a company that owns five percent or more of the capital stock of, or is affiliated with, the affiliated trust company.

§ 6.1-32.18. Procedure for granting or denying certificate.

Before any trust company shall begin business, it shall obtain from the Commission a certificate of authority authorizing it to do so. Prior to the issuance of such certificate, the Commission shall ascertain that:

1. All of the provisions of law have been complied with;
2. The trust company is formed for no other reason than a legitimate trust business;
3. Financially responsible persons have subscribed for capital stock, surplus and a reserve for operation in an amount deemed by the Commission to be sufficient to warrant successful operation, but the capital stock shall not be less than \$500,000;

4. Oaths of all the directors have been taken and filed in accordance with § 6.1-32.22;

5. The moral fitness, financial responsibility and business qualifications of those named as officers and directors of the proposed trust company are such as to command the confidence of the community in which the trust company is proposed to be located;

6. In its opinion, the public interest will be served by the formation of a trust company in the community where it is proposed. The addition of such trust company shall be deemed in the public interest if, based on all relevant evidence and information, advantages such as, but not limited to, increased competition, additional convenience, or gains in efficiency outweigh possible adverse effects such as, but not limited to, diminished or unfair competition, undue concentration of resources, conflicts of interests, or unsafe or unsound practices; ~~and~~

7. The operating plan of an affiliated trust company and any other relevant evidence and information demonstrate that the conduct of the affiliated trust company's investment activities and the compensation paid for such investment activities will be consistent with the affiliated trust company's fiduciary responsibilities and will be in accordance with applicable law and regulations; and

~~7.~~ 8. Any other facts deemed pertinent.

§ 6.1-32.20. Restrictions on control, officers and directors.

A. None of the following individuals or entities shall be or become a control person of any trust company:

1. An agent;
2. A broker-dealer;
3. An investment advisor;
4. An investment advisor representative;
5. An investment company; or
6. Any corporation, limited liability company, partnership, business trust, association, or similar organization.

B. For the purposes of this provision, a "control person" means any individual or entity (i) owning, directly or indirectly, five percent or more of any class of capital stock of a trust company or (ii) serving as an officer or director of a trust company.

C. Nothing in this section shall prohibit (i) a trust company holding company from owning, directly or indirectly, five percent or more of any class of capital stock of a trust company or (ii) any officer, director or employee of a trust company holding company or a subsidiary of a trust company holding company from serving as an officer or director of an affiliated trust company or from owning, directly or indirectly, five percent or more of any class of capital stock of an affiliated trust company.

§ 6.1-32.28. Commission's remedial powers.

A. If the Commission finds that a trust company (i) has failed to fully observe the laws of this Commonwealth, (ii) is being operated in an unsafe or unsound manner, (iii) has failed to comply with any Commission order or regulation, (iv) is engaging in any irregular practices, ~~or~~ (v) is, or is about to become, insolvent or its capital has been, or is in danger of being, impaired, ~~or~~ (vi) *if the trust company is an affiliated trust company, has failed to comply with its operating plan*, the Commission shall give notice thereof to the officers and directors of the company. If necessary to conserve the assets of the company or protect the public interest, the Commission may:

1. Close the company for a period not exceeding sixty days, which period may be further extended for a like period or periods as the Commission deems necessary;
2. Require that all orders and regulations of the Commission be complied with;
3. Require that the company make reports daily or at such other times as may be required as to the

results achieved in carrying out the Commission's orders;

4. Require that any irregularities be promptly corrected;

5. Require that any impairment of capital be made good; or

6. Temporarily suspend the right of the company to receive any further property in a fiduciary capacity.

B. If the Commission determines that a receiver should be appointed for a trust company, the Commission may close the company; take charge of the books, assets and affairs of the company; and apply to any circuit court in the Commonwealth for the appointment of a receiver to take charge of the company's business, assets and affairs. Proceedings for appointment of a receiver for a trust company shall not be entertained by any court except on application of the Commission.

C. 1. The Commissioner of Financial Institutions may issue and serve upon a trust company a cease and desist order if, in the opinion of the Commissioner, the company is engaging, has engaged, or, there is reasonable cause to believe, is about to engage in an unsafe or unsound practice, irregularity, or any violation of law, rule or regulation applicable to the conduct of its business, ~~or any~~ Commission order, *or, if the company is an affiliated trust company, its operating plan*. The cease and desist order shall contain a statement of the facts upon which it is based and may require, in terms that may be mandatory or otherwise, the company and its directors, officers, employees and agents to cease and desist from the practice or violation. The order shall specify its effective date and shall notify the company of its right to request a hearing in accordance with the Commission's Rules of Practice and Procedure.

2. When the practice or violation specified in the order, or any continuation thereof, is likely to prejudice the company's stockholders, or persons having an interest in property held by the company in a fiduciary capacity, the Commissioner may make the order effective immediately. An order shall remain in effect until withdrawn by the Commissioner or terminated by the Commission after a hearing. A request for a hearing shall be given expeditious treatment on the Commission's docket, and the Commission need not allow ten days' notice to the company.

2. That the provisions of this act shall become effective on April 1, 1995.