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HOUSE BILL NO. 491

Offered January 18, 1996

A BILL to amend and reenact §§ 6.1-2.1, 6.1-2.9:4, 6.1-194.87, 6.1-232, 6.1-250, 6.1-330.48, 6.1-381, 13.1-514, 13.1-620 and 13.1-627 of the Code of Virginia, relating to banking and finance; savings institutions.

Patron—Keating

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-2.1, 6.1-2.9:4, 6.1-194.87, 6.1-232, 6.1-250, 6.1-330.48, 6.1-381, 13.1-514, 13.1-620 and 13.1-627 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-2.1. Financial institutions to furnish certain information to fiduciaries.

The provisions of this title and any other provisions of law notwithstanding, any financial institution subject to the provisions of said title shall make available to any fiduciary, upon request, all information concerning assets or liabilities in which his decedent or ward had or has any interest.

Where used in this title, the term "financial institution" shall mean any bank, trust company, savings and loan association, *savings bank*, industrial loan association, consumer finance company, or credit union.

§ 6.1-2.9:4. Federal insurance of deposits required for all banks or savings institutions.

Notwithstanding any other provisions contained in this title, no bank or savings ~~and loan association~~ *institution* doing business in the Commonwealth shall accept deposits unless its deposit accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the insurance provided thereby. No bank or ~~savings and loan association~~ *savings institution* shall solicit deposits in the Commonwealth, nor shall any other person solicit or accept deposits in the Commonwealth on behalf of a bank or savings ~~and loan association~~ *institution*, unless the deposit accounts of such bank or savings ~~and loan association~~ *institution* are insured by the Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the insurance provided thereby.

§ 6.1-194.87. Regulation of savings institution holding companies.

A. Any person which, directly or indirectly, or acting in concert with one or more other companies or with one or more subsidiaries or affiliates, acquires, owns, controls or holds with power to vote twenty-five percent or more of the voting shares of a stock savings institution, or which controls in any manner the election of a majority of the directors of such institution, shall for purposes of this chapter be deemed to be a savings institution holding company.

B. The Commission may promulgate regulations governing savings institution holding companies doing business in the Commonwealth, including the activities of such companies and their subsidiaries. Any savings institution holding company which does not have any subsidiaries which are state ~~associations~~ *savings institutions* and which is subject to regulations adopted by the appropriate federal authority shall be deemed to be in substantial compliance with the regulations promulgated by the Commission if it is in compliance with the regulations promulgated by the appropriate federal authority.

C. Notwithstanding the provisions of subsection B of this section, no person, whether acting alone or in concert with others, shall acquire ownership or control of twenty-five percent or more of the voting shares of a state stock ~~association~~ *savings institution*, or otherwise control the election of a majority of the directors of such ~~association~~ *institution*, without the approval of the Commission. The Commission shall not approve the proposed acquisition unless the Commission determines that the proposed acquisition is in the public interest.

§ 6.1-232. Prohibitions as to associations having certificates issued and outstanding.

An association that has certificates of investment issued and outstanding shall not:

1. Advertise that it is subject to regulation or supervision by the State Corporation Commission or the Bureau of Financial Institutions, or publish any advertisement suggesting that it is engaged in the business of banking or that it receives deposits;

2. Advertise that it carries insurance unless its certificates of investment are insured or guaranteed by a state or federal agency;

3. Own any shares of stock issued by any other corporation except to the extent legal for banks;

4. Invest more than eighty percent of the amount of its outstanding certificates of investment in loans secured by liens on real estate;

5. Make any loan secured by liens on real estate in excess of that percent of the appraised value

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60 permitted to banks;

61 6. Issue certificates of investment for the purpose of borrowing money from financial institutions;

62 7. Issue a certificate of investment paying a higher rate of interest than four and one-half percent per
63 annum, except that notwithstanding this limitation it may pay at any time an interest rate equal to the
64 highest rate paid by any state savings ~~and loan association~~ *institution* or bank located in the same
65 community in the Commonwealth of Virginia.

66 § 6.1-250. Certain persons ineligible as licensees; exemptions.

67 No person doing business under the authority of any law of this Commonwealth or of the United
68 States relating to banks, savings ~~banks~~ *institutions*, trust companies, building and loan associations,
69 industrial loan associations, or credit unions shall be eligible to become a licensee under this chapter nor
70 shall this chapter apply to any business transacted by any person under the authority of and as permitted
71 by any such law, nor to any bona fide pawnbroking business transacted under pawnbroker's license, nor
72 to anyone operating in accordance with the specific provisions of any other law heretofore or hereafter
73 enacted.

74 § 6.1-330.48. Applicability of certain sections.

75 Sections 6.1-330.16, 6.1-330.24, 6.1-330.31 and 6.1-330.47 shall not apply to loans made by any
76 lender licensed by, and under the supervision of, the State Corporation Commission or the federal
77 government nor to loans made by state and national banks, state and federal savings ~~and loan~~
78 ~~associations~~ *institutions* and state and federal credit unions. Sections 6.1-330.16, 6.1-330.24, 6.1-330.31
79 and 6.1-330.47 shall not apply to a seller in a real estate sales transaction who takes a subordinate
80 mortgage on such real estate.

81 § 6.1-381. Definitions.

82 A. As used in this chapter, unless a different meaning is required by the context:

83 "Bank" means an institution which has or is eligible for insurance of deposits by the Federal Deposit
84 Insurance Corporation.

85 "Company" means any individual, corporation, partnership, business trust, association, joint venture,
86 pool, syndicate, sole proprietorship, unincorporated association, or any other entity not specifically listed
87 herein.

88 "Financial institution holding company" means any company which has control over any financial
89 institution or which has control over any company which controls any financial institution.

90 "Virginia financial institution" means a financial institution authorized to do business in the
91 Commonwealth of Virginia. As used in this chapter, the term "financial institution" shall not include
92 consumer finance companies and savings ~~and loan associations~~ *institutions*.

93 "Virginia financial institution holding company" means any company which has control over any
94 financial institution authorized to do business in this Commonwealth or has control over a company
95 which controls any such financial institution.

96 B. A company shall be deemed to "control" another company, referred to in this chapter as a
97 "subsidiary," if it owns twenty-five percent or more of the voting shares of the subsidiary, or if under
98 the Bank Holding Company Act of 1956, as amended, or under Section 408 of the National Housing
99 Act, as amended, such company is presumed to control the subsidiary, or a determination has been made
100 by the Commission that such company exercises a controlling influence over the management and
101 policies of the subsidiary.

102 C. A financial institution holding company shall be deemed to own shares owned by a subsidiary.
103 Such holding company shall be deemed to engage in activities engaged in by a subsidiary or by any
104 other company of which it owns five percent or more of the voting shares.

105 § 13.1-514. Exemptions.

106 A. The following securities are exempted from the securities registration requirements of this chapter:

107 1. Any security (including a revenue obligation) issued or guaranteed by the United States, any state,
108 any political subdivision of a state or any agency or corporate or other instrumentality of one or more of
109 the foregoing; or any certificate of deposit for any of the foregoing;

110 2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of
111 any such province, any agency or corporate or other instrumentality of one or more of the foregoing or
112 any other foreign government with which the United States currently maintains diplomatic relations, if
113 the security is recognized as a valid obligation by such issuer or guarantor;

114 3. Any security issued by and representing an interest in or a debt of, or guaranteed by, the
115 International Bank for Reconstruction and Development, or any national bank, or any bank or trust
116 company organized under the laws of any state or trust subsidiary organized under the provisions of
117 § 6.1-32.1 et seq.;

118 4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal
119 savings and loan association *or savings bank*, or by any savings and loan association or savings bank
120 which is organized under the laws of this Commonwealth;

121 5. Any security issued or guaranteed by an insurance company licensed to transact insurance business

in this Commonwealth;

6. Any security issued by any credit union, industrial loan association or consumer finance company which is organized under the laws of this Commonwealth and is supervised and examined by the Commission;

7. Any security issued or guaranteed by any railroad, other common carrier or public service company supervised as to its rates and the issuance of its securities by a governmental authority of the United States, any state, Canada or any Canadian province;

8. Any security which is listed or approved for listing upon notice of issuance on the New York Stock Exchange or the American Stock Exchange or any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants admitted to trading in any of said exchanges; or any warrant or right to subscribe to any of the foregoing securities;

9. Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace, or any renewal thereof which is likewise limited, or any guaranty of such paper or of any such renewal;

10. Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan;

11. Any security issued by a cooperative association organized as a corporation under the laws of this Commonwealth;

12. Any security listed on an exchange registered with the United States Securities and Exchange Commission or quoted on an automated quotation system operated by a national securities association registered with the United States Securities and Exchange Commission and approved by regulations of the State Corporation Commission;

13. Any security issued by any issuer organized under the laws of any foreign country and approved by rule or regulation of the Commission.

B. The following transactions are exempted from the securities, broker-dealer and agent registration requirements of this chapter except as expressly provided in this subsection:

1. Any isolated transaction by the owner or pledgee of a security, whether effected through a broker-dealer or not, which is not directly or indirectly for the benefit of the issuer;

2. Any nonissuer distribution by a registered broker-dealer and its registered agent of a security that has been outstanding in the hands of the public for the past five years, if the issuer in each of the past three fiscal years has lawfully paid dividends on its common stock aggregating at least four percent of its current market price;

3. Any transaction by a registered broker-dealer and its registered agent pursuant to an unsolicited order or offer to buy;

4. Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels, if the entire indebtedness secured thereby is offered and sold as a unit;

5. Any transaction in his official capacity by a receiver, trustee in bankruptcy or other judicially appointed officer selling securities pursuant to court order;

6. Any offer or sale to a corporation, investment company or pension or profit-sharing trust or to a broker-dealer;

7. a. Any sale of its securities by an issuer or any sale of securities by a registered broker-dealer and its registered agent acting on behalf of an issuer if, after the sale, such issuer has not more than thirty-five security holders, and if its securities have not been offered to the general public by advertisement or solicitation; or

b. To the extent the Commission by rule or order permits, any offer or sale in a transaction involving the sale by an issuer to not more than thirty-five persons in the Commonwealth during any period of twelve consecutive months, whether or not the issuer or any purchaser is then present in the Commonwealth, if the issuer reasonably believes that all the purchasers in the Commonwealth are purchasing for investment, and if the securities have not been offered to the general public by advertisement or general solicitation, and the Commission may assess and collect in connection with any filing required by the rule or order a nonrefundable fee not to exceed \$250.

The number of security holders of an issuer or the number of purchasers from an issuer, as the case may be, shall not be deemed to include the security holders of any other corporation, partnership, limited liability company, unincorporated association or trust unless it was organized to raise capital for the issuer. Notwithstanding the provisions of subdivision 15, the merger or consolidation of corporations, partnerships, limited liability companies, unincorporated associations or other entities shall be a violation of this chapter if the surviving or new entity has more than thirty-five security holders or purchasers and all the securities of the parties thereto were issued under this exemption, unless all of the parties thereto have been engaged in transacting business for more than two years prior to the merger or consolidation;

183 8. Any transaction pursuant to an offer to existing security holders of the issuer including holders of
184 transferable warrants issued to existing security holders and exercisable within ninety days of their
185 issuance, if either (i) no commission or other remuneration (other than a standby commission) is paid or
186 given directly or indirectly for soliciting any security holder in this Commonwealth, or (ii) the issuer
187 first notifies the Commission in writing of the terms of the offer and the Commission does not by order
188 disallow the exemption within five full business days after the date of the receipt of the notice;

189 9. Any offer (but not a sale) of a security for which registration statements have been filed under
190 both this chapter and the Securities Act of 1933; but this exemption shall not apply while a stop order is
191 in effect or, after notice to the issuer, while a proceeding or examination looking toward such an order
192 is pending under either act;

193 10. The issuance of not more than three shares of common stock to one or more of the incorporators
194 of a corporation and the initial transfer thereof;

195 11. Sales of an issue of bonds, aggregating \$150,000 or less, secured by a first lien deed of trust on
196 realty situated in Virginia, to thirty persons or less who are residents of Virginia;

197 12. Any offer or sale of any interest in any partnership, corporation, association or other entity
198 created solely to provide residential housing located in the Commonwealth, provided that such offer or
199 sale is by the issuer or by a real estate broker or real estate agent duly licensed in Virginia;

200 13. The Commission is authorized to create by rule a limited offering exemption, the purpose of
201 which shall be to further the objectives of compatibility with similar exemptions from federal securities
202 regulation and uniformity among the states; providing that such rule shall not exempt broker-dealers or
203 agents from the registration requirements of this chapter, except in the case of an agent of the issuer
204 who receives no sales commission directly or indirectly for offering or selling the securities. Any filing
205 made with the Commission pursuant to any exemption created under this subdivision shall be
206 accompanied by a \$250 fee;

207 14. The issuance of any security dividend, whether the corporation distributing the dividend is the
208 issuer of the security or not, if nothing of value is given by stockholders for the distribution other than
209 the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or
210 in a security;

211 15. Any transaction incident to a right of conversion or a statutory or judicially approved
212 reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split,
213 merger, consolidation, sale of assets, or exchange of securities;

214 16. Any offer or sale of a security issued by a Virginia church if the offer and sale are only to and
215 by its members who are Virginia residents and who do not receive remuneration or compensation
216 directly or indirectly for offering or selling the security.

217 17. Any offer or sale of securities issued by a professional business entity (as defined in subsection
218 A of § 13.1-1102) to a person licensed or otherwise legally authorized to render within this
219 Commonwealth the same professional services (as defined in subsection A of § 13.1-1102) rendered by
220 the professional business entity. Notwithstanding the foregoing, nothing in this subdivision shall be
221 deemed to provide that shares of stock, partnership or membership interests or other representations of
222 ownership in a professional business entity are securities except to the extent otherwise provided by
223 subsection A of this section.

224 C. In any proceeding under this chapter, the burden of proving an exemption shall be upon the
225 person claiming it.

226 § 13.1-620. Special kinds of business.

227 A. If any corporation is to conduct the business of a bank or trust company, that shall be stated in
228 the articles of incorporation and the corporation shall not have power to conduct other business except
229 as may be related to or incidental to the banking or trust company business.

230 B. If any corporation is to conduct the business of an insurance company, that shall be stated in the
231 articles of incorporation and the articles shall further set forth the class or classes of insurance the
232 corporation proposes to undertake and the corporation shall not have power to conduct other business
233 except as may be related to or incidental to the insurance business.

234 C. If any corporation is to conduct the business of a savings and loan association *or savings bank*,
235 that shall be stated in the articles of incorporation and the corporation shall not have power to conduct
236 other business except as may be related to or incidental to the stated business.

237 D. If any corporation is to conduct the business of a railroad or other public service company, that
238 shall be stated in the articles of incorporation and a brief description of the business shall be included.
239 Otherwise the corporation shall not have the power to conduct a public service business or to exercise
240 any of the privileges of a public service company. No corporation shall be organized under this chapter
241 for the purpose of conducting in this Commonwealth more than one kind of public service business
242 except that the telephone and telegraph businesses or the water and sewer businesses may be combined,
243 but this provision shall not limit the powers of domestic corporations existing on January 1, 1986. No
244 corporation organized under this chapter to conduct the business of a public service company shall have

general business powers in this Commonwealth. Corporations organized under this chapter to conduct the business of a public service company may, however, conduct in this Commonwealth other public service business or nonpublic service business so far as may be related to or incidental to its stated business as a public service company and in any other state such business as may be authorized or permitted by the laws thereof. Nothing in this subsection shall limit the powers of such corporation in respect of the securities of other corporations or of limited liability companies.

E. If one or more of the purposes set forth in the articles of incorporation is to own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery or furnishing of heat, light, power or water, including heated or chilled water, or sewerage facilities, either directly or indirectly, to or for the public, the Commission shall not issue a certificate of incorporation unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company.

F. Whether or not classified elsewhere in the Code as public service companies the following are not required to incorporate as public service companies: a person authorized by the Federal Communications Commission to provide commercial mobile service, household goods carriers, petroleum tank truck carriers, bottled gas companies, taxicab companies, community television companies, charter party carriers, restricted parcel carriers, sight-seeing carriers, companies excluded from the definition of "public utility" by § 56-265.1 (b) (4) or by § 56-1.2 and compressed natural gas filling stations.

G. A water or sewer company that proposes to serve more than fifty customers shall incorporate as a public service company. A water or sewer company shall not serve more than fifty customers unless its articles of incorporation state that the corporation is to conduct business as a public service company. The two preceding sentences shall not apply to a water or sewer company incorporated before and operating a water or sewer system on January 1, 1970; however, as to any water or sewer system serving more than fifty customers, upon application to the Commission by a majority of the customers or by the company, a hearing may be held after thirty days' notice to the company and the system's customers or a majority thereof, and the Commission may order such, if any, improvements or rate changes or both as are just and reasonable. Upon ordering into effect any rate changes or improvements found to be just and reasonable, the water or sewer system shall remain subject to the Commission's regulatory authority in the same manner as a public utility for such reasonable period as the Commission may direct. Nothing in this subsection shall apply to persons described in § 56-1.2.

§ 13.1-627. General powers.

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

1. To sue and be sued, complain and defend in its corporate name;
2. To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
3. To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this Commonwealth, for managing the business and regulating the affairs of the corporation;
4. To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
5. To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
6. To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
7. To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
8. To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
9. To conduct its business, locate offices, and exercise the powers granted by this Act within or without this Commonwealth;
10. To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
11. To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, share purchase plans and benefit and incentive plans for any or all of the current or former directors, officers, employees, and agents of the corporation or any of its subsidiaries;
12. To make donations for the public welfare or for religious, charitable, scientific, literary or

educational purposes, except that corporations subject to regulation as to rates by the Commission shall not have power to make donations in excess of five percent of net income computed before federal and state taxes on income and without taking into account any deduction for gifts;

13. To make payments or donations, or do any other act, not inconsistent with this section or any other applicable law, that furthers the business and affairs of the corporation;

14. To pay compensation, or to pay additional compensation, to any or all directors, officers and employees on account of services previously rendered to the corporation, whether or not an agreement to pay such compensation was made before such services were rendered;

15. To insure for its benefit the life of any of its directors, officers or employees, to insure the life of any shareholder for the purpose of acquiring at his death shares owned by such shareholder and to continue such insurance after the relationship terminates;

16. To cease its corporate activities and surrender its corporate franchise; and

17. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a public service company, a banking corporation, an insurance corporation, a savings ~~and loan association~~ *institution* or a credit union shall have power to enter into partnership agreements, joint ventures, or other association of any kind with any person or persons. The foregoing limitations on public service companies, banking corporations, insurance corporations, savings ~~and loan associations~~ *institutions*, and credit unions ~~and industrial loan associations~~ shall not apply to the purchase by any such entity of any security of a limited liability company. The term "public service company" as used in this subsection shall not apply to railroads, which shall have the power given other corporations generally by this subsection. The foregoing limitation on public service companies shall not apply to partnership agreements, joint ventures or other associations where the purposes of such partnerships, joint ventures or other associations are found by the Commission to be consistent with subsection D of § 13.1-620 and Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 and are otherwise found by the Commission to be in the public interest. The foregoing limitation on public service companies shall not apply to partnership agreements, joint ventures or other associations between telephone companies and telephone companies, whether in corporate or other form, or between telephone companies and commonly owned affiliates of telephone companies for the purpose of providing domestic cellular radio telecommunication service.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings and loan associations, credit unions, industrial loan associations or other special types of corporations, shall not be deemed repealed or amended by any provision of this Act except where specifically so provided.

D. Each corporation which is deemed a private foundation, as defined in § 509 of the Internal Revenue Code, unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing, as defined in § 4941 (d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943 (c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code or make any taxable expenditures, as defined in § 4945 (d) of the Internal Revenue Code. This subsection shall apply to any corporation organized after December 31, 1969, under this chapter or under the Virginia Stock Corporation Act (§ 13.1-601 et seq.) enacted by Chapter 428 of the 1956 Acts of General Assembly; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508 (e) (2) (A) or (B) of the Internal Revenue Code shall apply or unless the board of directors of such corporation shall elect that such restrictions as contained in this subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.