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SENATE BILL NO. 1107

Offered January 20, 1997

A *BILL* to amend the Code of Virginia by adding in Title 13.1 a chapter numbered 14, consisting of articles numbered 1 through 9, containing sections numbered 13.1-1200 through 13.1-1256, relating to the Virginia BIDCO Act.

Patrons—Stosch, Holland, Howell and Norment; Delegates: Cantor, Keating and Wilkins

Referred to the 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 Title 13.1 a chapter numbered 14, consisting of articles numbered 1 through 9, containing sections numbered 13.1-1200 through 13.1-1256, as follows:

**CHAPTER 14.
VIRGINIA BIDCO ACT.**

Article 1.

Title, Purposes and Definitions.

§ 13.1-1200. *Title and purpose.*

A. *This chapter shall be known and may be cited as the Virginia BIDCO Act.*

B. *The purposes of this chapter are to do all of the following:*

1. *Promote economic development by encouraging the formation of business and industrial development corporations, a new type of private institution, to help meet the financing assistance and management assistance needs of business firms in this state.*

2. *Provide for a system of licensing, regulation, and enforcement that will enable business and industrial development corporations to satisfy eligibility requirements to participate, if they so choose, in the program of the small business administration pursuant to section 7(a) of the Small Business Act, Public Law 85-536, 15 U.S.C. § 636(a), and other programs for which they may be eligible.*

3. *Provide for a system of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement, and to promote competent management, accurate record keeping, and appropriate communication with shareholders; in order to provide the following:*

4. *Comfort to prospective shareholders so as to facilitate equity investments in business and industrial development corporations.*

5. *Comfort to prospective debt sources so as to facilitate the borrowing of money by business and industrial development corporations.*

6. *Safeguard the general reputation of business and industrial development corporations as a type of institution in order to increase the confidence of prospective equity investors in and prospective debt sources for those institutions.*

7. *Eliminate unnecessary restrictions which have discouraged the formation of business development corporations.*

§ 13.1-1201. *Definition.*

As used in this chapter, unless the context otherwise requires, the term:

"Affiliate" means, if used with respect to a specified person other than a natural person, a person controlling or controlled by that specified person, or a person controlled by a person who also controls the specified person.

"BIDCO" means a business and industrial development corporation licensed under this chapter.

"Business firm" means a person that transacts business on a regular and continual basis, or a person that proposes to transact business on a regular and continual basis.

"Commissioner" means the Commissioner of the Bureau of Financial Institutions within the Virginia State Corporation Commission.

"Control" means, if used with respect to a specified person, the power to direct or cause the direction of, directly or indirectly through one or more intermediaries, the management and policies of that specified person, whether through the ownership of voting securities; by contract, other than a commercial contract for goods or nonmanagement services; or otherwise. A natural person shall not be considered to control a person solely on account of being a director, officer, or employee of that person. A person who, directly or indirectly, owns of record or beneficially holds with power to vote, or holds proxies with discretionary authority to vote, twenty percent or more of the then outstanding voting securities issued by a corporation shall be rebuttably presumed to control that corporation.

"Controlling person" means, if used with respect to a specified person, a person who controls that

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60 specified person, directly or indirectly through one or more intermediaries.

61 "Corporate name" means the name of a corporation as set forth in the articles of incorporation of
62 that corporation.

63 "Incorporating statute" means the chapter of this title under which a licensee is incorporated.

64 "Insolvent" means a licensee that ceases to pay its debts in the ordinary course of business, that
65 cannot pay its debts as they become due, or whose liabilities exceed its assets.

66 "Interests of the licensee" includes the interests of shareholders of the licensee.

67 "License" means a license issued under this chapter authorizing a Virginia corporation to transact
68 business as a BIDCO.

69 "Licensee" means a Virginia corporation which is licensed under this chapter.

70 "Virginia corporation" means a corporation incorporated under the Virginia Stock Corporation Act
71 (§ 13.1-601, et seq.) or the Virginia Nonstock Corporation Act (§ 13.1-801, et seq.).

72 "Officer" means:

73 (i) If used with respect to a corporation, a person appointed or designated as an officer of that
74 corporation by or pursuant to applicable law or the articles of incorporation, or bylaws of that
75 corporation, or a person who performs with respect to that corporation functions usually performed by
76 an officer of a corporation.

77 (ii) If used with respect to a specified person other than a natural person or a corporation, a person
78 who performs with respect to that specified person functions usually performed by an officer of a
79 corporation with respect to that corporation.

80 "Order" means an approval, consent, authorization, exemption, denial, prohibition, or requirement
81 applicable to a specific case issued by the Commissioner. Order includes a condition of a license and
82 an agreement made by a person with the commissioner under this chapter.

83 "Person" means an individual, proprietorship, joint venture, partnership, trust, business trust,
84 syndicate, association, joint stock company, corporation, cooperative, government, agency of a
85 government, or any other organization. If used with respect to acquiring control of or controlling a
86 specified person, person includes a combination of two or more persons acting in concert.

87 "Principal shareholder" means a person that owns, directly or indirectly, of record or beneficially,
88 securities representing ten percent or more of the outstanding voting securities of a corporation.

89 "Subject person" means a controlling person, subsidiary, or affiliate of a licensee; a director, officer,
90 or employee of a licensee or of a controlling person, subsidiary, or affiliate of a licensee; or any other
91 person who participates in the conduct of the business of a licensee.

92 "Subsidiary" means, if used with respect to a licensee, a company or business firm which the licensee
93 holds control of as permitted by § 13.1-226 A 2, 3 or 4.

94 "This chapter" includes an order issued or rule promulgated under this chapter.

95 Article 2.

96 Regulation, Reporting, and Examination.

97 § 13.1-1202. Administration of chapter; powers and duties of Commissioner.

98 A. The Commissioner shall administer this chapter. The Commissioner may issue orders and
99 promulgate rules that, in the opinion of the Commissioner, are necessary to execute, enforce, and
100 effectuate the purposes of this chapter. Any rules promulgated shall be promulgated in accordance with
101 the Administrative Process Act, (§ 9-6.14:1, et seq.).

102 B. Whenever the Commissioner issues an order or license under this chapter, the Commissioner may
103 impose conditions that are necessary, in the opinion of the Commissioner, to carry out this chapter and
104 the purposes of this chapter.

105 C. The Commissioner may honor applications from interested persons for declaratory rulings
106 regarding any provision of this chapter.

107 D. Every final order, decision, license, or other official act of the Commissioner under this chapter is
108 subject to judicial review in accordance with law.

109 E. An application filed with the Commissioner under this chapter shall be in such a form and
110 contain such information as the Commissioner may require.

111 § 13.1-1203. Investigations by Commissioner; purpose.

112 A. The Commissioner may make public or private investigations within or outside this state that the
113 Commissioner considers necessary to determine whether to approve an application filed with the
114 Commissioner under this chapter, to determine whether a person has violated or is about to violate this
115 chapter, to aid in the enforcement of this chapter, or to aid in issuing an order or promulgating a rule
116 under this chapter.

117 B. For purposes of an investigation, examination, or other proceeding under this chapter, the
118 Commissioner may administer oaths and affirmations, subpoena witnesses, compel the attendance of
119 witnesses, take evidence, and require the production of books, papers, correspondence, memoranda,
120 agreements, or other documents or records which the Commissioner considers relevant or material to
121 the proceeding.

C. If a person fails to comply with a subpoena issued by the Commissioner or to testify with respect to a matter concerning which the person may be lawfully questioned, the circuit court, on application of the Commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

§ 13.1-1204. Service of process.

Service of process authorized to be made by the Commissioner in connection with a noncriminal proceeding under this chapter may be made by registered or certified mail.

§ 13.1-1205. Fees.

A. The Commissioner shall establish annually a schedule of fees sufficient to pay for the Bureau's costs of enforcing this chapter. The fees shall be as follows:

1. For filing an application for a license, not less than \$2,500 or more than \$8,000.

2. For filing an application for approval to acquire control of a licensee, not less than \$1,250 or more than \$6,000.

3. For filing an application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee, not less than \$1,250 or more than \$6,000. Two or more applications relating to the same merger, purchase, or sale may be filed for the same fee as for filing a single application.

4. For annual license renewal, not less than \$2,500 or more than \$8,000, payable at a time prescribed by the Commissioner. A license renewal fee not paid when due is subject to a penalty of twenty-five dollars for each day the fee is delinquent or \$1,000, whichever is less.

5. For examination of the licensee, not less than forty dollars or more than seventy dollars per hour for each examiner involved in the examination. If the Commissioner examines a licensee or a subsidiary of a licensee, within ten days after receiving a statement from the Commissioner, the licensee shall pay the fee, plus travel expenses.

B. A fee for filing an application with the Commissioner is nonrefundable and is to be paid at the time the application is filed with the Commissioner.

C. If any fees or penalties provided for in this chapter are not paid when required, the Attorney General may maintain an action against the delinquent licensee to recover the fees or penalties together with interest and costs.

D. A licensee or an affiliate or subsidiary of a licensee that fails to submit a report as required by § 13.1-1208 is subject to a penalty of twenty-five dollars for each day the report is delinquent or \$1,000, whichever is less.

E. Money collected under this section shall be paid into the state treasury to the credit of the Bureau of Financial Institutions and used only for the operation of the Bureau.

§ 13.1-1206. Books and records.

A. A licensee shall make and keep books, accounts, and other records in such a form and manner as the Commissioner may require. These records shall be kept at such a place and shall be preserved for such a length of time as the Commissioner may specify.

B. The Commissioner may require by order that a licensee write down any asset on its books and records to a valuation which represents its then value.

C. Not more than ninety days after the close of each calendar year or a longer period if specified by the Commissioner, a licensee shall file with the Commissioner an audit report containing all of the following:

1. Financial statements, including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, for a licensee that is a Virginia nonprofit corporation, comparable financial statements for, or as of the end of, the calendar year, prepared with an audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

2. A report, certificate, or opinion of the independent certified public accountant or independent public accountant who performs the audit, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

3. Other information that the Commissioner may require.

§ 13.1-1207. Books, accounts, records; person other than licensee; applicability of chapter.

A. If a person other than a licensee makes or keeps the books, accounts, or other records of that licensee, this chapter applies to that person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if that person were the licensee.

B. If a person other than an affiliate or subsidiary of a licensee makes or keeps any of the books, accounts, or other records of that affiliate or subsidiary, this chapter applies to that person with respect

183 to those books, accounts, and other records to the same extent as if that person were the affiliate or
184 subsidiary.

185 C. If the Commissioner considers it expedient, the Commissioner may require any particular licensee
186 to obtain the approval of the Commissioner before permitting another person to make or keep any of
187 the books, accounts, or other records of the licensee.

188 § 13.1-1208. Reports; filing; time; contents.

189 Each licensee, each affiliate of a licensee, and each subsidiary of a licensee shall file with the
190 Commissioner such reports as and when the Commissioner may require. A report under this section
191 shall be in such a form and shall contain such information as the Commissioner may require.

192 § 13.1-1209. Impact of chapter; annual publication; legislature; statistics.

193 The Commissioner shall publish annually and provide to the House Corporations, Insurance and
194 Banking Committee, and the Senate Committee on Commerce and Labor, trade and tourism information
195 on the impact of this chapter in promoting economic development in this state. At the minimum, the
196 information shall include aggregate statistics on each of the following:

197 1. The number and dollar amount of provisions of financing assistance made by licensees to business
198 firms.

199 2. The number and dollar amount of provisions of financing assistance made by licensees to business
200 firms classified in broad categories of industry such as divisions of the standard industrial classification
201 manual.

202 3. The number and dollar amount of provisions of financing assistance made by licensees to
203 minority-owned business firms and to woman-owned business firms.

204 4. Estimates of the number of jobs created or retained.

205 § 13.1-1210. Examination of licensee.

206 A. The Commissioner shall examine each licensee not less than once each calendar year.

207 B. The Commissioner may at any time examine a licensee or subsidiary of a licensee.

208 C. A director, officer, or employee of a licensee or of a subsidiary of a licensee being examined by
209 the Commissioner, or a person having custody of any of the books, accounts, or records of the licensee
210 or of the subsidiary, shall exhibit to the Commissioner, on request, any of the books, accounts, and
211 other records of the licensee or of the subsidiary and shall otherwise facilitate the examination so far as
212 it is in their power to do so.

213 D. If in the Commissioner's opinion it is necessary in the examination of a licensee or of a
214 subsidiary of a licensee, the Commissioner may retain a certified public accountant, attorney, appraiser,
215 or other person to assist the Commissioner. Within ten days after receipt of a statement from the
216 Commissioner, the licensee being examined shall pay the fees of a person retained by the Commissioner
217 under this subsection.

218 Article 3.

219 Licensing.

220 § 13.1-1211. BIDCO; application for licensure.

221 A Virginia corporation may apply to the Commissioner for licensure as a BIDCO. A person other
222 than a Virginia corporation shall not apply for a license.

223 § 13.1-1212. Approval of application; determining factors.

224 A. After a review of information regarding the directors, officers, and controlling persons of the
225 applicant, a review of the applicant's business plan, including at least three years of detailed financial
226 projections and other relevant information, and a review of additional information considered relevant
227 by the Commissioner, the Commissioner shall approve an application for a license if, and only if, the
228 Commissioner determines all of the following:

229 1. The applicant has a net worth, or firm financing commitments which demonstrate that the
230 applicant will have a net worth when the applicant begins transacting business as a BIDCO, in liquid
231 form available to provide financing assistance, that is adequate for the applicant to transact business as
232 a BIDCO as determined under subsection B.

233 2. Each director, officer, and controlling person of the applicant is of good character and sound
234 financial standing; each director and officer of the applicant is competent to perform his or her
235 functions with respect to the applicant; and the directors and officers of the applicant are collectively
236 adequate to manage the business of the applicant as a BIDCO.

237 3. It is reasonable to believe that the applicant, if licensed, will comply with this chapter.

238 4. The applicant has reasonable promise of being a viable, ongoing BIDCO and of satisfying the
239 basic objectives of its business plan.

240 B. In determining if the applicant has a net worth or firm financing commitments adequate to
241 transact business as a BIDCO, the Commissioner shall consider the types and variety of financing
242 assistance that the applicant plans to provide; the experience that the directors, officers, and controlling
243 persons of the applicant have in providing financing and managerial assistance to business firms; the
244 financial projections and other relevant information from the applicant's business plan; and whether the

applicant intends to operate as a profit or nonprofit corporation. Except as otherwise provided in this chapter, the commissioner shall require a minimum net worth of not less than one million dollars and not more than ten million dollars. The Commissioner may require a minimum net worth of less than one million dollars, but not less than \$500,000, if, in the context of the applicant's business plan, the initial capitalization amount is adequate for the applicant to transact business as a BIDCO because of special circumstances including, but not limited to, funded overhead, low overhead, or specialized opportunities.

C. For the purposes of subsection A, the Commissioner may find any of the following:

1. That a director, officer, or controlling person of an applicant is not of good character if the director, officer, or controlling person, or a director or officer of a controlling person, has been convicted of or has pleaded nolo contendere to a crime involving fraud or dishonesty.

2. That it is not reasonable to believe that an applicant, if licensed, will comply with this chapter, if the applicant has been convicted of or has pleaded nolo contendere to a crime involving fraud or dishonesty.

D. For purposes of subsection A, subsection C shall not be considered to be the only grounds upon which the Commissioner may find that a director, officer, or controlling person of an applicant is not of good character or that it is not reasonable to believe that an applicant, if licensed, will comply with this chapter.

§ 13.1-1213. Preliminary approval of license application; final approval; review by Commissioner.

A. A person may apply to the Commissioner for preliminary approval of an application for a license. Notwithstanding that commitments to invest in the equity of the applicant have not been obtained and that all directors and officers of the applicant have not been identified, the Commissioner may grant preliminary approval. In issuing an order granting preliminary approval, the Commissioner shall indicate that, for the Commissioner to determine that the requirements of § 13.1-1212 are satisfied, final approval is conditioned on review by the Commissioner of the applicant's completion of fund-raising, including the controlling persons, and review by the Commissioner of the completion of the roster of directors and officers. If an application for preliminary approval has been granted, before granting final approval of the application for a license, the Commissioner may request an updated balance sheet and such other information considered relevant by the Commissioner.

B. If a person files an application under this section, the fee required by § 13.1-1205 is payable at the time the application is filed with the Commissioner.

§ 13.1-1214. Denial of application.

If the Commissioner denies an application under §§ 13.1-1211 through 13.1-1213, the Commissioner shall provide the applicant with a written statement explaining the basis for the denial. issuance, posting, nontransferability.

§ 13.1-1215. Approval of application.

If an application for a license is approved and all conditions precedent to the issuance of that license are fulfilled, the Commissioner shall issue a license to the applicant. A licensee shall post the license in a conspicuous place in the licensee's principal office. A license is not transferable or assignable.

§ 13.1-1216 Approval of application; license, issuance, posting, nontransferability.

If an application for a license is approved and all conditions precedent to the issuance of that license are fulfilled, the Commissioner shall issue a license to the applicant. A licensee shall post the license in a conspicuous place in the licensee's principal office. A license is not transferable or assignable.

§ 13.1-1217. Use of name or title, prohibition.

A. Except as otherwise provided in subsection B, a person transacting business in this Commonwealth, other than a licensee, shall not use a name or title which indicates that the person is a business and industrial development corporation including, but not limited to, use of the term "BIDCO", and shall not otherwise represent that the person is a business and industrial development corporation or a licensee.

B. Before being issued a license under this chapter, a Virginia corporation that proposes to apply for a license or that applies for a license may perform, under a name that indicates that the corporation is a business and industrial development corporation, the acts necessary to apply for and obtain a license and to otherwise prepare to commence transacting business as a licensee. Such a corporation shall not represent that it is a licensee until after the license has been obtained.

§ 13.1-1218. License; meaning or effect;

A. A Virginia corporation that is licensed under another law of this Commonwealth or under any law of the United States may apply for and be issued a license under this chapter unless the transaction of business by that corporation as a licensee under another law of this state or a law of the United States violates this chapter or is contrary to the purposes of this chapter.

B. A Virginia corporation that is licensed under this chapter may apply for and be issued a license

under another law of this Commonwealth or a law of the United States unless the transaction of business by that corporation as a licensee under another law of this state or a law of the United States would violate this chapter or would be contrary to the purposes of this chapter.

§ 13.1-1219. Surrender of license; approval; conditions.

A. Upon approval of a two-thirds vote of its board of directors and after complying with subsection B, a licensee may apply to the Commissioner to have the Commissioner accept the surrender of the licensee's license. If the Commissioner determines that the requirements of this section have been satisfied, the Commissioner shall approve the application unless in the opinion of the Commissioner the purpose of the application is to evade a current or prospective action by the commissioner under Article 7.

B. Not less than sixty days before filing an application with the Commissioner under subsection A, a licensee shall notify all of its shareholders and all of its creditors of its intention to file the application. Each creditor shall be notified of the right to comment to the Commissioner. Each shareholder shall be notified of the right to file with the licensee an objection to the proposed surrender of the license within the sixty-day period and shall be advised that, if the shareholder files an objection, the shareholder should send a copy of the objection to the Commissioner. If shareholders representing twenty percent of the outstanding voting securities of the licensee file an objection, the licensee shall not proceed with the application under subsection A unless the application is approved by a vote of shareholders representing two-thirds of the outstanding voting securities of the licensee.

Article 4.

Corporate Matters.

§ 13.1-1220. Corporate name.

The corporate name of each licensee shall include the word "BIDCO". A licensee shall not transact business under a name other than its corporate name.

§ 13.1-1221. Directors, number.

A. The board of directors of each licensee shall consist of not less than seven directors.

B. The board of directors of each licensee shall hold a meeting not less than once each calendar quarter.

§ 13.1-1222. Director, officer; death, resignation or removal; election; appointment; time; written notice; additional information.

Within thirty days after the death, resignation, or removal of a director or officer; the election of a director; or the appointment of an officer, the licensee shall notify the Commissioner in writing of the event and shall provide any additional information which the Commissioner may require.

§ 13.1-1223. Dividends, payment to shareholder; conditions; dividend policies, review; withdrawal of approval.

A. A licensee shall not pay, or obligate itself to pay, a cash dividend or dividend in kind to its shareholders, unless that payment is consistent with a dividend policy which has been adopted by the licensee and approved by the Commissioner. In reviewing dividend policies under this section, the Commissioner shall be flexible in recognizing the special characteristics of BIDCOs and the diverse range of potentially appropriate dividend policies for BIDCOs, while at the same time protecting against unsafe or unsound acts which could threaten the viability of the licensee as an ongoing BIDCO. The Commissioner may at any time withdraw any previous approval of a dividend policy if the Commissioner determines that the withdrawal is necessary to prevent unsafe or unsound acts.

B. Without the prior approval of the Commissioner, a licensee shall not buy back, or obligate itself to buy back a share of stock from a shareholder.

Article 5.

Transaction of Business.

§ 13.1-1224. Office within Commonwealth.

A. A licensee shall maintain not less than one office in this Commonwealth.

B. A licensee shall not maintain an office at any place outside this Commonwealth.

C. Each office of a licensee shall be located in a place which is reasonably accessible to the public.

D. A licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate name of the licensee.

E. A licensee shall maintain at each of its offices personnel who are competent to conduct the business of such an office.

F. Upon written notice to the Commissioner, a licensee may establish, relocate, or close an office.

§ 13.1-1225. Business of licensee; prohibition.

A. The business of a licensee shall be the business of providing financing assistance and management assistance to business firms. A licensee shall not engage in a business other than the business of providing financing assistance and management assistance to business firms.

B. In addition to the powers and privileges provided to a licensee by this chapter, a licensee has all powers and privileges conferred by its incorporating statute which are not inconsistent with or limited

by this chapter. The powers of a licensee include, but are not limited to, all of the following:

1. To borrow money and otherwise incur indebtedness for its purposes, including issuance of corporate bonds, debentures, notes, or other evidence of indebtedness. A licensee's indebtedness may be secured or unsecured, and may involve equity features including, but not limited to, provisions for conversion to stock and warrants to purchase stock.

2. To make contracts.

3. To incur and pay necessary and incidental operating expenses.

4. To purchase, receive, hold, lease, or otherwise acquire, or to sell, convey, mortgage, lease, pledge, or otherwise dispose of, real or personal property, together with rights and privileges that are incidental and appurtenant to these transactions of real or personal property, if the real or personal property is for the licensee's use in operating its business or if the real or personal property is acquired by the licensee from time to time in satisfaction of debts or enforcement of obligations.

5. To make donations for charitable, educational, research, or similar purposes.

6. To implement a reasonable and prudent policy for conserving and investing its money before the money is used to provide financing assistance to business firms or to pay the expenses of the licensee.

§ 13.1-1226. Financing assistance; form; terms; conditions; purchase of securities; government program, participation, compliance with requirement.

A. A licensee may determine the form and the terms and conditions for financing assistance provided by that licensee to a business firm including, but not limited to, forms such as loans; purchase of debt instruments; straight equity investments such as purchase of common stock or preferred stock; debt with equity features such as warrants to purchase stock, convertible debentures, or receipt of a percent of net income or sales; royalty based financing; guaranteeing of debt; or leasing of property. A licensee may purchase securities of a business firm either directly or indirectly through an underwriter. A licensee may participate in the program of the small business administration pursuant to section 7(a) of the Small Business Act, Public Law 85-536, 15 U.S.C. § 636(a), or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing assistance or management assistance to business firms. If a licensee participates in a program referred to in this subsection, the licensee shall comply with the requirements of that program.

B. Management assistance provided by a licensee to a business firm may encompass both management or technical advice and management or technical services.

C. Financing assistance or management assistance provided by a licensee to a business firm shall be for the business purposes of that business firm.

D. A licensee may exercise the incidental powers that are necessary or convenient to carry on the business of, or are reasonably related to the business of, providing financing assistance and management assistance to business firms.

E. Except as provided in subsection F, in connection with an extension of credit by a person to a licensee or an extension of credit by a licensee to a business entity, the parties may agree to any rate of interest.

F. In connection with an extension of credit described in subsection E, a person shall not knowingly charge, take, or receive money or other property as interest on the loan at a rate exceeding twenty-five percent simple interest per annum. A person who violates this subsection is guilty of a felony punishable by imprisonment for not more than five years or a fine of not more than \$10,000, or both. As used in this subsection, "interest" does not include anything of value that is contingent on the performance or value of the borrower including, but not limited to, a percentage of net income of the borrower, royalties, stock in the borrower, warrants to purchase stock in the borrower, and convertibility.

§ 13.1-1227. Licensee holding control of business firm, prohibition; exception.

A. Either by itself or in concert with a director, officer, principal shareholder, or affiliate; another licensee; or a director, officer, principal shareholder, or affiliate of another licensee, a licensee shall not hold control of a business firm, except as follows:

1. If and to the extent necessary to protect the licensee's interest as creditor of, or investor in, the business firm, a licensee that had provided financing assistance to a business firm may acquire and hold control of that business firm. Unless the Commissioner approves a longer period, a licensee holding control of a business firm under this subdivision shall divest itself of the interest which constitutes holding control as soon as practicable or within three years after acquiring that interest, whichever is sooner.

2. With the approval of the Commissioner, a licensee may acquire and hold control of a corporation which has offices located only in this Commonwealth.

3. With the approval of the Commissioner, a licensee may acquire and hold control of a company located in this Commonwealth which is a local development company, whether or not such a development company is or may become certified by the Small Business Administration under § 503 of the Small Business Investment Act of 1958, 15 U.S.C. § 697.

429 4. With the approval of the Commissioner, a licensee may acquire and hold control of another
430 business firm with offices only in this Commonwealth which is engaged in no business other than the
431 business of providing financing assistance and management assistance to business firms.

432 5. With the approval of the Commissioner, a licensee may acquire and hold control of a business
433 firm not referred to in subdivisions 1 through 4. The Commissioner shall not approve an application
434 under this subdivision unless the Commissioner determines that such an approval will not cause the
435 amount of the licensee's investments in business firms covered by this subdivision to exceed fifteen
436 percent of the amount of the assets of the licensee and that in the Commissioner's judgment such an
437 approval will promote the purposes of this chapter. An approval by the Commissioner under this
438 subdivision shall be for a period of not more than three years, except that in a particular case the
439 Commissioner may subsequently extend the period beyond three years if the Commissioner determines
440 that a longer period is needed and is consistent with the purposes of this chapter.

441 B. If the Commissioner fails to issue an order approving or denying an application under subdivision
442 A 2 or 3, within forty-five days from receipt by the Commissioner of an application which complies with
443 subsection E of § 13.1-1202, the application shall be considered approved by the Commissioner.

444 C. For the purposes of subsection A, "hold control" means ownership, directly or indirectly, of
445 record or beneficially, of voting securities greater than:

446 1. For a business firm with outstanding voting securities held by fewer than fifty shareholders, forty
447 percent of the outstanding voting securities.

448 2. For a business firm with outstanding voting securities held by fifty or more shareholders,
449 twenty-five percent of the outstanding voting securities.

450 D. If a licensee anticipates acquiring and holding control of a business firm under subdivision A 1
451 the licensee shall file with the Commissioner a plan for acquiring and holding control of the business
452 firm that shall include at least all of the following:

453 1. The reasons it is necessary for the licensee to acquire and hold control of the business firm.

454 2. The percentage of outstanding voting securities of the business firm the licensee plans to own.

455 3. The licensee's proposed course of action upon obtaining control of the business firm.

456 4. The length of time the licensee anticipates it will be necessary to hold control of the business firm.

457 E. The Commissioner may require the licensee to demonstrate the necessity for the licensee to hold
458 control of a business firm under subdivision A 1.

459 § 13.1-1228. Transaction of business by licensee; manner.

460 A. A licensee shall transact its business in a safe and sound manner and shall maintain itself in a
461 safe and sound condition.

462 B. In determining whether a licensee is transacting business in a safe and sound manner or has
463 committed an unsafe or unsound act, the Commissioner shall not consider the risk of a provision of
464 financing assistance to a business firm, unless the Commissioner determines that the risk is so great
465 compared with the realistically expected return as to demonstrate gross mismanagement.

466 C. Subsection B does not limit the authority of the Commissioner to do any of the following:

467 1. Determine that a licensee's financing assistance to a single business firm or a group of affiliated
468 business firms is in violation of subsection A or constitutes an unsafe or unsound act, if the amount of
469 that financing assistance is unduly large in relation to the total assets or the total shareholders equity of
470 the licensee.

471 2. Require that a licensee maintain a reserve in the amount of anticipated losses.

472 3. Require that a licensee have in effect a written financing assistance policy, approved by its board
473 of directors, including credit evaluation and other matters. The Commissioner shall not require that a
474 licensee adopt a financing assistance policy that contains standards which prevent the licensee from
475 exercising needed flexibility in evaluating and structuring financing assistance to business firms on a
476 deal by deal basis.

477 § 13.1-1229. "Associate," "relative," meaning.

478 A. For purposes of this section:

479 "Associate" means that term as defined as in Article 8.

480 "Relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law,
481 brother-in-law, daughter-in-law, sister-in-law, grandparent, grandchild, nephew, niece, uncle, or aunt.

482 B. If a licensee provides financing assistance to a business firm or engages in another business
483 transaction, and if that financing assistance or transaction involves a potential conflict of interest, the
484 terms and conditions under which the licensee provides the financing assistance or engages in the
485 transaction shall not be less favorable to the licensee than the terms and conditions that would be
486 required by the licensee in the ordinary course of business if the transaction did not involve a potential
487 conflict of interest. Each person who participates in the decision of the licensee relating to a transaction
488 described in this section and has knowledge of a potential conflict of interest involving that transaction
489 shall take care that the potential conflict of interest is disclosed in the financing documents of the
490 transaction or, for a business transaction not involving financing assistance, in another appropriate

document.

C. For the purposes of subsection B, transactions engaged in by a licensee which involve a potential conflict of interest include, but are not limited to, the following:

1. Providing financing assistance to a principal shareholder of the licensee, to a person controlled by a principal shareholder of the licensee, or to a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of the licensee.

2. Providing financing assistance to a business firm to which a principal shareholder of the licensee; a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of a licensee; or a person controlled by a principal shareholder of the licensee provides or plans to provide contemporaneous financing assistance.

3. Providing financing assistance to a business firm which has or is expected to have a substantial business relationship with another business firm which has a director, officer, or controlling person who is also a director, officer, or controlling person of the licensee or who is the spouse of a director, officer or controlling person of the licensee.

4. Providing financing assistance to a business firm if that business firm, or a director, officer, or controlling person of that business firm, contemporaneously has lent or will lend money to an associate of the licensee.

5. Providing financing assistance for the purchase of property of an associate or principal shareholder of the licensee.

6. Selling or otherwise transferring any of its assets to an associate or principal shareholder of the licensee.

D. Nothing in this section or in any other section of this chapter limits the authority of the Commissioner to determine that an act involves a conflict of interest and therefore is an unsafe or unsound act.

§ 13.1-1230. Lien or security interest; prohibition; exception.

Except with the approval of the Commissioner, a licensee shall not provide a lien on or security interest in any of its property for the purpose of securing an obligation of, or an obligation incurred for the benefit of, another person.

Article 6.

Mergers and Acquisitions.

§ 13.1-1231. Acquiring control of licensee.

A. Without the prior approval of the commissioner, a person shall not acquire control of a licensee.

B. With respect to an application for approval to acquire control of a licensee, if the Commissioner determines that the applicant and the directors and officers of the applicant are of good character and sound financial standing; that it is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with this chapter; and that the applicant's plans, if any, to make a major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee, the Commissioner shall approve the application. If, after notice and a hearing, the Commissioner determines otherwise, the Commissioner shall deny the application.

C. For purposes of subsection B, the Commissioner may determine any of the following:

1. That an applicant or a director or officer of an applicant is not of good character if that person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

2. That an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee if the plan provides for a person to become a director or officer of the licensee and that person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

D. The conditions described in subsection C are not the only conditions upon which the Commissioner may determine that an applicant or a director or an officer of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee.

§ 13.1-1232. Merger with another corporation; prohibition; exceptions.

A. A licensee shall not merge with another corporation unless:

1. If the licensee is the surviving corporation, the merger is approved by the commissioner.

2. If the licensee is a disappearing corporation, the surviving corporation is a licensee and the merger is approved by the Commissioner.

B. A licensee shall not purchase all or substantially all of the business of another person unless the purchase is approved by the Commissioner.

C. A licensee shall not sell all or substantially all of its business or of the business of any of its offices to another person unless that other person is a licensee and the sale is approved by the Commissioner.

D. The Commissioner shall approve an application for approval of a merger, purchase, or sale, if,

552 and only if, the Commissioner determines all of the following:

553 1. That the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee.

554 2. That, upon consummation of the merger, purchase, or sale, it is reasonable to believe that the
555 acquiring licensee will comply with this chapter.

556 3. That the merger, purchase, or sale will not have a major detrimental impact on competition in the
557 providing of financial assistance or management assistance to business firms, or if there will be such a
558 detrimental impact, the merger, purchase, or sale is necessary in the interests of the safety and
559 soundness of any of the parties to the merger, purchase, or sale, or is otherwise, on balance, in the
560 public interest.

561 Article 7.

562 Enforcement.

563 § 13.1-1233. Violation of chapter; action; injunction; mandamus; appointment of receiver or
564 conservator; bond.

565 If in the opinion of the Commissioner, a person violates, or there is reasonable cause to believe that
566 a person is about to violate this chapter, the Commissioner may bring an action in the name of the
567 people of this state in a circuit court to enjoin the violation or to enforce compliance with this chapter.
568 Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandamus
569 shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's
570 assets. The court shall not require the Commissioner to post a bond in an action brought under this
571 chapter.

572 § 13.1-1234. Violation; cease and desist order.

573 A. If the Commissioner finds that a person has violated or that there is reasonable cause to believe
574 that a person is about to violate § 13.1-1216, the Commissioner may order the person to cease and
575 desist from the violation unless and until the person is issued a license.

576 B. Within thirty days after an order is issued under subsection A, the person to whom the order is
577 directed may file with the Commissioner an application for a hearing on the order. If the Commissioner
578 fails to commence a hearing within fifteen business days after that application is filed or within a longer
579 period to which the person consents, the order shall be considered rescinded. Upon the hearing, the
580 Commissioner shall affirm, modify, or rescind the order. The right of a person to whom an order is
581 issued under subsection A to petition for judicial review of the order is not affected by the failure of the
582 person to apply to the Commissioner for a hearing on the order issued under this subsection.

583 § 13.1-1235. Notice; hearing; violation of chapter; unsafe or unsound action; cease and desist order;
584 correction of condition.

585 A. If, after notice and a hearing, the Commissioner determines that a licensee or a subject person of
586 a licensee has violated or is violating, or that there is reasonable cause to believe that a licensee or
587 subject person of a licensee is about to violate, this chapter or another applicable law, or that a
588 licensee or subject person of a licensee has engaged or participated or is engaging or participating, or
589 that there is a reasonable cause to believe that a licensee or subject person of a licensee is about to
590 engage or participate, in an unsafe or unsound act with respect to the business of that licensee, the
591 Commissioner may order that licensee or subject person to cease and desist from the action or
592 violation. The order may require the licensee or subject person to take affirmative action to correct any
593 condition resulting from the action or violation.

594 B. If the Commissioner determines that any of the factors set forth in subsection A are true with
595 respect to a licensee or subject person of a licensee and that the action or violation is likely to cause
596 the insolvency of or substantial dissipation of the assets or earnings of the licensee; is likely to seriously
597 weaken the condition of the licensee; or is likely to otherwise seriously prejudice the interests of the
598 licensee before the completion of proceedings conducted under subsection A, the Commissioner may
599 order the licensee or subject person to cease and desist from that action or violation. The order may
600 require the licensee or subject person to take affirmative action to correct any condition resulting from
601 the action or violation.

602 C. Within thirty days after an order is issued under subsection B, the licensee or subject person of a
603 licensee to whom the order is directed may file with the Commissioner an application for a hearing on
604 the order. If the Commissioner fails to commence a hearing within fifteen business days after the
605 application is filed or within a longer period to which the licensee or subject person consents, the order
606 shall be considered rescinded. Upon the hearing, the Commissioner shall affirm, modify, or rescind the
607 order. The right of a licensee or subject person to whom an order is issued under subsection B to
608 petition for judicial review of the order is not affected by the failure of the licensee or subject person to
609 apply to the Commissioner for a hearing on the order issued under this subsection.

610 § 13.1-1236. Subject person of licensee; removal from office; participation in conduct of business,
611 prohibition; notice; hearing; grounds.

612 A. The Commissioner may issue an order removing a subject person of a licensee from his or her
613 office, if any, with the licensee and prohibiting the subject person from further participating in any

manner in the conduct of the business of the licensee, if, after notice and a hearing, the Commissioner determines all of the following are true:

1. The subject person has violated this chapter or another applicable law; the subject person has engaged or participated in an unsafe or unsound act with respect to the business of the licensee; or the subject person has engaged or participated in an act which constitutes a breach of the subject person's fiduciary duty.

2. The act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, or the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty.

3. The act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee.

B The Commissioner may issue an order removing the subject person from his or her office with the licensee, if any, and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner, if, after notice and a hearing, the Commissioner determines that, by engaging or participating in an act with respect to a financial or other business institution which resulted in substantial financial loss or other damage, the subject person of a licensee has demonstrated both of the following:

1. Dishonesty or willful or continuing disregard for the safety and soundness of the financial or other business institution.

2. Unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

3. If the Commissioner determines that the factors set forth in subsection A or B are true with respect to a subject person of a licensee, and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the Commissioner immediately suspend the subject person from his or her office, if any, with the licensee and prohibit the subject person from further participating in any manner in conducting the business of the licensee, the Commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in conducting the business of the licensee, except with the consent of the Commissioner.

D. Within thirty days after an order is issued under subsection C, the subject person of a licensee to whom the order is directed may file with the Commissioner an application for a hearing on the order. If the Commissioner fails to begin a hearing within fifteen business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the hearing, the Commissioner shall affirm, modify, or rescind the order. The right of a subject person of a licensee to whom an order is issued under subsection C to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the Commissioner for a hearing on the order issued under this subsection.

E. A person to whom an order is issued under this section may apply to the Commissioner to modify or rescind the order. The Commissioner shall not modify or rescind the order unless the Commissioner determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this chapter.

F. As used in this section, "office", if used with respect to a licensee, means the position of director, officer, or employee of the licensee or of a subsidiary of the licensee.

§ 13.1-1237. Dishonesty or breach of trust; order suspending subject person; participation in conduct of business, prohibition; exception.

A. If the Commissioner determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust, and that the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the Commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the consent of the Commissioner.

B. If the Commissioner determines that a subject person or former subject person of a licensee to whom an order was issued under subsection A, or another subject person of a licensee, has been convicted of a crime which is punishable by imprisonment for a term of not less than one year and which involves dishonesty or breach of trust, and that the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the Commissioner may issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the licensee

675 and prohibiting the subject person from further participating in any manner in the conduct of the
676 business of the licensee, except with the prior consent of the Commissioner.

677 C. Within thirty days after an order is issued under subsection A or B, the subject person of a
678 licensee to whom the order is directed may file with the Commissioner an application for a hearing on
679 the order. If the Commissioner fails to commence a hearing within fifteen business days after the
680 application is filed or within a longer period to which the subject person consents, the order shall be
681 considered rescinded. Upon the hearing, the Commissioner shall affirm, modify, or rescind the order.
682 The right of a subject person or former subject person of a licensee to whom an order is issued under
683 subsection A or B to petition for judicial review of the order is not affected by the failure of the person
684 to apply to the Commissioner for a hearing on the order issued under this subsection.

685 D. The fact that a subject person of a licensee charged with a crime involving dishonesty or breach
686 of trust is not convicted of the crime shall not preclude the Commissioner from issuing an order to the
687 subject person under any other provision of this chapter.

688 E. A person to whom an order is issued under this section may apply to the Commissioner to modify
689 or rescind the order. The Commissioner shall not modify or rescind the order unless the Commissioner
690 determines that it is in the public interest to do so and that it is reasonable to believe that the person, if
691 and when he or she becomes a subject person of a licensee, will comply with this chapter.

692 F. As used in this section, "office", if used with respect to a licensee, means the position of director,
693 officer, or employee of the licensee or of a subsidiary of the licensee.

694 § 13.1-1238. Communication or order; disclosure to shareholders; form; manner.

695 If, in the opinion of the Commissioner, disclosure to shareholders regarding a matter is warranted,
696 the Commissioner may require a licensee, in such a form and manner as the Commissioner may specify,
697 to disclose to the shareholders of a licensee the results of a communication or order from the
698 Commissioner addressed to the licensee or to a subject person of the licensee.

699 § 13.1-1239. Meeting; board of directors; notice; time; contents; personal service; mail.

700 A. If the Commissioner considers it expedient, the Commissioner may call a meeting of the board of
701 directors of a licensee by giving notice of the time, place, and purpose of the meeting not less than five
702 days before the meeting to each director either by personal service or by registered or certified mail
703 sent to the director's last known address as shown in the records of the Commissioner.

704 B. If the Commissioner considers it expedient, the Commissioner may call a meeting of the
705 shareholders of a licensee by giving notice of the time, place, and purpose of the meeting not less than
706 five days before the meeting to each shareholder either by personal service or by registered or certified
707 mail sent to the shareholder's last known address as shown by the books of the licensee. The licensee
708 shall pay the expenses of the notice and of a meeting called under this subsection.

709 § 13.1-1240. Order to refrain from providing additional financial assistance; notice; hearing;
710 grounds.

711 A. The Commissioner may issue an order directing a licensee to refrain from providing any
712 additional financing assistance to business firms if, in the opinion of the Commissioner, the order is
713 necessary to protect the interests of the licensee or the public interest, and if, after notice and a
714 hearing, the Commissioner determines that any of the following are true:

715 1. The licensee or a controlling person, subsidiary, or affiliate of the licensee has violated this
716 chapter or another applicable law.

717 2. The licensee is conducting its business in an unsafe and unsound manner.

718 3. The licensee is in a condition that makes it unsafe or unsound for the licensee to transact
719 business.

720 4. The licensee has ceased to transact business as a business and industrial development
721 corporation.

722 5. The licensee is insolvent.

723 6. The licensee has suspended payment of its obligations, has made an assignment for the benefit of
724 its creditors, or has admitted in writing its inability to pay its debts as they become due.

725 7. The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other
726 relief under a bankruptcy, reorganization, insolvency, or moratorium law, or that a person has applied
727 for such relief under such a law against a licensee and the licensee has by any affirmative act approved
728 of or consented to the action or such relief has been granted.

729 8. A fact or condition exists which would have been grounds for denying the application if the fact
730 or condition had existed at the time the licensee applied for its license.

731 B. If the Commissioner determines that any of the factors set forth in subsection A are true with
732 respect to a licensee and that it is necessary for the protection of the interests of the licensee or the
733 public interest that the Commissioner immediately issue an order directing the licensee to refrain from
734 providing any additional financing assistance to business firms, the commissioner may issue such an
735 order without a hearing. Within thirty days after an order is issued under this subsection, the licensee to
736 whom the order is directed may file with the Commissioner a request for a hearing on the order. If the

Commissioner fails to commence a hearing within fifteen business days after the request is filed or within a longer period to which the licensee consents, that order shall be considered rescinded. Upon the hearing, the Commissioner shall affirm, modify, or rescind the order.

C. With the consent of the Commissioner, a licensee which has been the subject of an order under subsection A or B may resume providing financing assistance to business firms under such conditions as the Commissioner may prescribe.

D. A person to whom an order is issued under subsection A or B may apply to the Commissioner to modify or rescind the order. The Commissioner shall not grant the application unless the Commissioner determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when the order is modified or rescinded, will comply with this chapter.

§ 13.1-1241. Appointment of conservator; expenses; reimbursement; payment.

A. If the Commissioner finds that any of the factors set forth in § 13.1-1240 are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the Commissioner take immediate possession of the property and business of the licensee, the Commissioner may appoint a conservator for the licensee. The Commissioner may appoint as conservator one the employees of the Bureau of Financial Institutions or some other competent and disinterested person. The Bureau of Financial Institutions shall be reimbursed out of the assets of the conservatorship for all sums expended by the Bureau in connection with the conservatorship as expenses. Upon the approval of the Commissioner, the expenses of the conservatorship shall be paid out of the assets of the licensee. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution is made.

B. Under the direction of the Commissioner, the conservator shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of the licensee or any other action as may be necessary to conserve the assets of the licensee or ensure payment of obligations of the licensee pending further disposition of its business as provided by law. At any appropriate time, the Commissioner may terminate the conservatorship and permit the licensee to resume the transaction of its business subject to the terms, conditions, restrictions, and limitations the Commissioner may prescribe.

C. If in the opinion of the Commissioner it is appropriate that the licensee be liquidated, the Commissioner, with the attorney general representing the Commissioner, may apply to the circuit court for the county in which the principal office of the licensee is located for the appointment of a receiver for the licensee, if the Commissioner determines that any of the following are true:

1. The licensee is insolvent.
2. The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.
3. The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law.
4. A person has applied for the relief described under subdivision 3 against any licensee and that licensee has by an affirmative act approved of or consented to the action or the relief has been granted.
5. The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

D. If a receiver is appointed under subsection C, the receiver shall liquidate the property and business of the licensee, as if the licensee were a bank.

§ 13.1-1242. Violation of chapter; civil penalty; disposition.

A. After notice and a hearing, the Commissioner finds that a person has violated this chapter, the Commissioner may order that person to pay to the Commissioner a civil penalty in the amount the Commissioner specifies. However, the amount of the civil penalty shall not exceed \$1,000 for each violation, or in the case of a continuing violation, \$1,000 for each day for which the violation continues. Money collected for a civil penalty under this section shall be paid into the state treasury and credited to the general fund of this state.

B. This section does not apply to any act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the Commissioner, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

C. The provisions of subsection A are additional to, and not alternative to, other provisions of this chapter which authorize the Commissioner to issue orders or to take other action on account of a violation of this chapter. A person who is convicted under section 819 on account of a violation of Article 8 shall not be liable to pay a civil penalty under subsection A on account of that violation. A person who pays a civil penalty under subsection A on account of a violation of Article 8 shall not be liable to prosecution under § 13.1-1253 on account of that violation.

Article 8.

*Certain Unlawful Activities.**§ 13.1-1243. Definitions.*

A. As used in this article, unless the context otherwise requires:

"Advisor", means a person who regularly provides legal, accounting, or management services or advice to a licensee.

"Associate" means, if used with respect to a licensee:

(i) A controlling person, director, officer, agent, or advisor of that licensee.

(ii) A director, officer, or partner of a person referred to in clause (i).

(iii) A person who controls, is controlled by, or is under common control with a person referred to in clause (i), directly or indirectly through one or more intermediaries.

(iv) Any close relative of any person referred to in clause (i).

(v) A person of which a person referred to in clauses (i) to (iv) is a director or officer.

(vi) A person in which a person referred to in clauses (i) to (iv), or any combination of those persons acting in concert, owns or controls, directly or indirectly, a twenty percent or greater equity interest.

"Close relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, or sister-in-law.

"Closing services" means services performed in connection with the providing of financing assistance. Closing services includes, but is not limited to, appraising property and preparing credit reports. Closing services does not include a service performed after the providing of financing assistance.

"Short-term financing assistance" means financing assistance with a term of not more than five years.

B. For the purposes of subsection A:

1. A person who is an associate within six months before or after a licensee provides financing assistance shall be considered to be an associate as of the date that licensee provides that financing assistance.

2. If a licensee, in order to protect its interests, designates a person to serve as a director of, officer of, or in any capacity in the management of a business firm to which that licensee provides financing assistance, that person shall not, on that account, be considered to have a relationship with that business firm. This subdivision does not apply if the person has, directly or indirectly, any other financial interest in the business firm or if the person, at any time before the licensee provides the financing assistance, served as a director of, officer of, or in any other capacity in the management of the business firm for a period of thirty days or more.

§ 13.1-1244. Application or report; misrepresentation or omission of material fact.

A person shall not willfully make an untrue statement of a material fact in an application or report filed with the Commissioner under this chapter, or willfully omit to state in such an application or report a material fact required to be stated in the application or report.

§ 13.1-1245. Books, accounts, records; inspection; copies.

A person having custody of any of the books, accounts, or other records of a licensee shall not willfully refuse to allow the Commissioner, upon request, to inspect or make copies of any of those books, accounts, or other records.

§ 13.1-1246. Books, accounts, records; false entry; alteration; concealment; destruction.

A person shall not, with intent to deceive a director, officer, employee, auditor, or attorney of a licensee; the Commissioner; or a governmental agency, make a false entry in the books, accounts, or other records of that licensee; omit to make an entry in those books, accounts, or other records which that person is required to make; or alter, conceal, or destroy any of those books, accounts, or other records.

§ 13.1-1247. Financing assistance to associate of licensee.

A licensee shall not provide, directly or indirectly, financing assistance to an associate of the licensee.

§ 13.1-1248. Financing assistance to discharge obligation; inapplicability of section.

A licensee shall not provide, directly or indirectly, financing assistance to discharge, or to free other money for use in discharging, in whole or in part, an obligation to an associate of that licensee. This section does not apply to a transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

§ 13.1-1249. Business firm provided with financing assistance by associate of licensee; prohibition; conditions; difference in kind of assistance; burden of proof.

A licensee shall not provide, directly or indirectly, financing assistance to a business firm to which an associate of that licensee provides financing assistance, either contemporaneously with, or within one year before or after, the providing of financing assistance by the licensee, if the terms on which the licensee provides financing assistance are less favorable to the licensee than the terms on

which the associate provides financing assistance to the business firm. If the financing assistance provided by the associate of the licensee is of a different kind from the financing assistance provided by the licensee, the burden shall be on the licensee to prove that the terms on which the licensee provided financing assistance were at least as favorable to the licensee as the terms on which the associate provided financing assistance to the business firm.

B. This section does not apply to any of the following:

1. If the associate is a controlling person of the licensee and is also the only shareholder of the licensee.

2. If the associate is a subsidiary of the licensee.

3. A transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

§ 13.1-1250. Business firm provided with financing assistance by associate of licensee; prohibition; conditions; difference in kind of assistance; burden of proof.

A. A licensee shall not provide, directly or indirectly, financing assistance to a business firm to which an associate of that licensee provides financing assistance, either contemporaneously with, or within one year before or after, the providing of financing assistance by the licensee, if the terms on which the licensee provides financing assistance are less favorable to the licensee than the terms on which the associate provides financing assistance to the business firm. If the financing assistance provided by the associate of the licensee is of a different kind from the financing assistance provided by the licensee, the burden shall be on the licensee to prove that the terms on which the licensee provided financing assistance were at least as favorable to the licensee as the terms on which the associate provided financing assistance to the business firm.

B. This section does not apply to any of the following:

1. If the associate is a controlling person of the licensee and is also the only shareholder of the licensee.

2. If the associate is a subsidiary of the licensee.

3. A transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

§ 13.1-1251. Financing assistance; compensation, prohibition; bona fide closing fees, inapplicability of section; conditions.

An associate of a licensee shall not receive, directly or indirectly, from a person to whom that licensee provides financing assistance, compensation in connection with the providing of that financing assistance or anything of value for procuring, influencing, or attempting to procure or influence the licensee's action with respect to the providing of the financing assistance. This section does not apply to the receipt of fees by an associate of a licensee for bona fide closing services performed by that associate if all of the following are true:

1. The associate, with the consent and knowledge of the person to whom the financing assistance is provided, is designated by the licensee to perform the services.

2. The services are appropriate and necessary in the circumstances.

3. The fees for the services are approved as reasonable by the licensee.

4. The fees for the services are collected by the licensee on behalf of the associate.

§ 13.1-1252. Exemption; order or rules; public interest.

A. By such orders or rules the commissioner considers necessary and appropriate, the commissioner may exempt from §§ 13.1-1247 through 13.1-1251, either unconditionally or upon specified terms and conditions and for specified periods, a person or transaction or class of persons or transactions, if the commissioner finds that the exemption is in the public interest and that the regulation of the person, transaction, or class is not necessary for the purposes of this chapter.

B. In exempting a person or transaction or class of persons or transactions, the Commissioner shall give consideration, as considered appropriate by the Commissioner, to conflict of interest provisions of federal law or regulation that may be applicable to that person or transaction governing participants in federal financing programs.

§ 13.1-1253. Violation; penalty.

A. A person who knowingly commits an act which act violates this chapter shall be guilty of a Class 1 misdemeanor.

B. This section does not apply to an act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the Commissioner, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

C. Nothing in this chapter limits the power of the Commonwealth to punish a person for an act which constitutes a crime under any statute.

General Provisions.

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922 § 13.1-1254. *Construction.*923 *This chapter shall be liberally construed to accomplish its purposes.*924 § 13.1-1255. *Proceedings; rules; civil penalties; Administrative Procedures Act; exempt proceedings.*925 *A proceeding to promulgate rules or a proceeding regarding civil penalties under § 13.1-1242 shall*
926 *be subject to the Administrative Process Act (§ 9-6.14:1 et seq.). Any other proceedings under this*
927 *chapter are exempt from the provisions of such act.*928 § 13.1-1256. *Incorporating statute, application to licensee; exception.*929 *Except as otherwise provided in this section, the provisions of a licensee's incorporating statute*
930 *apply to the licensee. If a provision of the licensee's incorporating statute conflicts with any provision of*
931 *this chapter, this chapter controls.*