

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 231

An Act to amend and reenact §§ 6.1-398 and 6.1-399 of the Code of Virginia and to repeal §§ 6.1-400, 6.1-402, 6.1-405, and 6.1-407 of the Code of Virginia, relating to banking; acquisitions of Virginia banks by out-of-state bank holding companies.

[S 243]

Approved April 2, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-398 and 6.1-399 of the Code of Virginia are amended and reenacted as follows:

§ 6.1-398. Definitions.

As used in this chapter, unless a different meaning is required by the context, the following words or phrases shall have the following meanings:

"Acquire" means:

1. The merger or consolidation of one bank holding company with another bank holding company;
2. The acquisition by a bank holding company of direct or indirect ownership or control of voting shares of another bank holding company or a bank, if, after such acquisition, the bank holding company making the acquisition will directly or indirectly own or control more than five percent of any class of voting shares of the other bank holding company or the bank;

3. The direct or indirect acquisition by a bank holding company of all or substantially all of the assets of another bank holding company or of a bank; or

4. Any other action that would result in direct or indirect control by a bank holding company of another bank holding company or a bank.

5. The term "acquire" does not permit the branching or merging of banks across state lines.

"Bank" shall have the same meaning set forth in 12 U.S.C. § 1841 (c).

"Bank holding company" shall have the same meaning set forth in 12 U.S.C. § 1841 (a) (1).

"Control" shall have the same meaning set forth in 12 U.S.C. § 1841 (a) (2).

"Home state" means:

1. With respect to a national bank, the state in which the main office is located;
2. With respect to a state bank, the state by which the bank is chartered; and
3. With respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of (i) July 1, 1966, or (ii) the date on which the company becomes a bank holding company under the federal Bank Holding Company Act (12 U.S.C. § 1841 ff).

"Principal place of business of a bank holding company" shall be the state in which the largest amount of the deposits of its bank subsidiaries (excluding off-shore deposits) is located as of the end of the last calendar year.

"Out-of-state bank holding company" means a bank holding company:

1. That has its principal place of business in a state other than Virginia; and
2. That neither is controlled by nor is a foreign bank as defined in the International Banking Act of 1978 (12 U.S.C. § 3101 (7)) other than a foreign bank which has designated prior to January 1, 1984, a state within the region as defined in this section prior to July 1, 1994, as its home state pursuant to 12 U.S.C. § 3103 (e) that has as its home state a state other than Virginia.

"State" means any state of the United States or the District of Columbia.

"Subsidiary" with respect to a bank means:

1. Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote;

2. Any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or

3. Any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the Commission, after notice and opportunity for hearing.

"Virginia bank" means a bank that:

1. Is organized under the laws of this Commonwealth or of the United States;
2. Has its main office and branches, if any (excluding off-shore branches), located only in this Commonwealth Virginia as its home state; and
3. Is not a bank acquired under the provisions of § 6.1-392.

"Virginia bank holding company" means a bank holding company that:

1. Has its principal place of business in this Commonwealth Virginia as its home state; and

2. That Is not controlled by a bank holding company other than a Virginia bank holding company.

§ 6.1-399. Acquisitions by out-of-state bank holding companies.

A. An out-of-state bank holding company that does not have a Virginia bank subsidiary other than a Virginia bank subsidiary that was acquired either in a transaction involving assistance by the Federal Deposit Insurance Corporation or, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, as provided in § 3 (a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. § 1842 (a)), may acquire a Virginia bank holding company or a Virginia bank with the approval of the Commission. The out-of-state bank holding company shall submit to the Commission an application for approval of such acquisition, which application may be approved in the event provided: (i) *the out-of-state bank holding company complies with the application requirements of subsection A of § 6.1-383.1 of this title and* (ii) *the State Corporation Commission does not disapprove the application, after the investigation prescribed in § 6.1-383.2.*

1. The Commission determines that the laws of the state in which the out-of-state bank holding company making the acquisition has its principal place of business permit Virginia bank holding companies meeting the criteria in this chapter to acquire banks and bank holding companies in that state;

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

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

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

B. An out-of-state bank holding company that has a Virginia bank subsidiary other than a Virginia bank subsidiary that was acquired either in a transaction involving assistance by the Federal Deposit Insurance Corporation or, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, as provided in section 3 (a) of the Bank Holding Company Act of 1956 as amended (12 U.S.C. § 1842 (a)), may acquire any Virginia bank or Virginia bank holding company with the approval of the Commission. The out-of-state bank holding company shall submit to the Commission an application for approval of such acquisition, which application may be approved in the event:

1. The Commission determines either that the Virginia bank sought to be acquired has been in existence and continuously operating for more than two years or that all of the bank subsidiaries of the Virginia bank holding company sought to be acquired have been in existence and continuously operating for more than two years. The Commission may approve the acquisition by an out-of-state bank holding company of all or substantially all of the shares of a bank organized solely for the purpose of facilitating the acquisition of a bank that has been in existence and continuously operating as a bank for more than two years or the trust department or trust operations of such a bank; and

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

C. The period of existence and continuous operation of any Virginia bank which has merged into, or transferred all or substantially all of its assets, or transferred its trust department or trust operations to a Virginia bank or trust subsidiary, as defined in § 6.1-32.2, shall be included in the period of existence and continuous operation of the successor Virginia bank or trust subsidiary for purposes of satisfying the longevity requirements of this section.

2. That §§ 6.1-400, 6.1-402, 6.1-405, and 6.1-407 of the Code of Virginia are repealed.