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HOUSE BILL NO. 2251

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking
on February 5, 1999)

(Patron Prior to Substitute—Delegate Woodrum)

A BILL to amend and reenact § 6.1-5 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 2 of Title 6.1 an article numbered 3.3, consisting of sections numbered 6.1-32.31 through 6.1-32.45, relating to multistate trust institutions.

Be it enacted by the General Assembly of Virginia:

1. That § 6.1-5 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 6.1 an article numbered 3.3, consisting of sections numbered 6.1-32.31 through 6.1-32.45, as follows:

§ 6.1-5. Who shall not do a banking or trust business.

No person, copartnership or corporation, except corporations duly chartered and already conducting the banking business or trust business in this Commonwealth under authority of the laws of this Commonwealth or the United States, or which shall hereafter be incorporated under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, and except banks which may be authorized, after July 1, 1995, to establish and operate one or more branches in this Commonwealth under Article 5.1 (§ 6.1-44.1 et seq.) or 5.2 (§ 6.1-44.15 et seq.) of this chapter, *and except trust institutions which may be authorized to establish and operate one or more trust offices in this Commonwealth under Article 3.3 (§ 6.1-32.31 et seq.) of this chapter*, shall engage in the banking business or trust business in this Commonwealth, and no foreign corporation, except as permitted in Chapter 14 (§ 6.1-390 et seq.) and Chapter 15 (§ 6.1-398 et seq.) of this title, shall do a banking or trust business in this Commonwealth. Nothing in this chapter, however, shall:

(1) Prevent a natural person from qualifying and acting as trustee, personal representative, guardian, conservator, committee or in any other fiduciary capacity,

(2) Prevent any person or copartnership or corporation from lending money on real estate and personal security or collateral, or from guaranteeing the payment of bonds, notes, bills and other obligations, or from purchasing or selling stocks and bonds, or

(3) Prevent any bank or trust company organized under the laws of this Commonwealth from qualifying and acting in another state or in the District of Columbia, as trustee, personal representative, guardian of a minor, conservator or committee or in any other fiduciary capacity, when permitted so to do by the laws of such other state or District.

Nothing in this section shall be construed to prevent banks or trust companies organized in this Commonwealth and chartered under the laws of the United States from transacting business in Virginia.

Article 3.3.

Multistate Trust Institutions Act.

§ 6.1-32.31. *Title and purpose.*

A. This article may be cited as the "Multistate Trust Institutions Act."

B. It is the intent of this article to enable and promote the establishment of trust offices in other states by Virginia banks, trust companies and trust subsidiaries, and to permit out-of-state trust institutions, including without limitation national banks whose home state is other than Virginia, to engage in the trust business in this state, in accordance with the provisions set forth in this article.

§ 6.1-32.32. *Definitions.*

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

"Acquisition of a trust office" means the acquisition of a trust office located in a host state, without acquiring the trust institution of such office.

"Bank" has the meaning set forth in 12 U.S.C. § 1813 (h).

"Bank supervisory agency" means: (i) any agency of another state with primary responsibility for chartering and supervising a trust institution and (ii) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System and any successor to these agencies.

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

"Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust, or another trust.

"Home state" means (i) with respect to a federally chartered trust institution, the state in which such institution maintains its principal office and (ii) with respect to any other trust institution, the state which chartered such institution.

"Home state regulator" means the bank supervisory agency with primary responsibility for chartering

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60 and supervising an out-of-state trust institution.

61 "Host state" means a state, other than the home state of a trust institution, in which the trust
62 institution maintains or seeks to acquire or establish an office.

63 "New trust office" means a trust office located in a host state which (i) is originally established by
64 the trust institution as a trust office and (ii) does not become a trust office of the trust institution as a
65 result of (a) the acquisition of another trust institution or trust office of another trust institution or (b) a
66 merger, consolidation, or conversion involving any such trust institution or trust office.

67 "Office" with respect to a trust institution means the principal office or a trust office, but not a
68 branch.

69 "Out-of-state bank" means a bank chartered to act as a fiduciary whose home state is a state other
70 than Virginia.

71 "Out-of-state trust company" means a trust company whose home state is a state other than Virginia.

72 "Out-of-state trust institution" means a trust institution whose home state is a state other than
73 Virginia.

74 "Principal office" with respect to (i) a state trust company, means a location so designated by such
75 trust company pursuant to § 6.1-32.21 of the Virginia Trust Company Act or § 6.1-32.2 of the Virginia
76 Trust Subsidiary Act or (ii) a trust institution other than a state trust company, means its principal place
77 of business in the United States.

78 "State" means any of the United States, the District of Columbia, any territory of the United States,
79 Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands and
80 the Northern Mariana Islands.

81 "State bank" or "Virginia state bank" means a bank chartered under the laws of Virginia and
82 permitted to engage in the trust business pursuant to § 6.1-16 of the Virginia Banking Act.

83 "State trust company" means a corporation organized or reorganized under the Virginia Trust
84 Subsidiary Act (§ 6.1-32.1 et seq.) or the Virginia Trust Company Act (§ 6.1-32.11 et seq.).

85 "State trust institution" means a trust institution having its principal office in this Commonwealth.

86 "Trust business" shall have the same meaning assigned to that term in §§ 6.1-32.11 and 6.1-32.12 of
87 the Virginia Trust Company Act.

88 "Trust company" means a state trust company or any other company chartered to act as a fiduciary
89 that is not a bank.

90 "Trust institution" means a bank or trust company chartered by a state bank supervisory agency or
91 by the Office of the Comptroller of Currency.

92 "Trust office" means an office at which a trust institution engages in a trust business and not in the
93 banking business.

94 § 6.1-32.33. Interstate trust offices by Virginia state banks.

95 A. With the prior approval of the Commission, any Virginia state bank or state trust company may
96 establish a new trust office or acquire a trust office in a state other than Virginia.

97 B. A Virginia state bank or state trust company desiring to establish and maintain a trust office in
98 another state under this section shall file an application or notice on a form prescribed by the
99 Commission and pay the branch application fee set forth in § 6.1-94. If the Commission finds that the
100 applicant has the financial resources sufficient to undertake the proposed expansion without adversely
101 affecting its soundness and that the laws of the host state permit the establishment of the trust office, it
102 may approve the application. In acting on the application, the Commission shall consider the views of
103 the state bank supervisor of the host state where the trust office is proposed to be located.

104 § 6.1-32.34. Trust business of out-of-state trust institution.

105 An out-of-state trust institution which establishes or maintains one or more offices in this
106 Commonwealth under this article may conduct any activity at each such office which would be
107 authorized under the laws of this Commonwealth for a state trust institution to conduct at such an
108 office.

109 § 6.1-32.35. Trust business at a branch or trust office.

110 An out-of-state trust institution may engage in a trust business at an office in this state only if it
111 maintains (i) a trust office in this Commonwealth as permitted by this article or (ii) a branch in this
112 Commonwealth.

113 § 6.1-32.36. Establishing an interstate trust office.

114 An out-of-state trust institution that does not already maintain a trust office in this Commonwealth
115 and that meets the requirements of this article may establish and maintain a new trust office in this
116 Commonwealth.

117 § 6.1-32.37. Acquiring an interstate trust office.

118 An out-of-state trust institution that does not already maintain a trust office in this Commonwealth
119 and that meets the requirements of this article may acquire and maintain a trust office in this
120 Commonwealth.

121 § 6.1-32.38. Filing requirements.

An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this Commonwealth pursuant to this article shall submit to the Commission a copy of the application or notice it files with its home state regulator or the responsible federal bank supervisory agency to establish or acquire such office. Such submission shall be made at the same time the application or notice is filed by the out-of-state trust institution with such home state regulator or responsible federal bank supervisory agency. The out-of-state trust institution shall also comply with the requirements of Article 17 (§ 13.1-757 et seq.) of the Virginia Stock Corporation Act and pay any filing fee required by the Commission.

§ 6.1-32.39. Conditions for approval.

No trust office of an out-of-state trust institution may be acquired or established under this article unless:

1. In the case of a new trust office, the laws of the home state of the out-of-state trust institution permit state trust institutions to establish and maintain new trust offices in that state under substantially the same terms as set forth in this article.

2. In the case of a trust office to be established through the acquisition of a trust office, the laws of the home state of the out-of-state trust institution permit state trust institutions to establish and maintain trust offices in that state through the acquisition of trust offices under substantially the same terms as set forth in this article.

§ 6.1-32.40. Examinations; periodic reports; cooperative agreements; assessment of fees.

A. The Commission may make such examinations of any office established and maintained in this Commonwealth pursuant to this article by an out-of-state trust institution as the Commission may deem necessary to determine whether the office is operating in compliance with the laws of this Commonwealth and to ensure the office is being operated in a safe and sound manner. The provisions of § 6.1-87 shall apply to such examinations. The Commission shall also have authority to examine the principal office of an out-of-state trust institution, as necessary, and when any such examination is conducted outside the Commonwealth, the out-of-state trust institution shall be liable for and shall pay to the Commission within thirty days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of such examination, or shall pay for such examination at a reasonable per diem rate approved by the Commission.

B. The Commission may require periodic reports from any out-of-state trust institution that maintains an office in Virginia to the extent such reporting requirements (i) apply equally to similarly situated trust institutions having Virginia as their home state and (ii) are not preempted by federal laws. Such reports shall be filed under oath with such frequency and in such scope and detail as may be appropriate for the purpose of assuring continuing compliance with the provisions of this article.

C. The Commission may enter into cooperative agreements with the appropriate state bank supervisors and federal bank regulatory agencies for the examination of any trust office in this Commonwealth of an out-of-state trust institution or any office of a state trust institution in any host state, and may accept such agency's report of examination and report of investigation in lieu of conducting its own examinations or investigations. The Commission may enter into joint actions with other state bank supervisors and federal banking agencies having concurrent jurisdiction over any office maintained in this state by an out-of-state trust institution or any office established and maintained by a state trust institution in any host state; however, the Commission may take such actions independently to carry out its responsibilities under this article and to assure compliance with the laws of this Commonwealth.

D. Out-of-state trust institutions may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this Commonwealth and regulations of the Commission. Such fees may be shared with other state and federal bank supervisory agencies in accordance with agreements between them and the Commission.

§ 6.1-32.41. Enforcement.

If the Commission determines that there is any violation of any applicable law or regulation in the operation of an out-of-state trust institution engaged in business in this state or that a trust office of such an institution in this state is being operated in an unsafe and unsound manner, the Commission shall have authority to undertake such enforcement actions as it would be permitted to take if the office were a Virginia state bank or state trust company.

§ 6.1-32.42. Additional trust offices.

An out-of-state trust institution that maintains a trust office in this Commonwealth under this article may establish or acquire additional trust offices in this Commonwealth to the same extent that a state trust institution may establish or acquire additional offices in this Commonwealth provided it follows the procedures for establishing or acquiring such offices set forth in this article.

§ 6.1-32.43. Regulations; certain fees.

The Commission may promulgate such regulations, and may provide for the payment of such

183 *reasonable application and administration fees, as it finds necessary and appropriate in order to*
184 *implement the provisions of this article.*

185 *§ 6.1-32.44. Notice of subsequent merger, closing, etc.*

186 *An out-of-state trust institution that maintains an office in Virginia under this article shall give at*
187 *least thirty days' prior written notice (or in the case of an emergency transaction, such shorter notice as*
188 *is consistent with applicable state or federal law) to the Commission of any merger, consolidation, or*
189 *other transaction involving the trust institution which would cause any trust office operated by the*
190 *institution in this state to be maintained by another trust institution or cause the operation of such an*
191 *office to cease.*

192 *§ 6.1-32.45. Severability.*

193 *If any provision of this article is held to be invalid for any reason by a final order of any Virginia*
194 *or federal court of competent jurisdiction, or to be superseded by federal law, the remaining provisions*
195 *of this article shall not be affected and shall continue to apply.*