

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 303

An Act to amend and reenact § 6.2-1302 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.2-1302.1, relating to credit unions; virtual currency custody services.

[H 1727]

Approved March 23, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 6.2-1302 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.2-1302.1 as follows:

§ 6.2-1302. Powers.

In addition to the powers specified or implied elsewhere in this chapter or in the laws of the Commonwealth, a credit union shall have the power to:

1. Enter into contracts;
2. Sue and be sued;
3. Adopt, use, and display a corporate seal;
4. Receive savings from and make loans and extend lines of credit to its members;
5. Individually or jointly with other credit unions acquire, lease as lessor or lessee, hold, assign, pledge, exchange, repair, mortgage, hypothecate, sell, discount, or otherwise dispose of property or assets, either in whole or in part, as necessary or incidental to its operations, including any property or assets obtained as a result of defaults under obligations owing to it;
6. Borrow from any source, provided that (i) a credit union shall notify and obtain prior approval of the Commissioner if the total borrowings will exceed 50 percent of the credit union's outstanding shares and (ii) in no event shall the borrowings exceed 90 percent of the credit union's outstanding shares;
7. Sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the Commissioner;
8. Offer related financial services, including electronic fund transfers, share draft accounts, safe deposit boxes, leasing of tangible personal property to its members, and correspondent arrangements with other financial institutions;
9. Hold membership in other credit unions organized under this chapter or other applicable law, and in associations and organizations controlled by or fostering the interest of credit unions, including a central liquidity facility organized under state or federal law;
10. Contract with any licensed insurance company or society to insure the lives of its members to the extent of their loans and share accounts, in whole or in part, and to pay all or a portion of the premium therefor;
11. Engage in activities or programs as requested by any governmental authority, subject to the approval of the Commissioner;
12. Invest its funds, operate a business, manage or deal in property when such actions are reasonably necessary to avoid loss on a loan or investment previously made or an obligation previously created in good faith. Such property or business shall not be held or operated by the credit union for a period longer than is reasonably required to protect the interest of the credit union, unless specifically authorized by the Commissioner;
13. Make contributions to any nonprofit civic, charitable, or service organizations;
14. Make loans to its members and to other credit unions;
15. *Engage in virtual currency custody services in the manner and to the extent provided in § 6.2-1302.1;*
16. Engage in any additional activity, service, or other practice that is authorized for a federally chartered credit union and that has not otherwise been authorized for a state-chartered credit union by the provisions of this chapter or by Commission regulation, including regulations adopted pursuant to subsection B of § 6.2-1303, provided that (i) at least 45 calendar days prior to engaging in any such activity, service, or practice the credit union provides the Commissioner with written notice along with any additional information relating to the activity, service, or practice that the Commissioner may require and (ii) the credit union engages in the activity, service, or practice subject to the same terms, conditions, and limitations that are applicable to a federally chartered credit union. The Commissioner may at any time, based upon supervisory, legal, or safety and soundness considerations, prohibit or further restrict the activity, service, or practice. "Activity, service, or other practice" does not include credit union field of membership or field of membership expansion under §§ 6.2-1327 and 6.2-1328 and any related regulations; and
- ~~16.~~ 17. Undertake such other activities relating to the purposes of the credit union as its charter or bylaws may authorize, provided such activities are not inconsistent with this chapter.

§ 6.2-1302.1. Virtual currency custody services.

A. As used in this section:

"Custody services" means the role of a credit union in the safekeeping and custody of various customer assets.

"Virtual currency" has the same meaning as provided in § 6.2-818.1.

B. A credit union may provide its customers with virtual currency custody services so long as the credit union has adequate protocols in place to effectively manage risks and comply with applicable laws and, prior to offering virtual currency custody services, the credit union has carefully examined the risks in offering such services through a methodical self-assessment process. If a credit union engages in virtual currency custody services, the credit union shall:

1. Implement effective risk management systems and controls to measure, monitor, and control relevant risks associated with custody of digital assets such as virtual currency;
2. Confirm that it has adequate insurance coverage for such services; and
3. Maintain a service provider oversight program, to the extent that the credit union engages with a service provider to provide virtual currency custody services, to address risks to service provider relationships as a result of engaging in virtual currency custody services.

C. A credit union may provide virtual currency custody services in a fiduciary or nonfiduciary capacity. In providing such services in a nonfiduciary capacity, the credit union shall act as a bailee, taking possession of the customer's asset for safekeeping while legal title remains with the customer, such that the customer retains direct control over the keys associated with his virtual currency. To provide such services in a fiduciary capacity, the credit union shall obtain approval from the Commission as required by subsection D. In providing virtual currency custody services in a fiduciary capacity, the credit union shall receive control of the customer's virtual currency, and new private keys shall be created to be held by the credit union. If approved by the Commission to provide virtual currency custody services in a fiduciary capacity, a credit union shall have authority to manage virtual currency assets as it would any other type of asset held in such capacity.

D. No credit union shall provide virtual currency custody services in a fiduciary capacity without first obtaining authorization to do so from the Commission. The Commission shall not grant such authority until it finds that the credit union has satisfied the following requirements:

1. The credit union's capital structure is sufficiently strong to support the undertaking to provide virtual currency custody services;
2. The personnel who will direct the proposed virtual currency custody services have adequate experience, training, and sufficient resources to ensure compliance with laws and regulations and to protect the operations of the credit union; and
3. Granting such authority to the credit union is in the public interest.

E. The Commission may impose conditions on the authority granted to any credit union pursuant to subsection D and may suspend or revoke such authority if it finds that the credit union has failed to comply with any laws or regulations applicable to virtual currency custody services or any existing conditions imposed by the Commission or if the services are otherwise being provided in an unsafe or unsound manner.