

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 544

An Act to amend and reenact §§ 6.2-800 and 6.2-874 of the Code of Virginia, relating to financial institutions; certain investments by banks permitted.

[S 1153]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-800 and 6.2-874 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-800. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Bank" means a corporation authorized by statute to accept deposits and to hold itself out to the public as engaged in the banking business in the Commonwealth.

"Bankers' bank" means a bank whose shares are owned exclusively by either (i) financial institutions that have or are eligible for insurance of deposits by a federal agency or (ii) financial institution holding companies as defined in § 6.2-700 or savings institution holding companies as defined in § 6.2-1100 owning any financial institution described in clause (i), provided that no such financial institution or holding company owns, directly or indirectly, more than five percent of the issued and outstanding voting shares of any bankers' bank.

"Bank holding company" means any corporation (i) that directly or indirectly owns, controls, or holds with power to vote, 25 percent or more of the voting shares of one or more banks or of a corporation that is or becomes a bank holding company by virtue of this definition, (ii) that controls in any manner the election of a majority of the directors of one or more banks, or (iii) for the benefit of whose shareholders or members 25 percent or more of the voting shares of one or more banks or bank holding companies is held by trustees. For the purpose of this definition, any successor to any such corporation shall be deemed to be a bank holding company from the date as of which such successor corporation becomes a bank holding company. Notwithstanding the foregoing, (a) a bank shall not be a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity except where such shares are held for the benefit of the shareholders of such banks, (b) a corporation shall not be a bank holding company by virtue of its ownership or control of its shares acquired by it in connection with its underwriting of securities and which are held only for such period of time as will permit the sale thereof upon a reasonable basis, (c) a corporation formed for the sole purpose of participating in a proxy solicitation shall not be a bank holding company by virtue of its control of voting rights or shares acquired in the course of such solicitation, and (d) a corporation shall not be a bank holding company if at least 80 percent of its total assets are composed of holdings in the field of agriculture.

"Community and economic development entity" has the meaning assigned to it in 12 C.F.R. § 24.2.

"Community-based economic development" means activities that (i) seek to address economic development through affordable housing development or the rehabilitation of qualified rehabilitated buildings or certified historic structures or (ii) seek to address economic causes of poverty in specific geographic areas by revitalizing the economic and social base of low-income communities through activities that include (a) small business and micro-enterprise support; (b) commercial, industrial, and retail revitalization, retention, and expansion; (c) capacity development and technical assistance support for community development corporations; (d) employment and training efforts; (e) human resource development; and (f) social service enterprises.

"Community development corporation" means a private, nonprofit corporation whose board of directors is composed primarily of community representatives or business, civic, and community leaders and whose principal purpose includes the provision of housing, community-based economic development projects, and social services that primarily benefit low-income individuals and communities.

"Community development project" has the meaning assigned to it in 12 C.F.R. § 24.2.

"FDIC" means the Federal Deposit Insurance Corporation.

"International banking facility" means a set of assets and liability accounts segregated on the books and records of the bank, or an adjacent or other subsidiary that includes only international banking facility time deposits and international banking facility extensions of credit. The facility may either be located within Virginia or outside the territorial United States. "International banking facility" has the meaning assigned to it by the laws of the United States or the regulations of the Board of Governors for the Federal Reserve System.

"Public welfare investment" means any investment permitted by 12 C.F.R. § 24.3.

"Rural business investment company" means a company that has been granted final approval by the U.S. Secretary of Agriculture and has entered a participation agreement with the Secretary under 7

U.S.C. § 2009cc-3(e).

"State bank" means a bank incorporated under the laws of the Commonwealth and that has its principal place of business in the Commonwealth.

"Tax equity finance transaction" has the meaning assigned to it in 12 C.F.R. § 7.1025(b).

"Trust business" has the meaning assigned to it in § 6.2-1000.

"Trust company" has the meaning assigned to it in § 6.2-1000.

§ 6.2-874. Prohibited uses of bank's own stock; other investments or loans.

A. No bank shall:

1. Acquire or own its own stock except to protect itself against loss from debts previously contracted, in which case the stock shall be disposed of within 12 months after it is acquired, and except as herein permitted;

2. Make loans collaterally secured by the stock of the bank, except that this section shall not affect the validity of any such security agreement between the bank and its borrower; or

3. Invest any of its funds in:

a. Shares of stock of any other corporation;

b. Any security of a limited liability company; or

c. Any notes or other obligations that are secured by real estate on which the bank is prohibited by § 6.2-878 from making any loans secured thereby.

B. The prohibitions in subsection A shall not prevent any bank from:

1. Acquiring any such stock, notes, or other obligations to protect itself or any fund in its custody or possession against loss from debts theretofore contracted;

2. Acquiring, owning, and holding stock of a building corporation or security of a limited liability company of the character and to the amount provided by § 6.2-870;

3. Acquiring, owning, and holding stock of an agricultural credit corporation organized under the laws of the Commonwealth, provided that the total amount of such stock shall not exceed 20 percent of the amount of the capital stock of the bank actually paid in and unimpaired, plus the amount of its unimpaired surplus fund;

4. Acquiring, owning, and holding stock of the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

5. Acquiring, holding, and owning stock in any corporations or securities of limited liability companies which have as their purpose the operation of parking lots or parking garages, provided that no bank shall own, at any one time, stock in such corporations exceeding two percent of the amount of the capital stock of such bank actually paid in and unimpaired, plus the amount of its unimpaired surplus fund;

6. Acquiring, owning, and holding stock of a small business investment company as defined by the Federal Small Business Investment Act of 1958;

7. Acquiring, owning, and holding stock of an industrial development company organized under the provisions of the Virginia Industrial Development Corporation Act (§ 13.1-981 et seq.);

8. Acquiring, owning, and holding stock of a bank service corporation or security of a controlled subsidiary corporation, subject to § 6.2-871 or 6.2-885, or from investing in a limited liability company, provided such investment conforms to § 6.2-871 or 6.2-885;

9. Acquiring, owning, and holding stock of the Student Loan Marketing Association, a corporation organized under the Higher Education Act of 1965, as amended;

10. Acquiring, owning, and holding stock of a "clearing corporation" as defined in § 8.8A-102;

11. Acquiring, owning, and holding stock of a trust subsidiary as defined in § 6.2-1000;

12. Investing up to four percent of its capital and surplus, including undivided profits, in shares of any bankers' bank organized under § 6.2-809 or in any bank holding company wherein the ownership of shares in such bank holding company is restricted to (i) financial institutions which have or are eligible for insurance of deposits by a federal agency or (ii) a financial institution holding company as defined in § 6.2-700 or a savings institution holding company as defined in § 6.2-1100;

13. Acquiring its own stock, with the book value of all such stock held not to exceed in the aggregate five percent of the book value of all shares issued and outstanding, including capital, surplus, and undivided profits as of the time of the purchase being made. In computing such capital surplus and undivided profits for purposes of this section, amounts received for resale of any repurchased stock shall be added back to capital, surplus, and undivided profits for purposes of computation of the five percent limitation. Such purchase may be without the written consent of the Commission, unless the Commission or Commissioner has previously notified the bank in writing that it may not utilize this subdivision until further notice. The Commission may further allow purchases of such stock in excess of such five percent criterion if the Commission finds that the purchase (i) will not impair the safety and solvency of the bank and (ii) is otherwise appropriate. The Commission may require the divestiture of any shares held if deemed necessary and appropriate;

14. Acquiring, owning, and holding, subject to such conditions as the Commissioner may prescribe, shares of investment companies;

15. Acquiring, *investing in*, owning, and holding, *directly or indirectly*, subject to such conditions as

the Commissioner may prescribe, ~~shares of stock in~~ equity investments in a corporation, a limited partnership, a limited liability company, or another entity organized as (i) a community development corporation; (ii) an entity formed primarily to support community-based economic development; (iii) an entity qualifying for the new markets tax credit under 26 U.S.C. § 45D; (iv) an entity formed for a predominantly civic, community, or public purpose that (a) primarily benefits low-income and moderate-income individuals, (b) primarily benefits low-income and moderate-income areas, (c) primarily benefits areas targeted for redevelopment by a government entity, or (d) is a qualified investment under 12 C.F.R. § 25.23 for the purposes of the Community Reinvestment Act of 1977, 12 U.S.C. § 2901 et seq.; or (v) an entity making qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in 26 U.S.C. § 47, or a similar state historic tax credit program, as provided for in § 619(d)(1)(E) of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 1851(d)(1)(E);

16. Acquiring, owning, and holding shares of the Federal Agricultural Mortgage Corporation; or

17. Acquiring, owning, and holding shares of a Federal Home Loan Bank;

18. Establishing, acquiring, investing in, owning, and holding shares of a rural business investment company or any entity established to invest solely in a rural business investment company as permissible under 7 U.S.C. § 2009cc-9(a)(1)(A) and 7 U.S.C. § 2009cc-9(b);

19. Engaging, directly or indirectly, in any tax equity finance transaction permissible for a national bank or federal savings association under 12 C.F.R. § 7.1025. The authority to engage in tax equity finance transactions under this section is separate from and does not limit any investment authorities available to a bank. A tax equity finance transaction is subject to the substantive legal requirements of a loan; or

20. Acquiring, investing in, owning, and holding shares, directly or indirectly, subject to such conditions as the Commissioner may prescribe, in any community and economic development entity, community development project, or other public welfare investment, provided that the investment is in compliance with 12 C.F.R. Part 24.

C. The provisions of this section shall not be construed to require a bank to dispose of any preferred stocks lawfully acquired as an investment prior to January 1, 1940.