

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 351

An Act to amend and reenact §§ 6.1-398, 6.1-399, 6.1-402, 6.1-404, 6.1-406, and 6.1-407 of the Code of Virginia and to repeal § 6.1-401 of the Code of Virginia, relating to banking and finance; interstate banking.

[H 1040]

Approved April 5, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-398, 6.1-399, 6.1-402, 6.1-404, 6.1-406, and 6.1-407 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 mean an institution which has or is eligible for insurance of deposits by the Federal Deposit Insurance Corporation *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).

"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.

"Region" means the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, and the District of Columbia, which for the purposes of this chapter shall be considered a state.

"Regional bank" means a bank that:

1. Is organized under the laws of the United States or of one of the states in the region other than Virginia; and

2. Has its main office and all branches, if any (excluding off-shore branches), located only in states within the region.

"Regional Out-of-State bank holding company" means a bank holding company:

1. That has its principal place of business in a state within the region other than Virginia; and
2. Whose regional bank and Virginia bank subsidiaries hold more than eighty percent of the total deposits held by all of its bank subsidiaries (excluding off-shore branches); other than bank subsidiaries controlled by it in accordance with § 6.1-401. For purposes of this computation, a bank created and acquired under § 6.1-392 shall be treated as a "regional bank." For purposes of this chapter, any deposit in a bank located outside of the region owned on January 1, 1985, by a bank holding company which would be a Virginia bank holding company on such date if this chapter were in effect, shall not be treated as a deposit of a subsidiary bank for purposes of applying the eighty-percent test set forth in this section or determining the total bank deposits or regional bank deposits held by subsidiary banks of a bank holding company;

3. That is not controlled by a bank holding company other than a regional bank holding company; and

4. 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 or the District of Columbia as defined in this section prior to July 1, 1994, as its home state pursuant to 12 U.S.C. § 3103 (c).

"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; and

3. Is not a bank acquired under the provisions of § 6.1-392.

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

1. That has its principal place of business in this Commonwealth; *and*

2. Whose Virginia bank and regional bank subsidiaries hold more than eighty percent of the total deposits held by all of its bank subsidiaries, other than bank subsidiaries controlled by it in accordance with § 6.1-401; and

3. 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. ~~Any regional~~ *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 pursuant to ~~§ 116 or § 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. § 1730 a (m), § 1823 (f)) 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 ~~regional 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 that the laws of the state in which the ~~regional 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 ~~regional out-of-state~~ bank holding company making the acquisition has its principal place of business permit such ~~regional 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 a ~~regional 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 ~~regional 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. ~~A regional~~ *An out-of-state* bank holding company that has a Virginia bank subsidiary other than a Virginia bank subsidiary that was acquired either pursuant to ~~§ 116 or § 123 of the Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. § 1730 a (m), § 1823 (f)) 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 ~~regional 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 a ~~regional 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 ~~regional 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.

§ 6.1-402. Prohibitions.

A. Except as expressly permitted by *this chapter or by federal law*, no *out-of-state* bank holding company that is neither a Virginia bank holding company nor a ~~regional bank holding company~~ shall acquire a Virginia bank holding company or a Virginia bank.

B. Except as required by federal law, a Virginia bank holding company or a ~~regional bank holding company~~ that ceases to be a Virginia bank holding company or a ~~regional bank holding company~~ shall, as soon as practicable and, in all events, within one year after such event, divest itself of control of all Virginia bank holding companies and all Virginia banks. Such divestiture shall not be required if the Virginia bank holding company or the ~~regional bank holding company~~ ceases to be a Virginia bank holding company or a ~~regional bank holding company~~, as the case may be, because of an increase in the deposits held by bank subsidiaries not located within the region and if such increase is not the result of the acquisition of a bank or bank holding company.

§ 6.1-404. Periodic reports; interstate agreements.

The Commission shall have the authority to examine any ~~regional out-of-state~~ bank holding company owning a Virginia bank and each of its Virginia or non-Virginia bank or nonbank subsidiaries. The Commission shall require reports of each ~~regional out-of-state~~ bank holding company subject to this chapter. 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 chapter.

Prior to approving the acquisition of any Virginia bank or Virginia bank holding company by any ~~regional out-of-state~~ bank holding company, or the acquisition of any ~~regional out-of-state~~ bank or ~~regional out-of-state~~ bank holding company by any Virginia bank holding company, the Commission shall enter into cooperative agreements with the appropriate regulatory authorities for the periodic examination of any ~~regional out-of-state~~ bank holding company that has a Virginia bank subsidiary, or any subsidiary of such holding company, and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The Commission may enter into joint actions with other regulatory authorities having concurrent jurisdiction over any ~~regional out-of-state~~ bank holding company that has a Virginia bank subsidiary or may take such actions independently to carry out its responsibilities under this chapter, assure the safety and soundness of any Virginia banks, and assure compliance with the provisions of this chapter and the applicable banking laws of this Commonwealth.

§ 6.1-406. Notice of intent to acquire out-of-state bank.

A Virginia bank holding company or a ~~regional an out-of-state~~ bank holding company shall file with the Commission notice of its intention to acquire a bank outside Virginia, together with such information as the Commission shall request. It shall within thirty days or an extended period not exceeding fifteen days, disapprove such acquisition if it determines that the acquisition could affect detrimentally the safety or soundness of a Virginia bank. It shall approve such acquisition within forty-five days if it determines that the acquisition will not affect detrimentally the safety or soundness of such Virginia bank.

§ 6.1-407. Nonseverability.

It is the purpose of this chapter to facilitate orderly development *within Virginia* of banking organizations that own banks with main offices and branches in more than one state ~~within the region~~. It is not the purpose of this chapter to authorize acquisitions of Virginia bank holding companies or Virginia banks by bank holding companies that do not have their principal place of business in this Commonwealth on any basis other than as expressly provided in this chapter. Therefore, if any of the provisions of this chapter ~~which limit the region as set forth in the definition thereof pertaining to the terms and conditions for, and limitations upon acquisition of, Virginia bank holding companies and Virginia banks by bank holding companies that do not have their principal place of business in this Commonwealth~~ is held to be invalid for any reason by a final order of any Virginia or federal court of competent jurisdiction, then the invalidity shall cause the entire chapter to be invalid. ~~In no case shall the invalidity of the region prescribed herein cause this chapter to permit acquisitions of Virginia banks or Virginia bank holding companies or regional bank holding companies with Virginia bank subsidiaries by bank holding companies not located within the region within the terms of the chapter.~~ However, any transaction that has been lawfully consummated pursuant to this chapter prior to a determination of

invalidity shall be unaffected by such determination.

2. That § 6.1-401 of the Code of Virginia is repealed.