

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 301

An Act to amend and reenact §§ 6.1-5, 6.1-43 and 58.1-1201 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.1-39.5 and by adding in Chapter 2 of Title 6.1 an article numbered 5.1, consisting of sections numbered 6.1-44.1 through 6.1-44.14, and an article numbered 5.2, consisting of sections numbered 6.1-44.15 through 6.1-44.25, relating to banking; interstate branches and mergers.

[H 1753]

Approved March 16, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-5, 6.1-43 and 58.1-1201 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.1-39.5 and by adding in Chapter 2 of Title 6.1 an article numbered 5.1, consisting of sections numbered 6.1-44.1 through 6.1-44.14, and an article numbered 5.2, consisting of sections numbered 6.1-44.15 through 6.1-44.25, 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*, 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, 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 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.

§ 6.1-39.5. *Bank agent for depository institution affiliate.*

A bank that is a subsidiary of a bank holding company may act as the agent of any depository institution affiliate in receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations, without being deemed a branch of such affiliate, in accordance with the provisions of § 101(d) of the Riegle-Neal Interstate Banking & Branching Efficiency Act of 1994.

§ 6.1-43. Merger or share exchange authorized; laws applicable.

Virginia banks as defined in § 6.1-44.16 may merge upon compliance with the provisions of Article 12 (§ 13.1-716 et seq.) of the Virginia Stock Corporation Act. However, the provisions of § 13.1-722 that relate to merger shall not apply, except as hereafter provided; the provisions of § 13.1-730 shall not apply to a merger under this section. The provisions of §§ 13.1-716 and 13.1-722 relating to merger shall apply to the merger of a state and a national bank if the national bank is engaged in business in Virginia, and if the state bank is to be the surviving bank. A national bank shall be treated as if it were a foreign corporation and as if the United States were the state where it is organized. A bank may enter into a share exchange, as permitted by §§ 13.1-717 and 13.1-722, provided there is also compliance with Chapter 13 (§ 6.1-381 et seq.) or Chapter 15 (§ 6.1-398 et seq.) of this title. The exclusion in § 6.1-387 shall not apply in the case of such an exchange of shares.

Article 5.1.

Interstate Branching De Novo and by Acquisition of Branches.

§ 6.1-44.1. *Purpose.*

It is the intent of this article to permit interstate branching under §§ 102 and 103 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, in accordance with the provisions set forth in

this article.

§ 6.1-44.2. Definitions.

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

"Acquisition of a branch" means the acquisition of a branch located in a host state, without acquiring the bank of such branch.

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

"De novo branch" means a branch of a bank located in a host state which (i) is originally established by the bank as a branch and (ii) does not become a branch of the bank as a result of the acquisition of another bank or a branch of another bank, or the merger, consolidation, or conversion of any such bank or branch.

"Home state" means:

1. With respect to a national bank, the state in which the main office of the bank is located;
2. With respect to a state bank, the state by which the bank is chartered;
3. With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. § 3103 (c).

"Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch.

"Out-of-state bank" means a bank whose home state is a state other than Virginia.

"Out-of-state state bank" means a bank chartered under the laws of any state other than Virginia.

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

"Virginia state bank" means a bank chartered under the laws of Virginia.

§ 6.1-44.3. Interstate branching by Virginia state banks.

A. With the prior approval of the Commission, any Virginia state bank may establish and maintain a de novo branch or acquire a branch in a state other than Virginia.

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

§ 6.1-44.4. Interstate branching by de novo entry.

An out-of-state bank that does not already maintain a branch in this Commonwealth and that meets the requirements of this article may establish and maintain a de novo branch in this Commonwealth.

§ 6.1-44.5. Interstate branching through the acquisition of a branch.

An out-of-state bank that does not already maintain a branch in this Commonwealth and that meets the requirements of this article may establish and maintain a branch in this Commonwealth through the acquisition of a branch.

§ 6.1-44.6. Filing requirements.

An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in this Commonwealth shall submit to the Commission a copy of the application it files with its home state supervisor or the responsible federal banking agency to establish or acquire such branch. Such submission shall be made at the same time the application is filed by the out-of-state bank with such home state supervisor or responsible federal banking agency. The out-of-state bank 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.

§ 6.1-44.7. Conditions for approval.

No branch of an out-of-state bank may be established under this article, unless:

1. In the case of a de novo branch, the laws of the home state of the out-of-state bank permit Virginia banks to establish and maintain de novo branches in that state under substantially the same terms as set forth in this article.

2. In the case of a branch to be established through the acquisition of a branch, the laws of the out-of-state bank permit Virginia banks to establish and maintain branches in that state through the acquisition of branches under substantially the same terms as set forth in this article.

§ 6.1-44.8. Powers.

An out-of-state state bank which establishes and maintains one or more branches in Virginia under this article may conduct the same activities at such branch or branches that are authorized under Virginia law for Virginia state banks, except to the extent such activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state state bank.

A Virginia state bank may conduct the same activities at a branch outside Virginia that are

permissible for a bank chartered by the host state where the branch is located, except to the extent such activities are expressly prohibited by other laws, regulations, or orders applicable to the Virginia state bank.

§ 6.1-44.9. Examination; periodic reports; cooperative agreements; assessment of fees.

A. The Commission may make such examinations of any branch established under this article by an out-of-state state bank as the Commission may deem necessary to determine whether the branch is operating in compliance with the laws of this Commonwealth and to ensure that the branch is being operated in a safe and sound manner. The provisions of § 6.1-87 shall apply to such examinations.

B. The Commission may require periodic reports from any out-of-state bank that maintains a branch in Virginia to the extent such reporting requirements (i) apply equally to similarly situated banks having Virginia as their home state and (ii) are not preempted by federal law. 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 banking agencies for the periodic examination of any branch in Virginia of an out-of-state state bank, or any branch of a Virginia state bank in any host state, and may accept such agencies' reports of examination and reports of investigation in lieu of conducting its own examinations or investigations. The Commission may enter into joint enforcement actions with other state bank supervisors and federal banking agencies having concurrent jurisdiction over any branch of an out-of-state state bank or any branch of a Virginia state bank, or 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 state banks 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 regulators in accordance with agreements between them and the Commission.

§ 6.1-44.10. Enforcement.

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

§ 6.1-44.11. Additional branches.

An out-of-state bank that has established or acquired a branch in this Commonwealth under this article may establish or acquire additional branches in this Commonwealth to the same extent any bank, whose home state is Virginia, may establish or acquire a branch in this Commonwealth under applicable federal and state law.

§ 6.1-44.12. Regulations; certain fees.

The Commission may promulgate such regulations and may provide for the payment of such reasonable application and administration fees as it finds necessary and appropriate in order to implement the provisions of this article.

§ 6.1-44.13. Notice of subsequent merger, etc.

An out-of-state state bank that maintains a branch in Virginia under this article shall give thirty days' prior written notice of any merger, consolidation, or other transaction involving the bank which would cause the Virginia branch to be maintained by another bank.

§ 6.1-44.14. Nonseverability.

It is the purpose of this article to authorize the establishment of branches in this Commonwealth by out-of-state banks whose home state permits Virginia banks to establish branches in that state under substantially the same terms as set forth in this article. It is not the purpose of this article to authorize branching in this state by out-of-state banks on any basis other than as expressly provided in this article. Therefore, if any provision of this article 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 article to be invalid. However, any transaction that has been lawfully consummated pursuant to this article prior to a determination of invalidity shall be unaffected by such determination.

Article 5.2.

Interstate Bank Mergers.

§ 6.1-44.15. Purpose.

It is the intent of this article to permit interstate branching by merger under § 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, in accordance with the provisions set forth in this article.

§ 6.1-44.16. Definitions.

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

"Bank" means any bank defined in 12 U.S.C. § 1813 (h).

"Home state" means:

1. With respect to a national bank, the state in which the main office of the bank is located;
2. With respect to a state bank, the state by which the bank is chartered;
3. With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. § 3103 (c).

"Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch.

"Interstate merger transaction" means:

1. The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation to branches of the resulting bank; or
2. The purchase of all, or substantially all, of the assets of a bank whose home state is different than the home state of the acquiring bank.

"Out-of-state bank" means a bank whose home state is a state other than Virginia.

"Out-of-state state bank" means a bank chartered under the laws of any state other than Virginia.

"Resulting bank" means a bank that has resulted from an interstate merger transaction under this article.

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

"Virginia bank" means a bank whose home state is Virginia.

"Virginia state bank" means a bank chartered under the laws of Virginia.

§ 6.1-44.17. Authority to branch outside Virginia by merger.

With the prior approval of the Commission, any Virginia state bank may maintain and operate one or more branches in a state other than Virginia pursuant to an interstate merger transaction in which the Virginia state bank is the resulting bank. The Virginia state bank shall file an application on a form prescribed by the Commission, pay the merger fee prescribed by § 6.1-94, and comply with the applicable provisions of Article 12 (§ 13.1-716 et seq.) of the Virginia Stock Corporation Act. If the Commission finds that (i) the proposed transaction will not be detrimental to the safety and soundness of the applicant, (ii) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (iii) the proposed merger is in the public interest, it may approve the interstate merger transaction and the operation of branches outside Virginia by the Virginia state bank. Such an interstate merger transaction may be consummated only after the applicant has received the Commission's written approval.

§ 6.1-44.18. Interstate merger transactions and branching permitted.

Virginia banks may merge with out-of-state banks under this article, and an out-of-state bank resulting from such an interstate merger transaction may maintain and operate the branches in Virginia of a merged Virginia bank, provided the requirements of this article are met.

§ 6.1-44.19. Filing requirements.

Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Virginia bank shall submit to the Commission a copy of the application it files with the responsible federal banking agency to engage in the interstate merger transaction. Such submission shall be made at the same time the application is filed by the out-of-state bank with the responsible federal banking agency. All banks which are parties to any interstate merger transaction involving a Virginia bank shall comply with Article 12 (§ 13.1-716 et seq.) of the Virginia Stock Corporation Act, as applicable, and with other applicable state and federal laws. Any out-of-state bank resulting from an interstate merger transaction shall comply with Article 17 (§ 13.1-757 et seq.) of the Virginia Stock Corporation Act. The out-of-state bank shall pay any filing fee required by the Commission.

§ 6.1-44.20. Conditions for interstate merger.

An interstate merger transaction involving a Virginia bank shall not be consummated, and any out-of-state bank resulting from such a merger shall not operate any branch in Virginia, if the Commission finds that the laws of the home state of any out-of-state bank involved in the interstate merger transaction do not permit interstate merger transactions or finds that the resulting out-of-state bank has not complied with all applicable requirements of Virginia law.

§ 6.1-44.21. Powers.

An out-of-state state bank which establishes and maintains one or more branches in Virginia under this article may conduct the same activities at such branch or branches that are authorized under Virginia law for Virginia state banks, except to the extent such activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state state bank.

A Virginia state bank may conduct any activities at any branch outside Virginia that are permissible for a bank chartered by the host state where the branch is located, except to the extent such activities are expressly prohibited by other laws, regulations, or orders applicable to the Virginia state bank.

§ 6.1-44.22. Examination; periodic reports; cooperative agreements; assessment of fees.

A. The Commission may make such examinations of any branch of an out-of-state state bank located in Virginia as the Commission may deem necessary to determine whether the branch is operating in compliance with the laws of this Commonwealth and to ensure that the branch is being operated in a

safe and sound manner. The provisions of § 6.1-87 shall apply to such examinations.

B. The Commission may require periodic reports from any out-of-state bank that maintains a branch in Virginia to the extent such reporting requirements (i) apply equally to similarly situated banks having Virginia as their home state and (ii) are not preempted by federal law. 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 banking agencies for the examination of any branch in Virginia of an out-of-state state bank, or any branch of a Virginia state bank in any host state, and may accept such agencies' reports of examination and reports 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 branch of an out-of-state state bank or any branch of a Virginia state bank, or 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 state banks 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 regulators in accordance with agreements between them and the Commission.

§ 6.1-44.23. Enforcement.

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

§ 6.1-44.24. Regulations; certain fees.

The Commission may promulgate such regulations, and may provide for the payment of such reasonable application and administration fees, as it finds necessary and appropriate in order to implement the provisions of this article.

§ 6.1-44.25. Notice of subsequent merger, etc.

An out-of-state state bank that maintains a branch in Virginia under this article shall give thirty days' prior written notice of any merger, consolidation, or other transaction involving the bank which would cause the Virginia branch to be maintained by another bank.

§ 58.1-1201. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Bank" means any incorporated bank, banking association or trust company organized by or under the authority of the laws of the Commonwealth and any bank or banking association organized by or under the authority of the laws of the United States, doing business or having an office in the Commonwealth or having a charter which designates any place within the Commonwealth as the place of its principal office, and any bank which establishes and maintains a branch in this Commonwealth under Article 5.1 (§ 6.1-44.1 et seq.) of Title 6.1 or Article 5.2 (§ 6.1-44.15 et seq.), of Title 6.1, whether such bank or banking association is authorized to transact business as a trust company or not, and any joint stock land bank or any other bank organized by or under the authority of the laws of the United States upon which the Commonwealth is authorized to impose a tax. The term shall exclude all corporations organized under the laws of other states and doing business in the Commonwealth, corporations organized not as banks under the laws of the Commonwealth and all natural persons and partnerships.

"Bank holding company" means any corporation that is organized under the laws of Virginia, is doing business in the Commonwealth, and is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956.