**REPORT OF THE**
**VIRGINIA CODE COMMISSION**

# The Revision of Title 6.1 of the Code of Virginia

**TO THE GOVERNOR AND**
**THE GENERAL ASSEMBLY OF VIRGINIA**

# HOUSE DOCUMENT NO. 18

**COMMONWEALTH OF VIRGINIA**
**RICHMOND 2009**

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***Report of the***
***Virginia Code Commission***
***The Revision of Title 6.1 of the Code of Virginia***

**Richmond, Virginia**
**December 2009**

**To: The Honorable Timothy Kaine, Governor of Virginia**
**and**
**The General Assembly of Virginia**

In accordance with its authority granted pursuant to § 30-152 of the Code of Virginia, the Virginia Code Commission undertook the revision of Title 6.1 (Banking and Finance) in October 2007. Since the title has not been revised since 1966, the current recodification presents an opportunity to: (i) organize the laws in more logical manner; (ii) remove obsolete and duplicative provisions; and (iii) improve the structure and clarity of the laws pertaining to financial institutions and activities.

The Commission was assisted by a Work Group, comprised of Todd E. Rose, Associate General Counsel, State Corporation Commission; David B. Irvin, Senior Assistant Attorney General; Joseph E. Spruill, III, General Counsel to the Virginia Bankers Association; Dewey B. Morris, Esq., of Thompson McMullan; and George P. Whitley, Esq., of LeClair Ryan. The contributions by the Work Group were invaluable, and the Commission wishes to express its sincere gratitude to the Work Group members for all of the time and effort they contributed to the revision of Title 6.1. The Commission also wants to extend its appreciation to members of the project's mailing list, who represent a cross section of financial services and consumer groups. The expertise provided by the contributors proved to be an invaluable resource to the Commission and its staff.

The Virginia Code Commission recommends that the General Assembly enact legislation during the 2010 Session to implement the revisions proposed in this report.

Respectfully submitted,

Delegate R. Steven Landes, Chairman
Senator John S. Edwards, Vice Chairman
Delegate Bill Janis
Senator Ryan T. McDougle
The Honorable James F. Almand
Robert L. Calhoun
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# EXECUTIVE SUMMARY

## INTRODUCTION

Title 6.1 (Banking and Finance) contains provisions of the Code of Virginia that address the Commonwealth's regulation of certain providers of financial services, including depository institutions (such as banks, savings institutions, and credit unions) and nondepository institutions (such as consumer finance companies, payday lenders, check cashers, and mortgage lenders and brokers). Title 6.1 also contains laws addressing such related topics as safe deposit boxes, money of account, and usury. State laws applicable to several financial activities, including pawn lending, and financial service providers, including insurance companies, are not included in Title 6.1.

In December 1965, the Virginia Code Commission submitted its report on the proposed revision of Title 6, which was published as House Document 9 of the 1966 Session. The Code Commission's draft for the new Title 6.1 was enacted as Chapter 584 of the Acts of 1966. When Title 6.1 was enacted in 1966, it contained nine chapters. In the ensuing 43 General Assembly Sessions, 28 chapters have been added and 10 repealed, resulting in the existing title comprised of 27 chapters (of which two are captioned "Money and Interest"). In the intervening years, chapters often have been added at the end of the title, which has compromised any previous organizational scheme. It has become appropriate to (i) organize the laws in more logical manner, (ii) remove obsolete and duplicative provisions, and (iii) improve the structure and clarity of statutes pertaining to financial institutions and transactions.

## ORGANIZATION OF TITLE 6.2

The title is renamed from Banking and Finance to Financial Institutions and Services to more accurately describe the title's scope. Title 6.2 consists of 22 chapters divided into four subtitles: Subtitle I (General Provisions); Subtitle II (Depository Institutions and Trust Organizations); Subtitle III (Other Regulated Providers of Financial Services); and Subtitle IV (Other Financial Activities).

Subtitle I, containing Chapters 1 through 5, consists of provisions that apply to financial transactions and activities generally. Proposed Chapter 1 includes title-wide definitions and broadly applicable provisions, including measures applicable to the State Corporation Commission's administration of provisions of the title. Proposed Chapter 2 contains provisions in existing Chapter 7.3 applicable to money of account and the issuance and circulation of currency. Proposed Chapter 3 contains sections regarding interest and usury, including the legal, judgment and contract rates of interest, usury laws, and exemptions from the limit on the contract rate of interest. Proposed Chapter 4 (Certain Lending Practices) compiles provisions in existing Chapters 1 and 7.3 that regulate various aspects of lending other than the interest rate. These include late charges, prepayment fees, and measures applicable to the making and administration of real estate loans. This chapter also sets out measures applicable to open-end credit plans and credit cards, including statutes regulating credit cards that are currently codified at Chapter 6 of

Title 11. Finally, this subtitle includes, as Chapter 5, the existing Equal Credit Opportunity Act. This measure, which is existing Chapter 2.3 of Title 59.1, is moved to proposed Title 6.2 due to its interrelation with consumer lending.

Subtitle II contains proposed Chapters 6 through 13, each of which pertains to the regulation of depository institutions or providers of trust services. Proposed Chapter 6 (Deposits and Accounts) includes provisions from existing Chapter 1 that apply generally to deposit accounts and from the existing Chapter 2.1 (Multiple-Party Accounts). Proposed Chapter 7 (Acquisition of Interests in Financial Institutions) sets forth measures in existing Chapters 13 and 15 that pertain in general to the acquisition of Virginia financial institutions by out-of-state financial institutions. The other chapters in Subtitle II pertain to specific types of institutions and trust entities. Proposed Chapter 8 addresses the regulation of banks. Proposed Chapter 10 aggregates provisions, principally located in the existing Banking Act, that address the conduct of trust business by trust subsidiaries of banks, trust companies, multistate trust institutions, private trust companies, and savings institutions. Proposed Chapter 11 addresses the regulation of savings institutions, including savings banks. Credit unions are addressed in proposed Chapter 13.

Subtitle III contains proposed Chapters 14 through 21 and provides for the regulation, through the State Corporation Commission's Bureau of Financial Institutions, of providers of financial services. The providers addressed in this subtitle are connected by the facts that they are required to be licensed by the State Corporation Commission and that the services provided do not generally involve accepting deposits form the public. Proposed Chapter 14 addresses industrial loan associations. Proposed Chapter 15 addresses consumer finance companies and their making of consumer loans. Proposed Chapter 16 sets out provisions in existing Chapter 16 (Mortgage Lender and Broker Act). Proposed Chapter 17 consists of existing Chapter 16.1, enacted by the 2009 Session, that provides for the regulation of mortgage loan originators. Payday lending is addressed in proposed Chapter 18. Proposed Chapter 19 addresses money order sellers and money transmitters. Proposed Chapter 20, captioned Agencies Providing Debt Management Plans, recodifies existing Chapter 10.2 (Credit Counseling Act). Proposed Chapter 21 addresses check cashers.

Subtitle IV contains proposed Chapters 22 through 24, each of which involves a financial activity provided by an entity that is not required to be licensed by the State Corporation Commission. Proposed Chapter 22 contains measures regulating the provision of safe deposit boxes. Proposed Chapter 23 addresses aspects of securitization transactions. Proposed Chapter 24 addresses aspects of making income tax refund anticipation loans.

**Repealed Chapters**

During the revision process, the Code Commission became aware of a number of chapters that are either unnecessary or obsolete, and have been deleted, recast as articles of proposed chapters, or incorporated into other chapters. A chapter drafting note describes the reason for the repeal of each of the following chapters and articles:

Chapter 1.2, Compliance Review Committees (§ 6.1-2.16 et seq.)
Chapter 3.2, Virginia Savings and Loan Trust Powers Act (§ 6.1-195.77 et seq.)
Chapter 4.1, Virginia Credit Union Share Insurance Act (§ 6.1-226.1 et seq.)
Chapter 7.2, Money and Interest (§ 6.1-330.6 et seq.)
Chapter 14, Financial Service Center Banks (§ 6.1-390 et seq.)

**Other Affected Titles**

As noted previously, existing Chapter 6 (Credit Cards) of Title 11 and Chapter 2.3 (Equal Credit Opportunity Act) of Title 59.1 are transferred from other titles to proposed Title 6.2. In addition, three chapters of existing Title 6.1 are transferred to other titles. Chapter 1.1 (§ 6.1-2.10 et seq.), the Wet Settlement Act, is moved to Title 55 (Property) because its primary function is the regulation of the conduct of property settlements rather than their financing. For the same reason, Chapter 1.3 (§ 6.1-2.19 et seq.), Consumer Real Estate Settlement Protection Act) and Chapter 1.4 (§ 6.1-2.30 et seq.), Real Estate Settlement Agent Registration Act, have been combined into a new Chapter 27.2 in Title 55.

Two sections are transferred to other titles of the Code based on a determination that they do not fit within the proposed Title 6.2. Section 6.1-118.1 (Recovery of costs in civil actions for bad checks) is moved to proposed § 17.1-626.1, and part of § 6.1-17 pertaining to the effect of an order of qualification of a bank as a committee or guardian is moved to proposed § 26-7.5.

An outline of the organization of proposed Title 6.2 is included as Appendix A.

**Changes Made Throughout Title 6.2**

An explanation of the significant changes made in each chapter is provided in a note that precedes each chapter. Each section is followed by a drafting note describing any changes made in the section. If a section drafting note states "no change," the section contains no changes other than renumbering and updated cross-references. If a drafting note states "technical changes," the section contains changes to the text. These technical changes may range from the insertion of clarifying punctuation to a thorough modernization of archaic writing style. When sections contain structural or substantive changes, such as the deletion or addition of language, the drafting note describes the reason for the proposed change.

Many of the technical changes arose from the Code Commission’s determination that terminology should be clear, consistent, and modern. Among these changes, the following list provides a representative sample of the most significant.

- Use of the term "adopt regulations" rather than "promulgate regulations." The term "adopt regulations" means the process by which regulations are put into effect and include the promulgation, revision or amendment, and formal acceptance of a regulation by an agency that has exercised its regulation-making authority in accordance with law. In its revision of Titles 2.1, 9, 63.1, 37.1, and 3.1, the Code Commission adopted the use of this term instead of "promulgate" because it is more widely used.

- The term "rule" is deleted when used in conjunction with "regulation" since it has the same meaning and is therefore redundant.

- The term "court of competent jurisdiction" has been changed to "appropriate court."

- References made to "county, city or town" have been changed to "locality."

- The sections "not set out" that appear only in the Acts of Assembly are viewed by the Code Commission as policy statements and therefore have been deleted.

- The terms "Act," "Law," and "Virginia" have been deleted when used as part of the title of a specific law, such as the Banking Act, the Virginia Credit Union Act, and the Consumer Finance Act.

**Substantive Changes Proposed In Title 6.2**

When the Code Commission has approved a substantive change to a provision of existing law, it is noted in the drafting note for the affected section. These substantive changes include:

- Existing § 6.1-2.8 requires any banker or lender maintaining escrow accounts for the payment of taxes or insurance to make timely payments thereof. Proposed § 6.2-414 replaces the reference to banks or lenders with the broader "person" because a bank may be a lender, and an institution other than a bank may maintain an escrow account. Making the section applicable to persons that service mortgages but are not banks or lenders is consistent with the intended scope of the section.
- In existing § 6.1-44.16, "bank" is defined as any bank as defined in 12 U.S.C. § 1813 (h). In proposed § 6.2-849, the definition is conformed to the definition ascribed to the same term in existing § 6.1-44.2 (proposed § 6.2-836), which is to 12 U.S.C. § 1813 (a) (1). This change is proposed because (i) prior to 2007 amendments to § 6.1-44.2, "bank" had the same definition in both sections, (ii) the provision cited in the existing definition is to "insured bank," and (iii) the failure to make a conforming revision to the definition in this section in 2007 when the definition in § 6.1-44.2 was revised apparently was an oversight.
- Existing § 6.1-32.22 requires every director of a trust company to be the sole owner of stock of such trust company having a par book value of not less than $2,000. In proposed § 6.2-1029, "par value" is replaced with "book value" in order to use the same standard for measuring the required investment that, since 1995, has applied to banks. The change would not affect any existing entities because there are no existing independent Virginia-chartered trust companies.
- The definition of "bank" in existing § 6.1-32.32 incorporates by reference the definition ascribed to the term in 12 U.S.C. § 1813 (h). Proposed § 6.2-1065 replaces the cited section of federal law with 12 U.S.C. § 1813 (a)(1), which conforms it to the change in the definition of "bank" in proposed § 6.2-849.

- Existing § 6.1-255 requires the State Corporation Commission to mail a notice of the receipt of an application for a consumer finance company license to each licensee having a place of business in the community where the applicant proposes to do business. This requirement is deleted from proposed § 6.2-1506 because it relates to the process for finding whether the issuance of a license furthered convenience and advantage in the community, and the requirement for such finding has been deleted. Retaining this requirement would not be consistent with the other amendments to the existing Consumer Finance Act eliminating the requirement that the Commission determine that the issuance of a license furthered the convenience and advantage of the community, per existing § 6.1-260.
- Amendments to existing subsection E of § 6.1-431.10, as set out in proposed § 6.2-1709, clarifies that a person who passes an approved written test in any state is deemed to have satisfied all of Virginia's testing requirements for licensure as a mortgage loan originator except those pertaining to the specified areas of Virginia law, which the person would be required to successfully complete. Existing subsection E provides that successful completion of approved education and testing, excluding limited state tests, satisfies Virginia's pre-licensing testing requirements, but that provision is inconsistent with the requirement in subsection B that the written test cover state law and regulation with respect to fraud, consumer protection, and other specific issues.

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## TITLE 6.2: FINANCIAL INSTITUTIONS AND SERVICES

TITLE ~~6.1~~ 6.2.
~~BANKING AND FINANCE~~ FINANCIAL INSTITUTIONS AND SERVICES.
SUBTITLE I.
GENERAL PROVISIONS.
CHAPTER 1.
DEFINITIONS AND GENERAL PROVISIONS.

**Chapter drafting note: Separate articles have been created for definitions and for the sections of a general nature. Definitions of terms used throughout the title are intended to replace numerous chapter-specific definitions of the same terms, except in those instances where a chapter defines a term in a unique manner, in which case that definition is retained for use in that chapter.**

Article 1.
Definitions.

§ ~~6.1-1~~ 6.2-100. ~~"The Commission" defined~~ Definitions.

~~The term "the Commission," as~~ As used in this title, ~~shall be construed to mean the State Corporation Commission.~~ unless the context otherwise requires:

"Bureau" means the Bureau of Financial Institutions, a division of the Commission.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of Financial Institutions.

"Commission's Rules" means the rules of practice and procedure prescribed by the Commission pursuant to § 12.1-25.

"Entity" means any corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or other legal or commercial entity.

"Finance charge" has the meaning assigned to it in Federal Reserve Board Regulation Z, 12 C.F.R. § 226.4, as amended.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, or credit union.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or other legal or commercial entity.

**Drafting note: The definitions section is expanded to include terms that are used throughout the title, including "Commission's rules" and "Commissioner." The definition of "financial institution" is in existing § 6.1-2.1. The definition of "person" is based on the definition in § 1-230, but excludes successors, representatives, agents, agencies, and instrumentalities, because their inclusion would broaden the scope of the existing usage of**

**the term in this title. "Entity" encompasses any person other than an individual. The definition of "finance charge" is new, and incorporates the definition ascribed to the term in Regulation Z, issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending Act. The definition provides, in part, that a finance charge is the cost of consumer credit as a dollar amount; includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit; and does not include any charge of a type payable in a comparable cash transaction.**

Article 2.

General Provisions.

§ ~~6.1-1.1~~ 6.2-101. Confidentiality of information.

A. Except as otherwise provided in this title or § 12.1-19, ~~neither~~ the following shall not be disclosed by the Commission or any of its employees: (i) a report of examination of any person ~~or entity~~ subject to this title, ~~nor~~ including any contents thereof; (ii) any information furnished to or obtained by the Bureau ~~of Financial Institutions~~, the disclosure of which, in the opinion of the Commissioner ~~of Financial Institutions~~, could endanger the safety and soundness of a bank, savings institution, or credit union~~, nor~~; or (iii) any personal financial information furnished to, or obtained by the Bureau ~~of Financial Institutions, shall be disclosed by the Commission or any of its employees~~.

~~However, such~~ B. Any reports and information described in subsection A may be provided to:

~~(i) members~~ 1. Members and employees of the Commission in the performance of their duties;

~~(ii) in~~ 2. In the case of an entity, directors and officers thereof and such other persons as may be authorized by resolution of the entity's board of directors;

~~(iii) such~~ 3. Such governmental officers, instrumentalities, or agencies as the Commissioner ~~of Financial Institutions~~ may determine, in his discretion, to be proper recipients of such reports or information;

~~(iv) any~~ 4. Any persons pursuant to ~~appropriate~~ lawful process and, if necessary to protect the confidentiality of the reports and information, an appropriate protective order issued by or under the authority of any appropriate court ~~of competent jurisdiction~~; ~~or~~

~~(v) other~~ 5. Other persons pursuant to grand jury subpoenas; or

6. Any other persons with the consent of the person to whom the report or information pertains.

**Drafting note: Revisions clarify the circumstances under which the Commission is required to obtain a protective order, permit the provision of reports and information with the consent of the person to whom it pertains, and remove the unclear reference to an "appropriate" process that is independent of obtaining a protective order.**

§ ~~6.1-2~~ 6.2-102. Use of funds collected under this title.

A. All fees assessed under any provision of this title and paid into the state treasury shall be deposited to a special fund designated "Financial Institutions Special Fund - State Corporation Commission," and out of such special fund and the unexpended balance thereof shall be appropriated the sums necessary for the regulation, supervision, and examination of all entities subject to regulation under this title. The Commission shall have the authority to maintain a reasonable margin in the nature of a reserve in the Financial Institutions Special Fund for the expenses of operating the Bureau ~~of Financial Institutions~~.

B. In order to provide additional funds for the operation of the Bureau ~~of Financial Institutions~~, the Commission is ~~hereby~~ authorized to increase the fees and assessments for the examination and supervision of banks, trust companies, savings institutions, industrial loan associations, credit unions, consumer finance licensees, ~~and~~ mortgage lenders, and mortgage brokers by an amount not to ~~the extent of fifty~~ exceed 50 percent of the fees and assessments provided for in §§ ~~6.1-32.25~~ 6.2-908, ~~6.1-94~~ 6.2-1033, ~~6.1-194.85~~ 6.2-1202, ~~6.1-225.5~~ 6.2-1310, ~~6.1-237.4~~ 6.2-1414, ~~6.1-299.1~~ 6.2-1532, and ~~6.1-420~~, 6.2-1612.

**Drafting note: In proposed subsection B, the authorization for the Commission to increase fees and assessments is changed from "to the extent of fifty percent" to "by an amount not to exceed 50 percent" in order to clarify that the increase may be of less than such percentage. Other changes are technical. Several of the sections listed in subsection B do not specify the amounts of fees and assessments, and in such cases the authorization to increase the fees and assessments provided for therein may apply to the amounts established by the Commission through its regulatory process.**

§ ~~6.1-2.1~~ 6.2-103. Financial institutions to furnish certain information to fiduciaries.

The provisions of this title and any other provisions of law notwithstanding, any financial institution subject to the provisions of ~~said~~ this title shall make available to any fiduciary, upon request, all information concerning assets or liabilities in which his decedent or ward had or has any interest.

~~Where used in this title, the term "financial institution" shall mean any bank, trust company, savings and loan association, savings bank, industrial loan association, consumer finance company, or credit union.~~

**Drafting note: The definition of financial institution in the second paragraph is moved to proposed § 6.2-100.**

~~§§ 6.1-2.2. through 6.1-2.4.~~

**Drafting note: Repealed by Acts 1975, c. 448.**

~~§ 6.1-2.5. Certain mortgages, etc., not to prohibit further encumbrance of real property.~~

~~Where any loan secured by a mortgage or deed of trust, on real property comprised of one-to-four-family residential dwelling units, the note, or mortgage or deed of trust evidencing such loan shall in no way prohibit the further encumbrance of the real property. The provision of this section shall not apply to any transaction entered into prior to July 1, 1975.~~

**Drafting note: Relocated to proposed § 6.2-416.**

~~§ 6.1-2.6.~~

**Drafting note: Repealed by Acts 1980, c. 730.**

~~§ 6.1-2.6:1. Fire insurance coverage under certain loans not to exceed replacement value of improvements.~~

~~A. No lender shall require a borrower, as a condition to receiving or maintaining a loan secured by any mortgage or deed of trust, to provide or purchase property insurance coverage against risks to any improvements on any real property in an amount exceeding the replacement value of the improvements on the real property.~~

~~In this section, "property insurance coverage" means insurance against losses or damages caused by perils that commonly are covered in insurance policies described with terms similar to "standard fire" or "standard fire with extended coverage."~~

~~In determining the replacement value of the improvements on any real property, the lender may:~~

~~1. Accept the value placed on the improvements by the insurer; or~~

~~2. Use the value placed on the improvements that is determined by the lender's appraisal of the real property.~~

~~B. A violation of this section shall not affect the validity of the mortgage or deed of trust securing the loan.~~

**Drafting note: Relocated to proposed § 6.2-412.**

§ ~~6.1-2.7~~ 6.2-104. Directors to serve only one institution.

A. No officer or director of any financial institution, other than a consumer finance company or credit union domiciled in ~~this~~ the Commonwealth, shall at the same time serve as an officer or director of any other financial institution unless both such institutions are within a single financial institution holding company~~; however,~~.

B. Notwithstanding the provisions of subsection A, the Commission, upon petition brought on behalf of an individual, may permit him to serve on the boards of more than one such institution if the Commission finds that the financial institutions are not in competition with each other or that one or both of the institutions might otherwise be denied capable management or direction from an individual residing in or employed in the locality served by an institution.

~~The prohibition contained in this section shall not be applicable to officers, or directors who, on July 1, 1978, were in violation of the provisions hereof until November 10, 1993.~~

**Drafting note: The last paragraph is deleted because the delayed period for compliance expired 15 years ago. The other changes are technical.**

§ ~~6.1-2.7:1~~ 6.2-105. Reclassification or conversion of banking institution shares.

A. As used in this section, unless the context requires otherwise:

"Banking institution" means a corporation that is organized under the Virginia Stock Corporation Act (§ 13.1-601 et seq.) and that is a (i) bank, (ii) savings institution, (iii) bank holding company as defined in 12 U.S.C. § 1841 or § ~~6.1-4~~ 6.2-800, (iv) savings and loan holding company, or (v) multiple or diversified savings and loan holding company as defined in 12 U.S.C. § 1467a.

"Issuer" means a banking institution required to file periodic reports under § 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m or 78o(d)).

B. A banking institution may adopt an amendment to its articles of incorporation to reclassify or convert a portion of its issued and outstanding shares of common stock into a class or series of preferred stock for the purpose of ceasing to be, or avoiding the status of, an issuer, provided (i) such reclassification or conversion is authorized by the banking institution's original or amended articles of incorporation and (ii) the reclassified or converted shares continue to be a part of the equity capital of the corporation.

C. A reclassification or conversion of shares pursuant to this section shall not be subject to the provisions of Article 15 (§ 13.1-729 et seq.) of the Virginia Stock Corporation Act, notwithstanding that such shares are being reclassified or converted and other shares of the same class or series are not being reclassified or converted, if:

1. The board of directors of the banking institution ~~shall have~~ has recommended to the shareholders approval of the amendment to reclassify or convert such shares;

2. The shareholders of the corporation approve the amendment;

3. All affected shares are reclassified or converted on the same terms; and

4. Articles of amendment are filed in accordance with § 13.1-710.

**Drafting note: Technical change.**

~~§ 6.1-2.8. Obligation of lender to pay taxes and insurance; penalties.~~

~~Any bank or lender maintaining escrow accounts for the payment of taxes or insurance, which on receipt of notice thereof, fails to make timely payment therefor, and incurs a penalty or late charge thereon or a cancellation for nonpayment if there be sufficient funds in such escrow account at least five days before such due date to make such payment, shall be liable for the penalty or late charge assessed for late payment and for any loss as a result of the property being uninsured for nonpayment. Such bank or lender shall give written notice to any obligor of the payment of such penalty or late charge within five days after such payment is made.~~

**Drafting note: Relocated to proposed § 6.2-414.**

~~§ 6.1-2.9. Lenders to furnish borrower with copy of appraisal.~~

~~Any lender which requires a borrower or prospective borrower to pay for a residential appraisal made in connection with a loan or loan application shall, upon request by the borrower or prospective borrower, furnish free of charge such borrower or prospective borrower with a copy of the written appraisal or, if no written appraisal exists, with a statement of the appraised value within ten business days of the receipt of such request.~~

**Drafting note: Relocated to proposed § 6.2-407.**

~~§ 6.1-2.9:1. Obligation of lender to reimburse unused mortgage guaranty insurance premiums.~~

~~Any lender, which requires as a prerequisite to its lending money for the purchase of real property that private mortgage insurance be secured to insure a certain amount of such institution's interest in the property, shall return to the person who paid the premium, or other~~

~~person entitled thereto, any portion of the premium for such insurance that is not used to secure insurance for such institution's interest in the property.~~

**Drafting note: Relocated to proposed § 6.2-413.**

~~§ 6.1-2.9:2. Checks on consumer deposit accounts to show date account was opened.~~

~~All checks, drafts, or similar negotiable or nonnegotiable instruments or orders of withdrawal which are drawn against funds held by a financial institution located in Virginia in a consumer deposit account opened after December 31, 1981, shall clearly display on the face thereof the month and year in which the account was opened. This section does not apply to temporary checks, drafts, or similar negotiable or nonnegotiable instruments or orders of withdrawal, or to a consumer deposit account where the applicant either demonstrates through the production of monthly statements or represents in a writing which states it is made under penalties of perjury that, for twelve months immediately preceding his application, he has had an account at the same or another financial institution.~~

~~For purposes of this section the term "consumer deposit account" means a demand or other similar deposit account established and maintained by a natural person with a financial institution and operated primarily for personal, family or household purposes.~~

~~No liability or penalty shall be imposed on any depositor, financial institution or printer for an unintentional failure to comply with this section.~~

**Drafting note: Relocated to proposed § 6.2-600.**

~~§ 6.1-2.9:3. Disclosure of terms of assumption.~~

~~A. An owner of residential real estate, improved by the construction thereon of housing consisting of four or less dwelling units, which is encumbered by a mortgage or deed of trust, shall have the right, upon written request to any holder holding such mortgage or deed of trust, to receive a written disclosure of whether such holder will permit a qualified purchaser to assume such mortgage or deed of trust, and, if the answer is in the affirmative, the following terms of such assumption:~~

~~1. The rate of interest to be assumed, which may vary with an exterior standard;~~

~~2. The balance of the escrow account, if any;~~

~~3. Any fees and charges to be assessed by the holder against the seller and buyer in connection with the assumption;~~

~~4. Usual limitations or requirements placed on the assumption; and~~

~~5. Other terms and conditions of the assumption deemed pertinent by the holder.~~

~~B. The holder shall state the time period during which the terms disclosed pursuant to subsection A of this section shall be valid, together with any limitations thereon.~~

~~C. Any such holder receiving such a written request from an owner shall respond in writing within ten business days of the receipt of the request.~~

~~D. Any such holder receiving a second or subsequent written request with respect to the same mortgage or deed of trust within any twelve-month period may charge a fee, not to exceed fifteen dollars, for each additional request to be paid in advance.~~

**Drafting note: Relocated to proposed § 6.2-419.**

~~§ 6.1-2.9:4. Federal insurance of deposits required for all banks or savings institutions.~~

~~Notwithstanding any other provisions contained in this title, no bank or savings institution doing business in the Commonwealth shall accept deposits unless its deposit accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the insurance provided thereby. No bank or savings institution shall solicit deposits in the Commonwealth, nor shall any other person solicit or accept deposits in the Commonwealth on behalf of a bank or savings institution, unless the deposit accounts of such bank or savings institution are insured by the Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the insurance provided thereby.~~

**Drafting note: Relocated to proposed § 6.2-601.**

~~§ 6.1-2.9:5. Disclosure of terms of mortgage application.~~

~~Any lender or broker making or arranging loans secured by first mortgages or deeds of trust on owner occupied residential real estate, consisting of one to four family dwelling units, other than a lender making ten or less loans in any twelve-month period, shall provide, at the time an application for such a loan is submitted by a potential borrower, to the applicant-borrower a written statement:~~

~~1. Describing when, if ever, the interest, points and fees quoted will be locked in;~~

~~2. To be initialed by the applicant-borrower and lender or broker, stating that all the loan terms not legally locked in are subject to change until settlement; and~~

~~3. Providing a good faith estimate of the processing time required for the loan. The estimate shall take into account the time needed for the performance of any local government inspections or other functions necessary to close the loan.~~

**Drafting note: Relocated to proposed § 6.2-406.**

~~§ 6.1-2.9:6. Lender not to cancel insurance policy at time of refinancing under certain circumstances.~~

~~No lender shall require a borrower or debtor, for the protection of property securing the credit or lien, to cancel an existing insurance policy on such property at the time of a refinancing solely to change the effective dates of coverage under the policy, unless the expiration date of such policy is within four months of the date of the closing. Nothing herein shall prevent a lender from requesting a new policy when the coverage under the existing policy is inadequate or there is reasonable concern over the soundness or services of the insurer.~~

**Drafting note: Relocated to proposed § 6.2-415.**

~~§ 6.1-2.9:7. Adverse claims to accounts.~~

~~A. Notice to any financial institution doing business in Virginia of an adverse claim to funds in an account with such institution shall not require the institution to recognize the adverse claim unless the adverse claimant shall either:~~

~~1. Procure a restraining order, injunction, or other appropriate order against the financial institution from a court of competent jurisdiction, or unless the institution is served with a notice of lien pursuant to § 8.01-502; or~~

~~2. Execute to such financial institution, in form and with sureties acceptable to it, a bond indemnifying the institution from any and all liability, loss, damage, costs, and expenses, for and on account of the payment or recognition of such adverse claim, or the dishonor of, or failure to pay, any check, or failure to comply with any other order, of the person to whose credit the account is held.~~

~~B. This section shall not affect the provisions of Chapter 2.1 (§ 6.1-125.1 et seq.) of this title governing multi-party accounts, and any claim by a party to such account shall be determined in accordance with the provisions therein.~~

~~C. This section shall not affect notices of lien issued pursuant to Title 58.1.~~

**Drafting note: Relocated to proposed § 6.2-602.**

~~§ 6.1-2.9:8. Medical savings accounts and health savings accounts.~~

~~To the extent allowed by federal law, a bank, insured savings institution, or credit union may act as a trustee or custodian of health savings accounts established with financial institutions under § 223 of the United States Internal Revenue Code of 1986, as amended from time to time, and medical savings accounts established with financial institutions under § 220 of the United States Internal Revenue Code of 1986, as amended from time to time. Contributions may be accepted and interest thereon retained by such institution pursuant to forms provided by it and may be invested in accounts of the institution in accordance with the terms upon which such contributions were accepted. The financial institution shall administer such accounts in accordance with the requirements of federal law.~~

**Drafting note: Relocated to proposed § 6.2-603.**

§ 6.2-106. Payment of civil penalties.

Civil penalties paid pursuant to this title, when collected, shall be paid by the Commission into the treasury of Virginia, in the manner provided for judgments collected as set forth in § 12.1-35.

**Drafting note: New section. Currently, several provisions authorize the State Corporation Commission to impose a fine or penalty on persons who violate provisions of this title. The State Corporation Commission's imposition of such fines is civil, rather than criminal, in nature. Pursuant to § 12.1-35, judgments of the Commission when collected shall be paid into the treasury of Virginia, and this section is intended to provide that such sums continue to be paid in the same manner.**

## CHAPTER 2.
## MONEY AND CURRENCY.

**Chapter drafting note: Current Chapter 7.3 (Money and Interest) is split into this chapter and proposed Chapter 3 (Interest and Usury). This chapter contains sections formerly in Article 2 (Money of Account) of Chapter 7.3. Separate articles address money of account and the issuance and circulation of currency.**

### Article ~~2~~ 1.
### Money of Account.

§ ~~6.1-330.50~~ 6.2-200. Money of account.

A. The money of account of ~~this~~ the Commonwealth shall be the dollar, cent, and mill. All accounts by public officers shall be ~~so~~ kept in accordance with such monetary units.

B. No writing shall be invalid, nor the force of any account or entry shall be impaired, because a sum of money is expressed ~~otherwise~~ in other monetary units.

**Drafting note: Technical changes attempt to update archaic usage. Historical and Revision Notes to Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 980, state that the word "money" was substituted in the United States Code for "money of account" to eliminate unnecessary words. As far as can be determined, the phrase "money of account" has not been interpreted by any court or government agency. The phrase was used by Alexander Hamilton in his "Report on the Establishment of the Mint" (1791). Hamilton reportedly used the phrases "money unit of the United States" and "money of account" interchangeably and in the sense that the phrases are used to denote the monetary system for keeping financial accounts. The phrases indicate that financial accounts are to be based on a decimal money system. The phrase "money of account" did not mean, by itself, that dollars or fractions of dollars must be equal to something having intrinsic or "substantive" value.**

§ ~~6.1-330.51~~ 6.2-201. Ascertaining value in money of account for money expressed in foreign currency.

A. In any suit for a sum of money expressed in any foreign currency or otherwise than in the money of account of ~~this~~ the Commonwealth, the jury or the court shall ascertain the value in the money of account of the sum so expressed, ~~making~~ including an appropriate allowance for the difference of exchange ~~as shall be just~~. The judgment or order may be for either the amount so ascertained, or for the amount of money so expressed ~~which~~, and the judgment or order shall be discharged by an amount so ascertained.

B. ~~As to~~ In any such suit involving an instrument to which § 8.3A-107 is applicable, the provisions of that section shall apply.

**Drafting note: Technical changes attempt to update archaic usage.**

Article 2.

Currency Issuance and Circulation.

§ ~~6.1-330.52~~ 6.2-202. Issuance of currency~~; contracts and securities obtained by illegal currency; capital stock of certain companies, etc., vested in Commonwealth; proceedings to recover such stock; liability~~ and related prohibited acts.

A. ~~1.~~ No individual or entity, unless authorized by law, shall:

~~a~~ 1. Issue~~, with intent that the same be circulated as currency,~~ any note, bill, scrip, or other paper or thing~~,~~ with intent that the same be circulated as currency; or

~~b~~ 2. Otherwise deal, trade, or carry on business as a bank of circulation.

~~2~~ B. All contracts made for forming any ~~such~~ entity ~~as described in subdivision 1 of this~~ to engage in any activity prohibited by subsection A shall be void.

**Drafting note: Existing § 6.1-330.52 is divided into this section and proposed §§ 6.2-203 and 6.2-204. Changes are technical.**

§ 6.2-203. Contracts and securities from illegal currency dealing void; recovery of payments.

~~B~~ A. All contracts and securities that ~~may~~ originate from, or ~~be~~ are made or obtained in whole or in part by means of any illegal currency dealing, trade, or business, shall be void.

B. If any person ~~shall pay~~ pays any money or other valuable ~~thing~~ consideration on account of any ~~such~~ contract or security originating from, or made or obtained in whole or in part by means of, any illegal currency dealing, trade, or business, such person or his ~~or its~~ representative~~,~~ or assignee~~,~~ may~~, by suit brought within one year after such payment,~~ recover ~~back~~ the amount or value of such payment from the person ~~or such representative~~ to whom, or to whose use, ~~it may have been~~ the payment was made, by bringing suit within one year after such payment.

**Drafting note: Section consists of subsection B of existing § 6.1-330.52. Technical changes only.**

§ 6.2-204. Capital stock of certain entities vested in Commonwealth; proceedings to recover stock; liability.

~~C~~ A. The capital stock of every ~~such~~ entity formed to engage in any activity prohibited by subsection A of § 6.2-202, whether paid up or merely subscribed, shall belong to the Commonwealth. The Attorney General, whenever informed of the existence of any such entity, shall institute a suit in the Circuit Court of the City of Richmond, for the purpose of recovering such capital stock. In such suit, all or any of the members of such entity, and any of its officers, agents, or managers, may be made defendants, and compelled to exhibit all their books and papers, and an account of everything necessary to enable the court to enter a proper order. ~~But no~~

B. No disclosure made by a defendant in such suit, and no book or paper exhibited by him in answer to the bill, or under the order of the court, shall be used as evidence against him in any case at law.

~~D~~ C. Every member of any ~~such~~ entity~~,~~ formed to engage in any activity prohibited by subsection A of § 6.2-202 who is made defendant in any such suit, shall be held liable to the Commonwealth for his proportion of the capital stock in such entity held by him, or for his use or benefit, at the institution of such suit, or at the time of the order. Such order against any defendant shall be a bar to a proceeding against him for any act done in violation of subsection A of ~~this section~~ § 6.2-202.

**Drafting note: Section consists of subsections C and D of existing § 6.1-330.52. Technical changes only.**

~~CHAPTER 7.2.~~

~~MONEY AND INTEREST.~~

**Chapter drafting note: Existing Title 6.1 has two chapters (7.2 and 7.3) titled "Money and Interest." Chapter 7.2 consists of two sections that address the surviving applicability of**

**repealed sections that pertain to certain subordinate real estate loans by unlicensed lenders made prior to July 1, 1986.**

~~Article 10.~~

~~Usury - Penalty.~~

~~§ 6.1-330.47. Contracts, etc., in violation of §§ 6.1-330.16 and 6.1-330.24, waivers and releases void.~~

~~A. Any contract, note, mortgage, or deed of trust made or received and providing for interest charges in excess of those permitted by §§ 6.1-330.16 and 6.1-330.24, except as hereinafter provided, shall be null and void and unenforceable by the lender or by his assignees, who are agents or principals of the lender.~~

~~The provisions of this section shall apply only to loans made under § 6.1-330.16 and shall not apply to any contract or note, or mortgage or deed of trust securing such obligation, which has been assigned to a person who is not the agent or principal of the lender, if such assignee has taken the note or obligation in good faith and in reasonable reliance upon the provisions of § 6.1-330.44.~~

~~B. Any agreement whereby the borrower waives the benefits of this chapter or releases any rights he may have acquired by the virtue thereof shall be deemed to be against public policy and void.~~

**Drafting note: Substantive provisions of this section are set out in an enactment clause because of the section's limited applicability. Per the second paragraph of subsection A, the section applies only to loans made under § 6.1-330.16, which was repealed effective July 1, 1987. In addition, the third enactment clause of Chapter 622 of the 1987 Acts of Assembly, which enacted §§ 6.1-330.49 through 6.1-330.90 and repealed §§ 6.1-330.6 through 6.1-330.46 and § 6.1-330.47:1, provides that the provisions of §§ 6.1-330.47 and 6.1-330.48 shall continue to apply only to loans secured by subordinate deeds of trust or mortgages made by certain unregulated lenders that closed prior to July 1, 1986. The enactment clause states:**

> **"___. That the provisions of former §§ 6.1-330.47 and 6.1-330.48, which provide that (i) any contract, note, mortgage, or deed of trust made or received and providing for interest charges in excess of those permitted by former §§ 6.1-330.16 and 6.1-330.24, except as hereinafter provided, shall be null and void and unenforceable by the lender or by his assignees, who are agents or principals of the lender; (ii) the provisions of clause (i) shall apply only to loans made under former § 6.1-330.16; (iii) the provisions of clause (i) shall not apply to any (a) contract or note, or mortgage or deed of trust securing such obligation, that has been assigned to a person who is not the agent or principal of the lender, if such assignee has taken the note or obligation in good faith and in reasonable reliance upon the provisions of former § 6.1-330.44, (b) loan made by a lender licensed by, and under the supervision of, the State Corporation Commission or the federal government, or (c)**

**loan made by a state or national bank, state or federal savings institution, or state or federal credit union, or to a seller in a real state transaction who takes a subordinate mortgage on such real estate; and (iv) any agreement whereby the borrower waives the benefits of former Chapter 7.2 (§ 6.1-330.6 et seq.) of the Code of Virginia or releases any rights he may have acquired by the virtue thereof shall be deemed to be against public policy and void, shall continue to apply to, and apply only to, loans secured by subordinate deeds of trust or mortgages closed prior to July 1, 1986. For the purposes of this enactment, a loan shall be deemed closed upon the initial recordation of the deed of trust or mortgage securing the loan. The provisions of former § 6.1-330.47 shall not apply to any loan closed on or after July 1, 1986."**

~~§ 6.1-330.48. Applicability of certain sections.~~

~~Sections 6.1-330.16, 6.1-330.24, 6.1-330.31 and 6.1-330.47 shall not apply to loans made by any lender licensed by, and under the supervision of, the State Corporation Commission or the federal government nor to loans made by state and national banks, state and federal savings institutions and state and federal credit unions. Sections 6.1-330.16, 6.1-330.24, 6.1-330.31 and 6.1-330.47 shall not apply to a seller in a real estate sales transaction who takes a subordinate mortgage on such real estate.~~

**Drafting note: Per the third enactment clause of Chapter 622 of the 1987 Acts of Assembly, which enacted §§ 6.1-330.49 through 6.1-330.90 and repealed §§ 6.1-330.6 through 6.1-330.46 and § 6.1-330.47:1, § 6.1-330.48 continues to apply only to loans secured by subordinate deeds of trust or mortgages made by certain unregulated lenders that closed prior to July 1, 1986. Due to the time that has passed since loans to which this section could apply, and to the fact that add-on interest loans made under former § 6.1-330.16 closed over 20 years ago and had a maximum term of 10 years and two months, it is not necessary to carry these provisions in proposed Title 6.2 The provisions of this section that excluded certain loans and lenders from §§ 6.1-330.16 and 6.1-330.47 are included in the proposed enactment clause that addresses the surviving substantive elements of § 6.1-330.47 (see the Drafting Note to that section).**

## CHAPTER ~~7.3~~ 3.
## ~~MONEY AND~~ INTEREST AND USURY.

**Chapter drafting note: Existing Article 2 (Money of Account) is relocated to proposed Chapter 2 (Money and Currency). Existing Articles 3 and 4 are combined into a proposed Article 2 (Legal, Judgment, and Contract Rates of Interest). Existing Articles 6 through 11, which set out exceptions to the limit on the contract rate of interest, are combined in proposed Article 4. Existing Article 12, which deals with late charges, prepayment penalties, and acceleration of loans, is relocated to proposed Chapter 4 (Certain Lending Practices).**

### Article 1.
### Definitions.

§ ~~6.1-330.49~~ 6.2-300. Definitions.

As used in this chapter, unless the context ~~indicates some other meaning~~ otherwise requires:

"Bank" ~~shall mean~~ means any national bank, any bank organized under Chapter ~~2~~ 8 (§ ~~6.1-3~~ 6.2-800 et seq.) ~~of this title,~~ or any bank incorporated and organized under the laws of another state ~~or territory of the United States, or the District of Columbia~~.

"Credit union" ~~shall mean~~ means any credit union organized under Chapter ~~4.01~~ 13 (§ ~~6.1-225.1~~ 6.2-1300 et seq.) ~~of this title~~ or any credit union incorporated and organized under the laws of another state. "Credit union" shall not include ~~within its meaning~~ any federal credit ~~unions~~ union.

~~"Entity" shall mean any association, corporation, partnership, firm, company, trust, estate or joint venture.~~

"First deed of trust" or "first mortgage" includes all deeds of trust and mortgages, and amendments thereto, that are made by the same grantor or mortgagor, secure notes held by the same holder, convey substantially the same real estate, and are superior to all other deeds of trust or mortgages on the real estate.

"Grantor" or "mortgagor" includes an owner of real estate, and spouse, who has assumed responsibility for the obligation secured by a mortgage or deed of trust encumbering the real estate.

"Loan" means a loan or forbearance of money.

~~"Person" shall include an individual or an entity.~~

"Open-end credit" or "open-end credit plan" means consumer credit extended by a creditor under a plan in which: (i) the creditor reasonably contemplates repeated transactions; (ii) the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (iii) the amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

"Savings institution" ~~shall mean~~ means any savings institution, as defined in § ~~6.1-194.2~~ 6.2-1100, incorporated and organized under the laws of the United States, the Commonwealth, or another state ~~or territory of the United States, or the District of Columbia~~.

"Subordinate mortgage or deed of trust" means a mortgage or deed of trust that is subject to a prior mortgage or deed of trust in existence at the time of the making of the loan secured by such subordinate mortgage or deed of trust.

**Drafting note: Terms that are defined on a title-wide basis per proposed § 6.2-100 (entity and person) are removed from this section. In the definition of "bank," language following "state" is deleted as unnecessary as a result of the Code-wide definition of "state" in § 1-245. The definitions of "first deed of trust" or "first mortgage," and of "grantor" or "mortgagor" (with clarifying changes) are relocated from existing § 6.1-330.69. The definition of "subordinate mortgage or deed of trust" is relocated from existing § 6.1-330.71. The definition of "open-end credit" is new, and follows the corresponding**

**definition ascribed to the term in § 226.2 of Regulation Z. In the definition of "savings institution," the references to territories and the District of Columbia are deleted pursuant to § 1-245.**

~~Article 2.~~

~~Money of Account.~~

~~§ 6.1-330.50. Money of account.~~

~~The money of account of this Commonwealth shall be the dollar, cent and mill. All accounts by public officers shall be so kept. No writing shall be invalid, nor the force of any account or entry be impaired, because a sum of money is expressed otherwise.~~

**Drafting note: Section is moved to proposed § 6.2-200 in Chapter 2 (Money and Currency).**

~~§ 6.1-330.51. Ascertaining value in money of account for money expressed in foreign currency.~~

~~In any suit for a sum of money expressed in any foreign currency or otherwise than in the money of account of this Commonwealth, the jury or the court shall ascertain the value in the money of account of the sum so expressed, making allowance for the difference of exchange as shall be just. The judgment or order may be for either the amount so ascertained, or for the amount of money so expressed which shall be discharged by an amount so ascertained. As to any such suit involving an instrument to which § 8.3A-107 is applicable, the provisions of that section shall apply.~~

**Drafting note: Section is moved to proposed § 6.2-201 in Chapter 2 (Money and Currency).**

~~§ 6.1-330.52. Issuance of currency; contracts and securities obtained by illegal currency; capital stock of certain companies, etc., vested in Commonwealth; proceedings to recover such stock; liability.~~

~~A. 1. No individual or entity unless authorized by law shall:~~

~~a. Issue, with intent that the same be circulated as currency, any note, bill, scrip, or other paper or thing, or~~

~~b. Otherwise deal, trade or carry on business as a bank of circulation.~~

~~2. All contracts made for forming any such entity as described in subdivision 1 of this subsection shall be void.~~

~~B. All contracts and securities that may originate from, or be made or obtained in whole or in part by means of any illegal currency dealing, trade or business, shall be void. If any person shall pay any money or other valuable thing on account of any such contract or security, such person or his or its representative, or assignee, may, by suit brought within one year after such payment, recover back the amount or value of such payment from the person or such representative to whom, or to whose use, it may have been made.~~

~~C. The capital stock of every such entity, whether paid up or merely subscribed, shall belong to the Commonwealth. The Attorney General, whenever informed of the existence of any such entity, shall institute a suit in the Circuit Court of the City of Richmond, for the purpose of~~

~~recovering such capital stock. In such suit, all or any of the members of such entity, and any of its officers, agents, or managers, may be made defendants, and compelled to exhibit all their books and papers, and an account of everything necessary to enable the court to enter a proper order. But no disclosure made by a defendant in such suit, and no book or paper exhibited by him in answer to the bill, or under the order of the court, shall be used as evidence against him in any case at law.~~

~~D. Every member of any such entity, made defendant in any such suit, shall be held liable to the Commonwealth for his proportion of the capital stock in such entity held by him, or for his use or benefit, at the institution of such suit, or at the time of the order. Such order against any defendant shall be a bar to a proceeding against him for any act done in violation of subsection A of this section.~~

**Drafting note: Section is moved to proposed Article 2 (§§ 6.2-202, 6.2-203, and 6.2-204) of Chapter 2 (Money and Currency).**

Article ~~3~~ 2.

Legal ~~and~~, Judgment, and Contract Rates of Interest.

§ ~~6.1-330.53~~ 6.2-301. Legal rate of interest; when legal rate implied.

A. The legal rate of interest shall be an annual rate of six percent.

B. Except as provided in subsection (b) of § 8.3A-112 and § ~~6.1-330.54~~ 6.2-302, the legal rate of interest shall be implied ~~where~~ when there is an obligation to pay interest and no express contract to pay interest at a specified rate.

C. The seller or provider of goods sold or services provided on an open account shall be entitled to, and may collect, interest at the legal rate upon the unpaid balance if (i) there exists no written agreement for closed-end credit under § 6.2-311 or open-end credit plan under § 6.2-312 and (ii) the purchaser or recipient of the goods or services fails to make payment in full within 60 days after mailing or presentation of a billing statement or invoice. Such interest shall begin to accrue on the day following such 60-day period.

**Drafting note: Proposed subsection C is existing § 6.1-330.77:1, with stylistic and grammatical changes; it is relocated to this section because it is similar to subsection B in authorizing interest to be charged at the legal rate in the absence of a contrary agreement. Unlike other provisions in existing Article 11, § 6.1-330.77:1 does not set out an exception to the contract rate of interest.**

§ ~~6.1-330.54~~ 6.2-302. Judgment rate of interest.

A. The judgment rate of interest shall be an annual rate of six percent, except that a money judgment entered in an action arising from a contract shall carry interest at the rate lawfully charged on such contract, or at six percent annually, whichever is higher.

B. If the contract or other instrument does not fix an interest rate, the court shall apply the judgment rate of six percent to calculate prejudgment interest pursuant to § 8.01-382 and to calculate post-judgment interest.

C. The rate of interest for a judgment shall be the judgment rate of interest in effect at the time of entry of the judgment and shall not be affected by any subsequent changes to the rate of interest stated in this section.

**Drafting note: Technical changes only.**

~~Article 4.~~

~~Contract Rate of Interest.~~

§ ~~6.1-330.55~~ 6.2-303. Contracts for more than legal rate of interest.

A. Except as otherwise permitted by law, no contract shall be made for the payment of interest on a loan ~~greater than twelve~~ at a rate that exceeds 12 percent per year.

~~For statutes which~~ B. Laws that permit payment of interest ~~greater than twelve~~ at a rate that exceeds 12 percent per year~~, reference is hereby made to~~ are set out, without limitation, in:

1. Article ~~6~~ 4 (§ ~~6.1-330.60~~ 6.2-309 et seq.)~~, Article 7 (§ 6.1-330.64), Article 8 (§ 6.1-330.65 et seq.), Article 9 (§ 6.1-330.69 et seq.), Article 10 (§ 6.1-330.75 et seq.) and Article 11 (§ 6.1-330.77 et seq.)~~ of this chapter~~. Further reference is hereby made to~~;

2. Chapter ~~6~~ 15 (§ ~~6.1-244~~ 6.2-1500 et seq.) ~~of this title~~, relating to powers of consumer finance companies; ~~to~~

3. Chapter 18 (§ ~~6.1-444~~ 6.2-1800 et seq.) ~~of this title~~, relating to payday lenders; ~~to~~

4. § 36-55.31, relating to loans by the Virginia Housing Development Authority;

5. § 38.2-1806, relating to interest chargeable by insurance agents; ~~to §~~

6. Chapter 47 (§ 38.2-4700 ~~through 38.2-4712~~ et seq.) of Title 38.2, relating to interest chargeable by premium finance companies; ~~and to~~

7. § 54.1-4008, relating to interest chargeable by pawnbrokers; and

8. § 58.1-3018, relating to interest and origination fees payable under third-party ~~taxpayer~~ tax payment agreements.

C. In the case of any loan upon which a person is not permitted to plead usury, interest and other charges may be imposed and collected as agreed by the parties.

~~Those provisions~~ D. Any provision of this chapter ~~providing~~ that provides that a loan or extension of credit may be enforced as agreed in the contract of indebtedness, shall not be construed to preclude the charging or collecting of other loan fees and charges permitted by law, in addition to the stated interest rate~~, and such~~. Such other loan fees and charges need not be included in the rate of interest stated in the contract of indebtedness.

**Drafting note: Existing Article 4, which consisted of one section, is added to the two sections in existing Article 3 to create one article that contains the sections establishing the legal, judgment, and contract rates of interest. The list in existing § 6.1-330.55 of sections that permit interest to be charged at a rate exceeding 12 percent per year is expanded to identify pawn loans and other loans. The other changes are technical.**

Article ~~5~~ 3.

Usury~~; Penalty~~.

§ ~~6.1-330.56~~ 6.2-304. Plea of usury; ~~evidence;~~ judgment.

Any borrower may plead in general terms that the contract ~~or assurance~~ on which the action is brought was for the payment of interest greater than is allowed by statute. ~~Once~~ If the court ~~has determined~~ determines that the contract is usurious, judgment shall be rendered only for the principal sum.

**Drafting note: The changes update archaic usage; it is not clear what an "assurance" would be if it is not a contractual obligation.**

§ ~~6.1-330.57~~ 6.2-305. Recovery of twice total usurious interest paid; limitation of action; injunction to prevent sale of property pending action; effect of errors in computation.

A. If interest in excess of that permitted by ~~the~~ an applicable statute is paid upon any loan, the person paying may~~, in a suit or~~ bring an action ~~brought~~ within two years from the first to occur of: (i) the date of the last scheduled loan payment~~,~~ or (ii) the date of payment of the loan in full, ~~whichever is earlier,~~ to recover from the person taking or receiving such payments:

1. The total amount of the interest paid to such person in excess of that permitted by the applicable statute;

2. Twice the total amount of interest paid to such person during the two years immediately preceding the date of the filing of the ~~suit or~~ action; and

3. Court costs and reasonable ~~attorneys'~~ attorney fees.

B. If the sale of property in which an interest has been conveyed to secure the payment of the debt ~~and a sale thereof~~ is ~~about to be made, or is apprehended~~ scheduled or anticipated, an injunction may be ~~awarded~~ granted to prevent such sale pending the ~~suit or~~ completion of an action brought pursuant to subsection A.

C. Any creditor who proves that interest or other charges in excess of those permitted by law was imposed or collected as a result of a bona fide error in computation or similar mistake shall not be liable for the penalties prescribed in this section~~, but~~. In such event, the creditor shall only be liable to return to the borrower the amount of interest or other charges collected in excess of ~~that~~ the amount permitted by applicable statute.

**Drafting note: In subsection B, the phrase referring to when a sale is "about to be made, or is apprehended" is rewritten to update style. Other changes are clarifying and technical.**

§ ~~6.1-330.58~~ 6.2-306. ~~Contracts, etc., in violation~~ Waiver of rights violative of public policy.

A. Any agreement or contract in which the borrower waives the benefits of this chapter or releases any rights he may have acquired ~~by virtue of~~ under this chapter shall be deemed to be against public policy and void.

B. The provisions of ~~this section~~ subsection A shall not apply to a waiver of benefits or release of rights made subsequent to a loan as part of a settlement of potential or pending claims by a borrower involving such loan.

**Drafting note: Technical changes.**

§ ~~6.1-330.59~~ 6.2-307. ~~Applicability of §§ 6.1-330.56, 6.1-330.57 and 6.1-330.58 to certain loans made on or after July 1, 1986;~~ Assertion of defenses or claims by borrowers; effect of assignment.

~~A. The provisions of §§ 6.1-330.56, 6.1-330.57 and 6.1-330.58 shall apply to all loans made under § 6.1-330.71 or former § 6.1-330.16 as amended in 1986, which are closed on or after July 1, 1986. Section 6.1-330.47 shall not apply to any loan closed on or after July 1, 1986.~~

~~B.~~ As to any loan to which the provisions of §§ ~~6.1-330.71~~ 6.2-327 and ~~6.1-330.72~~ 6.2-328 are applicable, the borrower may assert any defense or claim he may have under §§ ~~6.1-330.56~~ 6.2-304 and ~~6.1-330.57~~ 6.2-305 against any assignee or transferee of the contract of indebtedness.

~~C. The provisions of § 6.1-330.47 shall continue to apply to loans made under former § 6.1-330.16 and closed prior to July 1, 1986. There shall be a presumption that a loan was closed on the date of initial recordation of the deed of trust or mortgage securing such loan.~~

~~D. The provisions of this section shall not apply to loans made by lenders enumerated in § 6.1-330.73, nor to loans closed prior to July 1, 1986.~~

**Drafting note: The provision of subsection A stating that the other sections of this article shall apply to loans made under existing § 6.1-330.71 is deleted as unnecessary; the provisions of this article apply to loans made under § 6.1-330.71 without stating it in this section. The provision of subsection A stating that the other sections of this article shall apply to loans made under former § 6.1-330.16 as amended in 1986 is of such limited applicability that it is addressed in a proposed enactment clause that states:**

> **"__. The provisions of §§ 6.2-304, 6.2-305, and 6.2-306 shall apply to all loans made under (i) § 6.2-327, (ii) former § 6.1-330.71 that closed between July 1, 1987, and the effective date of this act, or (iii) former § 6.1-330.16 as amended in 1986, that closed between July 1, 1986, and July 1, 1987. For the purposes of this enactment, a loan shall be deemed closed upon the initial recordation of the deed of trust or mortgage securing the loan."**

**The last portion of subsection A is deleted as redundant; § 6.1-330.47 is a remnant of Chapter 7.2, and its continued viability is addressed in the enactment clause at the drafting note following existing § 6.1-330.47. The substantive provisions of existing subsection B are also set out in proposed §§ 6.2-327 and 6.2-328 (existing §§ 6.1-330.71 and 6.1-330.72, respectively), in order to make the provisions more accessible. Existing subsection C is deleted because it is of limited continuing applicability and is addressed in the enactment clause set out at the drafting note to existing § 6.1-330.47. Existing subsection D is deleted as unnecessary because it states that this section does not apply to lenders enumerated in existing § 6.1-330.73, and existing §§ 6.1-330.71 and 6.1-330.72 (which are the only loans to which this section applies) specifically provide that those two sections do not apply to lenders enumerated in existing § 6.1-330.73. Existing subsection D further states that the**

**section does not apply to loans closed prior to July 1, 1986; it is no longer necessary because the scope of this proposed section is limited to loans made under existing §§ 6.1-330.71 and 6.1-330.72 (proposed §§ 6.2-327 and § 6.2-328).**

§ 6.2-308. Entities not permitted to plead usury.

A. No (i) corporation, (ii) partnership ~~which~~ that is required to file a certificate pursuant to Chapter 2.1 (§ 50-73.1 et seq.) of Title 50 or was required to file a certificate pursuant to former Chapter 2 (§ 50-44 et seq.)~~, Chapter 2.1 (§ 50-73.1 et seq.)~~ or Chapter 3 (§ 50-74 et seq.) of Title 50 or ~~which~~ that is formed under laws other than those of ~~this~~ the Commonwealth, (iii) limited liability company, ~~real estate investment~~ (iv) business trust, or (v) joint venture organized for the purpose of holding, developing, and managing real estate for profit, shall, by way of defense or otherwise, avail itself of any of the provisions of this chapter or any other ~~section~~ statutory or case law relating to usury or compounding of interest to avoid or defeat the payment of any interest or any other sum ~~which~~ that it has contracted to pay.

B. Nothing contained in ~~any of such sections~~ this chapter or any other statutory or case law relating to usury or compounding of interest shall be construed to prevent the recovery of ~~such~~ interest or any other sum that an entity described in subsection A has contracted to pay, ~~though~~ regardless of whether it is more than the contract rate of interest and ~~though~~ the fact appears on the face of the contract.

**Drafting note: Section is existing § 6.1-330.76; changes from the existing text are marked to assist in their identification. The section is relocated from existing Article 10 to this article because it establishes a blanket exemption from the usury laws for certain business entities, regardless of the lender or the amount or other features of the loan. As such, it pertains more to the scope of the usury laws than to the specific exceptions to the contract rate of interest listed in proposed Article 4. Changes in subsection A address the fact that Chapters 2 and 3 of Title 50 have been repealed, but the exception continues to apply to partnerships that were required to file a certificate pursuant to them. The clause "organized for the purpose of holding, developing and managing real estate for profit" in subsection A applies only to joint ventures, and does not modify the other enumerated categories of business entities. In the last sentence, "the" is added to correct an apparent error in the existing language.**

Article ~~6~~ 4.

~~Exceptions to~~ Loans Exempt from Limit on Contract Rate of Interest~~; Charges by Depository and Regulated Lenders~~.

**Article drafting note: This article sets out provisions exempting certain loans from the limit on the contract rate of interest. Existing Articles 6 through 11 primarily consist of exceptions to the contract rate of interest; they are combined into a single article. The provisions in existing Articles 6 through 11 that have a purpose other than exempting loans from the limit on the contract rate of interest are relocated to other chapters. The existing sections of Articles 6 through 11 are reordered to better group them according with the type of loan described.**

§ ~~6.1-330.60~~ 6.2-309. Charges by banks and savings institutions~~;~~ on installment loans.

~~A.~~ Notwithstanding any ~~statute~~ statutory or ~~other~~ case law, a bank or savings institution making a loan payable in installments may impose finance charges and other charges and fees at such rates and in such amounts and manner as ~~may be agreed by~~ the borrower has agreed. ~~The provisions of this section shall also apply to loans for the purpose of financing the purchase of a motor vehicle, made by a subsidiary or affiliate of a bank or savings institution that is not a licensee under the provisions of the Consumer Finance Act (§ 6.1-244 et seq.).~~

~~B. Notwithstanding any statute or law relating to interest or usury, including the deferral and capitalization of interest, any loan made by a bank or savings institution to defray educational expenses, including, but not limited to, tuition, fees, books, supplies, room, board, and personal expenses, shall be lawfully enforced as agreed in the contract of indebtedness.~~

**Drafting note: The second sentence of existing subsection A of § 6.1-330.60 is moved to proposed § 6.2-314. Existing subsection B is moved to proposed § 6.2-323.**

§ ~~6.1-5.3~~ 6.2-310. Rate of interest chargeable by state banks and savings institutions.

In addition to the permissible interest rates and charges specifically granted to banks and savings institutions by this title, state banks and savings institutions may take, receive, reserve, and charge on any loan, any rate of interest, finance charge, or other loan charge permitted to any other lender under the laws of ~~Virginia~~ the Commonwealth, other than those rates or charges permitted to consumer finance companies under § ~~6.1-272.1~~ 6.2-1520.

**Drafting note: Section combines existing §§ 6.1-5.3 and 6.1-194.6, which address charges by state banks and by savings institutions, respectively.**

§ 6.2-311. Closed-end installment loans by sellers of goods or services.

A. Any seller of goods or services who extends credit under a closed-end installment credit plan or arrangement may impose finance charges at such rate or rates as ~~may be agreed upon by~~ the seller and the purchaser have agreed. Deferrals and extensions of the time for payment, if allowed by ~~the~~ a seller of goods or services who extends credit under a closed-end installment credit plan or his assignee, may be subject to a finance charge~~,~~ if agreed to in the original contract or at the time of the renewal or extension. No additional finance charge shall be made for the extension of credit under such a plan or arrangement. If the total finance charge on the transaction is precomputed according to the actuarial method, the finance charge shall be calculated on the assumption that all scheduled payments will be made when due. The balance on which such finance charge may be imposed may include the deferred portion of the sales price, costs and charges incidental to the transaction, including (i) any insurance premium financed in connection therewith~~,~~ and (ii) the amount actually paid or to be paid by the seller to discharge a security interest or lien on the property traded in. The payment by a lessor to discharge a security interest or lien on the property traded in may be included in the gross capitalized cost of the goods leased and, for purposes of this chapter and Chapter 6 (§ 55-106 et seq.) of Title 55, shall not constitute a loan.

B. The debtor shall have the right to prepay in full on precomputed transactions and receive a rebate of unearned finance charge determined in accordance with the Rule of 78, as

illustrated in § ~~6.1-330.86~~ 6.2-403, or other method elected by the seller under which the finance charge imposed does not exceed the amount that results from application of the Rule of 78 on extensions of credit with an initial maturity of ~~sixty-one~~ 61 months or less. On extensions of credit with an initial maturity of more than ~~sixty-one~~ 61 months, the debtor shall receive a rebate computed under a method at least as favorable to the debtor as the actuarial method. The seller may also condition such rebate upon receiving a minimum of ~~twenty-five dollars~~ $25 in finance charges. This amount, to the extent not earned, may be withheld from the rebate required hereunder. ~~A~~

C. In connection with such a credit plan, the seller may also:

1. Impose a late charge pursuant to § ~~6.1-330.80~~ 6.2-400 ~~may be imposed. The seller may also charge~~; and

2. Charge and collect a document fee as may be agreed upon by the seller and purchaser in connection with such credit plan. The document fee shall (i) be for the preparation, handling, and processing of documents relating to the goods or services and to the closing of the transaction~~,~~ and ~~such fee shall~~ (ii) not be considered a finance charge for the purposes of this chapter.

~~B~~ D. Premiums for credit life insurance and credit accident and health insurance purchased by the debtor ~~are~~ shall not ~~to~~ be construed as an additional charge for the extension of credit if such insurance coverage is purchased voluntarily by the debtor. Premiums for property insurance on the goods purchased or leased, including vendor's single interest insurance on such goods, ~~are~~ shall not ~~to~~ be construed as additional charges for the extension of credit~~, provided that~~ if a clear and conspicuous statement in writing is furnished by the seller or lessor to the buyer or lessee setting forth the cost of the insurance if obtained from or through the seller or lessor and stating that the buyer or lessee may choose the person through which the insurance is to be obtained.

**Drafting note: Section is existing § 6.1-330.77; changes from existing text are marked for assistance in their identification.**

§ ~~6.1-330.78~~ 6.2-312. Open-end ~~sales and loan~~ credit plans.

A. Notwithstanding any provision of this chapter other than § ~~6.1-330.71~~ 6.2-327, and except as provided in subsection ~~E~~ C, ~~any~~ a seller or lender engaged in ~~the extension of~~ extending credit under an open-end credit ~~or similar~~ plan may impose, on credit extended under the plan, finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the creditor and the obligor, if under ~~which~~ the plan a finance charge is imposed upon the obligor~~,~~ if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date ~~(~~, which shall be at least ~~twenty-five~~ 25 days later than the prior billing date~~), may impose finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the seller or lender and the obligor~~.

B. Notwithstanding the provisions of § ~~6.1-330.71~~ 6.2-327 and subject to the provisions of § 8.9A-204.1, any loan made under this section may be secured in whole or in part by a

subordinate mortgage or deed of trust on residential real estate improved by the construction thereon of housing consisting of one- to four--family dwelling units.

~~C. Any application form or preapproved written solicitation for an open-end credit card account to be used for personal, family, or household purposes which is mailed on or after January 1, 1988, to a consumer residing in this Commonwealth by or on behalf of a creditor, whether or not the creditor is located in this Commonwealth, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the creditor, shall contain or be accompanied by any of the following disclosures:~~

~~1. A disclosure of each of the following if applicable:~~

~~a. Any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates. If the account is subject to a variable rate, the creditor may instead disclose the rate as of a specific date and indicate that the rate may vary, or identify the index and any amount or percentage added to, or subtracted from, that index and used to determine the rate.~~

~~b. Any membership or participation fee that may be imposed for availability of a credit card account.~~

~~c. Any transaction fee that may be imposed on purchases, or any other charge or fee that may be imposed, expressed as an amount or as a percentage of the transaction, as applicable.~~

~~d. Any grace period or free period during which the consumer may repay the full balance reflected on a billing statement which is attributable to purchases of goods or services from the creditor or from merchants participating in the credit card plan, without the imposition of additional finance charges. The creditor shall either disclose the number of days of that period, calculated from the closing date of the prior billing cycle to the date designated in the billing statement sent to the consumer as the date by which that payment must be received to avoid additional finance charges, or describe the manner in which the period is calculated. If the creditor does not provide such a period for purchases, the disclosure shall so indicate;~~

~~2. A disclosure that satisfies the initial disclosure requirements of Regulation Z; or~~

~~3. If a creditor is now or hereafter required under federal law to make disclosures of the terms applicable to a credit card account in connection with application forms or solicitations, the creditor shall be deemed to have complied with the requirements of this subsection if the creditor complies with the federal disclosure requirements. The disclosure of any transaction fee that may be imposed on purchases, or any other charge or fee, shall be written on any such application form or preapproved written solicitation.~~

~~D. An open-end credit or similar plan between a seller or lender and an obligor shall be governed solely by federal law, and by the laws of the Commonwealth of Virginia unless otherwise expressly agreed in writing by the parties.~~

~~E~~ C. Except as provided in subsection ~~F~~ D, (i) a licensee, as defined in § ~~6.1-444~~ 6.2-1800, shall not engage in the extension of credit under an open-end credit ~~or similar~~ plan described in this section~~,~~ and (ii) a third party shall not engage in the extension of credit under an open-end credit ~~or similar~~ plan described in this section at any office, suite, room, or place of business where a licensee conducts the business of making payday loans. In addition to any other

remedies or penalties provided for a violation of this section, any such extension of credit made by a licensee or third party in violation of this subsection shall be unenforceable against the borrower.

~~F~~ D. No prohibition in subsection ~~E~~ C shall apply to an extension of credit under an open-end credit ~~or similar~~ plan that is secured by a security interest in a motor vehicle, as such term is defined in § 46.2-100.

~~G~~ E. If a licensee, as defined in § ~~6.1-444~~ 6.2-1800, surrenders its license under Chapter 18 (§ ~~6.1-444~~ 6.2-1800 et seq.) of this title or has its license revoked, and if following such surrender or revocation of its license the former licensee engages in the extension of credit under an open-end credit ~~or similar~~ plan as described in this section, then the Commission shall not issue to such former licensee, or to any affiliate of the former licensee, a license under Chapter 18 of this title for a period of 10 years from the date such license is surrendered or revoked. As used in this subsection, "affiliate of the former licensee" means a business entity that owns or controls, is owned or controlled by, or is under common ownership or control with, the former licensee.

**Drafting note: "Open-end credit" is defined in proposed § 6.2-300. The phrase "or similar" is deleted following "open-end" in references to credit plans in order to eliminate potential confusion as to what would be included. Existing subsection C of § 6.1-330.78 is set out at proposed § 6.2-432, and existing subsection D is set out at proposed § 6.2-435. The other amendments are technical.**

~~§ 6.1-330.61. Defense of usury not applicable to certain loans.~~

~~No person shall, by way of defense or otherwise, avail himself of the provisions of this chapter or any other section relating to usury to avoid or defeat the payment of interest, or any other sum, upon a loan made to a person by a bank, savings institution, industrial loan association or credit union, provided the initial principal amount of the loan is $5,000 or more.~~

**Drafting note: Section is relocated to proposed § 6.2-316.**

~~§ 6.1-330.62. Loans of up to one year.~~

~~Any bank, savings institution, or any broker duly licensed to transact business as a stockbroker or as a broker dealing in options and futures under the provisions of Title 58.1, may loan money or discount bonds, bills, notes or other paper payable on demand or for periods up to one year, and such loan or discounting may be lawfully enforced as agreed in the contract of indebtedness. An interest rate charged in advance upon the entire amount of the loan or discount shall be lawful.~~

**Drafting note: Section is relocated to proposed § 6.2-315.**

§ ~~6.1-330.63~~ 6.2-313. ~~Charges~~ Open-end credit extended by banks or savings institutions~~; revolving credit~~.

A. Notwithstanding any ~~statute~~ statutory or ~~other~~ case law, any bank or savings institution may impose finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed by the borrower under ~~a contract for revolving~~ an open-end credit ~~or any~~ plan ~~which permits an obligor to avail himself of the credit so established~~.

B. In the event of the extension of credit by a bank or savings institution hereunder to be effected by the use of a credit card for the purchase of merchandise or services, no finance charge shall be imposed upon the cardholder or borrower on such extension of credit if payment in full of the unpaid balance owing for all extensions of credit under the ~~revolving~~ open-end credit ~~contract or~~ plan is received at the place designated by the creditor prior to the next billing date ~~(~~, which shall be at least 25 days later than the prior billing date~~)~~.

~~B. Any application form or preapproved written solicitation for an open-end credit card account to be used for personal, family, or household purposes which is mailed on or after January 1, 1988, to a consumer residing in the Commonwealth by or on behalf of a creditor, whether or not the creditor is located in the Commonwealth, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the creditor, shall contain or be accompanied by any of the following disclosures:~~

~~1. A disclosure of each of the following if applicable:~~

~~a. Any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates. If the account is subject to a variable rate, the creditor may instead disclose the rate as of a specific date and indicate that the rate may vary, or identify the index and any amount or percentage added to, or subtracted from, that index and used to determine the rate.~~

~~b. Any membership or participation fee that may be imposed for availability of a credit card account.~~

~~c. Any transaction fee that may be imposed on purchases, or any other charge or fee that may be imposed, expressed as an amount or as a percentage of the transaction, as applicable.~~

~~d. Any grace period or free period during which the consumer may repay the full balance reflected on a billing statement which is attributable to purchases of goods or services from the creditor or from merchants participating in the credit card plan, without the imposition of additional finance charges. The creditor shall either disclose the number of days of that period, calculated from the closing date of the prior billing cycle to the date designated in the billing statement sent to the consumer as the date by which that payment must be received to avoid additional finance charges, or describe the manner in which the period is calculated. If the creditor does not provide such a period for purchases, the disclosure shall so indicate;~~

~~2. A disclosure that satisfies the initial disclosure requirements of Regulation Z; or~~

~~3. If a creditor is now or hereafter required under federal law to make disclosures of the terms applicable to a credit card account in connection with application forms or solicitations, the creditor shall be deemed to have complied with the requirements of this subsection if the creditor complies with the federal disclosure requirements. The disclosure of any transaction fee that may be imposed on purchases, or any other charge or fee, shall be written on any such application form or preapproved written solicitation.~~

~~C. Any contract or plan referred to in subsection A may be amended in any respect by the bank or savings institution at any time and from time to time to modify or delete terms, or to add new terms, which new or modified terms and amendment need not be of a kind previously included in or contemplated by such contract or plan, or of a kind integral to the relationship of~~

~~the parties, by following the procedures, if any, set forth in the contract or plan for effecting changes in the terms thereof, subject to the bank's or savings institution's complying with any applicable notice requirements under the Truth in Lending Act (15 U.S.C. § 1601 et seq.) and regulations promulgated thereunder, as in effect from time to time.~~

~~D. Unless the contract or plan referred to in subsection A otherwise expressly provides, a bank or savings institution may amend such contract or plan in any respect at any time and from time to time, whether or not the amendment or the subject of the amendment was originally contemplated or addressed by the parties or is integral to the relationship between the parties. Without limiting the foregoing, such amendment may change terms by the addition of new terms or by the deletion or modification of existing terms, whether relating to plan benefits or features, the periodic rate or rates used to calculate finance charges, the manner of calculating periodic rate finance charges or outstanding unpaid indebtedness, variable schedules or formulas, finance charges other than periodic rate finance charges, other charges or fees, collateral requirements, methods for obtaining or repaying extensions of credit, attorney's fees, plan termination, the manner for amending the terms of the contract or plan, arbitration or other alternative dispute resolution mechanisms, or other matters of any kind whatsoever. Unless the contract or plan otherwise expressly provides, any amendment may, on and after the date upon which it becomes effective as to a particular borrower, apply to all then outstanding unpaid indebtedness in the borrower's account under the contract or plan, including any such indebtedness that arose prior to the effective date of the amendment. A contract or plan may be amended pursuant to this subsection regardless of whether the contract or plan is active or inactive or whether additional borrowings are available thereunder. Any such amendment may become effective as determined by the bank or savings institution, subject to compliance by the bank or savings institution with any applicable provisions under the Truth in Lending Act (15 U.S.C. § 1601 et seq.) and the regulations promulgated thereunder, as in effect from time to time. Any notice of an amendment sent by the bank or savings institution may be included in the same envelope with a periodic statement or as part of the periodic statement or in other materials sent to the borrower.~~

~~E. A contract for revolving credit between a bank or savings institution and an obligor, or any plan which permits an obligor to avail himself of the credit so established, shall be governed solely by federal law, and by the laws of the Commonwealth of Virginia unless otherwise expressly agreed in writing by the parties.~~

**Drafting note: The amendments to the first paragraph of subsection A are technical. Throughout the chapter, "revolving credit" is replaced with "open-end credit," which is defined in § 6.2-300, to conform to terminology under the federal Truth in Lending Act and Regulation Z. Existing subsection B is moved to proposed § 6.2-432, and combined with existing subsection C of § 6.1-330.78. Existing subsections C and D are moved to proposed § 6.2-433. Existing subsection E is relocated to proposed § 6.2-434.**

§ 6.2-314. Motor vehicle purchase loans by subsidiaries and affiliates of banks and savings institutions.

~~A.~~ Notwithstanding any ~~statute~~ statutory or ~~other~~ case law, a subsidiary or affiliate of a bank or savings institution ~~making a loan payable in installments~~ that is not a licensee under the provisions of Chapter 15 (§ 6.2-1500 et seq.) may impose finance charges and other charges and fees at such rates and in such amounts and manner as ~~may be agreed by~~ the borrower has agreed~~.~~ ~~The provisions of this section shall also apply to~~ on loans payable in installments for the purpose of financing the purchase of a motor vehicle~~, made by a subsidiary or affiliate of a bank or savings institution that is not a licensee under the provisions of the Consumer Finance Act (§ 6.1-244 et seq.)~~.

**Drafting note: Section is based on the second sentence of existing subsection A of § 6.1-330.60; changes from existing text are marked for assistance in their identification.**

§ 6.2-315. Loans by certain financial institutions or brokers payable on demand or having a term up to one year.

Any bank, savings institution, ~~or any~~ broker duly licensed to transact business as a stockbroker, or ~~as a broker dealing in options and futures under the provisions of Title 58.1~~ broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission, may loan money or discount bonds, bills, notes or other paper, whether payable on demand or for periods up to one year~~, and such~~. Such a loan or discounting may be lawfully enforced as agreed in the contract of indebtedness. An interest rate charged in advance upon the entire amount of the loan or discount shall be lawful.

**Drafting note: Section is existing § 6.1-330.62; changes from existing text are marked for assistance in their identification. The reference to brokers dealing in options and futures under the provisions of Title 58.1 (Taxation) is an error; the proposed substitution (borrowed from § 59.1-335.2) is intended to implements the section's apparent intent.**

§ 6.2-316. Loans of $5,000 or more made by certain financial institutions.

No person shall, by way of defense or otherwise, avail himself of the provisions of this chapter or any other section relating to usury to avoid or defeat the payment of interest, or any other sum, upon a loan made to a person by a bank, savings institution, industrial loan association, or credit union, ~~provided~~ if the initial principal amount of the loan is $5,000 or more.

**Drafting note: Section is existing § 6.1-330.61; changes from existing text are marked for assistance in their identification.**

§ 6.2-317. Loans of $5,000 or more for business or investment purposes.

A. For purposes of this section:

1. A loan shall be deemed to be for business or investment purposes if it is not for personal, family, or household purposes; and

2. Personal, family, or household purposes do not include a passive or active investment.

B. No person shall, by way of defense or otherwise, avail himself of the provisions of this chapter, or any other ~~section~~ statutory or case law relating to usury or compounding of interest, to avoid or defeat the payment of interest, or any other sum, in connection with a loan made to a person ~~or entity~~ for business or investment purposes, ~~provided~~ if the initial amount of the loan is $5,000 or more.

~~B. For the purposes of this section, unless a loan is for family, household, or personal purposes which shall not include a passive or active investment, it shall be deemed to be for business or investment purposes.~~

**Drafting note: Section is relocated from existing § 6.1-330.75; changes from existing text are marked for assistance in their identification. Existing subsection B is restructured as subsection A, with technical changes.**

~~Article 7.~~

~~Exception to Contract Rate of Interest; Charges by Credit Unions.~~

§ ~~6.1-330.64~~ 6.2-318. ~~Credit union loans~~ Loans by credit unions.

A. ~~A credit union may make loans to its members and to other credit unions.~~ As used in this section, "average daily balance" means, for any billing period, that amount which is the sum of the actual amounts outstanding each day during the billing period divided by the number of days in the billing period.

B. Notwithstanding any other statute or provision relating to interest or usury, any credit union may charge interest as agreed by the borrower provided such interest is not charged in advance.

~~B. 1~~ C. Any ~~credit union contract for revolving~~ open-end credit ~~or any~~ plan ~~which permits an obligor to avail himself of the credit so established may provide for~~ offered by a credit union shall provide:

1. For computation of any finance charges by application of a rate, at the option of the credit union, to:

a. The average daily balance for the period ending on the billing date;

b. The balance existing on the billing date of the month; or

c. Any other balance which does not result in the credit union charging or receiving any sum in excess of what would be charged or received under item a or b of this subdivision~~.~~;

2. ~~No~~ That no finance charge shall be imposed unless the bill is mailed not later than eight days ~~(~~, excluding Saturdays, Sundays and holidays~~),~~ after the billing date, except that such time limitation shall not apply in any case where the credit union has been prevented, delayed, or hindered in mailing or delivering the bill within such time period because of an act of God, war, civil disorder, natural disaster, strike, or other excusable or justifiable cause~~.~~; and

3. ~~In~~ That in the event of the extension of open-end credit by a credit union ~~hereunder~~ to be effected by the use of a credit card for the purchase of merchandise or services, no finance charge shall be imposed upon the member or cardholder on such extension of credit if payment in full of the unpaid balance owing for extensions of credit for merchandise or services is received at the place designated by the credit union prior to the next billing date, which shall be at least ~~twenty-five~~ 25 days later than the prior billing date.

~~4. As used in this section, "average daily balance" means, for any billing period, that amount which is the sum of the actual amounts outstanding each day during the billing period divided by the number of days in the billing period.~~

~~C~~ D. Notwithstanding any provision of this chapter other than § ~~6.1-330.71~~ 6.2-327, a credit union engaged in ~~the extension of~~ extending credit under an open-end credit ~~or similar~~ plan may impose, on credit extended under the plan, finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the credit union and the obligor, if under ~~which~~ the plan a finance charge is imposed upon the obligor~~,~~ if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date, which shall be at least 25 days later than the prior billing date~~, may impose finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the credit union and the obligor~~.

**Drafting note: The first sentence of existing subsection A is relocated to subdivision 14 of proposed § 6.2-1302 (Powers). Proposed subsection D is restructured to make it parallel to similar provisions in proposed § 6.2-312.**

~~Article 8.~~

~~Exception to Contract Rate of Interest; Charges by Non-Depository Lenders.~~

~~§ 6.1-330.65. Extension of credit under Securities Exchange Act.~~

~~A broker-dealer licensed by the State Corporation Commission and registered with the Securities Exchange Commission who extends credit to a customer on pledged securities as permitted under the provisions of the Securities Exchange Act of 1934, may charge the customer on his debit balances that are payable on demand interest not exceeding an annual rate of one and three-quarters percent above the higher of:~~

~~1. The interest rate charged such broker-dealer by a bank doing business in this Commonwealth on loans collateralized by securities; or~~

~~2. The interest rate charged such broker-dealer by a bank doing business in this Commonwealth on loans for business purposes.~~

**Drafting note: Section is relocated to proposed § 6.2-322.**

~~§ 6.1-330.66. Charges by private colleges and universities.~~

~~Loans made by a private college or university in Virginia to defray educational expenses of its students, including but not limited to tuition, fees, books, supplies, room, board and personal expenses, may be enforced as agreed in the contract of indebtedness. For purposes of this section, the term "private college or university" shall mean a private, accredited and nonprofit institution of collegiate education in the Commonwealth whose primary purpose is to provide collegiate or graduate education.~~

**Drafting note: Section is relocated to proposed § 6.2-324.**

~~§ 6.1-330.66:1. Loans under programs conducted by the State Education Assistance Authority.~~

~~Loans which are made under programs conducted by the State Education Assistance Authority to defray educational expenses may be enforced as agreed in the contract of indebtedness.~~

**Drafting note: Section is deleted because the statute establishing the State Education Assistance Authority was repealed in 1998, and thus no new loans may be made. The**

**continuation of its provisions with respect to outstanding loans is addressed in a proposed enactment clause.**

§ ~~6.1-330.67~~ 6.2-319. Loans by pension plans to participants.

A. As used in this section, "pension plan" includes an "employee pension benefit plan" or "pension plan" as defined in § 3 (2) of the federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829).

B. Loans by a pension plan to an individual participating in ~~such~~ the pension plan~~, including an "employee pension benefit plan" or "pension plan" as defined in § 3 (2) of the Employee Retirement Income Security Act of 1974, are not subject to the provisions of this chapter~~ shall be lawfully enforced as agreed in the contract of indebtedness. No such participating individual ~~shall~~, by way of defense or otherwise, shall avail himself of the provisions of this chapter, or any other law relating to interest or usury, to avoid or defeat the payment of interest or any other sum on any loan made by ~~such~~ the pension plan. Nothing contained in any ~~such~~ law relating to interest or usury shall be construed to prevent the recovery of such interest or other sum though it is more than otherwise lawful interest and though that fact appears on the face of the contract.

**Drafting note: Subsection A is created in order to streamline the first sentence of the current section. Other changes are technical. The wording of the first section is revised to conform to provisions of similar sections.**

§ ~~6.1-330.68~~ 6.2-320. ~~Charges~~ Loans by industrial loan associations.

A. Notwithstanding any ~~statute~~ statutory or case law relating to interest or usury, loans made by an industrial loan ~~associations~~ association payable in weekly, monthly, or other periodic installments may be enforced as agreed in the contract of indebtedness. In addition ~~to the foregoing~~, such association may charge or collect in advance from the borrower on such loans a loan fee not exceeding two percent of the principal amount of the loan ~~may also be charged or collected in advance from the borrower~~. An interest rate charged in advance upon the entire amount of the loan or pursuant to a written modification agreement shall be lawful.

B. An industrial loan association may charge interest at an annual rate not exceeding ~~eighteen~~18 percent on loans payable on demand or in a single payment. In addition, such association may ~~impose~~ charge or collect in advance from the borrower on such loans ~~the same~~ a loan fee ~~allowed by subsection A of this section~~ not exceeding two percent of the principal amount of the loan.

**Drafting note: Provisions in subsections A and B regarding the loan fee are conformed. Other changes are technical.**

~~Article 9.~~

~~Exceptions to Contract Rate of Interest; Real Estate Loan Transactions.~~

~~§ 6.1-330.69. Certain contracts enforced as agreed therein; definition of terms.~~

~~A. Notwithstanding the provisions of §§ 6.1-330.53, 6.1-330.55 and 6.1-330.62 or any other law relating to interest or usury, contracts made for the loan of money, secured or to be secured by a first deed of trust or first mortgage on real estate, or by a first priority security~~

~~interest in the stock of a residential cooperative housing corporation, may be enforced as agreed in the contract of indebtedness, or other agreement signed by the borrower.~~

~~B. For the purpose of this section and §§ 6.1-330.71 and 6.1-330.81:~~

~~1. Real estate shall be deemed to include a leasehold estate of not less than twenty-five years.~~

~~2. An interest rate which varies in accordance with any exterior standard, or which cannot be ascertained from the contract without reference to any exterior circumstances or documents, shall be enforceable as agreed in the contract of indebtedness or other signed agreement.~~

~~3. The terms "first deed of trust" or "first mortgage" shall include all deeds of trust and mortgages, and amendments thereto, which are made by the same grantor or mortgagor, secure notes held by the same holder, convey substantially the same real estate, and are superior to all other deeds of trust or mortgages on the real estate.~~

~~4. The terms "grantor" or "mortgagor" shall include an owner of the real estate, and spouse, who has assumed responsibility for the obligation secured by such deed of trust or mortgage.~~

~~C. Interest which is charged pursuant to a written agreement, whether or not recorded, shall be of equal priority with the principal debt secured by the mortgage or deed of trust and shall have priority as to third parties as provided in Title 55.~~

~~D. Notwithstanding any other statute or rule of case law relating to compounding of interest, if regularly scheduled periodic payments on an obligation secured by a first mortgage or first deed of trust on real estate are insufficient to pay currently accruing interest on the then principal balance, an agreement in the contract of indebtedness, or other agreement signed by the borrower, providing for the addition of such unpaid interest to the principal balance and the future accrual of interest on such balances, shall be enforceable as written.~~

~~E. Disclosure of charges in a disclosure given to the borrower pursuant to federal disclosure laws or regulations and acceptance of the loan proceeds by the borrower shall be deemed an agreement signed by the borrower within the meaning of this section.~~

**Drafting note: Provisions of this section are relocated to proposed §§ 6.2-300, 6.2-325, 6.2-327, 6.2-408, 6.2-409, and 6.2-421.**

~~§ 6.1-330.70. Fees and charges in connection with loans by real estate lenders; certain borrowers not to be required to employ particular attorney, surveyor or insurer.~~

~~A. A lender engaged in making real estate mortgage or deed of trust loans, other than loans subject to the provisions of §§ 6.1-330.71 and 6.1-330.72, may charge or collect in advance from the borrower a loan fee as agreed between the parties. Such a lender also may require the borrower to pay the reasonable and necessary charges in connection with making the loan, including the cost of title examination, title insurance, recording and filing fees, taxes, insurance, including mortgage guaranty insurance, appraisals, credit reports, surveys, drawing of papers and closing the loan.~~

~~B. In the case of loans secured by deeds of trust or mortgages on one to four family residences, the lender may not require the borrower to use the services of a particular attorney,~~

~~surveyor or insurer. However, the lender shall have the right to approve any attorney, surveyor, or insurer selected by the borrower, provided such approval is not unreasonably withheld. Any lender in compliance with regulations promulgated by the Federal Home Loan Bank Board relating to loan services and fees as in effect on July 1, 1977, shall be deemed to be in compliance with this subsection.~~

~~C. The fees and charges permitted by this section and other sections of this chapter are in addition to those permitted by § 6.1-330.69 and may be added to the principal of the loan, and shall not be considered in determining whether a loan contract is usurious.~~

**Drafting note: Section is relocated to proposed §§ 6.2-326 and 6.2-410.**

~~§ 6.1-330.71. Charges on subordinate mortgage loans by certain lenders.~~

~~A. 1. Any person, other than lenders enumerated in § 6.1-330.73, may charge add-on interest that results in an annual yield of not more than eighteen percent upon loans secured in whole or in part by a subordinate mortgage or deed of trust on residential real estate improved by the construction thereon of housing consisting of one to four family dwelling units. For the purposes of this chapter, a subordinate mortgage or deed of trust is one subject to a prior mortgage or deed of trust in existence at the time of the making of the loan secured by such subordinate mortgage or deed of trust. An add-on interest loan may be made only under this subsection and shall not exceed a period of five years and one month.~~

~~2. The lender may also impose a loan fee not exceeding two percent of the principal amount of the loan provided that such loan fee shall not be imposed more often than once each eighteen months except to the extent that new money is advanced within such eighteen-month period by a renewal or additional loan. New money shall be money advanced in excess of the outstanding principal balance at the time such new advance is made. These provisions shall apply whether such loan fee is payable directly to the lender or to a third party in connection with such loan.~~

~~B. No charge, other than actual costs documented to the applicant and expended for a credit report and an appraisal of the real estate conducted in connection with the loan application, may be made if the loan is not made. Such charge shall not exceed one percent of the amount of the loan applied for; but in no event shall such charge exceed fifty dollars or one-half of such costs whichever is less. Such charge may be made only if the lender commits to make the loan. Such commitment shall be in writing and signed by the lender or a person the lender has authorized to execute such documents.~~

~~C. The provisions of this section shall not apply to any loan by any lender enumerated in § 6.1-330.73.~~

~~D. 1. Any loan secured by a subordinate mortgage or deed of trust on such residential real estate where the interest is charged at an annual interest rate on the unpaid balance thereof may be lawfully enforced at the annual interest rate stated in the contract of indebtedness on the principal amount of the loan. Such annual interest rate may vary in accordance with an exterior standard.~~

2. In addition to the annual interest rate permitted by subdivision 1 of this subsection, the lender may charge the borrower a loan fee not exceeding five percent of the principal amount of the loan. The lender may also charge the borrower with the actual costs of the loan as permitted by § 6.1-330.72.

3. The loan fee permitted by subdivision 2 of this subsection shall not be imposed more often than once each eighteen months except to the extent that new money is advanced within such eighteen-month period by a renewal or additional loan. Such loan fee may only be reimposed by the lender upon a borrower in connection with the refinancing of a loan made pursuant to this subsection.

E. The rates, charges and other provisions permitted or required by this section or by § 6.1-330.72 shall apply to all loans secured by a subordinate mortgage, including without limitation single maturity, amortizing and loans secured by a credit line deed of trust as permitted by § 55-58.2.

F. Except for the loan fee permitted in this section, no discount, initial interest, points or charges by any other name may be collected, charged or added to a loan secured by a subordinate mortgage or deed of trust upon such residential real estate.

**Drafting note: Section is moved to proposed §§ 6.2-300 and 6.2-327.**

§ 6.1-330.72. Loans secured by subordinate mortgage; charges allowed; requirements relating to insurance.

A. Any lender making a loan secured by a subordinate mortgage or deed of trust may require the borrower to pay, in addition to the loan fee and interest permitted by § 6.1-330.71, the actual cost of a credit report, title examination, title insurance, mortgage guaranty insurance, recording fees, surveys, attorney's fees, appraisal fees, and a fee to determine if the property securing the loan is located in a special flood hazard area. No other charges of any kind shall be imposed on or be payable by the borrower either to the lender or any other party in connection with such loan other than a fee charged by the settlement agent as defined in § 6.1-2.20; provided, late charges in the amount specified in § 6.1-330.80 and a prepayment penalty permitted under § 6.1-330.85 may be contracted for and, upon default, the borrower may be subject to court costs, attorney's fees, trustee's commission and other expenses of collection as otherwise permitted by law. Broker's or finder's fees may be paid by the lender from the loan fee or interest permitted under § 6.1-330.71. A broker's fee, finder's fee or commission may be paid by the borrower not to exceed five percent of the principal amount of the loan if the total of the loan fee permitted under § 6.1-330.71 and broker's fees, finder's fees or commissions does not exceed five percent of the principal amount of the loan.

B. Evidence of flood insurance if the security property is located in a special flood hazard area and fire and extended coverage insurance may be required by the lender of the borrower and the premium shall not be considered as a charge. Decreasing term life insurance, in an amount not exceeding the amount of the loan and for a period not exceeding the term of the loan, may also be required by the lender of the borrower and the premium shall not be considered as a charge. At the option of the borrower, accident and health insurance and involuntary

~~unemployment insurance may be provided by the lender, and the premium therefor shall not be considered a charge. Proof of all insurance issued in connection with loans subject to this chapter shall be furnished to the borrower within ten days from the date the loan is closed.~~

~~C. No charge may be imposed or collected, except as permitted by § 6.1-330.71, if the loan is not made.~~

~~D. This section shall not apply to any loan made by any lender enumerated in § 6.1-330.73.~~

**Drafting note: Section is relocated to proposed §§ 6.2-328 and 6.2-411.**

~~§ 6.1-330.73. Applicability of §§ 6.1-330.71, 6.1-330.72 and 6.1-330.85.~~

~~Sections 6.1-330.71, 6.1-330.72 and 6.1-330.85 shall not apply to loans made by any bank, savings institution, industrial loan association, credit union, or to a seller in a real estate sales transaction who takes a subordinate mortgage on such real estate.~~

**Drafting note: Section is deleted; for clarification, the exception established by this section for the enumerated lenders is incorporated into the successors to §§ 6.1-330.71, 6.1-330.72, and 6.1-330.85 (§§ 6.2-327, 6.2-328, and 6.2-423, respectively), in order to exclude the application of those sections to exempt subordinate mortgage lenders.**

~~§ 6.1-330.74. Limiting application of this chapter and other usury sections in actions for recovery of interest under certain contracts insured, etc., by governmental agencies.~~

~~A. No person shall, by way of defense or otherwise, avail himself of any of the provisions of this chapter or any other law relating to usury or any statute or rule of case law relating to compounding of interest to avoid or defeat the payment of any interest or any other sum which he has contracted to pay on any loan:~~

~~1. Insured by the Federal Housing Administration, pursuant to the provisions of this National Housing Act;~~

~~2. Guaranteed by the Veterans Administration, pursuant to Title 38 of the United States Code; or~~

~~3. Insured or guaranteed by any similar federal governmental agency or organization, or made directly or indirectly by the Virginia Housing Development Authority pursuant to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36.~~

~~B. Nothing contained in this chapter shall be construed to prevent the recovery of such interest or fee from any person who has contracted to pay the same in connection with any loan described in this section.~~

**Drafting note: Section is relocated to proposed § 6.2-329.**

~~Article 10.~~

~~Exceptions to Contract Rate of Interest; Commercial Transactions.~~

~~§ 6.1-330.75. Defense of usury not applicable to certain business loans.~~

~~A. No person shall, by way of defense or otherwise, avail himself of the provisions of this chapter, or any other section or case law relating to usury or compounding of interest to avoid or defeat the payment of interest, or any other sum, in connection with a loan made to a person or~~

~~entity for business or investment purposes, provided the initial amount of the loan is $5,000 or more.~~

~~B. For the purposes of this section, unless a loan is for family, household, or personal purposes which shall not include a passive or active investment, it shall be deemed to be for business or investment purposes.~~

**Drafting note: Section is relocated to proposed § 6.2-317.**

~~§ 6.1-330.76. Corporations, partnerships, limited liability companies, real estate investment trusts and certain joint ventures not allowed to plead usury.~~

~~No corporation, partnership which is or was required to file a certificate pursuant to Chapter 2 (§ 50-44 et seq.), Chapter 2.1 (§ 50-73.1 et seq.) or Chapter 3 (§ 50-74 et seq.) of Title 50 or which is formed under laws other than those of this Commonwealth, limited liability company, real estate investment trust, or joint venture organized for the purpose of holding, developing and managing real estate for profit shall, by way of defense or otherwise, avail itself of any of the provisions of this chapter or any other section or case law relating to usury or compounding of interest to avoid or defeat the payment of any interest or any other sum which it has contracted to pay. Nothing contained in any of such sections shall be construed to prevent the recovery of such interest or any other sum, though it is more than contract rate of interest and though the fact appears on the face of the contract.~~

**Drafting note: Section is relocated to proposed § 6.2-308 because the section limits the application of the usury laws to the enumerated entities, and therefore is better located in proposed Article 3 (Usury) than in Article 4 (Loans Exempt from Limit on Contract Rate of Interest).**

~~Article 11.~~

~~Exceptions for Conract Rate of Interest; Certain Consumer Transactions.~~

~~§ 6.1-330.77. Charges by sellers of goods or services; certain premiums not construed as additional charges; penalty for violations of section.~~

~~A. Any seller of goods or services who extends credit under a closed-end installment credit plan or arrangement may impose finance charges at such rate or rates as may be agreed upon by the seller and the purchaser. Deferrals and extensions of the time for payment, if allowed by the seller or his assignee, may be subject to a finance charge, if agreed to in the original contract or at the time of the renewal or extension. No additional finance charge shall be made for the extension of credit under such a plan or arrangement. If the total finance charge on the transaction is precomputed according to the actuarial method, the finance charge shall be calculated on the assumption that all scheduled payments will be made when due. The balance on which such finance charge may be imposed may include the deferred portion of the sales price, costs and charges incidental to the transaction, including any insurance premium financed in connection therewith, and the amount actually paid or to be paid by the seller to discharge a security interest or lien on the property traded in. The payment by a lessor to discharge a security interest or lien on the property traded in may be included in the gross capitalized cost of the goods leased and, for purposes of this chapter and Chapter 6 (§ 55-106 et seq.) of Title 55, shall~~

~~not constitute a loan. The debtor shall have the right to prepay in full on precomputed transactions and receive a rebate of unearned finance charge determined in accordance with the Rule of 78, as illustrated in § 6.1-330.86, or other method elected by the seller under which the finance charge imposed does not exceed the amount that results from application of the Rule of 78 on extensions of credit with an initial maturity of sixty-one months or less. On extensions of credit with an initial maturity of more than sixty-one months, the debtor shall receive a rebate computed under a method at least as favorable to the debtor as the actuarial method. The seller may also condition such rebate upon receiving a minimum of twenty-five dollars in finance charges. This amount, to the extent not earned, may be withheld from the rebate required hereunder. A late charge pursuant to § 6.1-330.80 may be imposed. The seller may also charge and collect a document fee as may be agreed upon by the seller and purchaser in connection with such credit plan. The document fee shall be for the preparation, handling and processing of documents relating to the goods or services and to the closing of the transaction, and such fee shall not be considered a finance charge for the purposes of this chapter.~~

~~B. Premiums for credit life insurance and credit accident and health insurance purchased by the debtor are not to be construed as an additional charge for the extension of credit if such insurance coverage is purchased voluntarily by the debtor. Premiums for property insurance on the goods purchased or leased, including vendor's single interest insurance on such goods, are not to be construed as additional charges for the extension of credit, provided that a clear and conspicuous statement in writing is furnished by the seller or lessor to the buyer or lessee setting forth the cost of the insurance if obtained from or through the seller or lessor and stating that the buyer or lessee may choose the person through which the insurance is to be obtained.~~

**Drafting note: Section is relocated to proposed §§ 6.2-311.**

~~§ 6.1-330.77:1. Charge on open accounts.~~

~~In the event of a sale of goods or the provision of services on open accounts where there is no written agreement for closed-end credit under § 6.1-330.77 and no open-end credit plan under § 6.1-330.78, the seller or provider shall be entitled to and may collect interest at the rate specified in § 6.1-330.53 upon the unpaid balance if the purchaser or recipient of such goods or services fails to make payment in full within sixty days after mailing or presentation of a billing statement or invoice. Such interest shall begin to accrue on the day following such sixty-day period.~~

**Drafting note: Section is relocated to proposed subsection C of § 6.2-301.**

~~§ 6.1-330.78. Open-end sales and loan plans.~~

~~A. Notwithstanding any provision of this chapter other than § 6.1-330.71, any seller or lender engaged in the extension of credit under an open-end credit or similar plan under which a finance charge is imposed upon the obligor, if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date (which shall be at least twenty-five days later than the prior billing date), may impose finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed upon by the seller or lender and the obligor.~~

~~B. Notwithstanding the provisions of § 6.1-330.71 and subject to the provisions of § 8.9A-204.1, any loan made under this section may be secured in whole or in part by a subordinate mortgage or deed of trust on residential real estate improved by the construction thereon of housing consisting of one to four family dwelling units.~~

~~C. Any application form or preapproved written solicitation for an open-end credit card account to be used for personal, family, or household purposes which is mailed on or after January 1, 1988, to a consumer residing in this Commonwealth by or on behalf of a creditor, whether or not the creditor is located in this Commonwealth, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the creditor, shall contain or be accompanied by any of the following disclosures:~~

~~1. A disclosure of each of the following if applicable:~~

~~a. Any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates. If the account is subject to a variable rate, the creditor may instead disclose the rate as of a specific date and indicate that the rate may vary, or identify the index and any amount or percentage added to, or subtracted from, that index and used to determine the rate.~~

~~b. Any membership or participation fee that may be imposed for availability of a credit card account.~~

~~c. Any transaction fee that may be imposed on purchases, or any other charge or fee that may be imposed, expressed as an amount or as a percentage of the transaction, as applicable.~~

~~d. Any grace period or free period during which the consumer may repay the full balance reflected on a billing statement which is attributable to purchases of goods or services from the creditor or from merchants participating in the credit card plan, without the imposition of additional finance charges. The creditor shall either disclose the number of days of that period, calculated from the closing date of the prior billing cycle to the date designated in the billing statement sent to the consumer as the date by which that payment must be received to avoid additional finance charges, or describe the manner in which the period is calculated. If the creditor does not provide such a period for purchases, the disclosure shall so indicate;~~

~~2. A disclosure that satisfies the initial disclosure requirements of Regulation Z; or~~

~~3. If a creditor is now or hereafter required under federal law to make disclosures of the terms applicable to a credit card account in connection with application forms or solicitations, the creditor shall be deemed to have complied with the requirements of this subsection if the creditor complies with the federal disclosure requirements. The disclosure of any transaction fee that may be imposed on purchases, or any other charge or fee, shall be written on any such application form or preapproved written solicitation.~~

~~D. An open-end credit or similar plan between a seller or lender and an obligor shall be governed solely by federal law, and by the laws of the Commonwealth of Virginia unless otherwise expressly agreed in writing by the parties.~~

**Drafting note: Existing subsections A, B, E, F, and G are relocated to proposed § 6.2-312. Existing subsection C is merged with similar language at subsection B of § 6.1-330.63, and is moved to proposed § 6.2-432. Existing subsection D is moved to proposed § 6.2-435. The**

**relocated provisions pertain to requirements for such loans independent of the exemption from the limit on the contract rate of interest.**

§ ~~6.1-330.78:1~~ 6.2-321. ~~Charge on~~ Loans pursuant to stock option financing ~~contracts~~ programs.

A. As used in this section, "stock option financing program loan" means a loan pursuant to which a lender finances the option holder's exercise of the option to purchase stock, which exercise is financed through such means as purchasing the stock on margin, selling sufficient shares of the stock to cover the total exercise cost, or selling the full quantity of stock to cover the total exercise cost.

B. No person shall, by way of defense or otherwise, avail himself of the provisions of this chapter, or any other ~~section~~ statutory or case law relating to usury or compounding of interest, to avoid or defeat the payment of interest, or any other sum, in connection with a loan made to a person pursuant to a stock option financing program~~, pursuant to which a lender finances the option holder's exercise of the option to purchase stock, which exercise is financed through such means as purchasing the stock on margin, selling sufficient shares of the stock to cover the total exercise cost, or selling the full quantity of stock to cover the total exercise cost~~ loan.

**Drafting note: Subsection A is created in order to streamline the lengthy sentence comprising the existing section. Other changes are technical.**

§ 6.2-322. Extensions of credit on pledged securities.

A broker-dealer licensed by the ~~State Corporation~~ Commission and registered with the Securities Exchange Commission who extends credit to a customer on pledged securities as permitted under the provisions of the Securities Exchange Act of 1934, may charge the customer, on his debit balances that are payable on demand, interest at a annual rate that does not ~~exceeding an annual rate of~~ exceed one and three-quarters percent above the higher of:

1. The interest rate charged such broker-dealer by a bank doing business in ~~this~~ the Commonwealth on loans collateralized by securities; or

2. The interest rate charged such broker-dealer by a bank doing business in ~~this~~ the Commonwealth on loans for business purposes.

**Drafting note: Section is currently set out at § 6.1-330.65; changes from existing text are marked for assistance in their identification.**

§ 6.2-323. Educational loans by banks or savings institutions.

~~B.~~ Notwithstanding any ~~statute~~ statutory or case law relating to interest or usury, including the deferral and capitalization of interest, any loan made by a bank or savings institution to defray educational expenses, including~~, but not limited to,~~ tuition, fees, books, supplies, room, board, and personal expenses, shall be lawfully enforced as agreed in the contract of indebtedness.

**Drafting note: Section is existing subsection B of § 6.1-330.60; changes from existing text are marked for assistance in their identification. Pursuant to § 1-218, "but not limited to" is not necessary.**

§ 6.2-324. Educational loans by private college or university.

A. As used in this section, "private college or university" means a private, accredited and nonprofit institution of collegiate education in the Commonwealth whose primary purpose is to provide collegiate or graduate education.

B. Loans made by a private college or university in ~~Virginia~~ the Commonwealth to defray educational expenses of its students, including ~~but not limited to~~ tuition, fees, books, supplies, room, board, and personal expenses, may be enforced as agreed in the contract of indebtedness. ~~For purposes of this section, the term "private college or university" shall mean a private, accredited and nonprofit institution of collegiate education in the Commonwealth whose primary purpose is to provide collegiate or graduate education.~~

**Drafting note: Section is existing § 6.1-330.66; changes from existing text are marked for assistance in their identification. The definition of "private college or university" is set out as subsection A. Pursuant to § 1-218, "but not limited to" is not necessary.**

§ 6.2-325. Certain loans secured by first deed of trust or mortgage.

A. As used in this section, "real estate" includes a leasehold estate of not less than 25 years.

B. Notwithstanding the provisions of ~~§§ 6.1-330.53, 6.1-330.55 and 6.1-330.62 or~~ any ~~other~~ law relating to interest or usury, contracts made for the loan of money, secured or to be secured by a first deed of trust or first mortgage on real estate, or by a first priority security interest in the stock of a residential cooperative housing corporation, may be enforced as agreed in the contract of indebtedness~~,~~ or other agreement signed by the borrower.

~~B. For the purpose of this section and §§ 6.1-330.71 and 6.1-330.81:~~

~~1. Real estate shall be deemed to include a leasehold estate of not less than twenty-five years.~~

~~2~~ C. ~~An~~ For the purpose of this section, an interest rate which varies in accordance with any exterior standard, or which cannot be ascertained from the contract without reference to any exterior circumstances or documents, shall be enforceable as agreed in the contract of indebtedness or other signed agreement.

~~3. The terms "first deed of trust" or "first mortgage" shall include all deeds of trust and mortgages, and amendments thereto, which are made by the same grantor or mortgagor, secure notes held by the same holder, convey substantially the same real estate, and are superior to all other deeds of trust or mortgages on the real estate.~~

~~4. The terms "grantor" or "mortgagor" shall include an owner of the real estate, and spouse, who has assumed responsibility for the obligation secured by such deed of trust or mortgage.~~

~~C. Interest which is charged pursuant to a written agreement, whether or not recorded, shall be of equal priority with the principal debt secured by the mortgage or deed of trust and shall have priority as to third parties as provided in Title 55.~~

~~D. Notwithstanding any other statute or rule of case law relating to compounding of interest, if regularly scheduled periodic payments on an obligation secured by a first mortgage or first deed of trust on real estate are insufficient to pay currently accruing interest on the then~~

~~principal balance, an agreement in the contract of indebtedness, or other agreement signed by the borrower, providing for the addition of such unpaid interest to the principal balance and the future accrual of interest on such balances, shall be enforceable as written.~~

~~E~~ D. Disclosure of charges in a disclosure given to the borrower pursuant to federal disclosure laws or regulations and acceptance of the loan proceeds by the borrower shall be deemed an agreement signed by the borrower within the meaning of this section.

**Drafting note: Section is existing § 6.1-330.69; changes from existing text are marked for assistance in their identification. The definitions in current subdivisions B 3 and 4 are set out in proposed § 6.2-300. The definition in existing subdivision B 1 is set out as proposed subsection A. The provisions of subdivision B 2 are proposed subsection C. The provisions of existing subsection B are reiterated in part in the successors to §§ 6.1-330.71 and 6.1-330.81 (§§ 6.2-327 and 6.2-421) because of the potential for confusion resulting from relying on definitions in a section in another article or chapter. Existing subsection C is moved to proposed § 6.2-408. Existing subsections D and E are moved to proposed § 6.2-409. Existing subsection E is duplicated in this section and in proposed § 6.2-409 because both provisions include references to "an agreement signed by the borrower."**

§ ~~6.1-330.70~~ 6.2-326. Fees and charges in connection with loans by real estate lenders~~; certain borrowers not to be required to employ particular attorney, surveyor or insurer~~.

A. A lender engaged in making real estate mortgage or deed of trust loans, other than loans subject to the provisions of §§ ~~6.1-330.71~~ 6.2-327 and ~~6.1-330.72~~ 6.2-328, may ~~charge~~:

1. Charge or collect in advance from the borrower a loan fee as agreed between the parties~~. Such a lender also may require~~; and

2. Require the borrower to pay the reasonable and necessary charges in connection with making the loan, including the cost of title examination, title insurance, recording and filing fees, taxes, insurance, including mortgage guaranty insurance, appraisals, credit reports, surveys, drawing of papers and closing the loan.

B. ~~In the case of loans secured by deeds of trust or mortgages on one to four family residences, the lender may not require the borrower to use the services of a particular attorney, surveyor or insurer. However, the lender shall have the right to approve any attorney, surveyor, or insurer selected by the borrower, provided such approval is not unreasonably withheld. Any lender in compliance with regulations promulgated by the Federal Home Loan Bank Board relating to loan services and fees as in effect on July 1, 1977, shall be deemed to be in compliance with this subsection.~~

~~C.~~ The fees and charges permitted by this section and other sections of this chapter are in addition to those permitted by § ~~6.1-330.69~~ 6.2-325 and may be added to the principal of the loan, and shall not be considered in determining whether a loan contract is usurious.

**Drafting note: Section is existing § 6.1-330.70; changes from existing text are marked for assistance in their identification. Existing subsection B is moved to proposed § 38.2-410.**

§ 6.2-327. Certain loans secured by a subordinate deed of trust or mortgage.

A. As used in this section:

"Exempt subordinate mortgage lender" means (i) a bank, savings institution, industrial loan association, or credit union or (ii) a seller in a real estate sales transaction who takes a subordinate mortgage or deed of trust on such real estate.

"New money" means money advanced in excess of the outstanding principal balance at the time a new advance is made.

"Real estate" includes a leasehold estate of not less than 25 years.

"Residential real estate" means real estate improved by the construction thereon of housing consisting of one- to four-family dwelling units.

B. An add-on interest loan shall be subject to the following provisions:

1. Any person~~, other than lenders enumerated in § 6.1-330.73,~~ may charge add-on interest that results in an annual yield of not more than ~~eighteen~~ 18 percent upon loans secured in whole or in part by a subordinate mortgage or deed of trust on residential real estate ~~improved by the construction thereon of housing consisting of one to four family dwelling units. For the purposes of this chapter, a subordinate mortgage or deed of trust is one subject to a prior mortgage or deed of trust in existence at the time of the making of the loan secured by such subordinate mortgage or deed of trust.~~;

2. An add-on interest loan may be made only under this subsection and shall not exceed a period of five years and one month~~.~~; and

~~2~~ 3. The lender may also impose a loan fee not exceeding two percent of the principal amount of the loan provided that such loan fee shall not be imposed more often than once each ~~eighteen~~ 18 months except to the extent that new money is advanced within such ~~eighteen-month~~ 18-month period by a renewal or additional loan. New money shall be money advanced in excess of the outstanding principal balance at the time such new advance is made. These provisions shall apply whether such loan fee is payable directly to the lender or to a third party in connection with such loan.

~~B~~ C. No charge, other than actual costs documented to the applicant and expended for a credit report and an appraisal of the real estate conducted in connection with the loan application, may be made if ~~the~~ a loan secured by a subordinate mortgage or deed of trust is not made. Such charge ~~shall~~:

1. Shall not exceed one percent of the amount of the loan applied for; but in no event shall such charge exceed ~~fifty dollars~~ $50 or one-half of such costs, whichever is less~~. Such charge may~~; and

2. May be made only if the lender commits to make the loan. Such commitment shall be in writing and signed by the lender or a person who the lender has authorized to execute such documents.

~~C. The provisions of this section shall not apply to any loan by any lender enumerated in § 6.1-330.73.~~

D. ~~1.~~ Any loan secured by a subordinate mortgage or deed of trust on ~~such~~ residential real estate ~~where~~ upon which the interest is charged at an annual interest rate on the unpaid balance

thereof ~~may be lawfully enforced at the annual interest rate stated~~ shall be subject to the following provisions:

1. Such a loan may be lawfully enforced at the annual interest rate stated in the contract of indebtedness on the principal amount of the loan. Such annual interest rate may vary in accordance with an exterior standard~~.~~;

2. In addition to the annual interest rate permitted by subdivision 1 ~~of this subsection~~, the lender may charge the borrower a loan fee not exceeding five percent of the principal amount of the loan, provided that such loan fee shall not be imposed more often than once each 18 months except to the extent that new money is advanced within such 18-month period by a renewal or additional loan. Such loan fee may only be reimposed by the lender upon a borrower in connection with the refinancing of a loan made pursuant to this subsection~~.~~; and

3. The lender may ~~also~~ charge the borrower with the actual costs of the loan as permitted by § ~~6.1-330.72~~ 6.2-328.

~~3. The loan fee permitted by subdivision 2 of this subsection shall not be imposed more often than once each eighteen months except to the extent that new money is advanced within such eighteen-month period by a renewal or additional loan. Such loan fee may only be reimposed by the lender upon a borrower in connection with the refinancing of a loan made pursuant to this subsection~~.

E. The rates, charges and other provisions permitted or required by this section or by § ~~6.1-330.72~~ 6.2-328 shall apply to all loans secured by a subordinate mortgage or deed of trust, including, without limitation, (i) single maturity loans, (ii) amortizing loans, and (iii) loans secured by a credit line deed of trust as permitted by § 55-58.2.

F. Except for the loan fee permitted in this section, no discount, initial interest, points or charges by any other name may be collected, charged or added to a loan secured by a subordinate mortgage or deed of trust upon ~~such~~ residential real estate.

G. The provisions of this section shall not apply to any loan by an exempt subordinate mortgage lender.

H. For the purpose of this section, an interest rate that varies in accordance with any exterior standard, or that cannot be ascertained from the contract without reference to any exterior circumstances or documents, shall be enforceable as agreed in the contract of indebtedness or other signed agreement.

I. The borrower under any loan to which the provisions of this section apply may assert any defense or claim he may have under §§ 6.2-304 and 6.2-305 against any assignee or transferee of the contract of indebtedness.

**Drafting note: Section is existing § 6.1-330.71; changes from existing text are marked for assistance in their identification. The section is reorganized to add definitions of terms and to set out the differing restrictions on subordinate loans made by non-exempt subordinate mortgage lenders. The definition of "real estate" is provided by existing subdivision B 1 of § 6.1-330.69. In proposed subdivision B 1, the existing exclusion for "lenders enumerated in § 6.1-330.73" is deleted because it is duplicated at proposed subsection G. Proposed**

**subsection H is existing subdivision B 2 of § 6.1-330.69, which states that it applies to loans under § 6.1-330.71. Subsection I sets out the substantive provisions of existing subsection B of § 6.1-330.59.**

§ ~~6.1-330.72~~ 6.2-328. ~~Loans~~ Charges allowed on loan secured by subordinate mortgage~~; charges allowed; requirements relating to insurance~~.

A. Any lender making a loan secured by a subordinate mortgage or deed of trust may require the borrower to pay, in addition to the loan fee and interest permitted by § ~~6.1-330.71~~ 6.2-327, the actual cost of a credit report, title examination, title insurance, mortgage guaranty insurance, recording fees, surveys, ~~attorney's~~ attorney fees, appraisal fees, and a fee to determine if the property securing the loan is located in a special flood hazard area. No other charges of any kind shall be imposed on or be payable by the borrower either to the lender or any other party in connection with such loan other than ~~a:~~

1. A fee charged by the settlement agent as defined in § ~~6.1-2.20~~ 55-525.9; ~~provided, late~~

2. Late charges in the amount specified in § ~~6.1-330.80~~ 6.2-400 and a prepayment penalty permitted under § ~~6.1-330.85 may be~~ 6.2-423 that are contracted for; and~~, upon~~

3. Upon default, ~~the borrower may be subject to~~ court costs, ~~attorney's~~ attorney fees, trustee's commission, and other expenses of collection to which the borrower may be subject as otherwise permitted by law.

B. Broker's or finder's fees may be paid by the lender from the loan fee or interest permitted under § ~~6.1-330.71~~ 6.2-327. A broker's fee, finder's fee, or commission not to exceed five percent of the principal amount of the loan may be paid by the borrower ~~not to exceed five percent of the principal amount of the loan~~ if the total of the loan fee permitted under § ~~6.1-330.71~~ 6.2-327 and the broker's ~~fees~~ fee, finder's ~~fees~~ fee, or ~~commissions~~ commission does not exceed five percent of the principal amount of the loan.

~~B. Evidence of flood insurance if the security property is located in a special flood hazard area and fire and extended coverage insurance may be required by the lender of the borrower and the premium shall not be considered as a charge. Decreasing term life insurance, in an amount not exceeding the amount of the loan and for a period not exceeding the term of the loan, may also be required by the lender of the borrower and the premium shall not be considered as a charge. At the option of the borrower, accident and health insurance and involuntary unemployment insurance may be provided by the lender, and the premium therefor shall not be considered a charge. Proof of all insurance issued in connection with loans subject to this chapter shall be furnished to the borrower within ten days from the date the loan is closed.~~

C. The premium for any insurance required or provided pursuant to § 6.2-411 shall not be considered a charge imposed on or payable by the borrower in connection with the loan.

~~C~~ D. No charge may be imposed or collected, except as permitted by § ~~6.1-330.71~~ 6.2-327, if the loan is not made.

~~D~~ E. This section shall not apply to any loan made by ~~any lender enumerated in § 6.1-330.73~~ (i) a bank, savings institution, industrial loan association, or credit union or (ii) a seller in

a real estate sales transaction who takes a subordinate mortgage or deed of trust on such real estate.

F. The borrower under any loan to which the provisions of this section apply may assert any defense or claim he may have under §§ 6.2-304 and 6.2-305 against any assignee or transferee of the contract of indebtedness.

**Drafting note: Section is existing § 6.1-330.72; changes from existing text are marked for assistance in their identification. Existing subsection B is moved to proposed § 6.2-411. The reference to insurance premiums on policies required or provided pursuant to proposed § 6.2-411 has been added to ensure that the lender may require the borrower to pay them without violating the restrictions of subsection A. Subsection F sets out the substantive provisions of existing subsection B of § 6.1-330.59. Other changes are technical.**

§ 6.2-329. Loans insured or guaranteed by certain governmental agencies.

A. No person shall, by way of defense or otherwise, avail himself of any of the provisions of this chapter or any other law relating to usury or any ~~statute~~ statutory or ~~rule of~~ case law relating to compounding of interest to avoid or defeat the payment of any interest or any other sum which he has contracted to pay on any loan:

1. Insured by the Federal Housing Administration, pursuant to the provisions of ~~this~~ the National Housing Act (12 U.S.C. § 1701 et seq.);

2. Guaranteed by the Veterans Administration, pursuant to Title 38 of the United States Code; or

3. Insured or guaranteed by any similar federal governmental agency or organization, or made directly or indirectly by the Virginia Housing Development Authority pursuant to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36.

B. Nothing contained in this chapter shall be construed to prevent the recovery of such interest or ~~fee~~ any other sum from any person who has contracted to pay the same in connection with any loan described in this section.

**Drafting note: Section is existing § 6.1-330.74; changes from existing text are marked for assistance in their identification.**

~~§ 6.1-330.79. Compliance with federal law.~~

~~Every person subject to the provisions of 15 U.S.C. § 1601 et seq. and Regulation Z, Truth-in-Lending, promulgated by the Board of Governors of the Federal Reserve System shall comply with such statutes and regulations when offering or extending consumer credit as defined therein. A lender who fails to comply with this section shall not be subject to any liability or penalty beyond those imposed by such federal statutes and regulations.~~

**Drafting note: Section is moved to proposed § 6.2-436.**

~~Article 12.~~

~~Late Charges; prepayment and Acceleration Laws; Certain Rights of Borrowers and Consumers.~~

**Drafting note: Existing Article 12 is moved to proposed Articles 1 and 2 of Chapter 4.**

~~§ 6.1-330.80. Amount of late charge; when charge can be made.~~

~~A. Any lender or seller may impose a late charge for failure to make timely payment of any installment due on a debt, whether installment or single maturity, provided that such late charge does not exceed five percent of the amount of such installment payment and that the charge is specified in the contract between the lender or seller and the debtor. For the purposes of this section, "timely payment" is defined as one made by the date fixed for payment or within a period of seven calendar days after such due date. Late charges shall not be deemed to include charges imposed upon acceleration of the entire debt or to include costs of collection and attorney's fees as otherwise permitted by law by reason of a default by the debtor.~~

~~B. If any federal governmental agency or organization shall adopt any rules or regulations dealing with the application of late penalties as to loans insured or guaranteed by such federal agency or organization, then such rules and regulations shall control as to such loans insured or guaranteed by them.~~

~~C. Any provision for late charges in excess of the amount permitted by this section shall be void as to such excess but shall not otherwise affect the validity of the obligation.~~

**Drafting note: Section is moved to proposed § 6.2-400.**

~~§ 6.1-330.81. Certain contracts to permit prepayment; amount of prepayment penalty.~~

~~A. Every loan contract, except as provided in subsection C of this section, secured by a first deed of trust or first mortgage on real estate, where the principal amount of the loan is less than $75,000, shall permit the prepayment of the unpaid principal at any time and no penalty in excess of one percent of the unpaid principal balance shall be allowed.~~

~~B. Any prepayment penalty provision in violation of this section shall be unenforceable as to the amount in excess of one percent of such balance.~~

~~C. The provisions of this section shall not apply to secured or unsecured notes evidencing installment sales contracts. The provisions of this section relating to prepayment penalty shall not apply to loan contracts subject to § 6.1-330.83 or § 6.1-330.84 or to loan contracts governmentally regulated as to prepayment privilege.~~

**Drafting note: Section is moved to proposed § 6.2-421.**

~~§ 6.1-330.82. Property owner entitled to written statement of payoff amount.~~

~~A. Where a lien on real estate is secured by a deed of trust or mortgage, the owner of such real estate, if entitled to prepay the obligation secured by such deed of trust or mortgage, shall be entitled to receive from the bank, savings institution or other corporate entity holding such obligation, a written statement setting forth the total amount to be paid as of a particular date in order to obtain a release of the deed of trust or mortgage. The holder of the obligation secured by said deed of trust or mortgage shall mail or deliver such written statement of the payoff amount to the property owner or his designee within ten business days of the receipt of a written request for such payoff information from the property owner or his designee if the request contains the loan number and the address or other description of the location of the subject premises. Upon payment in full of the obligation, the holder shall promptly cause the cancelled loan documents to be forwarded to the owner or his designee. An inadvertent error~~

made in the calculation of the payoff amount shall not release the party liable for payment of the obligation from the requirement to pay the full amount due under the contract of indebtedness, nor shall it release the holder of the contract of indebtedness from the requirement to return any overpayment to such party or his designee.

B. A request for payoff information under this section may be made one time within a twelve-month period without charge, and a fee not exceeding fifteen dollars may be charged for each additional request made within such period.

**Drafting note: Section is moved to proposed § 6.2-418.**

§ 6.1-330.83. Prepayment penalty for loan secured by home occupied by borrower.

The prepayment penalty in the case of a loan secured by a mortgage or deed of trust on a home which is occupied or to be occupied in whole or in part by a borrower shall not be in excess of two percent of the amount of such prepayment.

**Drafting note: Section is moved to proposed § 6.2-422.**

§ 6.1-330.84. Prepayment by borrower from industrial loan association; rebates for unearned interest; prepayment penalty.

Any natural person borrowing from an industrial loan association shall have the right to anticipate payment of his debt at any time. In cases where interest has been added to the face amount of the note, such person shall have the right to receive a rebate by way of credit for any unearned interest, which rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.1-330.86 or by using any other method that is at least as favorable to such borrower on loans (i) with an initial maturity and corresponding amortization period of sixty-one months or less and (ii) payable in equal periodic installments, and on other loans under a method at least as favorable to the borrower as the actuarial method. In addition, the industrial loan association may charge a prepayment penalty not to exceed two percent of the amount of the prepayment, provided such prepayment penalty, including the percent thereof, is set forth in the contract of indebtedness and is disclosed to the borrower pursuant to the federal interest disclosure laws.

**Drafting note: Section is moved to proposed § 6.2-1409.**

§ 6.1-330.85. Prepayment of loan described in § 6.1-330.71; rebates for unearned interest.

A. Any borrower under any loan described in § 6.1-330.71 shall have the right to anticipate payment of his debt in whole or in part at any time. As agreed to by the borrower, a lender may contract for a penalty for prepayment of the full amount of the loan, but such prepayment penalty shall not exceed two percent of the principal amount prepaid. However, such prepayment penalty may not be imposed if (i) the loan is refinanced or consolidated with the same lender or a subsequent noteholder or (ii) the loan is accelerated due to default. No penalty shall be charged in the event of partial prepayment or in the case of an open-end credit plan where there is a payment of the outstanding balance without a demand to release the subordinate deed of trust or mortgage. In cases where interest has been added to the face amount of a note payable in installments, the borrower shall have the right to a rebate of any unearned interest, which rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.1-330.86

~~on loans (i) with an initial maturity and corresponding amortization period of sixty-one months or less and (ii) payable in equal periodic installments. On loans with an initial maturity of more than sixty-one months, the borrower shall receive a rebate computed under a method at least as favorable to the borrower as the actuarial method.~~

~~B. The provisions of this section shall not apply to any loan made by any lender enumerated in § 6.1-330.73.~~

**Drafting note: Section is moved to proposed § 6.2-423.**

~~§ 6.1-330.85:1. Notice on loan or sale on credit using Rule of 78 rebate method.~~

~~Where any loan or sale on credit contains a provision that a rebate of unearned interest shall be calculated in accordance with the Rule of 78, the note or other instrument evidencing the loan or sale on credit shall contain a notice advising the borrower of the effect of the interest calculation. The notice shall be in all capital letters and in ten-point type, and shall be substantially as follows:~~

~~NOTICE: IF YOU PAY THIS LOAN OR SALE ON CREDIT PARTIALLY OR IN FULL BEFORE ITS DUE DATE, THE AMOUNT OF INTEREST YOU PAY WILL BE GREATER THAN THE AMOUNT OF INTEREST YOU WOULD PAY FOR A SIMPLE INTEREST LOAN OF THE SAME PRINCIPAL AMOUNT.~~

**Drafting note: Section is moved to proposed § 6.2-402.**

~~§ 6.1-330.86. The Rule of 78.~~

~~A. The Rule of 78 is so named because the months of one year, i.e., one through twelve added together, total seventy-eight.~~

~~B. To determine the amount of the rebate of unearned interest under the Rule of 78 on a loan where payment is anticipated:~~

~~1. Determine the number of months over which the loan is to be repaid according to its terms. Write the numbers in sequence and add (for example, for a four-year loan write the numbers one through forty-eight). The total will be the denominator of a fraction to be determined below.~~

~~2. Determine the number of months remaining on the loan after payment is anticipated. Write in inverse sequence and add (for example, for a four-year loan anticipated after the third month, write the numbers forty-five back to one). The total will be the numerator of the fraction of which subdivision 1 of this subsection is the denominator.~~

~~3. Multiply the original amount of interest that would have been paid over the life of the loan by the fraction derived in subdivisions 1 and 2 of this subsection. Such figure, so determined, is the amount to be rebated.~~

~~C. Payment anticipated between scheduled payment dates shall not be considered but instead the succeeding scheduled payment date shall be used in determining the rebate under subsection B of this section.~~

**Drafting note: Section is moved to proposed § 6.2-403.**

~~§ 6.1-330.86:1. Use of Rule of 78 prohibited.~~

~~A. On any loan of money made with an initial maturity of greater than sixty-one months or on any sales contract which necessitates such a loan, which is made after January 1, 1991, the Rule of 78 shall not be used to determine the amount of the rebate of unearned interest where payment of the debt is anticipated on such loan or contract.~~

~~B. On any loan of money made with an initial maturity and corresponding amortization period of sixty-one months or less, payable in equal periodic installments, the Rule of 78 may be used to determine the amount of rebate of unearned interest where payment of the debt is anticipated on such loan or contract.~~

**Drafting note: Section is moved to proposed § 6.2-404.**

~~§ 6.1-330.87. Prepayment penalties not to be collected in certain circumstances.~~

~~No lender shall collect or receive any prepayment penalty on loans secured by real property comprised of one to four family residential dwelling units, if the prepayment results from the enforcement of the right to call the loan upon the sale of the real property which secures the loan. If the loan is prepaid because of sale to a person whom the lender has refused to approve for purposes of assuming the loan or failed to approve within fifteen days after receipt by it of written request for approval, such prepayment shall be presumed to result from enforcement of the right to call the loan.~~

**Drafting note: Section is moved to proposed § 6.2-420.**

~~§ 6.1-330.88. Mortgage, etc., to contain notice that debt is subject to call or modification on conveyance of property.~~

~~Where any loan is made secured by a mortgage or deed of trust on real property comprised of one to four family residential dwelling units, and the note, or mortgage or deed of trust evidencing such loan contains a provision that the holder of the note secured by such mortgage or deed of trust may accelerate payment of or renegotiate the terms of such loan upon sale or conveyance of the security property or part thereof, then the mortgage or deed of trust shall contain in the body or on the margin thereof a statement, either in capital letters or underlined, which will advise the borrower as follows: "Notice – The debt secured hereby is subject to call in full or the terms thereof being modified in the event of sale or conveyance of the property conveyed."~~

**Drafting note: Section is moved to proposed § 6.2-417.**

~~§ 6.1-330.89. Acceleration clause in note evidencing installment loan; effect of acceleration.~~

~~Any note or other contract evidencing an installment loan or other installment sales obligation with add-on interest may provide that the entire unpaid loan balance, at the option of the holder, shall become due and payable upon default in payment of any installment without impairing the negotiability of the note, if otherwise negotiable. Upon such acceleration, the holder of the contract of indebtedness shall not be entitled to judgment for unearned interest, but the balance owing shall be computed as if the borrower had made a voluntary prepayment and obtained as of the date of acceleration an interest credit based upon the Rule of 78 as defined in § 6.1-330.86 on a loan with an initial maturity and corresponding amortization period of sixty-one~~

~~months or less payable in equal periodic installments, and on other loans under a method at least as favorable to the borrower as the actuarial method. Such accelerated balance shall bear interest at the rate shown, or which should have been shown if a consumer credit transaction were involved, as the annual percentage rate under a truth-in-lending disclosure pursuant to federal law.~~

**Drafting note: Section is moved to proposed § 6.2-401.**

~~§ 6.1-330.90. Right of buyer of consumer goods to refinance certain payments; agreements as to fluctuation in schedule of payments.~~

~~A. In any sales transaction, except one pursuant to an open-end account, involving exclusively consumer goods as defined in subdivision (a)(23) of § 8.9A-102 wherein credit is extended and a security interest in consumer goods is taken, any installment payment, other than a down payment made prior to or contemporaneously with the execution of an agreement evidencing the transaction, which is more than ten percent greater than the regular or recurring installment payments, shall be subject to the buyer's right to refinance such a payment on the basis of an extended period of time. Such additional payments shall be in amounts which shall allow the unpaid balance to be paid in as few periodic payments, not more than ten percent greater than the regularly scheduled installment payments, as are required to pay such balance. Such additional payments shall be considered and treated as part of the original transaction.~~

~~B. The parties may agree in a separate writing that one or more payments or the intervals between one or more payments shall be reduced or expanded in accordance with the desires or needs of the buyer, if such fluctuations in the schedule of payments are expressly arranged to coincide with the anticipated fluctuations in the buyer's capability to make such payments.~~

~~C. No seller who has refused to refinance in compliance with the provisions of this section shall be entitled (i) to return or repossession of the goods involved in the transaction or (ii) to a judgment for the unpaid balance involved in the transaction at the time of his failure to do so.~~

**Drafting note: Section is moved to proposed § 6.2-437.**

## CHAPTER 4.
## CERTAIN LENDING PRACTICES.

**Chapter Drafting Note: Proposed Chapter 4 includes provisions generally addressing the terms of loans, excluding the rate of interest (which is addressed in proposed Chapter 3). Proposed Article 1 includes provisions concerning late charges, loan acceleration, and rebates of unearned interest that are in existing Article 12 of Chapter 7.3. Proposed Article 2 collects provisions specifically addressing aspects of loans secured by liens on real estate. Proposed Article 3 includes provisions of credit card lending, including existing Chapter 6 (Credit Cards) of Title 11 (Contracts). Proposed Article 4 sets out provisions applicable to open-end credit plans that are currently included in Article 11 of Chapter 7.3, but which do not address the rate of interest charged. Proposed Article 5 includes other provisions specifically addressing consumer credit issues that are in existing Article 12 of Chapter 7.3.**

Article 1.

Late Charges and Rebates of Unearned Interest.

§ ~~6.1-330.80~~ 6.2-400. Amount of late charge; when charge can be made.

A. As used in this section:

"Late charges" does not include charges imposed upon acceleration of the entire debt or costs of collection and attorney fees as otherwise permitted by law by reason of a default by the debtor.

"Timely payment" means a payment made by the date fixed for payment or within a period of seven calendar days after such due date.

B. Any lender or seller may impose a late charge for failure to make timely payment of any installment due on a debt, whether installment or single maturity, provided that such late charge does not exceed five percent of the amount of such installment payment and that the charge is specified in the contract between the lender or seller and the debtor. ~~For the purposes of this section, "timely payment" is defined as one made by the date fixed for payment or within a period of seven calendar days after such due date. Late charges shall not be deemed to include charges imposed upon acceleration of the entire debt or to include costs of collection and attorney's fees as otherwise permitted by law by reason of a default by the debtor.~~

~~B~~ C. If any federal governmental agency or organization shall adopt any rules or regulations dealing with the application of late penalties as to loans insured or guaranteed by such federal agency or organization, then such rules and regulations shall control as to such loans insured or guaranteed by them.

~~C~~ D. Any provision for late charges in excess of the amount permitted by this section shall be void as to such excess but shall not otherwise affect the validity of the obligation.

**Drafting note: Technical changes.**

§ ~~6.1-330.89~~ 6.2-401. Acceleration clause in note evidencing installment loan; effect of acceleration.

A. Any note or other contract evidencing an installment loan or other installment sales obligation with add-on interest may provide that the entire unpaid loan balance, at the option of the holder, shall become due and payable upon default in payment of any installment without impairing the negotiability of the note, if otherwise negotiable.

B. Upon such acceleration, the holder of the contract of indebtedness shall not be entitled to judgment for unearned interest, but the balance owing shall be computed as ~~if~~ follows:

1. On loans payable in equal periodic installments with an initial maturity and corresponding amortization period not exceeding 61 months, the accelerated balance shall be calculated as if the borrower had made a voluntary prepayment and obtained as of the date of acceleration an interest credit based upon the Rule of 78 rebate method as defined in § ~~6.1-330.86~~ 6.2-403 ~~on a loan with an initial maturity and corresponding amortization period of sixty-one months or less payable in equal periodic installments,~~; and

2. ~~on~~ On other loans, the accelerated balance shall be calculated under a method at least as favorable to the borrower as the actuarial method.

C. ~~Such~~ The accelerated balance shall bear interest at the rate shown, or ~~which~~ that should have been shown as the annual percentage rate under a truth in lending disclosure pursuant to federal law if ~~a~~ the transaction was a consumer credit transaction ~~were involved, as the annual percentage rate under a truth in lending disclosure pursuant to federal law~~.

**Drafting note: The changes are technical, and in proposed subsection C clarify the presumed intent.**

§ ~~6.1-330.85:1~~ 6.2-402. Notice ~~on loan or sale on credit using~~ of use of Rule of 78 rebate method.

Where any loan or sale on credit contains a provision that a rebate of unearned interest shall be calculated in accordance with the Rule of 78 rebate method as defined in § 6.2-403, the note or other instrument evidencing the loan or sale on credit shall contain a notice advising the borrower of the effect of the interest calculation. The notice shall be in all capital letters and in ~~ten~~ 10-point type, and shall be substantially as follows:

NOTICE: IF YOU PAY THIS LOAN OR SALE ON CREDIT PARTIALLY OR IN FULL BEFORE ITS DUE DATE, THE AMOUNT OF INTEREST YOU PAY WILL BE GREATER THAN THE AMOUNT OF INTEREST YOU WOULD PAY FOR A SIMPLE INTEREST LOAN OF THE SAME PRINCIPAL AMOUNT.

**Drafting note: Technical changes.**

§ ~~6.1-330.86~~ 6.2-403. The Rule of 78

A. The Rule of 78 is so named because the ~~months of one year, i.e.,~~ integers one through ~~twelve~~ 12 added together~~,~~ total ~~seventy-eight~~ 78.

B. ~~To determine the~~ The amount of the rebate of unearned interest ~~under the Rule of 78 on~~ to be credited upon the acceleration or anticipation of a loan ~~where payment is anticipated~~ on which such rebate is required to be calculated under the Rule of 78 shall be calculated as follows:

1. Determine the denominator of the fraction, to be used as provided in subdivision 3, by adding the integers corresponding to the number of months over which the loan is to be repaid according to its terms~~. Write the numbers in sequence and add (for~~, which in the example~~, for~~ of a four-year loan ~~write the numbers~~ would be the sum obtained by adding all of the integers in the series one through ~~forty-eight)~~ 48. ~~The total will be the denominator of a fraction to be determined below.~~

2. Determine the numerator of the fraction, to be used as provided in subdivision 3, by adding in inverse sequence the integers corresponding to the number of months remaining on the loan after payment is anticipated~~. Write in inverse sequence and add (for~~, which in the example~~, for~~ of a four-year loan anticipated after the third month, ~~write the numbers forty-five back to~~ would be the sum obtained by adding all of the integers in the series 45 through one~~)~~. ~~The total will be the numerator of the fraction of which subdivision 1 of this subsection is the denominator.~~

3. Multiply the original amount of interest that would have been paid over the life of the loan by ~~the~~ a fraction ~~derived~~ that has as its denominator the number determined as in ~~subdivisions~~ subdivision 1 and as its numerator the number determined as in subdivision 2 ~~of this~~

~~subsection~~. ~~Such figure, so determined,~~ The product is the amount of unearned interest to be rebated under the Rule of 78.

C. Payment anticipated between scheduled payment dates shall not be considered but instead the succeeding scheduled payment date shall be used in determining the ~~rebate under subsection B of~~ amount of unearned interest to be rebated under the Rule of 78 pursuant to this section.

**Drafting note: The revisions clarify the instructions for calculating the rebate of unearned interest.**

§ ~~6.1-330.86:1~~ 6.2-404. ~~Use~~ When use of Rule of 78 prohibited or permitted.

A. ~~On any loan of money made with an initial maturity of greater than sixty-one months or on any sales contract which necessitates such a loan, which is made after January 1, 1991, the~~ The Rule of 78 shall not be used to determine the amount of ~~the rebate of~~ unearned interest ~~where~~ to be rebated if payment of the debt is anticipated on ~~such loan or contract~~ any (i) loan of money made after January 1, 1991, with an initial maturity of more than 61 months; or (ii) sales contract made after January 1, 1991, that necessitates a loan as described in clause (i).

B. On any loan of money made with an initial maturity and corresponding amortization period of ~~sixty-one~~ 61 months or less~~,~~ and that is payable in equal periodic installments, the Rule of 78 may be used to determine the amount of ~~rebate of~~ unearned interest ~~where~~ to be rebated if payment of the debt is anticipated on ~~such~~ the loan or contract.

**Drafting note: Technical changes clarify the categories of loans under which use of the Rule of 78 is permitted and prohibited.**

§ 6.2-405. References to sections regulating rebates of unearned interest and prepayment penalties.

A. This article does not affect the application of §§ 6.2-420 through 6.2-423 regarding the imposition of prepayment penalties or rebates of unearned interest on certain loans secured by a lien on real estate.

B. This article does not affect the application of § 6.2-1409 regarding the imposition of prepayment penalties or rebates of unearned interest on loans made by an industrial loan association.

**Drafting note: New section provides notice that this article is not the exclusive source of Code sections regulating the prepayment or anticipation of certain loans. Sections referenced with regard to real estate loans are existing §§ 6.1-330.81, 6.1-330.83, 6.1-330.85, and 6.1-330.87. Section referenced with regard to loans by an industrial loan association is existing § 6.1-330.84.**

Article 2.

Loans Secured by Lien on Real Estate.

**Article drafting note: New article; sets out sections in existing Chapter 1 (General Provisions) and existing Articles 9 (Exceptions to Contract Rate of Interest for Real Estate Loans) and 12 (Late Charges; Prepayment and Acceleration Laws; Certain Rights of Borrowers and Consumers) of Chapter 7.3, that are applicable only to loans secured by a**

**mortgage or deed of trust encumbering an interest in real estate. Provisions pertaining to finance charges on such loans are set out in proposed Chapter 3.**

§ ~~6.1-2.9:5~~ 6.2-406. Disclosure of terms of mortgage application.

A. Any lender ~~or broker~~ making, or broker arranging, loans secured by a first ~~mortgages~~ mortgage or ~~deeds~~ first deed of trust on owner occupied residential real estate~~,~~ consisting of one~~-~~ to four ~~-~~family dwelling units~~, other than a lender making ten or less loans in any twelve-month period,~~ shall provide, at the time an application for such a loan is submitted by a ~~potential borrower~~ loan applicant, to the ~~applicant-borrower~~ loan applicant a written statement that:

1. ~~Describing~~ Describes when, if ever, the interest, points, and fees quoted will be locked in;

2. ~~To be initialed by the applicant-borrower and lender or broker, stating~~ States that all the loan terms not legally locked in are subject to change until settlement, which shall be initialed by the loan applicant and lender or broker; and

3. ~~Providing~~ Provides a good faith estimate of the processing time required for the loan. The estimate shall take into account the time needed for the performance of any local government inspections or other functions necessary to close the loan.

B. The requirements of subsection A shall not apply to any lender making 10 or fewer loans secured by a first mortgage or first deed of trust on such owner occupied residential real estate in any 12-month period.

**Drafting note: The phrases "applicant-borrower" and "potential borrower" are replaced with "loan applicant."**

§ ~~6.1-2.9~~ 6.2-407. Lenders to furnish borrower with copy of appraisal.

Any lender ~~which~~ that requires a borrower or prospective borrower to pay for ~~a residential~~ an appraisal of residential real estate made in connection with a loan or ~~loan~~ application for a loan secured by the real estate shall, upon request by the borrower or prospective borrower, furnish free of charge ~~such~~ the borrower or prospective borrower with a copy of the written appraisal or, if no written appraisal exists, with a statement of the appraised value within ~~ten~~ 10 business days of the receipt of such request.

**Drafting note: Technical changes.**

§ 6.2-408. Priority of interest on debts secured by mortgage or deed of trust.

~~C.~~ Interest ~~which~~ that is charged pursuant to a written agreement, whether or not recorded, shall be of equal priority with the principal debt secured by the mortgage or deed of trust and shall have priority as to third parties as provided in Title 55.

**Drafting note: Section is existing subsection C of § 6.1-330.69; changes from existing text are marked for assistance in their identification. Existing subsections A, B (in part), and E are set out at proposed § 6.2-325. Additional provisions of existing § 6.1-330.69 are set out at proposed § 6.2-409.**

§ 6.2-409. Addition of unpaid interest to principal balance.

A. For the purpose of this section:

"First deed of trust" or "first mortgage" includes all deeds of trust and mortgages, and amendments thereto, that are made by the same grantor or mortgagor, secure notes held by the same holder, convey substantially the same real estate, and are superior to all other deeds of trust or mortgages on the real estate.

"Grantor" or "mortgagor" includes an owner of real estate, and spouse, who has assumed responsibility for the obligation secured by such deed of trust or mortgage encumbering the real estate.

"Real estate" includes a leasehold estate of not less than 25 years.

~~D~~ B. Notwithstanding any other ~~statute~~ statutory or ~~rule of~~ case law relating to compounding of interest, if regularly scheduled periodic payments on an obligation secured by a first mortgage or first deed of trust on real estate are insufficient to pay currently accruing interest on the then principal balance, an agreement in the contract of indebtedness, or other agreement signed by the borrower, providing for the addition of such unpaid interest to the principal balance and the future accrual of interest on such balances, shall be enforceable as written.

~~E~~ C. Disclosure of charges in a disclosure given to the borrower pursuant to federal disclosure laws or regulations and acceptance of the loan proceeds by the borrower shall be deemed an agreement signed by the borrower within the meaning of this section.

**Drafting note: Section is existing subdivisions B 1, B 3, and B 4 and subsections D and E of § 6.1-330.69; changes from existing text are marked for assistance in their identification.**

§ 6.2-410. Borrowers not to be required to employ particular professionals.

~~B.~~ In the case of loans secured by deeds of trust or mortgages on one~~-~~ to four~~-~~ family ~~residences~~ dwelling units, the lender may not require the borrower to use the services of a particular attorney, surveyor, or insurer. ~~However, the~~ The lender shall have the right to approve any attorney, surveyor, or insurer selected by the borrower, provided such approval is not unreasonably withheld. ~~Any lender in compliance with regulations promulgated by the Federal Home Loan Bank Board relating to loan services and fees as in effect on July 1, 1977, shall be deemed to be in compliance with this subsection.~~

**Drafting note: Section is existing subsection B of § 6.1-330.70; changes from existing text are marked for assistance in their identification. "Residences" is changed to "dwelling units" to make the provision consistent with other sections. The reference to FHLBB regulations in effect in 1977 is deleted as obsolete.**

§ 6.2-411. Requirements relating to insurance.

A. Any lender making a loan secured by a subordinate mortgage or deed of trust, as defined in § 6.2-300, may require the borrower to provide:

1. Evidence of flood insurance if the security property is located in a special flood hazard area ~~and fire~~;

2. Evidence of fire and extended coverage insurance ~~may be required by the lender of the borrower and the premium shall not be considered as a charge.~~; and

3. Decreasing term life insurance, in an amount not exceeding the amount of the loan and for a period not exceeding the term of the loan~~, may also be required by the lender of the borrower and the premium shall not be considered as a charge~~.

B. At the option of the borrower, accident and health insurance and involuntary unemployment insurance may be provided by the lender~~, and the premium therefor shall not be considered a charge~~.

C. Proof of all insurance issued in connection with loans subject to this chapter shall be furnished to the borrower within 10 days from the date the loan is closed.

**Drafting note: Section is portion of existing subsection B of § 6.1-330.72; changes from existing text are marked for assistance in their identification.**

§ ~~6.1-2.6:1~~ 6.2-412. Fire insurance coverage under certain loans not to exceed replacement value of improvements.

A. As used in this section, "property insurance coverage" means insurance against losses or damages caused by perils that commonly are covered in insurance policies described with terms similar to "standard fire" or "standard fire with extended coverage."

B. No lender shall require a borrower, as a condition to receiving or maintaining a loan secured by any mortgage or deed of trust, to provide or purchase property insurance coverage against risks to any improvements on any real property in an amount exceeding the replacement value of the improvements on the real property.

~~In this section, "property insurance coverage" means insurance against losses or damages caused by perils that commonly are covered in insurance policies described with terms similar to "standard fire" or "standard fire with extended coverage."~~

C. In determining the replacement value of the improvements on any real property, the lender may:

1. Accept the value placed on the improvements by the insurer; or

2. Use the value placed on the improvements that is determined by the lender's appraisal of the real property.

~~B~~ D. A violation of this section shall not affect the validity of the mortgage or deed of trust securing the loan.

**Drafting note: Changes are technical.**

§ ~~6.1-2.9:1~~ 6.2-413. Obligation of lender to reimburse unused mortgage guaranty insurance premiums.

Any lender~~, which~~ that requires, as a prerequisite to its lending money for the purchase of real property, that private mortgage insurance be secured to insure a certain amount of ~~such institution's~~ the lender's interest in the property~~,~~ shall return to the person who paid the premium, or other person entitled thereto, any portion of the premium for such insurance that is not used to secure insurance for ~~such institution's~~ the lender's interest in the property.

**Drafting note: Changes are technical.**

§ ~~6.1-2.8~~ 6.2-414. Obligation of ~~lender~~ person maintaining escrow account to pay taxes and insurance; penalties.

Any ~~bank or~~ lender or other person maintaining escrow accounts for the payment of taxes or insurance, ~~which~~ who on receipt of notice thereof, fails to make timely payment therefor, and incurs a penalty or late charge thereon or a cancellation for nonpayment if there ~~be~~ are sufficient funds in such escrow account at least five days before such due date to make such payment, shall be liable for the penalty or late charge assessed for late payment and for any loss as a result of the property being uninsured for nonpayment. ~~Such bank or lender~~ The lender or other person shall give written notice to any obligor of the payment of such penalty or late charge within five days after such payment is made.

**Drafting note: The references to banks or lenders are replaced with the broader "person" because a bank may be a lender, and an institution other than a bank may maintain an escrow account. This is a substantive change by making the section applicable to mortgage servicers that are not banks; however, the change is consistent with the intended scope of the section.**

§ ~~6.1-2.9:6~~ 6.2-415. Lender not to cancel insurance policy at time of refinancing under certain circumstances.

A. No lender shall require a borrower or debtor, for the protection of property securing the credit or lien, to cancel an existing insurance policy on such property at the time of a refinancing solely to change the effective dates of coverage under the policy, unless the expiration date of such policy is within four months of the date of the closing. ~~Nothing herein~~

B. The provision of subsection A shall not prevent a lender from requesting a new policy when the coverage under the existing policy is inadequate or there is reasonable concern over the soundness or services of the insurer.

**Drafting note: Technical changes.**

§ ~~6.1-2.5~~ 6.2-416. Certain mortgages~~, etc.,~~ not to prohibit further encumbrance of real property.

Where any loan is secured by a mortgage or deed of trust~~,~~ on real property comprised of ~~one-to-four-family~~ one- to four-family residential dwelling units, the note, or mortgage or deed of trust evidencing such loan shall in no way prohibit the further encumbrance of the real property. ~~The provision of this section shall not apply to any transaction entered into prior to July 1, 1975.~~

**Drafting note: The second sentence, establishing an exemption for transactions entered into prior to July 1, 1975, is deleted as obsolete.**

§ ~~6.1-330.88~~ 6.2-417. Mortgage~~, etc.,~~ or deed of trust to contain notice that debt is subject to call or modification on conveyance of property.

Where any loan is ~~made~~ secured by a mortgage or deed of trust on real property comprised of one- to four--family residential dwelling units, and the note~~,~~ or mortgage or deed of trust evidencing ~~such~~ or securing the loan contains a provision that the holder of the note secured by such mortgage or deed of trust may accelerate payment of or renegotiate the terms of such loan upon sale or conveyance of the security property or part thereof, then the mortgage or deed of trust shall contain in the body or on the margin thereof a statement, either in capital letters or

underlined, ~~which will advise~~ that advises the borrower as follows: "Notice - The debt secured hereby is subject to call in full or the terms thereof being modified in the event of sale or conveyance of the property conveyed."

**Drafting note: Changes are technical.**

§ ~~6.1-330.82~~ 6.2-418. Property owner entitled to written statement of payoff amount.

A. ~~Where a lien~~ If an obligation is secured by the lien of a deed of trust or mortgage on real estate ~~is secured by a deed of trust or mortgage~~, and the owner of ~~such~~ the real estate~~, if~~ is entitled to prepay the obligation secured by ~~such~~ the deed of trust or mortgage, the owner shall be entitled to receive from the ~~bank, savings institution or other corporate entity holding such~~ holder of the obligation~~,~~ a written statement setting forth the total amount to be paid as of a particular date in order to obtain a release of the deed of trust or mortgage.

B. The holder of the obligation secured by ~~said~~ the deed of trust or mortgage shall mail or deliver such written statement of the payoff amount to the property owner or his designee within ~~ten~~ 10 business days of the receipt of a written request for such payoff information from the property owner or his designee if the request contains the loan number and the address or other description of the location of the subject premises.

C. Upon payment in full of the obligation, the holder shall promptly cause the cancelled loan documents to be forwarded to the owner or his designee.

D. An inadvertent error made in the calculation of the payoff amount shall ~~not~~ neither release the ~~party liable for payment of the obligation~~ obligor from the requirement to pay the full amount due under the contract of indebtedness, nor ~~shall it~~ release the holder of the contract of indebtedness from the requirement to return any overpayment to ~~such party~~ the obligor or his designee.

~~B.~~ E. A request for payoff information under this section may be made one time within a ~~twelve~~ 12-month period without charge, and a fee not exceeding ~~fifteen dollars~~ $15 may be charged for each additional request made within such period.

**Drafting note: Changes are clarifying.**

§ ~~6.1-2.9:3~~ 6.2-419. Disclosure of terms of assumption.

A. An owner of residential real estate~~,~~ that is improved by the construction thereon of housing consisting of four or ~~less~~ fewer dwelling units~~, which is~~ and encumbered by a mortgage or deed of trust~~,~~ shall have the right, upon written request to any holder ~~holding such~~ of the obligation secured by the mortgage or deed of trust, to receive a written disclosure of whether ~~such~~ the holder will permit a qualified purchaser to assume ~~such~~ the mortgage or deed of trust~~, and, if~~. If the answer is in the affirmative, the holder shall disclose the following information regarding the terms of such assumption:

1. The rate of interest to be assumed, which may vary with an exterior standard;

2. The balance of the escrow account, if any;

3. Any fees and charges to be assessed by the holder against the seller and buyer in connection with the assumption;

4. Usual limitations or requirements placed on the assumption; and

5. Other terms and conditions of the assumption deemed pertinent by the holder.

B. The holder shall state the time period during which the terms disclosed pursuant to subsection A ~~of this section~~ shall be valid, together with any limitations thereon.

C. Any ~~such~~ holder receiving such a written request from an owner shall respond in writing within ~~ten~~ 10 business days of the receipt of the request.

D. Any ~~such~~ holder receiving a second or subsequent written request with respect to the same mortgage or deed of trust within any ~~twelve-month~~ 12-month period may charge a fee, not to exceed ~~fifteen dollars~~ $15, for each additional request ~~to be~~,. The fee shall be paid in advance.

**Drafting note: Technical changes.**

§ ~~6.1-330.87~~ 6.2-420. Prepayment penalty not to be collected in certain circumstances.

No lender shall collect or receive any prepayment penalty on loans secured by real property comprised of one~~-~~ to four~~-~~ family residential dwelling units~~,~~ if the prepayment results from the enforcement of the right to call the loan upon the sale of the real property ~~which~~ that secures the loan. If the loan is prepaid because of sale to a person ~~whom~~ who the lender has refused to approve for purposes of assuming the loan or failed to approve within ~~fifteen~~ 15 days after receipt by it of written request for approval, ~~such~~ the prepayment shall be presumed to result from enforcement of the right to call the loan.

**Drafting note: Technical changes.**

§ ~~6.1-330.81~~ 6.2-421. Certain contracts to permit prepayment; amount of prepayment penalty.

A. For the purpose of this section:

1. "Real estate" includes a leasehold estate of not less than 25 years; and

2. "First deed of trust" or "first mortgage" includes all deeds of trust and mortgages, and amendments thereto, that are made by the same grantor or mortgagor, secure notes held by the same holder, convey substantially the same real estate, and are superior to all other deeds of trust or mortgages on the real estate.

B. Every loan contract, except as provided in subsection ~~C of this section~~ D, that is secured by a first deed of trust or first mortgage on real estate~~, where~~ if the principal amount of the loan is less than $75,000, shall: ~~permit~~

1. Permit the prepayment of the unpaid principal at any time; and ~~no~~

2. Not provide for a prepayment penalty in excess of one percent of the unpaid principal balance ~~shall be allowed~~.

~~B~~ C. Any prepayment penalty provision in violation of ~~this section~~ subdivision B 2 shall be unenforceable as to the amount in excess of one percent of such balance.

~~C~~ D. The provisions of ~~this section~~:

1. Subsections B and C shall not apply to secured or unsecured notes evidencing installment sales contracts~~. The provisions of this section relating to prepayment penalty~~; and

2. Subdivision B 2 and subsection C shall not apply to any loan ~~contracts~~ contract that is (i) subject to § ~~6.1-330.83~~ 6.2-422 or § ~~6.1-330.84~~ 6.2-1409 or ~~to loan contracts~~ (ii) governmentally regulated as to prepayment privilege.

**Drafting note: Proposed subsection A sets out the definitions in existing subdivisions B 1 and B 3 of § 6.1-330.69, which makes all the provisions of subsection B applicable to § 6.1-330.81. Subdivisions B 2 and B 4 of existing § 6.1-330.69 are not included because they pertain to variable interest rates and the terms "grantor" and "mortgagor," which are not used in this section.**

§ ~~6.1-330.83~~ 6.2-422. Prepayment penalty for loan secured by home occupied by borrower.

The prepayment penalty in the case of a loan secured by a mortgage or deed of trust on a home ~~which~~ that is occupied or to be occupied in whole or in part by a borrower shall not ~~be in excess of~~ exceed two percent of the amount of such prepayment.

**Drafting note: Technical changes.**

§ ~~6.1-330.85~~ 6.2-423. Prepayment of loans secured by certain subordinate mortgages or deeds of trust; rebates for unearned interest.

A. Any borrower under any loan ~~described in § 6.1-330.71~~ secured by a subordinate mortgage or deed of trust on residential real estate, which loan is subject to the provisions of § 6.2-327, shall have the right to anticipate payment of his debt in whole or in part at any time. ~~As~~ If agreed to by the borrower, a lender may contract for a penalty for prepayment of the full amount of the loan~~, but such~~ if the prepayment penalty shall not exceed two percent of the principal amount prepaid~~. However, such~~, but no prepayment penalty ~~may not~~ shall be imposed if ~~(i) the~~:

1. The loan is refinanced or consolidated with the same lender or a subsequent noteholder ~~or (ii) the~~;

2. The loan is accelerated due to default~~. No penalty shall be charged in the event of~~;

3. A partial prepayment is made; or ~~in~~

4. In the case of an open-end credit plan, as defined in § 6.2-300, where there is a payment of the outstanding balance without a demand to release the subordinate deed of trust or mortgage.

~~In cases where~~ B. If interest has been added to the face amount of a note payable in installments, the borrower shall have the right to a rebate of any unearned interest~~, which rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.1-330.86 on~~. On loans ~~(i)~~ with an initial maturity and corresponding amortization period of ~~sixty-one~~ 61 or fewer months ~~or less and (ii)~~ that are payable in equal periodic installments, the rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.2-403. On loans with an initial maturity of more than ~~sixty-one~~ 61 months, the ~~borrower~~ rebate shall ~~receive a rebate~~ be computed under a method at least as favorable to the borrower as the actuarial method.

~~B~~ C. The provisions of this section shall not apply to any loan made by ~~any lender enumerated in § 6.1-330.73~~ (i) a bank, savings institution, industrial loan association, or credit union or (ii) a seller in a real estate sales transaction who takes a subordinate mortgage or deed of trust on such real estate.

**Drafting note: The cross-reference in existing subsection B to § 6.1-330.73 is replaced with the specific entities referenced therein. The other changes are technical.**

Article 3.

Credit Cards.

**Article drafting note: Proposed Article 3 consists of current Chapter 6 of Title 11 and other provisions in existing Chapter 7.3 that apply to credit cards.**

§ ~~11-30~~ 6.2-424. Definitions.

~~The following words and phrases as~~ As used in this ~~chapter~~ article, unless ~~a different meaning is plainly required by~~ the context~~, shall have the following meanings~~ otherwise requires:

~~(a)~~ "Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card was issued by an issuer.

~~(b)~~ "Credit card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or any other thing of value.

~~(c)~~ "Issuer" means the business organization or financial institution or its duly authorized agent ~~which~~ that issues a credit card.

"Payment device" means any credit card, any "accepted card or other means of access" as defined in 15 U.S.C. § 1693a(1), or any card that enables a person to pay for transactions through the use of value stored on the card itself.

**Drafting note: The definition of payment device is based on the definition thereof in § 46.2-100.**

§ ~~11-31~~ 6.2-425. Cardholder not liable in absence of request for, consent to issuance of, or use of card.

A. A cardholder~~,~~ who receives a credit card from an issuer, which ~~such~~ card the cardholder has not requested nor consented to the issuance of in writing ~~to the issuance of such credit card~~, nor used ~~the credit card~~, shall not be liable for any amount owing because of a use of the credit card.

B. The failure to destroy or return an unsolicited credit card shall ~~not be~~ neither:

1. Be evidence of ~~such~~ a cardholder's request for or consent to the issuance of the credit card, nor ~~shall it constitute~~

2. Constitute negligence on the part of the cardholder.

C. Use by an authorized agent of the cardholder shall be the equivalent of use by the cardholder. The burden of proving the authority of an agent shall be upon the issuer.

**Drafting note: Technical changes.**

§ ~~11-32~~ 6.2-426. When request, consent, or use not condition precedent to liability.

The request, consent, or use required in § ~~11-31~~ 6.2-425 as a condition precedent to liability shall not be necessary in any ~~case of a~~ instance:

1. Of a credit card ~~which~~ that is a renewal of a credit card previously held and used by the cardholder or his authorized agent within ~~twelve~~ 12 months of the renewal date ~~nor in any~~; or ~~instance where~~

2. Where the card is issued to a customer who has previously established credit with the issuer and has used such credit within ~~twelve~~ 12 months prior to the issuance of ~~said~~ the card.

**Drafting note: Technical changes.**

§ ~~11-33~~ 6.2-427. Costs and ~~attorney's~~ attorney fee in suit on card; evidence of request or consent.

A. In any suit arising out of the use of a credit card, where the request, consent, or use as required by § ~~11-31~~ 6.2-425 is denied and is not proved, and judgment shall be for the defendant, the court shall assess against the issuer all court costs and shall award the defendant a reasonable ~~attorney's~~ attorney fee.

B. For purposes of ~~this section~~ subsection A, a certified copy of ~~such~~ the request or consent shall be admissible as evidence that such request or consent was obtained.

**Drafting note: Technical changes.**

§ ~~11-33.1~~ 6.2-428. Production of credit card number as condition of check cashing or acceptance prohibited.

A. ~~As used in this section, the term "person" means any individual, corporation, partnership, or association.~~

~~B.~~ Except as otherwise provided in subsection ~~E~~ D, no person shall, as a means of identification or for any other purpose~~, require~~:

1. Require that a person produce a credit card number for recordation~~;~~ or ~~record~~

2. Record a credit card number in connection with (i) a sale of goods or services in which a purchaser pays by check or (ii) the acceptance of a check.

~~C~~ B. A person aggrieved by a violation of this section shall be entitled to institute an action to recover his actual damages or $100, whichever is greater, and to injunctive relief against any person who has engaged, is engaged, or is about to engage in any act in violation of this section. Such action shall be brought in the general district or circuit court, whichever is appropriate, of any county or city wherein the defendant resides or has a place of business. In the event the aggrieved party prevails, he may be awarded reasonable ~~attorney's~~ attorney fees and court costs in addition to any damages awarded.

~~D~~ C. This section shall not be construed to (i) impose liability on any employee or agent of a person, where that employee or agent has acted in accordance with the directions of his employer, (ii) prohibit a person from requesting a purchaser to display a credit card as an indication of creditworthiness or financial responsibility or as identification, and in these instances the type, the issuer, and the expiration date of the credit card may be recorded, or (iii) require acceptance of a check, whether or not a credit card is presented.

~~E~~ D. A person may require production of and may record a credit card number as a condition for cashing a check only where (i) the person requesting the card number has agreed with the issuer to cash checks as a service to the issuer's cardholders, (ii) the issuer has agreed to guarantee cardholder checks cashed by that person, and (iii) the cardholder has given actual, apparent, or implied authority for use of his card number in this manner and for this purpose.

**Drafting note: Technical changes.**

§ ~~11-33.2~~ 6.2-429. Improper use of payment device numbers.

A. No person~~, firm, partnership, association, or corporation~~ that accepts payment devices for any purpose shall print on any receipt provided to the holder of the payment device (i) more than the last four digits of the payment device number or (ii) the expiration date ~~on any receipt provided to the holder of the payment device~~.

B. For transactions in which the sole means of recording the person's payment device number is by handwriting or by an imprint or copy of the payment device, no receipt, other than the one original, shall display the information prohibited in subsection A. Returning all copies, including carbons, that do not comply with this section, to the payment device holder or authorized user or destroying such copies and carbons in front of the payment device holder or authorized user shall constitute compliance with this section.

C. The provisions of this section shall apply to all cash registers or other machines or devices that electronically print receipts for payment device transactions that are placed in service on or after July 1, 2003.

D. For all cash registers or other machines or devices that electronically print receipts for payment device transactions in service prior to July 1, 2003, the provisions of this subsection shall not apply until July 1, 2005.

E. Any ~~violator of~~ person violating this section (i) shall be liable to the payment device holder and the issuer for any damages or expenses, or both, including ~~attorneys'~~ attorney fees, that the payment device holder incurs due to the use of the payment device without the permission of the payment device holder and (ii) may be compelled, in a proceeding instituted in any appropriate court by the attorney for the Commonwealth, to comply with this section by injunction, mandamus, or other appropriate remedy. Without limiting the remedies authorized by this section in a proceeding instituted by the attorney for the Commonwealth, any person failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section, shall be subject, in the discretion of the court, to a civil penalty not to exceed $1,000 for each violation.

**Drafting note: Technical changes.**

§ ~~11-33.3~~ 6.2-430. Place where transaction occurred; federal Fair Credit Billing Act.

Solely for the purpose of a buyer asserting claims and defenses pursuant to 15 U.S.C. § 1666i, a transaction shall be presumed to have occurred at the mailing address most recently provided by the cardholder to the card issuer, without regard to the location where the last act necessary for the formation of the contract between the cardholder and the party honoring the card took place.

**Drafting note: No change.**

§ ~~11-34~~ 6.2-431. Certain cards excepted ~~from chapter~~.

Except as set forth in § ~~11-33.1~~ 6.2-428, the provisions of this ~~chapter~~ §§ 6.2-424 through 6.2-430 shall not apply to any credit card issued by any telephone company that is subject to supervision or regulation by the ~~Virginia State Corporation~~ Commission.

**Drafting note: Technical changes.**

§ 6.2-432. Credit card account disclosures.

Any application form or preapproved written solicitation for an open-end credit card account to be used for personal, family, or household purposes ~~which~~ that is mailed ~~on or after January 1, 1988,~~ to a consumer residing in the Commonwealth by or on behalf of a creditor, whether or not the creditor is located in the Commonwealth, other than an application form or solicitation included in a magazine, newspaper, or other publication distributed by someone other than the creditor, shall contain or be accompanied by ~~any of the following disclosures:~~

~~1. A disclosure of each of the following if applicable:~~

~~a. Any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates. If the account is subject to a variable rate, the creditor may instead disclose the rate as of a specific date and indicate that the rate may vary, or identify the index and any amount or percentage added to, or subtracted from, that index and used to determine the rate.~~

~~b. Any membership or participation fee that may be imposed for availability of a credit card account.~~

~~c. Any transaction fee that may be imposed on purchases, or any other charge or fee that may be imposed, expressed as an amount or as a percentage of the transaction, as applicable.~~

~~d. Any grace period or free period during which the consumer may repay the full balance reflected on a billing statement which is attributable to purchases of goods or services from the creditor or from merchants participating in the credit card plan, without the imposition of additional finance charges. The creditor shall either disclose the number of days of that period, calculated from the closing date of the prior billing cycle to the date designated in the billing statement sent to the consumer as the date by which that payment must be received to avoid additional finance charges, or describe the manner in which the period is calculated. If the creditor does not provide such a period for purchases, the disclosure shall so indicate;~~

~~2. A~~ a disclosure that satisfies the initial disclosure requirements of Federal Reserve Board Regulation Z (12 C.F.R. Part 226)~~; or~~

~~3. If a creditor is now or hereafter required under federal law to make disclosures of the terms applicable to a credit card account in connection with application forms or solicitations, the creditor shall be deemed to have complied with the requirements of this subsection if the creditor complies with the federal disclosure requirements. The disclosure of any transaction fee that may be imposed on purchases, or any other charge or fee, shall be written on any such application form or preapproved written solicitation~~.

**Drafting note: Section is based on the nearly identical existing subsection B of § 6.1-330.63 and subsection C of 6.1-330.78; changes from existing text are marked for assistance in their identification. The reference to solicitations mailed after January 1, 1988, is deleted as obsolete. Subdivisions 1 and 3 are deleted because federal Truth in Lending Act requirements and Regulation Z requires lenders to comply with the federal disclosure requirements. See also proposed § 6.2-436.**

Article 4.

Open-End Credit Plans.

**Article consists of provisions in sections pertaining to open-end credit accounts that are currently set out in sections in existing Chapter 7.3 but which do not address an exception to the limitation on the rate of interest that may be charged thereunder.**

§ 6.2-433. Amendment to open-end credit contract or plan by bank or savings institution.

~~C~~ A. Any ~~contract or~~ open-end credit plan ~~referred to in subsection A~~, as defined in § 6.2-300, by a bank or savings institution may be amended in any respect by the bank or savings institution at any time and from time to time to modify or delete terms, or to add new terms, which new or modified terms and amendment need not be of a kind previously included in or contemplated by such contract or plan, or of a kind integral to the relationship of the parties, by following the procedures, if any, set forth in the contract or plan for effecting changes in the terms thereof, subject to the bank's or savings institution's complying with any applicable notice requirements under the Truth in Lending Act (15 U.S.C. § 1601 et seq.) and regulations promulgated thereunder, as in effect from time to time.

~~D~~ B. Unless the contract or plan referred to in subsection A otherwise expressly provides, a bank or savings institution may amend such contract or plan in any respect at any time and from time to time, whether or not the amendment or the subject of the amendment was originally contemplated or addressed by the parties or is integral to the relationship between the parties. Without limiting the foregoing, such amendment may change terms by the addition of new terms or by the deletion or modification of existing terms, whether relating to plan benefits or features, the periodic rate or rates used to calculate finance charges, the manner of calculating periodic rate finance charges or outstanding unpaid indebtedness, variable schedules or formulas, finance charges other than periodic rate finance charges, other charges or fees, collateral requirements, methods for obtaining or repaying extensions of credit, attorney's fees, plan termination, the manner for amending the terms of the contract or plan, arbitration or other alternative dispute resolution mechanisms, or other matters of any kind whatsoever. Unless the contract or plan otherwise expressly provides, any amendment may, on and after the date upon which it becomes effective as to a particular borrower, apply to all then outstanding unpaid indebtedness in the borrower's account under the contract or plan, including any such indebtedness that arose prior to the effective date of the amendment. A contract or plan may be amended pursuant to this subsection regardless of whether the contract or plan is active or inactive or whether additional borrowings are available thereunder. Any such amendment may become effective as determined by the bank or savings institution, subject to compliance by the bank or savings institution with any applicable provisions under the Truth in Lending Act (15 U.S.C. § 1601 et seq.) and the regulations promulgated thereunder, as in effect from time to time. Any notice of an amendment sent by the bank or savings institution may be included in the same envelope with a periodic statement or as part of the periodic statement or in other materials sent to the borrower.

**Drafting note: Section is existing subsections C and D of § 6.1-330.63.**

§ 6.2-434. Law governing open-end credit contract or plan by bank or savings institution.

~~E~~. ~~A contract for revolving~~ An open-end credit plan, as defined in § 6.2-300, between a bank or savings institution and an obligor, or any plan which permits an obligor to avail himself

of the credit so established, shall be governed solely by federal law, and by the laws of the Commonwealth ~~of Virginia,~~ unless otherwise expressly agreed in writing by the parties.

**Drafting note: Section is existing subsection E of § 6.1-330.63.**

§ 6.2-435. Law governing open-end credit contract or plan by seller or lender.

~~D~~. An open-end credit ~~or similar~~ plan as defined in § 6.2-300, between a seller or lender and an obligor shall be governed solely by federal law, and by the laws of the Commonwealth ~~of Virginia,~~ unless otherwise expressly agreed in writing by the parties.

**Drafting note: Currently at subsection D of § 6.1-330.78. Technical changes.**

Article 5.

Additional Provisions Applicable to Consumer Credit.

§ ~~6.1-330.79~~ 6.2-436. Compliance with federal law.

Every person subject to the provisions of 15 U.S.C. § 1601 et seq. and Federal Reserve Board Regulation Z~~, Truth-in-Lending, promulgated by the Board of Governors of the Federal Reserve System~~ (12 C.F.R. Part 226) shall comply with such statutes and regulations when offering or extending consumer credit as defined therein. A lender who fails to comply with this section shall not be subject to any liability or penalty beyond those imposed by such federal statutes and regulations.

**Drafting note: Technical changes.**

§ ~~6.1-330.90~~ 6.2-437.Right of buyer of consumer goods to refinance certain payments; agreements as to fluctuation in schedule of payments.

A. In any sales transaction, except one pursuant to an open-end account, involving exclusively consumer goods as defined in subdivision (a)(23) of § 8.9A-102 ~~wherein~~ in which credit is extended and a security interest in consumer goods is taken, any installment payment, other than a down payment made prior to or contemporaneously with the execution of an agreement evidencing the transaction, ~~which~~ that is more than ~~ten~~ 10 percent greater than the regular or recurring installment payments, shall be subject to the buyer's right to refinance such a payment on the basis of an extended period of time. Such additional payments shall be in amounts ~~which~~ that shall allow the unpaid balance to be paid in as few periodic payments, not more than ~~ten~~ 10 percent greater than the regularly scheduled installment payments, as are required to pay such balance. Such additional payments shall be considered and treated as part of the original transaction.

B. The parties may agree in a separate writing that one or more payments or the intervals between one or more payments shall be reduced or expanded in accordance with the desires or needs of the buyer, if such fluctuations in the schedule of payments are expressly arranged to coincide with the anticipated fluctuations in the buyer's capability to make such payments.

C. No seller who has refused to refinance in compliance with the provisions of this section shall be entitled (i) to the return or repossession of the goods involved in the transaction or (ii) to a judgment for the unpaid balance involved in the transaction at the time of his failure to do so.

**Drafting note: Changes are technical.**

CHAPTER ~~2.3~~ 5.

EQUAL CREDIT ~~OPPORTUNITY ACT~~ OPPORTUNITIES.

**Chapter drafting note: Existing Chapter 2.3 of Title 59.1 is moved from Chapter 59.1 (Trade and Commerce) to proposed Title 6.2 because it pertains to credit transactions generally and provides for State Corporation Commission to adopt regulations and investigate complaints. This chapter is the Virginia counterpart to the federal Equal Credit Opportunity Act. Though compliance with the federal act constitutes compliance with this state law, this chapter is retained, in part because it provides additional remedial options. The change in the caption follows the format of other chapters in this subtitle of not referring to a chapter as an "act."**

~~§ 59.1-21.19. Title of chapter.~~

~~This chapter may be cited as the Equal Credit Opportunity Act.~~

**Drafting note: This section is deleted as unnecessary because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter or article serves as a short title citation.**

§ ~~59.1-21.20~~ 6.2-500. Definitions.

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

"Adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. The term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

~~(a) The term "applicant"~~ "Applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor~~,~~ indirectly by use of an existing credit plan for an amount exceeding the previously established credit limit.

~~(b) The term "credit"~~ "Credit means the right granted by a creditor to a debtor to defer payment of debt or to incur ~~debts~~ debt and defer its payment or to purchase property or services and defer payment therefor.

~~(c) The term "creditor"~~ "Creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

~~(d) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.~~

~~(e) The term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.~~

**Drafting note: The definition of "person" is deleted because it is consistent with the title-wide definition in § 6.2-100. The definition of "adverse action" is placed in alphabetical order.**

~~§ 59.1-21.21.~~

**Drafting note: Repealed by Acts 1977, c. 589.**

§ ~~59.1-21.21:1~~ 6.2-501. Prohibited discrimination~~; notification of action on credit application; statement of reasons for adverse action~~.

A. It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction:

1. On the basis of race, color, religion, national origin, sex or marital status, or age ~~(~~, provided the applicant has the capacity to contract~~)~~; or

2. Because all or part of the applicant's income derives from any public assistance or social services program.

B. It shall not constitute discrimination for purposes of this chapter for a creditor:

1. To make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness;

2. To make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance or social services program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of creditworthiness as provided in regulations of the ~~State Corporation~~ Commission;

3. To use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the ~~State Corporation~~ Commission, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

4. To make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

C. It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to:

1. Any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

2. Any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

3. Any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the ~~State Corporation~~ Commission; if such refusal is required by or made pursuant to such program.

~~D. 1.~~ § 6.2-502. Notification of action on credit application.

Within ~~thirty~~ 30 days ~~(~~, or such longer reasonable time as specified in regulations of the ~~State Corporation~~ Commission for any class of credit transaction~~)~~, after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

~~2~~ § 6.2-503. Statement of reasons for adverse action.

A. Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for ~~such~~ the action on the application from the creditor. A creditor ~~satisfies~~ shall satisfy this obligation by:

~~a~~ 1. Providing statement of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

~~b~~ 2. Giving written notification of adverse action that discloses (i) the applicant's right to a statement of reasons within ~~thirty~~ 30 days after receipt by the creditor of a request made within ~~sixty~~ 60 days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. ~~Such~~ The statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

~~3~~ B. A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

~~4~~ C. Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this ~~subsection~~ section may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

~~5~~ D. The requirements of ~~subdivision 2, 3, or 4~~ subsections A, B, and C may be satisfied by ~~verbal~~ oral statements or notifications in the case of any creditor who did not act on more than 150 applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the ~~State Corporation~~ Commission.

**Drafting note: Section is divided into proposed §§ 6.2-501 (existing subsections A, B, and C), 6.2-502 (existing subdivision D 1), and 6.2-503 (existing subdivisions D 2 through D 5). Technical changes.**

§ ~~59.1-21.22~~ 6.2-504. Requirement of signatures of both parties to a marriage not discriminatory in a secured transaction.

For the purposes of a secured transaction, a request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this chapter~~; provided, however, that this~~. This provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

**Drafting note: Technical change.**

§ ~~59.1-21.23~~ 6.2-505. Remedies for violation.

~~(a)~~ A. Any creditor who fails to comply with any requirement imposed under this chapter shall be liable to the aggrieved applicant in an amount equal to the sum of any actual damages sustained by such applicant.

~~(b)~~ B. Any creditor, other than the federal or state government or any political subdivision or agency of such government, who fails to comply with any requirement imposed under this chapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, as determined by the court, in addition to any actual damages provided in subsection ~~(a) of this section~~ A.

~~(c)~~ C. Upon application by an aggrieved applicant, ~~a~~ an appropriate court ~~of competent jurisdiction~~ may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this chapter.

~~(d)~~ D. In the case of any successful action to enforce the foregoing liability, the costs of the action, together with the reasonable ~~attorney's~~ attorney fee as determined by the court, shall be added to any damages awarded by the court under the provisions of subsections ~~(a), (b) and (c) of this section~~ A, B, and C.

~~(e)~~ E. Any action under this chapter may be brought in ~~any~~ an appropriate court ~~of competent jurisdiction~~ within two years from the date of the occurrence of the violation.

**Drafting note: Technical changes.**

§ ~~59.1-21.24~~ 6.2-506. ~~State Corporation~~ Commission regulations.

The ~~State Corporation~~ Commission shall adopt regulations to effectuate the purposes of this chapter provided that such regulations conform to and are no broader in scope than regulations, and amendments thereto, adopted by the Board of Governors of the Federal Reserve System under the ~~Consumer Credit Protection Act, Title VII~~ federal Equal Credit Opportunity Act (15 U.S.C. §§ 1691 et seq.). Such conforming regulations shall exempt from the coverage of this chapter any class of transactions which may be exempted from time to time from the ~~Consumer Credit Protection Act, Title VII~~ federal Equal Credit Opportunity Act (15 U.S.C. §§ 1691 et seq.), by regulations of the Federal Reserve System.

**Drafting note: Existing § 59.1-21.24 is divided into this section and proposed §§ 6.2-507 and 6.2-508. References to Title VII of the Consumer Credit Protection Act are replaced with the citation to the Equal Credit Opportunity Act, which is Title VII of the Consumer Credit Protection Act.**

§ 6.2-507. Limitation on liability.

No provision of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the ~~State Corporation~~ Commission or by the Federal Reserve Board or officer or employee duly authorized by the Board to issue such interpretation or approvals under the comparable provisions of the federal Equal Credit Opportunity Act, (15 U.S.C. §§ 1691 et seq.), and regulations thereunder, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

**Drafting note: Existing § 59.1-21.24 is divided into this section and proposed §§ 6.2-506 and 6.2-508.**

§ 6.2-508. Compliance with Equal Credit Opportunity Act constitutes compliance with chapter.

Compliance with the federal Equal Credit Opportunity Act, (15 U.S.C. §§ 1691 et seq.), as amended, ~~Title VII of the Federal Consumer Credit Protection Act,~~ and regulations issued by the Federal Reserve Board thereunder, constitutes compliance with this chapter.

**Drafting note: Existing § 59.1-21.24 is divided into three separate proposed sections (§§ 6.2-506, 6.2-507, and 6.2-508) in order to make the last two sentences of the existing section easier to locate. References to the Equal Credit Opportunity Act, which was enacted as Title VII of the federal Consumer Credit Protection Act and codified as Subchapter IV of Chapter 41 of Title 15 of the United States Code, are simplified.**

§ ~~59.1-21.25~~ 6.2-509. Public to be informed of rights under chapter.

The ~~State Corporation~~ Commission ~~is directed to~~ shall use any methods available to it to inform the public of the rights created by this chapter~~; provided, however, notice~~. Notice given pursuant to the ~~Federal Consumer Credit Protection Act, Title VII~~ federal Equal Credit Opportunity Act (15 U.S.C. §§ 1691 et seq.), and regulations promulgated thereto, ~~is deemed to~~ shall satisfy the ~~notice~~ requirements of this section.

**Drafting note: Technical changes.**

§ ~~59.1-21.26~~ 6.2-510. ~~State Corporation~~ Commission to investigate~~, etc.,~~ complaints; records to be open to public.

The ~~State Corporation~~ Commission shall receive, investigate, and mediate complaints of violations of this chapter and shall keep all records pertaining to such complaints, investigations, and mediations open to the public. Nothing in this section shall toll the operation of § ~~59.1-21.23 (e)~~ subsection E of § 6.2-505.

**Drafting note: Technical changes.**

§ ~~59.1-21.27~~ 6.2-511. Credit standards discoverable.

Nothing in this chapter shall be construed to prohibit the discovery of a creditor's standards for granting credit ~~granting standards~~, which discovery shall be under appropriate discovery procedures in the court in which an action is brought.

**Drafting note: Technical and stylistic changes.**

§ ~~59.1-21.28~~ 6.2-512. Election of remedies.

Where the same act or omission constitutes a violation of this chapter and of applicable federal law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this chapter or under federal law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

**Drafting note: No change.**

§ 6.2-513. Authority of Attorney General.

Notwithstanding any other provisions of the law to the contrary, the Attorney General may investigate and bring an action in the name of the Commonwealth to enjoin any violation of this chapter.

**Drafting note: New section that duplicates the provisions of existing § 59.1-68.2 (Authority of Attorney General) in Chapter 4.1 (Remedies for Violations of Preceding Chapters and Chapter 6, Article 8, of Title 18.2). Existing § 59.1-68.2 states that the Attorney General's authority applies to "any violation of Chapters 2.1 (§ 59.1-21.1 et seq.) through 3.1 (§ 59.1-41.1 et seq.) and of Article 18 (§ 18.2-214 et seq.), Chapter 6, Article 8, of Title 18.2." As existing Chapter 2.3 of Title 59.1 is being relocated to Title 6.2, no change to the text of existing § 59.1-68.2 is required.**

## SUBTITLE II.
## DEPOSITORY INSTITUTIONS AND TRUST ORGANIZATIONS.

**Subtitle drafting note: Subtitle II assembles chapters pertaining to the regulation of financial institutions that accept deposits from customers, including banks, savings banks, other savings institutions, and credit unions, and entities that provide trust services, including trust companies and trust subsidiaries of depository institutions.**

## CHAPTER 6.
## DEPOSITS AND ACCOUNTS.

**Chapter drafting note: New chapter. Proposed Article 1 collects various sections in existing Chapter 1 (General Provisions) that pertain to deposits. Proposed Article 2 (Multiple-party Accounts) is existing Chapter 2.1.**

### Article 1.
### General Provisions.

§ ~~6.1-2.9:2~~ 6.2-600. Checks on consumer deposit accounts to show date account was opened.

A. For purposes of this section, "consumer deposit account" means a demand or other similar deposit account established and maintained by an individual with a financial institution and operated primarily for personal, family, or household purposes.

B. All checks, drafts, or similar negotiable or nonnegotiable instruments or orders of withdrawal which are drawn against funds held by a financial institution located in ~~Virginia~~ the Commonwealth in a consumer deposit account opened after December 31, 1981, shall clearly display on the face thereof the month and year in which the account was opened.

C. This section does not apply to ~~temporary~~:

1. Temporary checks, drafts, or similar negotiable or nonnegotiable instruments or orders of withdrawal~~,~~; or ~~to a~~

2. Any consumer deposit account where the applicant either (i) demonstrates through the production of monthly statements or (ii) represents in a writing ~~which~~ that states it is made under penalties of perjury, that, for ~~twelve~~ 12 months immediately preceding his application, he has had an account at the same or another financial institution.

~~For purposes of this section the term "consumer deposit account" means a demand or other similar deposit account established and maintained by a natural person with a financial institution and operated primarily for personal, family or household purposes.~~

D. No liability or penalty shall be imposed on any depositor, financial institution, or printer for an unintentional failure to comply with this section.

**Drafting note: Technical changes.**

§ ~~6.1-2.9:4~~ 6.2-601. Federal insurance of deposits required for all banks or savings institutions.

Notwithstanding any other provisions contained in this title, no bank or savings institution doing business in the Commonwealth shall accept deposits unless its deposit accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the insurance provided thereby. No bank or savings institution shall solicit deposits in the Commonwealth, nor shall any other person solicit or accept deposits in the Commonwealth on behalf of a bank or savings institution, unless the deposit accounts of such bank or savings institution are insured by the Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the insurance provided thereby.

**Drafting note: No change.**

§ ~~6.1-2.9:7~~ 6.2-602. Adverse claims to accounts.

A. Notice to any financial institution doing business in ~~Virginia~~ the Commonwealth of an adverse claim to funds in an account with such institution shall not require the institution to recognize the adverse claim unless the adverse claimant shall either:

1. Procure a restraining order, injunction, or other appropriate order against the financial institution from ~~a~~ an appropriate court ~~of competent jurisdiction, or unless the institution is served with a notice of lien pursuant to § 8.01-502~~; or

2. Execute to such financial institution, in form and with sureties acceptable to it, a bond indemnifying the institution from any and all liability, loss, damage, costs, and expenses, for and on account of the payment or recognition of such adverse claim, or the dishonor of, or failure to pay, any check, or failure to comply with any other order, of the person to whose credit the account is held.

B. This section shall not affect the provisions of ~~Chapter 2.1~~ Article 2 (§ ~~6.1-125.1~~ 6.2-604 et seq.) of this ~~title~~ chapter governing ~~multi-party~~ multiple-party accounts, and any claim by a party to such account shall be determined in accordance with the provisions therein.

C. This section shall not affect ~~notices of lien issued pursuant to Title 58.1~~ any notice of lien pursuant to § 8.01-502, any order of an appropriate court, or the issuance of a notice or other action issued by a state or federal governmental agency.

**Drafting note: The reference in subsection B to multi-party accounts is replaced with "multiple-party accounts" to reflect the usage in proposed Article 2 of this chapter. The existing exception for instances when an institution is served with a notice of lien pursuant to § 8.01-502 is relocated to subsection C in order to place all exceptions in one subsection. In subsection C, the reference to notice of liens issued pursuant to Title 58.1 is broadened to**

**reference notices or other actions issued by a state or federal governmental agency in order to reflect current practice, and the original purpose of the existing provision, that the requirements of subsection A are not applicable in situations where a financial institution receives an order or notice from a court or other governmental agency; in such instances, a governmental agency has not been construed as being an adverse claimant. Other changes are technical.**

§ ~~6.1-2.9:8~~ 6.2-603. Medical savings accounts and health savings accounts.

To the extent allowed by federal law, a bank, insured savings institution, or credit union may act as a trustee or custodian of health savings accounts established with financial institutions under § 223 of the United States Internal Revenue Code of 1986, as amended from time to time, and medical savings accounts established with financial institutions under § 220 of the United States Internal Revenue Code of 1986, as amended from time to time. Contributions may be accepted and interest thereon retained by such institution pursuant to forms provided by it and may be invested in accounts of the institution in accordance with the terms upon which such contributions were accepted. The financial institution shall administer such accounts in accordance with the requirements of federal law.

**Drafting note: No change.**

~~CHAPTER 2.1~~ Article 2.

~~MULTIPLE-PARTY ACCOUNTS~~ Multiple-party Accounts.

**New article. Existing Chapter 2.1 is based on the 1969 version of the Uniform Multiple-Person Accounts Act, which according to the NCCUSL, was initially Article VI, Part 1 of the Uniform Probate Code.**

§ ~~6.1-125.1~~ 6.2-604. Definitions.

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

~~1.~~ "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other ~~like arrangement;~~ similar arrangements.

~~2.~~ "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee~~;~~.

~~3.~~ "Financial institution" means any ~~organization~~ entity authorized to do business under state or federal laws relating to financial institutions that is authorized to establish accounts, including, without limitation, banks ~~and~~, trust companies, savings ~~banks, building and loan associations, savings and loan companies or associations~~ institutions, and credit unions~~;~~.

~~4.~~ "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship~~;~~.

~~5.~~ "Multiple-party account" means any of the following types of account: (i) a joint account, (ii) a P.O.D. account, or (iii) a trust account. ~~It~~ The term does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee

for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement~~;~~.

~~6.~~ "Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or any dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question~~;~~.

~~7.~~ "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. ~~A~~ The term includes a P.O.D. payee or beneficiary of a trust account ~~is a party~~ only after the account becomes payable to him by reason of his surviving the original payee or trustee. ~~Unless the context otherwise requires, it~~ The term includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. ~~It~~ The term also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal~~;~~.

~~8.~~ "Payment," ~~of~~ with respect to sums on deposit, includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any setoff, or reduction or other disposition of all or part of an account pursuant to a pledge~~;~~.

"P.O.D. account" means an account payable on request to one person during his lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

"P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

~~9.~~ "Proof of death" includes a death certificate; a certificate of qualification upon a decedent's estate; or an authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is dead~~;~~.

~~10. "P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees;~~

~~11. "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons;~~.

~~12.~~ "Request" means a proper request for withdrawal, or a check or order for payment, ~~which~~ that complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution~~; but if~~. If the financial institution conditions withdrawal or payment on advance notice, for purposes of this ~~chapter~~article the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal~~;~~.

~~13.~~ "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party~~;~~.

~~14.~~ "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account~~; it is not essential that~~, without regard to whether payment to the beneficiary ~~be~~ is mentioned in the deposit agreement. ~~A trust account~~ The term does not include (i) a regular trust account under a testamentary trust or a trust agreement ~~which~~ that has significance apart from the account, or (ii) a fiduciary account arising from a fiduciary ~~relation~~ relationship such as an attorney-client~~;~~ relationship.

~~15.~~ "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

**Drafting note: In the definition of "financial institution" (i) "savings institutions" replaces entities included within the scope of that term and (ii) the phrase "authorized to establish accounts" is added to avoid the circularity of the existing definition that provides in sum that a financial institution means an organization authorized to do business as a financial institution. The definitions of "P.O.D. account" and "P.O.D. payee" are relocated to put them in alphabetical order. In the definition of "party," the phrase "unless the context otherwise requires" is deleted because it is included at the beginning of the section.**

§ ~~6.1-125.2~~ 6.2-605. Applicability.

A. The provisions of §§ ~~6.1-125.3~~ 6.2-606 through ~~6.1-125.5~~ 6.2-608 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts.

B. The provisions of §§ ~~6.1-125.9~~ 6.2-612 through ~~6.1-125.14~~ 6.2-617 govern the liability of financial institutions ~~who~~ that make payments pursuant thereto, and their set-off rights.

**Drafting note: Technical changes.**

§ ~~6.1-125.3~~ 6.2-606. Ownership during lifetime; garnishment, attachment or levy.

A. A joint account belongs, during the lifetimes of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, except that a joint account between persons married to each other shall belong to them equally, and unless, in either case, there is clear and convincing evidence of a different intent.

B. A P.O.D. account belongs to the original payee during his lifetime and not to ~~the~~ any P.O.D. payee ~~or payees; if~~. If two or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection A ~~of this section~~.

C. Unless (i) a contrary intent is manifested by the terms of the account or the deposit agreement or (ii) there is other clear and convincing evidence of an irrevocable trust, a trust

account belongs beneficially and absolutely to the trustee during his lifetime~~, and if~~. If two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection A ~~of this section~~. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

D. Upon an order of garnishment, attachment, or other levy addressed to a party to a joint account as mentioned in subsection A, or a trust account as mentioned in subsection C, the financial institution shall:

1. ~~file~~ File an answer setting forth the form of account, whether it has funds responsive to the process, and such information as it has as to the names and addresses of the parties to the account~~. The financial institution shall~~;

2. ~~by first-class mail send~~ Send a copy of such answer by first class mail to the petitioning creditor or counsel of record~~.~~;

3. From the time of service of such garnishment, attachment or levy, ~~the financial institution shall~~ hold the amount subject to such garnishment, attachment or levy, or such lesser amount or sum as it may have, which amount shall be set forth in its answer~~. It shall~~; and

4. ~~not~~ Not permit any person to draw against such amount whether by check against such account or otherwise.

E. If the petitioning creditor shall desire to pursue the question of ownership of such funds held subject to the claim of two or more parties to the deposit account, it shall (i) provide the clerk of the court that issued the order of garnishment, attachment, or other levy with a copy of the documents originally served on the original defendants or judgment defendants and (ii) request the clerk to issue a summons accompanied by such copy with a copy of ~~the~~ a notice ~~at the end of this subsection.~~ to co-depositors containing substantially the following information: "Attached is a copy of the documents served on a financial institution to cause it to withhold money from an account in which you may have an interest. If you wish to protect your interests, you or your attorney should take appropriate legal action promptly."

F. Upon payment of the appropriate fees, the clerk shall issue such summons to be served on ~~such~~ any other party having an interest or apparent interest in such account. Service on a party to the account made at the address on record at the financial institution shall be presumed to be proper service for the purposes of this section. In addition, a copy of such summons and notice ~~will~~ shall be issued and served on or mailed to both the financial institution and the original defendant or judgment debtor. If such summons is received either by certified or registered mail or acknowledged in writing within ~~twenty-one~~ 21 days on or by such financial institution, it shall continue to hold such funds pending further order of the court. If such financial institution ~~shall~~ is not served with, or does not acknowledge, such an order within ~~twenty-one~~ 21 days from the filing of such answer ~~be served with or acknowledge such an order~~, it may treat the garnishment, attachment or levy, insofar as it relates to such joint or trust accounts, as terminated on the twenty-second day and being of no further force or effect.

G. The court shall allow the financial institution its reasonable expenses in responding to discovery of its records and may condition any such discovery upon prepayment of such

expenses. ~~The notice to the co-depositor described in this subsection shall contain substantially the following information: "Attached is a copy of the documents served on a financial institution to cause it to withhold money from an account in which you may have an interest. If you wish to protect your interests, you or your attorney should take appropriate legal action promptly."~~

~~E~~ H. Orders to withhold and deliver issued by the Department of Social Services shall be complied with as provided in §§ 63.2-1929 and 63.2-1931.

**Drafting note: In subsection B, "or payees" is deleted because § 1-227 provides that any word in the singular includes the plural and vice versa. Other changes are technical.**

§ ~~6.1-125.4~~ 6.2-607. Effect of divorce.

Upon the entry of a decree of divorce, either a mensa et thoro or a vinculo matrimonii, all rights of either consort in any multiple-party account then existing between them, including the right of survivorship, shall be extinguished; and any joint account then existing between the consorts shall thereupon be converted into a tenancy in common, in the proportions provided in subsection A of § ~~6.1-125.3 A~~ 6.2-606, unless otherwise ordered by the court.

**Drafting note: Technical change.**

§ ~~6.1-125.5~~ 6.2-608. Right of survivorship.

A. Sums remaining on deposit at the death of a party to a joint account belong to the surviving party ~~or parties~~ as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, their respective ownerships during their lifetime shall be in proportion to their previous ownership interests under § ~~6.1-125.3~~ 6.2-606 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

B. If the account is a P.O.D. account:

1. On the death of one of two or more original payees, the rights to any sums remaining on deposit are governed by subsection A ~~of this section~~;

2. On the death of the sole original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee~~; if~~. If two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

C. If the account is a trust account:

1. On the death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subsection A ~~of this section~~;

2. On the death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the ~~person or~~ persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear evidence of a contrary intent~~; if~~. If two or more beneficiaries survive the death of the sole trustee or the last survivor of two or more trustees, there is no right of survivorship in the event of death of any

beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

D. In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate. If the terms of the account clearly indicate that there is no right of survivorship, the estate of a decedent party shall succeed to the rights of decedent in such account.

E. A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

**Drafting note: In subsection A, "their" is inserted to cure an apparent error. In subsection A and subdivision C 2, language is deleted because § 1-227 provides that any word in the singular includes the plural and vice versa. Other changes are technical.**

§ ~~6.1-125.6~~ 6.2-609. Change of form of account upon written order to financial institution.

The provisions of § ~~6.1-125.5~~ 6.2-608 as to rights of survivorship are determined by the form of the account at the death of a party. This form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request ~~must~~ shall be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

**Drafting note: Technical changes.**

§ ~~6.1-125.7~~ 6.2-610. Transfers ~~under § 6.1-125.5~~ arising from right of survivorship nontestamentary.

Any transfers resulting from the application of § ~~6.1-125.5~~ 6.2-608 are effective by reason of the account contracts involved and this ~~statute~~ article and are not to be considered as testamentary or subject to Chapter 3 (§ 64.1-45 et seq.) of Title 64.1.

**Drafting note: The change to the catchline reflects trend to avoid referring to section numbers in catchlines generally. "Statute" is replaced with article to clarify the presumed intent.**

§ ~~6.1-125.8~~ 6.2-611. Liability of surviving party for debts~~, etc.,~~ and other liabilities of decedent's estate.

~~No~~ A. If the assets of a deceased party's estate, other than the assets in a multiple-party account ~~will be effective against an estate of a deceased party to transfer~~, are not sufficient ~~to a survivor sums needed~~ to pay the debts, taxes, and expenses of estate administration, including statutory allowances to the surviving spouse, minor children, and dependent children, ~~if other assets~~ no transfer of account funds, to which the deceased party was beneficially entitled immediately before his death, shall be effective, by virtue of a party's survivorship of the decedent, against the estate of such deceased party to the extent such funds are needed to pay such liabilities of the estate ~~are insufficient~~.

B. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to his personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges ~~mentioned above remaining~~ described in subsection A that remain unpaid after application of the decedent's estate. No proceeding to assert this liability shall be commenced (i) unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor or dependent child of the decedent, and ~~no proceeding shall be commenced~~ (ii) later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate.

C. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless, before payment, the institution has been served with process in a proceeding by the personal representative.

**Drafting note: Subsection A has been re-written to clarify its purpose. The changes are technical.**

§ ~~6.1-125.9~~ 6.2-612. Financial institution ~~protection~~ duties; multiple-party accounts.

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

**Drafting note: The changes to the catchline clarify the scope of the section.**

§ ~~6.1-125.10~~ 6.2-613. ~~Same; payment~~ Payment of sums in joint account.

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded~~; but payment~~. Payment may not be made to the personal representative or heirs of a deceased party unless (i) proof of death is presented to the financial institution showing that the decedent was the last surviving party or ~~unless~~ (ii) there is no right of survivorship under § ~~6.1-125.5~~ 6.2-608.

**Drafting note: Technical changes.**

§ ~~6.1-125.11~~ 6.2-614. ~~Same; payment~~ Payment of P.O.D. account.

Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

**Drafting note: No change.**

§ ~~6.1-125.12~~ 6.2-615. ~~Same; payment~~ Payment of trust account.

Any trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

**Drafting note: No change.**

§ ~~6.1-125.13~~ 6.2-616. ~~Same; discharge~~ Discharge of financial institution upon payment.

A. Payment made pursuant to §§ ~~6.1-125.9~~ 6.2-612 through ~~6.1-125.12~~ 6.2-615 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors.

B. The ~~protection here given~~ discharge provided by subsection A does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, or the successor of any deceased party ~~must concur~~ has concurred in any demand for withdrawal ~~if the~~, a discharge provided by subsection A shall not apply to withdrawals permitted by the financial institution ~~is to be protected under this section~~.

C. No other notice or any other information shown to have been available to a financial institution shall affect its right to the ~~protection~~ discharge provided ~~here~~ by subsection A. The ~~protection here~~ discharge provided by subsection A shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

~~Should~~ D. If any party, or the personal representative of any party, ~~notify~~ notifies the financial institution in writing not to permit withdrawals by any party, the financial institution may refuse, without liability, to allow any withdrawal pending the determination of the rights of the parties.

**Drafting note: Subsections B and C have been rewritten to clarify their purpose. Changes are technical.**

§ ~~6.1-125.14~~ 6.2-617. ~~Same; setoff~~ Setoff by financial institution against account.

Without qualifying any other statutory right to setoff or lien, and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to setoff is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

**Drafting note: Catchline is revised to clarify the section's scope. No change to section text.**

§ ~~6.1-125.15~~ 6.2-618. Identification of joint accounts.

A. Every financial institution in ~~this~~ the Commonwealth offering joint accounts to its depositors shall either:

1. Maintain two separate forms for the creation of joint accounts, one of which shall be clearly labeled "JOINT ACCOUNT WITH SURVIVORSHIP" and the other of which shall be clearly labeled "JOINT ACCOUNT - NO SURVIVORSHIP," both of which shall be made available to all persons opening joint accounts; or

2. Maintain one form for the creation of such accounts that shall contain the two labels "JOINT ACCOUNT WITH SURVIVORSHIP" and "JOINT ACCOUNT - NO SURVIVORSHIP," with appropriate blank space or lines beside such labels for the parties to sign in order to indicate the type of account desired, which signature requirement shall be in addition to any signature verification form.

B. The forms provided for in ~~alternative~~ subdivision A 1 may be identical in all respects except for the labels therein specified. This section shall not be construed to prevent any financial institution from changing from one method of identification to the other method of identification at any time, nor to require a financial institution making such a change to make any changes to the forms of its existing accounts. ~~This section is not applicable to joint accounts created before July 1, 1980.~~

~~B~~ C. The forms described in subsection A shall include disclosures to inform persons opening joint accounts of the disposition of such accounts upon a party's death. Disclosures in a form substantially similar to the following shall satisfy the requirements of this section:

Joint Account With Survivorship - On the death of a party to the account, the deceased party's ownership in the account passes to the surviving party or parties to the account.

Joint Account - No Survivorship - On the death of a party to the account, the deceased party's ownership in the account passes as a part of the party's estate under the party's will, trust, or by intestacy.

D. This section is not applicable to joint accounts created before July 1, 1980.

**Drafting note: Technical changes.**

§ ~~6.1-125.15:1~~ 6.2-619. Certain duties of parties to joint ~~bank~~ accounts in financial institutions.

A. Parties to a joint account in a financial institution occupy the relation of principal and agent as to each other, with each standing as a principal in regard to his ownership interest in the joint account and as agent in regard to the ownership interest of the other party. The provisions of the Uniform Power of Attorney Act (§ 26-71.01 et seq.) shall apply to such principal/agent relationships.

B. For the purposes of this section, ~~the definition of a joint account in a financial institution, and~~ the ownership interest of the parties ~~therein, are~~ to the joint account, shall be determined in accordance with the provisions of this ~~chapter~~ article.

**Drafting note: The statement in proposed subsection B "the definition of a joint account in a financial institution" is not necessary because the terms "joint account" and "financial institution" would have the definitions ascribed to them in proposed § 6.2-604 by default without so stating.**

§ ~~6.1-125.16~~ 6.2-620. ~~Effective date~~ Application of article to accounts existing on July 1, 1980.

A. ~~The~~ Unless otherwise provided in this article, the provisions of this ~~chapter~~ article shall be applicable to all multiple-party accounts~~,~~ in every financial institution in ~~this~~ the Commonwealth~~,~~ on July 1, 1980, regardless of when such multiple-party accounts might have been opened or created~~; provided, however, that nothing herein contained.~~

B. Nothing in this article shall affect the common-law presumption of convenience now existing between persons not married to each other in joint accounts that were created prior to July 1, 1980, insofar as the ownership of the funds, whenever deposited, during their joint lifetime or their right of survivorship therein are concerned~~, and such cases~~. Issues regarding ownership of such funds shall continue to be decided pursuant to the precedents of the Virginia Supreme Court.

**Drafting note: The catchline is revised to better describe the scope of the section. In proposed subsection A, the phrase "unless otherwise provided in this article" is added to avoid a conflict with subsection D of proposed § 6.2-618.**

CHAPTER ~~13~~ 7.

ACQUISITIONS OF INTERESTS IN FINANCIAL ~~INSTITUTION HOLDING COMPANIES~~ INSTITUTIONS.

**Chapter Drafting Note: Existing Chapters 13 and 15 (Acquisitions by Out-of-State Bank Holding Companies) are combined.**

§ ~~6.1-381~~ 6.2-700. Definitions.

~~A.~~ As used in this chapter, unless the context requires a different meaning ~~is required by the context~~:

"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.

"Bank" ~~means an institution which has or is eligible for insurance of deposits by the Federal Deposit Insurance Corporation~~ has the same meaning assigned to it in 12 U.S.C. § 1841 (c).

"Bank holding company" has the meaning assigned to it in 12 U.S.C. § 1841 (a) (1).

~~"Company" means any individual, corporation, partnership, business trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated association, or any other entity not specifically listed herein.~~

"Financial institution" shall not include any consumer finance company or savings institution.

"Financial institution holding company" means any ~~company which~~ person that has control over any financial institution or ~~which~~ that has control over any ~~company which~~ person that controls any financial institution.

"Home state" means:

1. With respect to a national bank, the state in which the main office is located;

2. With respect to a state bank, the state by which the bank is chartered; and

3. With respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of (i) July 1, 1966, or (ii) the date on which the company becomes a bank holding company under the federal Bank Holding Company Act (12 U.S.C. § 1841 ff).

"Out-of-state bank holding company" means a bank holding company that has as its home state a state other than the Commonwealth.

"Subsidiary" means an entity over which another person has control. With respect to a bank, "subsidiary" means:

1. Any entity 25 percent or more of whose voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, are directly or indirectly owned or controlled by such bank holding company, or 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 is organized under the laws of the Commonwealth or of the United States and that has the Commonwealth as its home state.

"Virginia bank holding company" means a bank holding company that has the Commonwealth as its home state and is not controlled by a bank holding company other than a Virginia bank holding company.

"Virginia financial institution" means a financial institution authorized to do business in the Commonwealth ~~of Virginia~~. ~~As used in this chapter, the term "financial institution" shall not include consumer finance companies and savings institutions.~~

"Virginia financial institution holding company" means any ~~company which~~ person that has control over any financial institution authorized to do business in ~~this~~ the Commonwealth or has control over a ~~company which~~ person that controls any such financial institution.

~~B. A company shall be deemed to "control" another company, referred to in this chapter as a "subsidiary," if it owns twenty-five percent or more of the voting shares of the subsidiary, or if under the Bank Holding Company Act of 1956, as amended, or under Section 408 of the National Housing Act, as amended, such company is presumed to control the subsidiary, or a determination has been made by the Commission that such company exercises a controlling influence over the management and policies of the subsidiary.~~

~~C. A financial institution holding company shall be deemed to own shares owned by a subsidiary. Such holding company shall be deemed to engage in activities engaged in by a subsidiary or by any other company of which it owns five percent or more of the voting shares.~~

**Drafting note: The definitions of "acquire," "bank holding company," "home state," "out-of-state bank holding company," "subsidiary," and "Virginia bank" are moved from existing § 6.1-398. In the definition of "Virginia bank," the requirement that the bank not be acquired under the provisions of § 6.1-392 is deleted because that section, with all other sections in existing Chapter 14, is deleted. The definition of "bank" is revised to conform to the definition thereof in existing § 6.1-398. The definition of "company" is deleted because it is consistent with the definition of "person" in proposed § 6.2-100, and "entity" or "person" is substituted for "company" throughout this proposed chapter. The definition of "financial institution" is separated from its current location within the definition of "Virginia financial institution." This definition of "financial institution" is retained for purposes of this chapter, though the term is also defined in proposed § 6.2-100, because the definitions are inconsistent (in proposed § 6.2-100, it is defined as any bank, trust company, savings institution, savings bank, industrial loan association, consumer finance company, or credit union). Existing subsections B and C are set out in proposed § 6.2-701.**

§ 6.2-701. Presumptions regarding control of entities, ownership of shares, and activities of subsidiaries or other entities.

~~B~~ A. A ~~company~~ person shall be deemed to ~~"~~control~~"~~ another ~~company, referred to in this chapter as a "subsidiary,"~~ entity if ~~it~~:

1. It owns ~~twenty-five~~ 25 percent or more of the voting shares of the ~~subsidiary, or if~~ entity;

2. The person is presumed to control the entity under the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended, or under Section ~~408~~ 10 of the ~~National Housing~~ Home Owners' Loan Act (§ 12 U.S.C. § 1467a), as amended~~, such company is presumed to control the subsidiary,~~; or ~~a~~

3. A determination has been made by the Commission that ~~such company~~ the person exercises a controlling influence over the management and policies of the ~~subsidiary~~ entity.

~~C~~ B. A financial institution holding company shall be deemed to own shares owned by a subsidiary.

C. ~~Such~~ A financial institution holding company shall be deemed to engage in activities engaged in by ~~a~~ its subsidiary or by any other ~~company~~ entity of which it owns five percent or more of the voting shares.

**Drafting note: New section, consisting of existing subsections B and C of § 6.1-381. The statement "referred to in this chapter as a subsidiary" is deleted because "subsidiary" is defined in proposed § 6.2-700. The change to the cited section of the National Housing Act is discussed in the drafting note following proposed § 6.2-709. Other amendments are technical.**

§ ~~6.1-382~~ 6.2-702. Registration; authority to transact business.

Every ~~company~~ person that controls one or more Virginia financial institutions (i) shall register with the Commission in accordance with procedures established by the Commission within 180 days after the date the person acquires control of a Virginia financial institution, unless the Commission allows additional time, and~~,~~ (ii) unless such ~~company (except as provided in Chapter 15 (§ 6.1-398 et seq.) of this title)~~ person is a corporation chartered under the laws of Virginia, ~~it~~ shall ~~be admitted~~ obtain a certificate of authority to transact business in ~~Virginia~~ the Commonwealth in accordance with § 13.1-757. ~~Unless the Commission allows additional time, registration shall be completed within 180 days after July 1, 1978, or after the company acquires control of a Virginia financial institution, whichever date is later.~~

**Drafting note: The exception "as provided in Chapter 15" is deleted because that chapter (Acquisitions by Out-of-State Bank Holding Companies) is combined with existing Chapter 13 to form this chapter. The reference to the July 1, 1978, deadline for registration is deleted because it is no longer relevant. The requirement for admission to transact business in accordance with § 13.1-757 is restated as requiring that the corporation obtain a certificate of authority in order to be consistent with the terms of § 13.1-757. The requirement is not applicable to other forms of foreign business entities. The section also incorporates technical changes.**

§ ~~6.1-383~~ 6.2-703. Acquisition of interest in ~~company~~ entity other than financial institution by financial institutions.

No financial institution shall acquire more than five percent of the voting shares or otherwise gain control of any ~~company~~ entity other than a financial institution without prior notice to the Commission.

**Drafting note: Technical change.**

§ ~~6.1-383.1~~ 6.2-704. Acquisition of interests in financial institutions and financial institution holding companies; ~~prerequisites~~ application; notice; ~~information to be made available to public~~ Commission approval required.

A. Except as provided in ~~Chapter 14 (§ 6.1-390 et seq.) and Chapter 15 (§ 6.1-398 et seq.) of~~ this ~~title~~ chapter, no ~~company~~ person shall acquire or make any public offer to acquire, directly or indirectly, control of a Virginia financial institution or a Virginia financial institution

holding company, and no Virginia financial institution holding company shall acquire more than five percent of the voting shares of any Virginia financial institution or of any other Virginia financial institution holding company, unless it first shall:

1. File with the Commission an application in such form as the Commission may prescribe from time to time;

2. Deliver to the Commission such other information as the Commission may require with such certification of financial information and such verification by oath or affirmation of other data as the Commission may deem appropriate;

3. Pay such application fee as the Commission may prescribe from time to time; and

4. Except in the case of ~~a company which~~ an entity that is a domestic corporation or a foreign corporation qualified to do business in ~~Virginia~~ the Commonwealth, deliver to the Commission a written consent to service of process in any action or suit arising out of or in connection with said proposed acquisition through service of process on the Secretary of the Commonwealth.

B. Upon receipt of an application, the Commission shall notify the affected Virginia financial institution or Virginia financial institution holding company, and shall solicit the views of the affected Virginia financial institution or Virginia financial institution holding company. The application and all other information required by the Commission under this section, except such additional information as the Commission determines should be kept confidential, shall be held as part of the public records and made available to the public.

C. ~~Notwithstanding any other provision of law, except as permitted in Chapter 14 and Chapter 15 of this title, no holding company, other than a bank holding company with bank subsidiaries whose operations are principally conducted in the Commonwealth of Virginia, or whose bank subsidiaries are presently conducting business in Virginia, may acquire or own a bank organized under the laws of Virginia with its main office or branch in Virginia or a national banking association whose main office is located in Virginia.~~ An out-of-state bank holding company may acquire a Virginia bank holding company or a Virginia bank if: (i) the out-of-state bank holding company complies with the application requirements of subsection A and (ii) the Commission does not disapprove the application, after the investigation prescribed by § 6.2-705.

**Drafting note: In proposed subsection A, the reference to existing Chapters 14 and 15 is deleted. Existing subsection C is deleted because it is superseded by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. It is replaced with existing § 6.1-399, which states that "[an] out-of-state bank holding company may acquire a Virginia bank holding company or a Virginia bank provided (i) the out-of-state bank holding company complies with the application requirements of subsection A of § 6.1-383.1 of this title and (ii) the State Corporation Commission does not disapprove the application, after the investigation prescribed in § 6.1-383.2."**

§ ~~6.1-383.2~~ 6.2-705. ~~Same; investigation~~ Investigation of application~~; prescribed investigation period; shortening, lengthening or waiving of period; hearing; appeal~~.

A. For ~~a period of sixty~~ 60 days following receipt of a complete application ~~under § 6.1-383.1~~ with the required information, fee, and consent as provided in subsection A of § 6.2-704, the Commission ~~shall be empowered to~~ may conduct an investigation for the purpose of determining whether:

1. The proposed acquisition would be detrimental to the safety and soundness of the applicant or of the Virginia financial institution or Virginia financial institution holding company ~~which~~ that the applicant seeks to control or ~~whose~~ the stock of which is to be acquired;

2. The applicant, its directors and officers, if applicable, and any proposed new directors and officers of the Virginia financial institution or Virginia financial institution holding company ~~which~~ that the applicant seeks to control or ~~whose~~ the stock of which is to be acquired, are qualified by character, experience, and financial responsibility to control and operate a Virginia financial institution;

3. The proposed acquisition would be prejudicial to the interests of the depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of the applicant or of the Virginia financial institution holding company or any Virginia financial institution ~~which~~ that the applicant seeks to control or ~~whose~~ the stock of which is to be acquired; and

4. The acquisition is in the public interest.

B. ~~1.~~ The ~~sixty-day~~ 60-day investigation period may be ~~shortened~~:

1. Shortened or waived by the Commission, as it deems appropriate, if the Commission finds that it must act immediately in order to prevent the probable failure of a Virginia financial institution involved~~.~~; or

2. ~~The sixty-day investigation period may be extended~~ Extended only if the Commission determines that the applicant has not furnished all the information required by ~~§ 6.1-383.1~~ subsection A of § 6.2-704 or that the information submitted is substantially inaccurate or misleading.

C. Within the prescribed investigation period, and upon request of the applicant or the Virginia financial institution or Virginia financial institution holding company ~~which~~ that the applicant seeks to control or ~~whose~~ the stock of which is to be acquired, the Commission may order a hearing concerning the proposed acquisition.

D. Within the prescribed investigation period, the Commission, by giving written notice of its decision and the reasons therefor to the applicant and to the Virginia financial institution or Virginia financial institution holding company ~~which~~ that the applicant seeks to control or ~~whose~~ the stock of which is to be acquired, may~~:~~ (i) disapprove the application~~,~~ or (ii) impose such conditions on the acquisition as the Commission may deem advisable to effectuate the purposes of this chapter.

E. If the Commission (i) takes no action within the ~~sixty-day~~ prescribed investigation period~~, or within such shorter period as the Commission may prescribe under subdivision 1 of subsection B of this section,~~ or ~~if the Commission~~ (ii) issues notice within the prescribed investigation period of its intent not to disapprove the application, the acquisition may be completed by the applicant.

~~E.~~ F. Any party in interest aggrieved by any decision of the Commission, as a matter of right, may appeal to the Supreme Court of Virginia in the manner provided by law.

~~F~~ G. The provisions of this section ~~and § 6.1-383.1~~ shall not apply ~~to mergers~~:

1. To mergers or acquisitions of assets authorized by the Commission pursuant to the provisions of § ~~6.1-100.1, nor shall they apply in any case where~~ 6.2-914;

2. If the acquisition or merger is arranged by the Commission or other supervisory authority in order to prevent the insolvency or closing of the institution; or

3. If a financial institution itself forms a corporation for the purpose of acquiring and holding the stock of such financial institution and it is proposed that the shareholders of the financial institution will become the shareholders of the financial institution holding company being organized. This exclusion shall apply regardless of the fact that some shareholders of the financial institution may dissent from the proposal.

**Drafting note: Proposed subdivision G 3 is currently set out at the first two sentences of existing § 6.1-387; the provision is moved here to be in proximity with the other exclusions to these sections. Other changes are technical.**

§ 6.2-706. Cooperative agreements with other regulatory authorities.

Prior to approving the acquisition of any Virginia bank or Virginia bank holding company by any out-of-state bank holding company, or the acquisition of any out-of-state bank or 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 out-of-state bank holding company that has a Virginia bank subsidiary, or any subsidiary of such holding company. The Commission may accept reports of examination and other records from such authorities in lieu of conducting its own examinations.

**Drafting Note: New section, comprised of the first sentence of the second paragraph of existing § 6.1-404, with technical amendments.**

§ ~~6.1-384~~ 6.2-707. Reports and examinations.

The Commission may require any financial institution holding company that controls a Virginia financial institution to furnish such reports as it deems appropriate to the proper supervision of such holding companies. Unless the Commission determines otherwise, reports prepared for federal authorities may be submitted by such holding company in satisfaction of the requirements of this section. If, in the judgment of the Commission, such information and reports ~~as heretofore described~~ are inadequate for the Commission's intended purposes, the Commission may examine any such financial institution holding company and any subsidiary doing business in ~~this~~ the Commonwealth.

**Drafting note: Technical changes. The phrase "as heretofore described" is deleted as unnecessary; "such information and reports" is sufficiently clear.**

§ ~~6.1-385~~ 6.2-708. Unsafe or unsound practices; cease and desist ~~power~~ orders.

Upon ~~a~~ finding that any activity of a financial institution holding company, including the control of ~~a company or companies~~ an entity other than a Virginia financial institution, is or may be detrimental to the safety or soundness of ~~an~~ a financial institution that is subject to regulation

under the laws of ~~this~~ the Commonwealth, the Commission, after reasonable notice to the financial institution holding company and an opportunity for it to be heard, shall have authority to order it to cease and desist from such activity.

**Drafting note: Technical changes. The term "holding company," which is not defined, is changed to "financial institution holding company." "Company or companies" is replaced with "entity" because, per § 1-227, the singular includes the plural and the term has been replaced with person or entity. The phrase "institution subject to regulation under the laws of this Commonwealth" is revised to limit is scope to financial institutions.**

§ ~~6.1-386~~ 6.2-709. Conformity with federal ~~procedures~~ forms.

To the maximum extent consistent with the effective discharge of the Commission's responsibilities, the forms ~~established~~ prescribed by the Commission under this chapter for registration, reports, or any other forms shall conform with those established by regulation adopted pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.) or Section ~~408~~ 10 of the ~~National Housing~~ Home Owners' Loan Act (12 U.S.C. § 1467a et seq.).

**Drafting note: The Commission prescribes (rather than "establishes") forms. Section 408 of the National Housing Act, codified at 12 U.S.C. § 1730a, made it unlawful to acquire control over an FSLIC-insured institution without prior written approval by the FSLIC; the section was repealed by Pub. L. 101-73, title IV, Sec. 407, Aug. 9, 1989, 103 Stat. 363. Subsection b of 12 U.S.C. § 1467a (Regulation of holding companies) currently provides for the registration and reports by savings and loan holding companies.**

§ ~~6.1-387~~ 6.2-710. ~~Exclusions~~ Regulations excluding financial institution holding companies from this chapter.

~~The provisions of §§ 6.1-383.1 and 6.1-383.2 shall not apply where a financial institution itself forms a corporation for the purpose to acquire and hold the stock of such financial institution and it is proposed that the shareholders of the financial institution will become the shareholders of the holding company being organized. This exclusion shall apply regardless of the fact that some shareholders of the financial institution may dissent from the proposal~~. The Commission may ~~promulgate~~ adopt regulations excluding financial institution holding companies from the provisions of this chapter, under conditions comparable to those provided in either the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.) or Section ~~408~~ 10 of the ~~National Housing~~ Home Owners' Loan Act (12 U.S.C. § 1467a et seq.), ~~where~~ when control of a Virginia financial institution arises (i) out of the acquisition of shares in a fiduciary capacity, ~~or~~ (ii) in connection with an underwriting of securities or proxy solicitation, or (iii) in connection with securing or collecting a debt.

**Drafting note: The first two sentences are relocated to proposed subdivision G 3 of § 6.2-705, in order that all exceptions be located in one section. The replacement of "promulgate" with "adopt" conforms to current usage. The change to the references to the National Housing Act is discussed in the drafting note following proposed § 6.2-709.**

§ ~~6.1-388~~ 6.2-711. ~~Prohibitions and~~ Civil penalties; injunction.

A. To the extent provided for therein, the Commission may impose a civil penalty of not less than $100 but not exceeding $1,000 per day for each day of noncompliance upon financial institution holding companies subject to the laws of ~~this~~ the Commonwealth ~~shall be subject to the penalties set forth in §§ 6.1-114 and 6.1-125~~ that fail to comply with any of the provisions of § 6.2-707 for a period of longer than 30 days, after being called upon by the Commission for a statement, or to do such other act as is therein provided. The Commission may impose a civil penalty of not less than $25 but not exceeding $100 per day for each day of noncompliance upon any officer of any such financial institution holding company, who shall refuse to give any examiner the information or refuse to be sworn, as required by this title.

B. The Commission (i) may impose a civil penalty not exceeding $10,000 against any financial institution holding company subject to the laws of the Commonwealth or against any of its directors, officers, or employees for violating any lawful order of the Commission and (ii) may remove from office any director or officer who a second time violates any such order. In all cases the defendant shall have an opportunity to be heard and to introduce evidence, and the right to appeal as provided by law.

C. Any ~~company~~ person violating any provision of this chapter or any regulation ~~promulgated~~ adopted thereunder shall be subject to injunction by the Commission or by ~~a~~ an appropriate court ~~of competent jurisdiction~~ on motion of any party in interest. In addition, ~~such company shall be subject to a~~ the Commission may impose a civil penalty of not more than $1,000 per day for each day the violation continues upon any person violating any provision of this chapter or any regulation adopted thereunder.

**Drafting note: Subsections A and B attempt to incorporate the penalty provisions in existing §§ 6.1-114 and 6.1-125 into this chapter, in order to provide notice as to the violation for which the penalty may be prescribed. The existing provisions that make violators subject to monetary fines or penalties are restated as civil penalties; the disposition of civil penalties is addressed in proposed § 6.2-106.**

~~§ 6.1-389. Limitation of provisions of chapter.~~

~~In the event any provision of this chapter should conflict with an applicable provision of Chapter 14 (§ 6.1-390 et seq.) of this title, the provision of Chapter 14 shall be controlling.~~

**Drafting note: Section is deleted because Chapter 14 is being deleted.**

~~CHAPTER 14.~~

~~FINANCIAL SERVICE CENTER BANKS.~~

**Chapter drafting note: Existing Chapter 14 is deleted because its provisions are obsolete. The chapter established procedures by which out-of-state bank holding companies and general business corporations could acquire credit card banks. Under the chapter, the type of entity to be acquired and its operational and capitalization requirements appear to have been tailored for specific transactions (i.e., a single office, employing at least 40 persons, engaging in significant multi-state credit card operations, and a minimum capital stock and paid-in surplus of $5 million). Existing Chapter 14 created exceptions to the limits on**

**acquisitions by out-of-state bank holding companies set out in existing subsection C of § 6.1-383.1; however, that subsection is superseded by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and by existing § 6.1-399 as amended in 1998, which allows an out-of-state bank holding company to acquire a Virginia bank or bank holding company upon complying with the requirements of subsection A of existing § 6.1-383.1 and § 6.1-383.2. The provisions regarding acquisition of a Virginia bank by a general business corporation (including existing §§ 6.1-392.1 and 6.1-394.1) are inconsistent with other provisions governing who may acquire control of a bank. For example, a controlling shareholder must become a bank holding company, and bank holding companies are subject to restrictions on investing in nonbank activities.**

~~§ 6.1-390. Purpose.~~

~~The provisions of this chapter shall establish those conditions under which out-of-state bankj holding companies or subsidiaries thereof and general business corporations pursuant to this chapter may acquire and hold shares of voting stocks in certain banks located in the Commonwealth. The provisions of this chapter shall not be construed to limit the powers granted to any bank in this Commonwlth to conduct its business.~~

**Drafting Note: Section is not currently set out, in furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application.**

~~§ 6.1-391. Definitions.~~

~~As used in this chapter:~~

~~"Bank" means a bank or trust company created under this title or a national banking association created under the National Bank Act, 12 U.S.C. § 21 et seq., after the effective date of this chapter.~~

~~"Out-of-state bank holding company" means a bank holding company as defined in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.), with banking subsidiaries whose operations are principally conducted in a state other than Virginia. For purposes of this chapter, the state in which the operations of a bank holding company's bank subsidiaries are principally conducted is that state in which the total deposits of all such banking subsidiaries are greatest.~~

~~"Commissioner" means the Commissioner of Financial Institutions.~~

~~"Credit card bank" shall mean an institution as defined in and that has satisfied the conditions set forth in subdivisions 1 through 7 of subsection A of § 6.1-392.1.~~

~~"Divest" means to transfer all interest, legal or equitable, to a person or entity in which the transferor has no interest, direct or indirect, or which has no interest, direct or indirect, in the transferral.~~

~~"General business corporation" means any domestic corporation, any foreign corporation which is qualified to do business in Virginia and any affiliate or subsidiary thereof. Excluded from this definition are bank holding companies registered under the Bank Holding Company~~

~~Act of 1956, as amended (12 U.S.C. § 1841 et seq.), public service corporations and subsidiaries or affiliates thereof.~~

~~"Located in this Commonwealth" means, with respect to state-chartered banks, banks created under the laws of this Commonwealth, and, with respect to national banking associations, banks whose organization certificate identifies an address in this Commonwealth as the place in which its discount and deposit operations are to be carried out.~~

~~"Subsidiary" means, with respect to an out-of-state bank holding company, (i) any company twenty-five percent or more of whose voting shares are directly or indirectly owned or controlled by such bank holding company, or held by it with power to vote; or (ii) any company in which the election of a majority of the directors is controlled in any manner by such bank holding company.~~

**Drafting Note: Section is deleted.**

~~§ 6.1-392. Acquisition of interests in bank located in Commonwealth by out-of-state bank holding company or subsidiary; conditions.~~

~~An out-of-state bank holding company or any subsidiary thereof may acquire and hold all or substantially all of the voting shares of a single bank located in this Commonwealth when and for so long as the following conditions are satisfied:~~

~~1. The bank whose stock is to be acquired is a newly established bank that has or will have, when chartered and thereafter, no more than a single office located in this Commonwealth open to the public for the conduct of banking business; and such bank shall be created for the primary purpose of engaging in a significant multi-state credit card operation;~~

~~2. The bank whose stock is to be acquired has or will have on the date of commencement of business in this Commonwealth a minimum capital stock and paid-in surplus of five million dollars and thereafter will maintain capital stock and surplus of five million dollars or an amount equal to six and one-half percent of its total assets, whichever is greater, so long as it continues to do business in this Commonwealth;~~

~~3. The bank whose stock is to be acquired employs on the date of commencement of its banking business in this Commonwealth or will employ within one year of such date not less than forty persons in this Commonwealth in its business; provided, that there shall be counted in the number of persons to be so employed, new employees in this Commonwealth of all subsidiaries of the out-of-state bank holding company. For the purposes of this subsection, "new employees" shall be defined as including only those employees of the subsidiaries of the out-of-state bank holding company who were first employed by such subsidiaries within Virginia no more than nine months before the Commission approved the acquisition pursuant to subdivision 5 of this section;~~

~~4. The bank whose stock is to be acquired is operated in a manner and at a location that is not likely to attract customers from the general public in this Commonwealth to the substantial detriment of existing banking institutions located in this Commonwealth; however, such bank may be operated in a manner likely to attract and retain customers with whom that bank, the out-~~

~~of state holding company, or such holding company's bank or nonbanking subsidiaries have or have had business relations; and~~

~~5. Such acquisition has received the prior approval of the Commission.~~

**Drafting Note: Section is deleted.**

~~§ 6.1-392.1. Acquisition of interests in credit card bank located in state by general business corporation; conditions.~~

~~A. A general business corporation may acquire and hold all or substantially all of the voting shares of a single credit card bank located in this Commonwealth when and for so long as the following conditions are satisfied:~~

~~1. The credit card bank whose stock is to be acquired shall comply with the provisions of subdivisions 1 and 2 of § 6.1-392, except that such credit card bank shall be created for the sole purpose of engaging in a multi-state credit card operation;~~

~~2. The credit card bank whose stock is to be acquired employs on the date of commencement of its banking business in this Commonwealth or will employ within one year of such date not less than forty persons in this Commonwealth in its business; provided, that there shall be counted in the number of persons to be so employed, new employees in this Commonwealth of the general business corporation. For the purposes of this subsection, "new employees" shall be defined as including only those employees of the general business corporation who were first employed within Virginia no more than nine months before the Commission approved the acquisition pursuant to subdivision 7 of this subsection;~~

~~3. The credit card bank whose stock is to be acquired shall not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;~~

~~4. The credit card bank whose stock is to be acquired shall not accept any savings or time deposits of less than $100,000 but may accept such deposits of $100,000 or more only from affiliates of the credit card bank having their principal places of business outside of this Commonwealth; however, the Commission shall not issue a Certificate of Authority authorizing the commencement of business of any credit card bank created in accordance with the provisions of this section unless it has determined that such deposits are to be insured or guaranteed by a federal agency up to the limits of the insurance provided thereby;~~

~~5. The credit card bank whose stock is to be acquired shall not engage in the business of making commercial loans;~~

~~6. The credit card bank whose stock is to be acquired is operated in a manner and at a location that is not likely to attract customers from the general public in this Commonwealth to the substantial detriment of existing banking institutions located in this Commonwealth; however, such credit card bank may be operated in a manner likely to attract and retain the credit card transaction business of customers with whom that credit card bank, or the general business corporation acquiring that credit card bank, has or has had business relations; and~~

~~7. Such general business corporation has received the prior approval of the Commission for the acquisition.~~

~~B. Any general business corporation proposing an acquisition pursuant to this section shall file an application with the Commission for approval to make such acquisition. The application shall be in such form as the Commission may prescribe from time to time. Such application shall specifically acknowledge the applicant's agreement to be bound by the conditions set forth in this section. In addition, such application shall designate a resident of this Commonwealth as the applicant's registered agent in connection with matters arising out of this chapter and shall be accompanied by a filing fee of $10,000.~~

~~C. An institution created in accordance with this chapter shall be a bank within the meaning of § 6.1-4 but shall at all times remain subject to the restrictions and limitations on its authority as set forth in this chapter. A credit card bank acquired in accordance with this chapter may impose charges as permitted by § 6.1-330.78, but for purposes of § 6.1-39.3 and Chapter 15 (§ 6.1-398 et seq.) of this title shall not be considered a bank. A credit card bank shall be subject to the provisions of Chapter 2 (§ 6.1-3 et seq.) of this title except where any rights, powers, privileges or provisions of Chapter 2 are inconsistent with the rights, powers, privileges, provisions or limitations of this chapter, in which case this chapter shall govern.~~

~~D. Upon determination that any general business corporation is holding stock in a credit card bank located in the Commonwealth in violation of the conditions set forth in this section or its agreement pursuant to § 6.1-393, the Commissioner shall have authority to take remedial action, including an order to divest such stock, in the same manner and under the same terms and conditions as are applicable to out-of-state bank holding companies or subsidiaries thereof pursuant to § 6.1-396.~~

~~E. A credit card bank acquired by a general business corporation pursuant to this section shall annually, not later than January 31 of each year, file with the Commissioner a certificate of compliance which shall be executed by the appropriate officers of the credit card bank and attested to under oath by at least three of the directors of the credit card bank. A certificate of compliance shall specifically certify that the credit card bank is in compliance with all the requirements, restrictions and limitations set forth in this section and such other matters as may be required by the Commissioner.~~

**Drafting Note: Section is deleted.**

~~§ 6.1-393. Application for approval; filing fee; factors to be considered by Commission.~~

~~A. Any out-of-state bank holding company or subsidiary thereof proposing an acquisition pursuant to § 6.1-392 shall file an application with the Commission for approval to make the acquisition. The application shall contain any information required by Commission regulation, and shall specifically acknowledge an applicant's agreement to be bound by the conditions set forth in § 6.1-392. In addition, the application shall designate a resident of this Commonwealth as the applicant's registered agent in connection with matters arising out of this chapter and shall be accompanied by a filing fee of $10,000.~~

~~B. In determining whether to approve an acquisition by an out-of-state bank holding company or any subsidiary thereof of any voting stock of a bank located in this Commonwealth, the Commission shall consider:~~

~~1. The financial and managerial resources of the out-of-state bank holding company or its subsidiary;~~

~~2. The future prospects of the out-of-state bank holding company or its subsidiary and the bank whose assets or shares it will acquire;~~

~~3. The financial history of the out-of-state bank holding company or its subsidiary;~~

~~4. Whether the acquisition or holding may result in undue concentration of resources or substantial lessening of competition in this Commonwealth; and~~

~~5. The convenience and needs of the public of this Commonwealth.~~

**Drafting Note: Section is deleted.**

~~§ 6.1-394. Required reports.~~

~~An out-of-state bank holding company that directly or indirectly through any subsidiary acquires voting stock of a bank pursuant to this chapter, and any general business corporation which acquires voting stock of a credit card bank pursuant to this chapter, shall file with the Commissioner copies of all regular and periodic reports which such bank holding company or such general business corporation is required to file under Section 15 or Section 15 (d) of the Securities Exchange Act of 1934, as amended, but excluding any portion not available to the public.~~

~~Any such general business corporation which is not required to file such reports but which is an affiliate or subsidiary of another corporation which is required to file such reports, shall cause copies of those reports to be filed with the Commissioner. In the event that a credit card bank is acquired pursuant to this chapter by a general business corporation which is not required to file such reports and which has no affiliate or subsidiary which is required to file such reports, the Commissioner shall be authorized to require such general business corporation to file with his office such information as he may deem fit.~~

**Drafting Note: Section is deleted.**

~~§ 6.1-394.1. Examination and supervision.~~

~~Any credit card bank formed pursuant to this chapter for the purpose of being acquired by a general business corporation shall file with the Commissioner a copy of periodic reports of examination conducted by the federal insuring agency and shall file annually with the Commissioner audited financial statements pertaining to the credit card bank, the general business corporation and all of the subsidiaries and affiliates of such corporation. In lieu of separate financial statements, the general business corporation may annually file an audited consolidated financial statement for itself and all of its affiliates and subsidiaries. Such audited financial statements shall be filed within 120 days of the completion of the fiscal years of the credit card bank, the general business corporation and all of the subsidiaries and affiliates of such corporation. The State Corporation Commission shall have authority to take such action as it may deem necessary to require and enforce compliance with the provisions of this chapter by a credit card bank, including the authority to supervise and examine such bank and the authority to promulgate standards to govern the examination and supervision of such bank; but otherwise shall have no duty or authority to supervise or examine the general business corporation or any~~

~~other affiliates or subsidiaries thereof and may include in its reports of examination a statement consistent with this provision. The Commissioner may rely upon a determination by the federal insuring agency that the credit card bank is operating in compliance with the provisions and restrictions of this chapter.~~

**Drafting Note: Section is deleted.**

~~§ 6.1-395. Rules, regulations and orders.~~

~~The Commission may adopt rules and regulations and issue orders under this chapter for the following purposes:~~

~~1. To prescribe information or forms required in connection with an application pursuant to § 6.1-393;~~

~~2. To establish procedures in connection with approval pursuant to § 6.1-393 and the filing of required reports pursuant to § 6.1-394; or~~

~~3. To issue orders under § 6.1-396 and establish procedures governing such issuances.~~

**Drafting Note: Section is deleted.**

~~§ 6.1-396. Violations; divestiture.~~

~~A. Upon determination that any out-of-state bank holding company or subsidiary thereof is holding stock in a bank located in this Commonwealth in violation of the conditions set forth in § 6.1-392 or of its agreement pursuant to § 6.1-393, the Commissioner may order such out-of-state holding company or subsidiary thereof to take steps to remedy such violation by a date certain.~~

~~B. The Commission shall have the authority to order an out-of-state bank holding company or subsidiary thereof to divest any shares of a bank that it has acquired under the provisions of this chapter upon a determination that such holding company or subsidiary continues to own shares of stock of a bank located in this Commonwealth in violation of the conditions contained in § 6.1-392 or of its agreement pursuant to § 6.1-393 after the date fixed for compliance by any order issued under subsection A of this section.~~

~~C. An out-of-state bank holding company or subsidiary thereof shall divest any shares of a bank that it has acquired under the provisions of this chapter within two years of the date an order issued under subsection B of this section becomes final and subject to no further judicial review; provided that the Commission may extend such two-year period for a further period or periods upon determination that such an extension would not be detrimental to the public interest.~~

**Drafting Note: Section is deleted.**

~~§ 6.1-397. Severability generally; effect of invalidity of certain provisions of chapter.~~

~~If any provision of this chapter is held invalid, such invalidity shall not affect any other provision or application of this chapter which can be given effect without the invalid provision, except that if any provision of § 6.1-392 or § 6.1-392.1 is for any reason held invalid as a condition of the statutory grant contemplated by this chapter or unenforceable as a term of an agreement under § 6.1-393 of this chapter, in a final order subject to no further judicial review, entered by a court of competent jurisdiction of this Commonwealth or of the United States, no~~

~~out-of-state bank holding company or any subsidiary thereof may thereafter acquire shares of a bank located in this Commonwealth pursuant to this chapter.~~

**Drafting Note: Section is deleted.**

~~CHAPTER 15.~~

~~ACQUISITIONS BY OUT-OF-STATE BANK HOLDING COMPANIES.~~

**Chapter drafting note: Existing Chapter 15 is combined with existing Chapter 13 to create proposed Chapter 7.**

~~§ 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.~~

~~"Bank" shall 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).~~

~~"Home state" means:~~

~~1. With respect to a national bank, the state in which the main office is located;~~

~~2. With respect to a state bank, the state by which the bank is chartered; and~~

~~3. With respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of (i) July 1, 1966, or (ii) the date on which the company becomes a bank holding company under the federal Bank Holding Company Act (12 U.S.C. § 1841 ff).~~

~~"Out-of-state bank holding company" means a bank holding company that has as its home state a state other than Virginia.~~

~~"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) are directly~~

~~or indirectly owned or controlled by such bank holding company, or 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 Virginia as its home state; and~~

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

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

~~1. Has Virginia as its home state; and~~

~~2. Is not controlled by a bank holding company other than a Virginia bank holding company.~~

**Drafting Note: The definitions of "acquire," "bank holding company," "home state," "out-of-state bank holding company," "subsidiary," and "Virginia bank" are moved to proposed § 6.2-700. The definition of "control" is deleted because the term is defined in proposed § 6.2-701. The definition of "state" is deleted because the term is defined in § 1-245.**

~~§ 6.1-399. Acquisitions by out-of-state bank holding companies.~~

~~An out-of-state bank holding company may acquire a Virginia bank holding company or a Virginia bank provided: (i) the out-of-state bank holding company complies with the application requirements of subsection A of § 6.1-383.1 of this title and (ii) the State Corporation Commission does not disapprove the application, after the investigation prescribed in § 6.1-383.2.~~

**Drafting Note: Section is moved to subsection C of proposed § 6.2-704.**

§ ~~6.1-399.1~~ 6.2-712. A savings institution holding company seeking to acquire a bank or bank holding company deemed a bank holding company.

For purposes of this chapter, any savings institution holding company seeking to acquire a bank or bank holding company, shall be deemed to be a bank holding company, for purposes of determining whether such savings institution holding company is permitted to acquire the bank or bank holding company in question.

**Drafting Note: Technical change.**

~~§ 6.1-400.~~

**Drafting Note: Repealed by Acts 1998, c. 231.**

~~§ 6.1-401.~~

**Drafting Note: Repealed by Acts 1994, c. 351.**

~~§ 6.1-402.~~

**Drafting Note: Repealed by Acts 1998, c. 231.**

§ ~~6.1-403~~ 6.2-713. Applicable laws~~, rules~~ and regulations.

A. Any Virginia bank that is controlled by a bank holding company that is not a Virginia bank holding company shall be subject to all laws of ~~this~~ the Commonwealth and all ~~rules and~~ regulations under such laws that are applicable to Virginia banks controlled by Virginia bank holding companies.

B. The Commission shall ~~promulgate~~ adopt such ~~rules and~~ regulations, including the imposition of reasonable application and administration fees, as it finds necessary to implement and effect the provisions of this chapter.

**Drafting Note: "Rules and" is deleted preceding "regulations." Other changes are technical.**

§ ~~6.1-404~~ 6.2-714. ~~Periodic~~ Examinations of out-of-state bank holding companies and subsidiaries; reports; ~~interstate agreements~~ joint actions.

A. The Commission shall have the authority to examine any out-of-state bank holding company owning a Virginia bank and each of its Virginia or non-Virginia bank or nonbank subsidiaries.

B. The Commission shall require reports of each 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 out-of-state bank holding company, or the acquisition of any out-of-state bank or 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 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.~~ C. The Commission may enter into joint actions with other regulatory authorities having concurrent jurisdiction over any 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~~ the Commonwealth.

**Drafting Note: The first sentence of the second paragraph of the existing section are moved to proposed § 6.2-706 because the requirement that the Commission enter into agreements with regulatory authorities of other states is a prerequisite for Commission approval of these acquisitions. Other changes are technical.**

~~§ 6.1-405.~~

**Drafting Note: Repealed by Acts 1998, c. 231.**

§ ~~6.1-406~~ 6.2-715. Notice of intent to acquire out-of-state bank.

A Virginia bank holding company or an out-of-state bank holding company that controls a Virginia bank shall file with the Commission (i) notice of its intention to acquire a bank outside

Virginia~~, together with~~ and (ii) such information as the Commission shall request. ~~It~~ The Commission shall within~~ thirty~~ 30 days~~,~~ or an extended period not exceeding~~ fifteen~~ 15 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~~ 45 days if it determines that the acquisition will not affect detrimentally the safety or soundness of such Virginia bank.

**Drafting Note: Technical changes.**

~~§ 6.1-407.~~

**Drafting Note: Repealed by Acts 1998, c. 231.**

CHAPTER~~ 2~~ 8.

~~BANKING ACT~~ BANKS.

**Chapter drafting note: The revised caption reflects the style adopted for other chapters in proposed Title 6.2. All or parts of existing Articles 3, 3.1, 3.2, 3.2:1, and 3.3, which apply to trust services, are moved to proposed Chapter 10 (Entities Conducting Trust Business). Existing Chapter 1.2 (Compliance Review Committees), as it applies to banks, is set out as § 6.2-807. Existing Article 8 (Deposits and Reserves) is split into proposed Articles 10 (Reserves) and 11 (Deposits). Portions of existing Chapter 3.01 (Virginia Savings Institutions Act) pertaining to conversions by banks to other types of financial institutions are moved to proposed Article 4.**

Article 1.

~~In~~ General Provisions.

~~§ 6.1-3. Short title.~~

~~This chapter may be cited as the "Virginia Banking Act."~~

**Drafting note: This section is unnecessary because of the title-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

§~~ 6.1-4~~ 6.2-800. ~~Application of chapter; definitions~~ Definitions.

~~The provisions of this chapter shall apply to all state banks, and so far as constitutionally permissible, to all banks organized under the laws of the United States doing business in Virginia.~~

As used in this chapter, unless~~ a~~ the context requires a different meaning~~ is required by the context, the following words shall have the following meanings~~:

~~1.~~ "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~~ this~~ the Commonwealth.

~~2. Repealed.]~~

"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.

~~3.~~ "Bank holding company" means any ~~company~~ corporation (~~a~~ i) ~~which~~ that directly or indirectly owns, controls, or holds with power to vote, ~~twenty-five~~ 25 percent or more of the voting shares of one or more banks or of ~~a company which~~ a corporation that is or becomes a bank holding company by virtue of this ~~section~~ definition, ~~or~~ (~~b~~ ii) ~~which~~ that controls in any manner the election of a majority of the directors of one or more banks, or (~~c~~ iii) for the benefit of whose shareholders or members ~~twenty-five~~ 25 percent or more of the voting shares of one or more banks or bank holding ~~company~~ companies is held by trustees. For the purpose of this ~~section~~ definition, any successor to any such ~~company~~ corporation shall be deemed to be a bank holding company from the date as of which such successor ~~co-company~~ corporation becomes a bank holding company. Notwithstanding the foregoing, (~~i~~ a) ~~no~~ 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, (~~ii~~ b) ~~no company~~ 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, (~~iii~~ c) ~~no company~~ 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 (~~iv~~ d) ~~no company~~ a corporation shall not be a bank holding company if at least ~~eighty~~ 80 percent of its total assets are composed of holdings in the field of agriculture.

"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.

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

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

~~4.~~ "Trust company" has the meaning ~~prescribed~~ assigned to it in § ~~6.1-32.11~~ 6.2-1000.

**Drafting note: The first paragraph regarding application of the chapter is set out as proposed § 6.2-801. The term "company" in the definition of "bank holding company" is replaced with "corporation." The definition of "bankers' bank" is moved from existing § 6.1-6.1 and revised to integrate the provisions that a bankers' bank is owned by multiple financial institutions or holding companies with not one having more than a five percent interest. The definition of "international banking facility" is moved from existing § 6.1-11.2. The definition of "state bank" is new; it is identical to the definition thereof in**

**proposed § 6.2-1100. The definition of "trust business" referenced in proposed § 6.2-1000 is moved from existing § 6.1-32.11, including the exemptions in § 6.1-32.12.**

§ 6.2-801. Application of chapter.

The provisions of this chapter shall apply to all state banks, and so far as constitutionally permissible, to all banks organized under the laws of the United States doing business in Virginia.

**Drafting note: New section is the first paragraph of existing § 6.1-4.**

§ 6.2-802. Effect of chapter on certain banks.

A. Nothing in this chapter shall be construed to change or affect any privilege granted by charter to any bank incorporated before June 15, 1910, nor to affect the legality of any investment made or transaction had prior to June 18, 1928, pursuant to any provisions of law in force when such investment was made or transaction occurred.

B. No provision of this chapter other than § 6.2-803 shall apply to any bank chartered prior to June 15, 1910, under the laws of the Commonwealth but having no place of business within the Commonwealth and conducting its entire business outside of the Commonwealth.

**Drafting note: Section is the second sentence of existing § 6.1-7, which is moved to this section because it pertains to the application of this chapter to certain entities.**

§ ~~6.1-5~~ 6.2-803. ~~Who shall not do a~~ Entities authorized to engage in banking ~~or trust~~ business.

A. No person~~, copartnership or corporation~~, except (i) corporations duly chartered and already conducting ~~the~~ banking business ~~or trust business~~ in ~~this~~ the Commonwealth under authority of the laws of ~~this~~ the Commonwealth or the United States, ~~or which~~ (ii) corporations that shall hereafter be incorporated under, and authorized to conduct banking business in the Commonwealth under authority of, the laws of ~~this~~ the Commonwealth ~~or~~, (iii) corporations that shall hereafter be authorized to do business in ~~this~~ the Commonwealth under the banking laws of the United States, and ~~except~~ (iv) banks ~~which may be~~ authorized, after July 1, 1995, to establish and operate one or more branches in ~~this~~ the Commonwealth under Article ~~5.1~~ 6 (§ ~~6.1-44.1~~ 6.2-836 et seq.) or ~~5.2~~ Article 7 (§ ~~6.1-44.15~~ 6.2-849 et seq.) of this chapter, ~~and except trust companies or institutions that may be authorized to establish and operate one or more trust offices or conduct business in this Commonwealth under Article 3.1 (§ 6.1-32.1 et seq.), Article 3.2 (§ 6.1-32.11 et seq.), Article 3.2:1 (§ 6.1-32.30:1 et seq.) or Article 3.3 (§ 6.1-32.31 et seq.) of this chapter~~, shall engage in the banking business ~~or trust business~~ in ~~this~~ the Commonwealth~~, and no~~. No foreign corporation, except as permitted in Chapter ~~14~~ 7 (§ ~~6.1-390~~ 6.2-700 et seq.) ~~and Chapter 15 (§ 6.1-398 et seq.) of this title~~, shall ~~do~~ engage in a banking ~~or trust~~ business in ~~this~~ the Commonwealth.

B. Nothing in this chapter~~, however,~~ shall prevent:

1. ~~Prevent a natural person~~ An individual from qualifying and acting as trustee, personal representative, guardian, conservator, committee or in any other fiduciary capacity;

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

3. ~~Prevent any~~ Any bank ~~or trust company~~ organized under the laws of ~~this~~ the 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~~; or

4. ~~Prevent an~~ An incorporated association that is authorized to sell burial association group life insurance certificates in the Commonwealth, as described in the definition of limited burial insurance authority in § 38.2-1800, ~~whose~~ the principal purpose of which is to assist its members in (i) financial planning for their funerals and burials and (ii) obtaining insurance for the payment, in whole or in part, for funeral, burial, and related expenses, from serving as trustee of a trust established pursuant to § 54.1-2822.

C. Nothing in this section shall be construed ~~to~~:

1. To prevent banks ~~or trust companies~~ organized in ~~this~~ the Commonwealth and chartered under the laws of the United States from transacting business in ~~Virginia.~~ the Commonwealth; or

~~Nothing in this section shall be construed to~~ 2. To prevent a real estate broker as defined in § 54.1-2100 from owning or operating a bank provided that the requirements of this chapter are met.

**Drafting note: Section is narrowed to apply to the authorization to engage in banking business; provisions applicable to the conduct of trust business are relocated to proposed § 6.1-1001. "Person" is defined in proposed § 6.2-100 as including partnerships and corporations; changes in subsections A and B delete surplus language. Per § 1-245, "state" includes the District of Columbia.**

§ ~~6.1-5.1~~ 6.2-804. Amendment of powers of state banks by regulation of the Commission.

A. In addition to the powers specifically granted to banks by the provisions of this chapter, the Commission may by regulation amend the powers of state banks so as to allow such state banks to engage in any activity in which a bank subject to the jurisdiction of the federal government may be authorized by federal legislation or regulation to engage.

~~Furthermore, by adopting regulations the~~ B. The Commission, by regulation, may specify the activities that are permitted to be conducted at a location ~~which~~ that is not authorized as a branch under § ~~6.1-39.3~~ 6.2-831, ~~so as~~ in order to allow a state bank to engage in any activity in which a bank subject to the jurisdiction of the federal government may engage at a location other than a branch.

C. Regulations authorized by this section shall be adopted as provided in the Commission's Rules ~~of Practice and Procedure (5 VAC 5-10-10 et seq.)~~.

**Drafting note: Technical changes. The "Commission's Rules" are defined in proposed § 6.2-100.**

§ ~~6.1-5.2~~ 6.2-805. ~~Conferring~~ Commission authorized to confer on state banks power to make charges comparable to those permitted to national banking associations.

In addition to the permissible interest rates and charges that banks specifically, and lenders generally, are granted the power to ~~banks and to lenders generally~~ charge by this title, the ~~State Corporation~~ Commission may, by order, from time to time~~,~~ confer upon state banks the power to take, receive, reserve, and charge on any loan or discount made, at a rate of one per centum in excess of the discount rate on ~~ninety-day~~ 90-day commercial paper in effect at the Federal Reserve Bank for the fifth Federal Reserve District~~, it being intended the State Corporation~~. The Commission may thereby confer upon state banks the power to make ~~comparable~~ charges that are comparable to those permitted under any federal statute or regulation to any national banking association.

**Drafting note: Technical changes.**

~~§ 6.1-5.3. Rate of interest chargeable by state banks.~~

~~In addition to the permissible interest rates and charges specifically granted to banks by this title, state banks may take, receive, reserve and charge on any loan, any rate of interest, finance charge or other loan charge permitted to any other lender under the laws of Virginia, other than those rates or charges permitted to consumer finance companies under § 6.1-272.1.~~

**Drafting note: Section is moved to proposed § 6.2-310, in order to place with similar provisions creating exemptions to limits on the rate of interest that may be charged.**

§ ~~6.1-5.4~~ 6.2-806. Saturday closing of banks.

~~It shall be lawful for any~~ Any bank ~~as defined in § 6.1-4~~, including national banking associations and federal reserve banks, ~~to~~ may permit any one or more or all of its offices to remain closed on any one or more or all Saturdays, as the bank, by resolution of its board of directors, may from time to time determine. Any Saturday on which an office of a bank remains closed, as herein permitted, shall constitute a legal holiday as to such office~~, and any~~. Any act authorized, required or permitted to be performed at, by or with respect to any such office on a Saturday on which the office is so closed~~,~~ may be performed on the next succeeding business day ~~and no~~. No liability or loss of rights of any kind shall result from such delay.

**Drafting note: Technical changes.**

~~CHAPTER 1.2.~~

~~COMPLIANCE REVIEW COMMITTEES.~~

**Drafting note: Existing Chapter 1.2 is limited in scope to banks and savings institutions. It is of such limited length and scope that it is preferable to be set out in this proposed chapter and proposed Chapter 11 (Savings Institutions). The three sections in the existing chapter are combined into a single section.**

~~§ 6.1-2.16. Definitions.~~

~~As used in this chapter, the following terms shall have the following meanings:~~

~~"Bank" means a bank as defined in § 6.1-4.~~

~~"Compliance Review Committee" means a committee appointed by a bank's or by a savings institution's board of directors for the purpose of evaluating and improving the bank's or~~

~~savings institution's compliance with federal and state laws and adherence to its own established ethical and financial standards. The definition of compliance review committee includes any other person when that person acts in an investigatory capacity at the direction of a compliance review committee; however, the work product created by any person prior to his participation in the work of the compliance review committee or at the direction of the compliance review committee shall be subject to the rules governing discovery in accordance with the Rules of the Virginia Supreme Court~~.

~~"Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation or other entity.~~

~~"Savings institution" means a savings institution as defined in § 6.1-194.2~~.

**Drafting note: Person is defined in § 6.2-100. The definition of "bank" is deleted because the term is defined in proposed § 6.2-800. The definition of "savings institution" is deleted because the section, as set out here, is limited to banks. The definition of "compliance review committee" is moved to proposed subsections A and E of § 6.2-807.**

§ ~~6.1-2.17~~ 6.2-807. ~~Compliance~~ Discoverability or admissibility of compliance review committee documents.

A. As used in this section, "compliance review committee" means a committee appointed by the board of directors of a bank for the purpose of evaluating and improving the bank's compliance with federal and state laws and adherence to its own established ethical and financial standards, and includes any other person when that person acts in an investigatory capacity at the direction of a compliance review committee.

B. Any records, reports or other documents created by a compliance review committee are confidential and ~~are~~ shall not be discoverable or admissible in evidence in any civil action ~~except~~ unless, upon motion ~~and in the discretion of,~~ the trial court ~~if it~~ determines in its discretion that there has been an abuse of the provisions of this ~~chapter.~~ section.

~~B~~ C. Any records, reports or other documents produced by a compliance review committee and delivered to a federal or state governmental agency remain confidential and ~~are~~ shall not be discoverable or admissible in evidence in any civil action, except to the extent that ~~they are not protected from disclosure under~~ applicable ~~laws~~ law provides that such records, reports or other documents are not protected from disclosure.

~~C~~ D. In no event shall the existence of or any action by a compliance review committee serve as a basis or justification for delay of, or limit upon, the discovery process set forth in state or federal rules.

E. The work product created by any person acting in an investigatory capacity at the direction of a compliance review committee prior to his participation in the work of the compliance review committee or at the direction of the compliance review committee shall be subject to the rules governing discovery in accordance with the Rules of the Virginia Supreme Court.

F. This section shall not be construed to limit the discovery or admissibility:

1. In any civil action of any records, reports or other documents that are not created by a compliance review committee; or

2. Of any factual information which may be reviewed by a compliance review committee.

**Drafting note: Proposed subsection A contains the only remaining defined term from existing § 6.1-2.16. Existing subsections A and B are updated and clarified. Proposed subsection E is relocated from the definition of "compliance review committee" in existing § 6.1-2.16, with the qualification contained in that definition that limits it to persons acting in an investigatory capacity at the direction of a compliance review committee. Proposed subsection F is relocated from existing § 6.1-2.18.**

~~§ 6.1-2.18. Effect of chapter; discovery or admissibility not limited under certain circumstances.~~

~~This chapter shall not be construed to limit the discovery or admissibility in any civil action of any records, reports or other documents that are not created by a compliance review committee, nor shall it be construed to limit the discovery or admissibility of any factual information which may be reviewed by a compliance review committee.~~

**Drafting note: This section, with technical changes, is moved to proposed subsection F of § 6.2-807.**

Article 2.

Incorporation and Powers.

§ ~~6.1-6~~ 6.2-808. ~~How bank incorporated; application of Virginia Stock Corporation Act; consideration for shares; no-par stock~~ Incorporation; corporate powers.

A. A bank may be incorporated under the Virginia Stock Corporation Act (§ 13.1-601 et seq.), but need not comply with the provisions of subsection A of § 13.1-630.

B. Except as otherwise provided in this chapter, ~~it~~ a bank shall:

1. ~~have~~ Have all the powers conferred on corporations, and be subject to all restrictions imposed on corporations, by the Virginia Stock Corporation Act~~. Except as otherwise provided in this chapter, a bank shall~~;

2. ~~not~~ Not issue its shares for any consideration except money at least equal in amount to the par value of its shares; and ~~it shall~~

3. ~~not~~ Not issue no-par stock.

**Drafting note: Technical changes.**

§ ~~6.1-6.1~~ 6.2-809. Bankers' ~~bank; formation; applicability of banking code~~ banks.

A. A bank may be incorporated as provided in § ~~6.1-6~~ 6.2-808 for the purpose of becoming a bankers' bank. ~~A bankers' bank is a bank whose shares shall be owned exclusively by either (i) a financial institution which has or is eligible for insurance of deposits by a federal agency or (ii) a financial institution holding company as defined in § 6.1-381 or a savings institution holding company as defined in § 6.1-194.87 owning any such aforementioned entity. No such financial institution or holding company may own directly or indirectly more than five percent of the issued and outstanding voting shares of any bankers' bank.~~

B. Except as specifically provided in this section or by regulation or order of the Commission, a bankers' bank shall be vested with all of the powers and subject to all of the restrictions imposed upon a bank.

C. Notwithstanding any other provision in this title to the contrary, a bankers' bank shall only accept deposits from or make loans to (i) a financial institution which has or is eligible for insurance of deposits by a federal agency, (ii) a bank in organization that has applied for insurance of deposits by a federal agency, (iii) a financial institution holding company as defined in § ~~6.1-381~~ 6.2-700 or a savings institution holding company as defined in § ~~6.1-194.87~~ 6.2-1100 owning ~~any such aforementioned~~ an entity described in clause (i) or (ii), (iv) the officers, directors and employees of any such financial institution, bank in organization or holding company, (v) any person referred to a banker's bank by a financial institution or by a bank in organization that has applied for insurance of deposits by a federal agency, or (vi), with the prior approval of the Commissioner ~~of Financial Institutions~~ and subject to such conditions as the Commissioner may impose, other persons.

D. A bankers' bank may form a bank holding company upon compliance with the provisions of Chapter ~~13~~ 7 (§ ~~6.1-381~~ 6.2-700 et seq.) of this title and any applicable federal law.

E. A bankers' bank may purchase investments or securities of governments or private corporations which are traded on the open market such as are authorized to any other bank organized under the provisions of this chapter.

**Drafting note: The definition of a bankers' bank has been moved to proposed § 6.2-800. "Commissioner" is defined in proposed § 6.2-100.**

§ ~~6.1-7~~ 6.2-810. Effect of chapter on charter powers~~; investments~~.

The powers, privileges, duties and restrictions conferred and imposed upon any bank existing and doing business under the laws of ~~this~~ the Commonwealth are abridged, enlarged or modified, as each particular case may require, to conform to the provisions of this chapter. ~~Nothing in this chapter, however, shall be construed to change or affect any privilege granted by charter to any bank incorporated before June 15, 1910, nor to affect the legality of any investment made or transaction had prior to June 18, 1928, pursuant to any provisions of law in force when such investment was made or transaction had, nor shall the provisions of this chapter other than § 6.1-5 apply to any bank chartered prior to such date under the laws of this Commonwealth but having no place of business within this Commonwealth and conducting its entire business outside of this Commonwealth~~.

**Drafting note: The second sentence is moved to proposed § 6.2-802.**

§ ~~6.1-8~~ 6.2-811. ~~State banks may become members of~~ Membership in Federal Reserve Bank System or ~~the~~ Federal Home Loan Bank System.

Any bank ~~heretofore~~ that has been or is hereafter incorporated under the laws of ~~this~~ the Commonwealth, at its election, may~~, if it so elects,~~ become a member bank of the Federal Reserve Bank System, subject to the provisions of the Federal Reserve Act (P.L. 63-43, 38 Stat. 251) as it may be amended to permit a bank to become a member, or the Federal Home Loan Bank System ~~of the United States~~, subject to the provisions of the Federal Home Loan Bank Act

(P.L. 72-304, 47 Stat. 785) as it may be amended to permit a bank to become a member, or both, ~~subject to the provisions of the acts of Congress of the United States, approved December 23, 1913, and July 22, 1932, respectively, and of any amendment thereof permitting it to do so, and~~. Upon becoming a member of either system, the bank shall be vested with all powers conferred upon state member banks of such systems by the terms of such acts~~, which~~. The powers shall be exercised subject to all restrictions and limitations imposed by the Federal Reserve Act or the Federal Home Loan Bank Act, or by regulations of the Federal Reserve Board or the Federal Housing Finance Board, respectively, ~~made~~ adopted pursuant ~~thereto~~ to such acts. The right~~, however,~~ is expressly reserved to revoke or amend the powers ~~herein~~ conferred pursuant to this section. The ~~State Corporation~~ Commission may disclose to the Federal Reserve Board, or to examiners duly appointed by it, all information in reference to the affairs of any bank which has become, or desires to become a member of the system.

**Drafting note: Technical changes. References to the Federal Reserve Act and the Federal Home Loan Bank Act are updated to conform to current style.**

§ ~~6.1-9~~ 6.2-812. ~~State~~ Inspection of records, reports, and information of insured banks ~~may become insured under Federal Reserve Act~~.

A. As used in this section, "insured bank" has the meaning assigned to it in § 12-B of the Federal Reserve Act (12 U.S.C. 1813(h)), as amended.

~~Any bank heretofore or hereafter incorporated under the laws of this Commonwealth may, if it so elects, become an "insured bank" as that term is used in section twelve B of the Federal Reserve Act, as amended, providing for the creation of a Federal Deposit Insurance Corporation, and shall, upon becoming an insured bank, be vested with all powers conferred by the section and any amendment thereof upon state banks which shall become insured banks. Such powers shall be exercised subject to all restrictions and limitations imposed upon such banks by the section and any amendment thereof.~~ B. All records, reports, reports of examinations, and information relating to insured banks shall be open to the inspection of, and made available to, the officers and duly accredited agents of the Federal Deposit Insurance Corporation so long as like records, reports, and information in the possession or under the control of the Federal Deposit Insurance Corporation are, by federal statute, made available and subject to ~~the~~ inspection ~~of the governmental authority of this Commonwealth having supervisory authority over such banks~~ by the Commission.

**Drafting Note: The first two sentences are deleted as unnecessary because (i) the requirement that banks' deposits be federally insured is set out in subdivision A 7 of proposed § 6.2-816 and (ii) the extent to which banks are vested with powers by federal law is governed by federal law. The "governmental authority of this Commonwealth" referred to in the last sentence is the State Corporation Commission. Section 12B was withdrawn from the Federal Reserve Act and made the Federal Deposit Insurance Act by section 1 of act Sept. 21, 1950, ch. 967, 64 Stat. 873, which is codified at Chapter 16 (§ 1811 et seq.) of Title 12 of the United States Code.**

§ ~~6.1-10~~ 6.2-813. Participation by banks in school thrift or savings plans.

A bank may contract with the principal of any elementary or secondary school, if authorized to do so ~~to do~~ by the school board in any ~~county, city or town wherein such~~ locality where the bank has a location, for the ~~participation by the~~ bank to participate in ~~any~~ a school thrift or savings plan~~, and it~~. A participating bank may accept deposits at ~~such a~~ the school either by its own collector or by any representative of the school who becomes the agent of the bank for such purpose.

**Drafting Note: Technical changes.**

§ ~~6.1-11~~ 6.2-814. ~~Permissible business~~ Powers of banks.

A. Every ~~such~~ bank shall have power to exercise, by its board of directors~~,~~ or duly authorized officers or agents, subject to law, all ~~such~~ incidental powers ~~as shall be~~ that are necessary to carry on the business of banking, by:

1. Discounting and negotiating bills of exchange, promissory notes, drafts, and other evidences of debt;

2. Receiving deposits;

3. Buying and selling exchange, coin, and bullion;

4. Loaning money on real ~~and~~ property, personal property, security, or collateral;

5. Guaranteeing the payment of bonds, bills, notes and other obligations~~, having not more than~~ that have six months ~~to run~~ or fewer until maturity;

6. Rediscounting paper;

7. Purchasing and selling bonds;

8. Acting as agent in the sale of insurance and annuities;

9. Dealing in or making a market in securities;

10. Providing financial, investment, or economic advisory services;

11. Providing other products and services deemed by the Commission to be financial in nature;

12. Engaging directly in those activities in which a controlled subsidiary corporation of a bank is authorized to engage pursuant to §§ ~~6.1-58.1~~ 6.2-885 and ~~6.1-58.3~~ 6.2-888 in accordance with the requirements of such sections, ~~and further~~ provided that a bank, or a controlled subsidiary corporation of a bank, that transacts business as a real estate brokerage firm shall be subject to the provisions of § ~~6.1-58.3~~ 6.2-888;

13. Establishing an international banking facility, either as a division of the bank or as a separate corporate entity under § 6.2-885; and

14. Utilizing armored vehicles or other vehicles to provide adequate protection for the funds transported for receipt of deposits of its customers or to deliver currency and coin.

B. In addition to the permissible business authorized by subsection A, the Commission may, upon the Commission's finding that an emergency exists, confer by order upon banks such temporary powers as the Commission may determine to be in the public interest. Such powers as are conferred may be (i) authorized for a limited period of time, (ii) granted selectively to fewer than all banks, and (iii) revoked by further order of the Commission.

**Drafting Note: Proposed subsection B is moved from existing § 6.1-11.1. In proposed subdivision A 4, "property" is inserted to clarify its purpose. Proposed subdivision A 13 is moved from existing 6.1-11.2. Proposed subdivision A 14 is moved from existing § 6.1-41.1. Other changes update archaic usage.**

~~§ 6.1-11.1. Grant of special powers to banks by the Commission.~~

~~In addition to the permissible business authorized by § 6.1-11, the State Corporation Commission may, upon the Commission's finding that an emergency exists, confer by order upon banks such temporary powers as the Commission may determine to be in the public interest and such powers as are granted may be authorized for a limited period of time, may be granted selectively to fewer than all banks, and may be revoked by further order of the Commission.~~

**Drafting Note: Section is moved to proposed subsection B of § 6.2-814.**

~~§ 6.1-11.2. International banking facility.~~

~~A bank may establish an international banking facility, either as a division of the bank or as a separate corporate entity under § 6.1-58.1. An "international banking facility" shall mean 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" shall have the same meaning as set forth in the laws of the United States or the regulations of the Board of Governors for the Federal Reserve System.~~

**Drafting Note: The first sentence is moved to proposed subdivision A 13 of § 6.2-814. The definition of "international banking facility" is moved to proposed § 6.2-800.**

§ ~~6.1-12~~ 6.2-815. Suspension of business during ~~actual or threatened enemy attack or other~~ emergency.

Every bank ~~and trust company~~ doing business in ~~this~~ the Commonwealth is authorized temporarily to suspend its usual business during a period of actual or threatened enemy attack, civil insurrection or riot, affecting the community in which such institution is doing business or other emergency justifying temporary closing such as fire, flood or hurricane.

**Drafting Note: This section, as it applies to trust companies, is duplicated as subsection C of proposed § 6.2-1002.**

§ ~~6.1-13~~ 6.2-816. ~~Bank~~ Banks to obtain certificate of authority ~~before beginning business; prerequisites to issuance of certificate~~.

~~A.~~ Before any bank shall begin business it shall obtain from the ~~State Corporation~~ Commission a certificate of authority authorizing it to do so. Prior to the issuance of such certificate, the Commission shall ascertain:

1. That all of the provisions of law have been complied with;

2. That financially responsible individuals have subscribed for capital stock and surplus in an amount deemed by the Commission to be sufficient to warrant successful operation~~, provided that the~~. ~~The~~ amount of capital stock shall not be less than ~~two~~ $2 million ~~dollars~~, except that the capital stock shall not be less than $500,000 for any trust company incorporated

for the sole purpose of exercising fiduciary powers authorized by the provisions of Article 3 (§ ~~6.1-16~~ 6.2-819 et seq.) ~~of this chapter~~. The minimum capital stock requirement under this subdivision (i) shall apply ~~in cases in which~~ when a bank is being organized to begin business~~; it shall~~ and (ii) shall not ~~be applicable~~ apply when this section is referred to or used in connection with the conversion of an operating savings institution or national bank to a state bank~~,~~ or ~~when this section is used in connection with~~ the reorganization of an operating bank under a holding company;

3. That oaths of all the directors have been taken and filed in accordance with the provisions of § ~~6.1-48~~ 6.2-863;

4. That, in its opinion, the public interest will be served by banking facilities or additional banking facilities, as the case may be, in the community where the bank is proposed. The addition of such facilities shall be deemed in the public interest if, based on all relevant evidence and information, advantages such as, but not limited to, increased competition, additional convenience, or gains in efficiency outweigh possible adverse effects such as, but not limited to, diminished or unfair competition, undue concentration of resources, conflicts of interests, or unsafe or unsound practices;

5. That the corporation is formed for no other reason than a legitimate banking business;

6. That the moral fitness, financial responsibility, and business qualifications of ~~those~~ individuals named as officers and directors of the proposed bank are ~~such as~~ sufficient to command the confidence of the community ~~in which~~ where the bank is proposed ~~to be located~~;

7. That ~~its~~ the bank's deposits are to be insured ~~or guaranteed~~ by a ~~state or~~ federal agency up to the limits of the insurance provided thereby~~, except that any trust company incorporated for the sole purpose of exercising fiduciary powers authorized by the provisions of Article 3 (§ 6.1-16 et seq.) of this chapter shall not be required to obtain such insurance and guarantees~~; and

8. Anything else deemed pertinent.

~~B. The Commission shall not be required to ascertain the findings set forth in subdivisions 4, 5 and 7 of subsection A of this section in order to grant a certificate of authority to a bank which is formed for the purpose of its being acquired in accordance with the provisions of Chapter 14 (§ 6.1-390 et seq.) of this title.~~

**Drafting Note: In proposed subdivision 7, the reference to "guarantees" of bank deposits is deleted because it is not consistent with current practice, and the reference to a state agency insuring deposits is deleted because no such state agency exists. The exception for trust companies in proposed subdivision 7 is deleted as a non sequitur because there are no trust companies that exist to hold deposits. Existing subsection B is deleted because it pertains to credit card banks formed for the purpose of being acquired by an out-of-state bank holding company or general business corporation pursuant to existing Chapter 14, which chapter is deleted as obsolete. Other changes are technical.**

§ ~~6.1-14~~ 6.2-817. ~~How~~ Capital stock subscriptions ~~to stock to be paid; bank not to begin business until amounts specified in certificate of authority received; disposition of money received before bank opens; stock option plans~~.

A. Subscriptions to the capital stock of a bank shall be paid in money at not less than par. No bank shall begin business until the amounts specified in its certificate of authority to commence business have been received by ~~it~~ the bank.

B. All money received for subscriptions to or for purchases of stock of a bank before it opens for business shall be deposited in an escrow account in an insured financial institution or invested in United States government obligations, under the joint control of two organizing directors of the bank, both of whom shall be bonded for an amount equal to the total amount of the money to be collected. Such funds, together with any income thereon, shall be remitted to the bank on the day it opens for business. ~~In~~ If the ~~event the~~ bank is denied a certificate of authority~~,~~ or is refused insurance of accounts, or it otherwise is determined that the bank will not open for business, such funds, after payment of any amount owing for expenses in connection with such attempted organization, including reasonable consulting fees, ~~attorney's~~ attorney fees, salaries, filing fees, and other expenses, shall be refunded to subscribers or shareholders.

C. The requirement that capital stock be paid in money shall not be construed to prohibit the establishment, as otherwise authorized by law, of stock option plans and stock purchase plans, and the issuance of stock pursuant to such plans. Such plans shall be established only after the bank has opened for business, and ~~such plans~~ shall be approved by a majority vote of the bank's shareholders. In no event shall any stock option be granted at a price which is less than 100 percent of the book value per share of the stock as shown by the bank's last published statement prior to the granting of the option.

**Drafting Note: Technical changes.**

§ ~~6.1-15~~ 6.2-818. Commissions~~, fees, etc.,~~ or other compensation for sale of stock not permitted.

The ~~State Corporation~~ Commission shall not issue a certificate of authority to any bank to commence business if commissions, fees, brokerage, or other compensation, ~~by whatever name it may be called~~, have been paid or contracted to be paid by the bank, or by anyone in its behalf, either directly or indirectly, to any person~~, partnership, association or corporation~~ for the sale of stock in ~~said~~ the bank.

**Drafting Note: Technical changes. Per § 6.2-100, "person" includes the other entities listed. The existing phrase "by whatever named it may be called" is deleted as redundant, because "other compensation" would include any such items.**

Article 3.

Conduct of Trust ~~Powers~~ Business by Banks.

§ ~~6.1-16~~ 6.2-819. ~~What banks may~~ Authority to engage in trust business; permission of ~~State Corporation~~ Commission required.

A. A bank shall not engage in the trust business unless its articles of incorporation state that one of its purposes is to engage in the trust business.

B. ~~It~~ A bank shall not commence to engage in the trust business without first obtaining permission from the ~~State Corporation~~ Commission. The Commission shall not grant such permission unless it finds~~:~~ that ~~the~~:

1. The bank's capital structure is sufficiently strong to support such additional undertaking~~, that the~~;

2. The personnel who will direct the proposed trust department have adequate experience and training, and will devote sufficient time to its affairs to insure compliance with the law and to protect the bank against surcharge~~, and that the~~; and

3. The granting of trust powers to the bank will be in the public interest.

~~But~~ C. Notwithstanding the provisions of subsection B, any bank actively engaged in the trust business on January 1, 1966, may continue in the trust business without ~~such~~ the Commission's permission.

D. A bank authorized to do a trust business shall conduct such business in accordance with the applicable provisions of Chapter 10 (§ 6.2-1000 et seq.).

**Drafting Note: Proposed subsection D is new; it is added to refer users to proposed Chapter 10, which includes provisions in existing Article 3 regarding the exercise of trust powers by banks. Other changes are technical.**

§ ~~6.1-17~~ 6.2-820. Powers of ~~banks and trust companies;~~ national banks as fiduciaries.

~~All banks that are authorized to do a trust business, and all trust companies heretofore and hereafter chartered, shall have the following rights, powers and privileges, and shall be subject to the following regulations and restrictions:~~

~~(1) To act as agent for any person, corporation, municipality or state for the collection or disbursement of interest, or income or principal of securities.~~

~~(2) To act as the fiscal or transfer agent of any state, municipality, body politic or corporate, and in such capacity to receive and disburse money; to transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any lawful purpose.~~

~~(3) To act as trustee under any mortgage or bond issued by an individual, municipality, body politic or corporate, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this Commonwealth.~~

~~(4) To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.~~

~~(5) To act as guardian, receiver or trustee of the estate of any minor and as depository of any money paid into court, whether for the benefit of any minor or other person, corporation or party.~~

~~(6) To take, accept and execute any and all such lawful trusts, duties and powers in regard to the holding and management and disposition of any estate, real and personal, and the rents and profits thereof, or the sale or lease thereof, as may be granted or confided to it by any circuit court, judge or clerk, or by any person, corporation, municipality or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.~~

~~(7) To take, accept and execute any and all such trusts and powers, of whatever nature and description, as may be conferred upon or entrusted or committed to it by any person or persons, or any body politic or corporate, or by other authority, by grant, assignment, transfer, devise, bequest or otherwise or as may be entrusted or committed or transferred to it or vested in it by order of any circuit court, judge or clerk, and to receive and hold any property or estate, real or personal, which may be the subject of any such trust.~~

~~(8) To act as executor under the last will and testament or administrator of the estate of any deceased person; or as guardian of the person or of the estate of any infant; or as guardian, or conservator of any incapacitated person or habitual drunkard or any person who by reason of advanced age or impaired health or physical disability has become mentally or physically incapable of taking proper care of his person or properly handling and managing his estate, or trustee or committee for any convict in the penitentiary, under appointment of any circuit court, judge or clerk thereof, having jurisdiction of the estate of such deceased person or other person. In the case of qualification before or after July 1, 1984, if the order of qualification of a bank as committee or guardian fails to specify that the bank is to be guardian or committee of the person, it shall be deemed a qualification solely as committee, conservator or guardian of the estate.~~

~~Nothing in this section shall ever be construed as authorizing the creation of a trust not lawful as between individuals nor to prohibit the deposit of funds by court and fiduciaries in banks of deposit and discount and savings banks.~~

All national banks ~~which~~ that have been, or hereafter may be, permitted by law to act as trustee and in other fiduciary capacities, shall have the rights, powers, privileges, and immunities conferred upon trust companies by ~~this chapter~~ Chapter 10 (§ 6.2-1000 et seq.).

**Drafting Note: This section, except for the last paragraph, is moved to proposed § 6.2-1002. The revision in the remaining paragraph reflects that provisions conferring powers, privileges, and immunities upon trust companies have been moved to proposed Chapter 10.**

~~§ 6.1-18. When security not required.~~

~~No bank or trust company of this Commonwealth, with a minimum unimpaired capital stock of $50,000 or more, shall be required by any officer or court of this Commonwealth to give security upon appointment to or acceptance of any office of trust which it may, by law, be authorized to execute or to give security upon any bond given pursuant to § 4.1-341 or similar statute; provided, however, no bank or trust company shall qualify on an estate having a value in excess of its combined unimpaired capital and surplus without giving bond for such excess. When such bank or trust company shall qualify on any office of trust, the clerk in lieu of collecting the fees under Title 17.1 and probate taxes may render a bill or statement to such bank or trust company to be paid within five business days.~~

**Drafting Note: This section is moved to proposed § 6.2-1003.**

~~§ 6.1-19. Who may take oath for corporate fiduciary.~~

~~In all cases where any bank, trust company or trust subsidiary in this Commonwealth shall be appointed to act as trustee, executor or administrator of any estate or guardian for any infant, or in any other fiduciary capacity, it shall be lawful for the president, vice-president,~~

~~cashier, treasurer, secretary, or any other officer of such bank, trust company or trust subsidiary to take and subscribe for such corporation any and all oaths required to be taken or subscribed by such executor, administrator, trustee, guardian, or other fiduciary.~~

**Drafting Note: This section is moved to proposed § 6.2-1004.**

§ ~~6.1-20~~ 6.2-821. Separation of banking and trust functions; establishment of trust department.

Every state bank ~~which~~ that obtains permission from the ~~State Corporation~~ Commission to ~~do a~~ engage in trust business~~, and every trust company chartered prior to January 1, 1993, which is permitted to do commercial banking,~~ shall establish a separate trust department. Such department shall be established before such institution undertakes to act in any fiduciary capacity and shall be placed under the management of an officer or officers whose duties shall be prescribed by the board of directors of the institution or by either an amendment to the bylaws of the institution or by a resolution duly entered in the minutes of the board of directors.

**Drafting Note: The provision regarding trust companies chartered prior to January 1, 1993, is deleted because there exist no trust companies chartered prior to January 1, 1993, and there are no trust companies permitted to do commercial banking. The other changes are technical.**

**Drafting Note: The other existing sections of existing Article 3 of Chapter 2, consisting of §§ 6.1-21, 6.1-22, 6.1-23, 6.1-24, 6.1-30.1, 6.1-30.2, 6.1-30.3, 6.1-31, 6.1-31.1, 6.1-31.2, and 6.1-32, are moved to proposed Article 1 of Chapter 10, and are set out at §§ 6.2-1005 through 6.2-1012.**

~~Article 3.1.~~

~~Trust Subsidiary Act.~~

**Drafting Note: Existing Article 3.1 is relocated to proposed Chapter 10 (Entities Conducting Trust Business) as Article 3 (Trust Subsidiaries), consisting of §§ 6.2-1047 through 6.2-1064.**

~~Article 3.2.~~

~~Trust Company Act.~~

**Drafting Note: Existing Article 3.2 is relocated to proposed Chapter 10 (Entities Conducting Trust Business) as Article 2 (Trust Companies), consisting of §§ 6.2-1013 through 6.2-1046.**

~~Article 3.2:1.~~

~~Private Trust Company Act.~~

**Drafting Note: Existing Article 3.2:1 is relocated to proposed Chapter 10 (Entities Conducting Trust Business) as Article 5 (Private Trust Companies), consisting of §§ 6.2-1074 through 6.2-1080.**

~~Article 3.3.~~

~~Multistate Trust Institutions Act.~~

**Drafting Note: Existing Article 3.3 is relocated to proposed Chapter 10 (Entities Conducting Trust Business) as Article 4 (Multistate Trust Institutions), consisting of §§ 6.2-1065 through 6.2-1073.**

Article 4.

~~Conversion of State~~ Bank ~~Into National Bank and Vice Versa~~ Mergers and Conversions.

§ ~~6.1-43~~ 6.2-822. Merger ~~or~~ and share exchange ~~authorized; laws applicable~~ by state banks.

A. Virginia banks as defined in § ~~6.1-44.16~~ 6.2-849 may merge upon compliance with the provisions of Article 12 (§ 13.1-715.1 et seq.) of the Virginia Stock Corporation Act. ~~However, the~~ The provisions of ~~§~~:

1. Section 13.1-716 that relate to a merger with a foreign corporation as foreign eligible entity shall not apply, except ~~as hereafter provided~~ that the provisions of § 13.1-716 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; ~~the provisions of §~~ and

2. Section 13.1-730 shall not apply to a merger under this section. ~~The provisions of § 13.1-716 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.~~

B. 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, provided there is also compliance with Chapter ~~13~~ 7 (§ ~~6.1-381~~ 6.2-700 et seq.) ~~or Chapter 15 (§ 6.1-398 et seq.) of this title~~. The exclusion in subdivision G 3 of § ~~6.1-387~~ 6.2-705 shall not apply in the case of such an exchange of shares.

~~§ 6.1-44. Effect of merger; certificate of authority required.~~

C. In the event of ~~any such~~ a merger ~~as is~~ authorized by ~~§ 6.1-43~~ subsection A or B, the merged corporation ~~(~~, whether it be one of merging banks, or a new bank formed by means of such merger~~),~~ shall without further act or deed succeed to, and be vested with all offices, rights, obligations and relations of trust or of a fiduciary nature, including appointments, designations and nominations, existing immediately prior to the time at which such merger became effective, or then belonging or pertaining to any one or more of the banks, parties to such merger, or which would then inure to any one or more of such banks.

~~But no~~ D. No state bank resulting from any merger shall do business in ~~Virginia~~ the Commonwealth until it shall have obtained from the ~~State Corporation~~ Commission a certificate of authority authorizing it to do so. The provisions of § ~~6.1-13~~ 6.2-816 shall apply to the issuance, or refusal of the Commission to issue, the certificate herein provided for, to the same extent as if the merged bank were a new bank.

E. In the case of a merger heretofore or hereafter effected, the surviving or new bank shall be deemed to have been in actual operation for the period during which the oldest of the banks involved in the merger has been in actual operation.

**Drafting note: Sections 6.1-43 and 6.1-44 are combined to create this new proposed section; these existing sections are set out in order to facilitate identification of changes. Other changes are stylistic.**

§ ~~6.1-33~~ 6.2-823. ~~National~~ Conversion of national banking association ~~may become~~ to state bank; ~~procedure~~ certificate of authority.

A. A national banking association, organized under the laws of the United States and doing business in ~~this~~ the Commonwealth, may be converted into and become ~~an incorporated~~ a state bank ~~of this Commonwealth~~ by the following procedure:

1. The directors of the national banking association shall cause to be incorporated under the laws of ~~this~~ the Commonwealth a corporation authorized by its certificate of incorporation to conduct the business of banking as the successor of the national banking association. With regard to such incorporation:

a. The certificate of incorporation of ~~said~~ the corporation shall conform as nearly as may be legally permissible to that of the national banking association~~.~~;

b. The principal office of ~~said~~ the corporation shall be in the county or city wherein the national banking association has its principal office~~.~~; and

c. The amount of the capital stock of ~~said~~ the corporation, its division into shares, the par value of shares, their classification and preferences, if any, shall conform to those of the national banking association, and the minimum capital of the state bank shall comply with that required for a bank under § ~~6.1-13~~ 6.2-816.

2. The ~~procedure to be followed in effecting the conversion of a~~ national banking association shall effect its conversion to a state bank ~~shall be that~~ in accordance with the procedure prescribed by ~~the act of Congress of August 17, 1950, Chapter 729~~ Subchapter XV of Chapter 2 of Title 12 of the United States Code (12 U.S.C. § 214 et seq.), as it now exists or as it may hereafter be amended.

3. Upon completion of the procedures required by ~~federal law~~ subdivision 2, the president of the national banking association and the official having custody of its records shall execute, under the seal of the association, a certificate showing in detail the procedures followed, the number of shares of each class of stock of the national banking association issued and outstanding, and the vote of each class of stockholders in favor of the plan of conversion~~, and~~. The national banking association shall then file ~~said~~ the certificate with the ~~State Corporation~~ Commission.

B. The Commission shall examine the certificate filed pursuant to subdivision A 3. If from such examination it appears that the procedure required by subdivision A 2 has been followed and that the conversion has been approved by the stockholders of the national banking association in the manner and by the percentage vote required by federal law, the Commission may issue to the newly incorporated state bank a certificate of authority to do business as a bank, in accordance with the provisions of § 6.2-816. Upon the issue of such certificate, the conversion of the national banking association into a state bank shall become effective and be automatically completed.

**Drafting Note: Subsection B is existing § 6.1-38, with technical changes. The reference in proposed subdivision A 2 to the requirements of the Bank Merger Act as codified is intended to improve the accessibility of the provision without making a substantive change.**

§ ~~6.1-34~~ 6.2-824. ~~New~~ Status of converted bank ~~considered same business and corporate entity as old; reference to latter in contract, will or document~~.

Upon the conversion of a national banking association to a state bank~~,~~ as provided in §~~§ 6.1-33 and 6.1-38~~ 6.2-823, the state bank shall be considered to be the same business and corporate entity as the former national banking association ~~but with~~, except that the state bank shall have the rights, powers, and duties as prescribed by state law. Any reference to the former national banking association in any contract, will, or document shall be ~~considered and construed as~~ deemed to be a reference to the state bank if not inconsistent with the provisions of the contract, will, or document or with applicable law.

**Drafting Note: Technical changes.**

§ ~~6.1-35~~ 6.2-825. State bank becoming national bank; notice required; effect on liabilities.

A. Any bank incorporated under the laws of ~~this~~ the Commonwealth may, upon compliance with ~~the laws of the United States~~ federal law, be converted into a national banking association.

~~Whenever~~ B. When any ~~such~~ state bank ~~shall have become~~ becomes a corporation for carrying on the business of banking under ~~the laws of the United States~~ federal law, it shall notify the ~~State Corporation~~ Commission of such fact~~,~~ and ~~shall~~ file with ~~it~~ the Commission a copy of its authorization as a national banking association certified by the Comptroller of the Currency. ~~It~~ Such bank shall thereupon cease to be a corporation under the laws of ~~this~~ the Commonwealth, except that, for a period not exceeding three years thereafter, its corporate existence shall be deemed to continue for the ~~purpose~~ purposes of (i) prosecuting or defending suits by or against it~~,~~ and ~~of~~ (ii) enabling it to settle and close its affairs, to dispose of and convey its property, and to divide its capital, but not for the purpose of continuing the business for which such bank ~~shall have been~~ was established.

~~Such change~~ C. A conversion from a state to a national bank shall not release ~~any such~~ the state bank from its obligations to pay and discharge (i) all the liabilities created by law or incurred by it before becoming a national banking association, ~~or~~ (ii) any tax imposed by the laws of ~~this~~ the Commonwealth up to the date of its becoming such national banking association in proportion to the time which has elapsed since the next preceding payment therefor, or (iii) any assessment, penalty, or forfeiture imposed or incurred under the laws of ~~this~~ the Commonwealth up to the date ~~of its becoming~~ it became a national banking association.

**Drafting Note: Technical changes.**

§ ~~6.1-36~~ 6.2-826. ~~General effect~~ Effect of ~~change~~ conversion of state bank to national bank.

A. ~~At the time when such~~ When a conversion of a state bank into a national banking association under the authority granted by ~~the preceding section (§ 6.1-35)~~ 6.2-825 becomes

effective, all the property of the former state bank, including all its right, title, and interest in and to all property of ~~whatsoever~~ every kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or which would inure to it, shall immediately, by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of such national bank~~, which~~. The national bank shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, or enjoyed by ~~such~~ the state bank~~; and such~~. The national bank shall be deemed to be a continuation of the entity and identity of ~~such~~ the state banking corporation~~,~~ that is operated under and pursuant to ~~the laws of the United States, and all~~ federal law.

B. All the rights, obligations, and relations of ~~such~~ the converted state ~~banking corporation~~ bank to or in respect to (i) any person, estate, creditor, depositor, trustee, or beneficiary of any trust, and ~~in or in respect to~~ (ii) any executorship or trusteeship or other trust or fiduciary function, including appointments, designations, and nominations, shall remain unimpaired. ~~And such~~ The national bank, as of the beginning of its corporate existence, shall, by operation of this section, succeed to all such rights, obligations, relations, and trusts, including appointments, designations, and nominations, and the duties and liabilities connected therewith~~, and~~. The national bank shall execute and perform each and every such trust and relation in the same manner as if such national bank had itself assumed the trust or relation, including the obligations and liabilities connected therewith.

C. If ~~such~~ the state banking corporation ~~be~~ is acting as administrator, coadministrator, executor, coexecutor, trustee, or cotrustee of, or in respect to, any estate or trust being administered under the laws of ~~this~~ the Commonwealth, such relation, as well as any other or similar fiduciary relation, and all rights, privileges, duties, and obligations connected therewith, shall remain unimpaired and shall continue ~~into and~~ in such national bank from and as of the beginning of its corporate existence, irrespective of (i) the date when any such relation may have been created or established, ~~and irrespective of~~ (ii) the date of any trust agreement relating thereto, or (iii) the date of the death of any testator or decedent whose estate is being so administered.

D. Nothing done in connection with ~~the change~~ a conversion from a state to a national bank ~~shall~~, in respect to any such executorship, trusteeship, or similar fiduciary relation, shall (i) be deemed to be or to effect, under the laws of ~~this~~ the Commonwealth, a renunciation or revocation of any letters of administration or letters testamentary pertaining to such relation~~, nor~~ or a removal or resignation from any such executorship or trusteeship, ~~nor shall such act or any other thing done~~ or (ii) be deemed to be of the same effect as if the executor or trustee had died or otherwise become incompetent to act~~; provided, however, that nothing~~. Nothing in this section shall in any way affect any provisions of law ~~in case of~~ if a national bank ~~becoming~~ becomes a state bank.

**Drafting Note: Technical changes.**

§ ~~6.1-37~~ 6.2-827. Rights of national bank stockholders dissenting from conversion.

The rights of stockholders of ~~the~~ a national banking association who dissent from the ~~action of~~ approval by the stockholders~~, approving~~ of the conversion of the national banking corporation into a state bank~~,~~ shall be governed by the provisions of 12 U.S.C. §~~2~~ 214a (b) ~~of the act of Congress of August 17, 1950, Chapter 729~~, as now existing or as hereafter amended.

**Drafting Note: Technical changes. See drafting note to proposed § 6.2-823 regarding citations to the federal Bank Merger Act.**

~~§ 6.1-38. Issuance of certificate of authority to state bank converted from national bank.~~

~~The State Corporation Commission shall examine the certificate filed pursuant to § 6.1-33 and if from such examination it appears that the procedure required by federal law has been followed and that the conversion has been approved by the stockholders of the national banking association in the manner and by the percentage vote required by federal law, the Commission may issue to the newly incorporated state bank a certificate of authority to do business as a bank, in accordance with the provisions of § 6.1-13 and upon the issue of such certificate the conversion of the national banking association into a state bank shall be and become effective and automatically completed.~~

**Drafting Note: Section is moved to subsection B of proposed § 6.2-823.**

§ ~~6.1-194.33~~ 6.2-828. ~~How~~ Conversion of state ~~association or~~ bank ~~may convert into~~ to federal savings institution.

A. A ~~state association or~~ state bank may convert into a federal savings institution as follows:

1. At any meeting of the ~~members or~~ stockholders called and held in accordance with the Virginia Stock Corporation Act (§ 13.1-601 et seq.) or the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) to consider such action, the ~~members or~~ stockholders, by an affirmative vote of those holding and voting two-thirds of the votes present in person or by proxy, may resolve to convert the ~~association or~~ bank into a federal savings institution;

2. A copy of the minutes of the meeting duly certified by the president or vice-president and the secretary or assistant secretary of the state ~~association or~~ bank shall be transmitted to the Commission;

3. Thereafter, the state ~~association or~~ bank shall take such action as is necessary under federal law to make it a federal savings institution; and

4. ~~It~~ The bank shall file with the Commission a certified copy of the charter issued to it by the federal chartering authority, or a certificate of that authority showing the organization of the ~~state association or~~ bank as a federal savings institution~~, and the association or~~.

B. Upon the filing of the certified copy of a charter or certificate of authority as provided in subdivision A 4, the bank shall ~~thereupon~~ cease to be a state ~~association or~~ bank~~;~~.

~~5~~ C. No state ~~association or~~ bank shall convert into a federal savings institution until it has been in operation as a state ~~association or~~ bank for a period of at least five years.

~~§ 6.1-194.34. Effect of conversion of state association or bank into federal savings institution.~~

D. When ~~such~~ a conversion of a state bank into federal savings institution becomes effective, the state ~~association or~~ bank shall cease to be a Virginia corporation and all its property ~~shall,~~ by operation of law and without any further act or deed, shall continue to be vested in it under its new name as a federal savings institution and under its federal charter. The federal savings institution shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state ~~association or~~ bank. ~~Such~~ The federal savings institution, at the time of the taking effect of the conversion, shall become and continue responsible for all of the obligations of the state ~~association or~~ bank including taxes and other liabilities created by law or incurred by it before becoming a federal savings institution to the same extent as though the conversion had not taken place.

**Drafting note: Section is existing § 6.1-194.33 (at proposed subsections A, B, and C) and § 6.1-193.34 (at proposed subsection D), as revised to delete provisions referring to conversions of a state savings institution into a federal savings institutions. The parallel provision addressing conversions of state savings institutions to federal savings institutions is located at proposed § 6.2-1141. Other changes are technical.**

§ ~~6.1-194.129~~ 6.2-829. Conversion from state savings bank to state ~~association or commercial~~ bank; conversion from state ~~association or commercial~~ bank to state savings bank.

A. A state savings bank may be converted into a ~~state association or a~~ state bank ~~by the amendment of its articles of incorporation in~~ upon compliance with the procedure ~~established by Title 13.1, provided that such conversion is approved in advance by the Commission~~ set forth in subsection A of § 6.2-1144. ~~Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a savings and loan association or banking business, as the case may be, and approval shall not be granted unless the applicant meets the standards established by § 6.1-194.12 or § 6.1-13, as applicable. The order granting a certificate of authority to do a savings and loan or banking business shall designate the main office of the state savings bank as the main office of the resulting financial institution. The resulting financial institution shall be permitted to operate all branch offices of the state savings bank that could have been established de novo by such financial institution having its main office at such location or which were in operation for at least five years prior to the date of the order permitting conversion. Within one year of the date of a conversion, the resulting financial institution shall conform its assets and operations to the provisions of law regulating the operation of state associations or banks, as the case may be. The Commission may grant such resulting financial institution additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations as required by this section.~~

B. A ~~state association or~~ state bank may be converted into a state savings bank by the amendment of its articles of incorporation in compliance with the procedure established by Title 13.1, provided that such conversion is approved in advance by the Commission. Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a savings bank, and

approval shall not be granted unless the applicant meets the standards established by § ~~6.1-194.114~~ 6.2-1118. Within one year of the date of the conversion, the resulting state savings bank shall conform its assets and operations to the provisions of law regulating the operation of state savings banks. The Commission may grant such resulting state savings bank additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of law regulating the operation of state savings banks.

**Drafting note: New section is existing § 6.1-194.129 as it applies to conversions of a state bank into a state savings bank. Provisions pertaining to conversions of state savings banks to state associations and from state associations to state savings banks are set out at proposed § 6.2-1143.**

§ ~~6.1-194.38~~ 6.2-830. Conversion from stock association to bank; conversion from bank to stock association.

A. A state stock association may be converted into a bank ~~by the amendment of its articles of incorporation in~~ upon compliance with the procedure ~~established by Title 13.1, provided that such conversion is approved in advance by the Commission~~ set forth in § 6.2-1144. ~~Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a banking business, and approval shall not be granted unless the applicant meets the standards established by § 6.1-13. The order granting a certificate of authority to do a banking business shall designate the main office of the association as the main office of the resulting bank, and the resulting bank shall be permitted to operate all branch offices of the association that could have been established de novo by a bank having its main office at such location or which were in operation for at least five years prior to the date of the order permitting conversion. Within one year of the date of a conversion, the resulting bank shall conform its assets and operations to the provisions of law regulating the operation of banks. The Commission may grant such resulting bank additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of laws regulating the operation of banks.~~

B. A bank may be converted into a stock association by the amendment of its articles of incorporation in compliance with the procedure established by Title 13.1, provided that such conversion is approved in advance by the Commission. Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it ~~were~~ was an application for a certificate of authority to begin a savings and loan business, and approval shall not be granted unless the applicant meets the standards established by § ~~6.1-194.12~~ 6.2-1118. Within one year of the date of the conversion, the resulting stock association shall conform its assets and operations to the provisions of law regulating the operation of savings and loan associations. The Commission may grant such resulting stock association additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of law regulating the operation of savings and loan associations.

**Drafting note: Section is existing § 6.1-194.38, with revisions as shown that delete the provisions referring to conversions of a state stock association into a bank. The parallel**

**provision addressing the conversion of a state stock association into a bank is located at proposed § 6.2-1144. Other changes are technical.**

Article 5.

Branches and ~~Mergers~~ Facilities.

~~§§ 6.1-39. through 6.1-39.2.~~

**Drafting note: Repealed by Acts 1986, c. 505.**

§ ~~6.1-39.3~~ 6.2-831. ~~When and where~~ Establishment of branch banks ~~may be established~~; redesignation of main office.

A. A bank may establish and operate one or more branch offices, and a bank may relocate a main or branch office, provided the bank applies to the Commission for authority to establish or relocate any such office. Applications shall be made in writing on a form prescribed by the Commission and shall be accompanied by ~~a~~ the fee ~~not to exceed the amounts set by~~ established pursuant to § ~~6.1-94~~ 6.2-908.

B. The Commission shall have ~~thirty~~ 30 days from the date it receives a complete application in which to review a branch proposal or a proposed relocation~~; the~~. The review period may be extended for an additional ~~thirty~~ 30 days. The Commission may deny such an application~~,~~ if the Commission finds that a proposal would have a detrimental effect on the applicant bank's safety and soundness~~,~~ or that it is otherwise not in the public interest. A branch office that has been denied shall not be established~~;~~ and a relocation that has been denied shall not be carried out. If the Commission does not issue a denial of a branch proposal or a proposed relocation ~~in thirty~~ within 30 days, or ~~sixty~~ 60 days ~~in the case of an extended~~ if the review period is extended, the proposed branch office or offices, or the proposed relocation, shall be authorized, and the branch or branches may be established and operated, or the relocation may be completed.

~~B~~ C. The office at which a bank begins business shall be designated initially as its main office. Thereafter, the board of directors may redesignate as the main office any authorized office of the bank in ~~Virginia~~ the Commonwealth. The bank shall notify the Commission of any such redesignation not later than ~~thirty~~ 30 days before its effective ~~day~~ date and confirm the redesignation to the Commission within ~~ten~~ 10 days of its occurrence.

~~C~~ D. A bank shall be subject to the prohibition in § ~~6.1-44.8~~ 6.2-842 against establishing or maintaining a branch in ~~Virginia~~ the Commonwealth on the premises or property of an affiliate if the affiliate engages in commercial activities.

E. The Commission may impose a civil penalty not exceeding $2,000 upon any bank that it determines, in proceedings commenced in accordance with the Commission's Rules, has violated the provisions of this section.

**Drafting Note: Technical changes. Proposed subsection E is the penalty provision currently at § 6.1-113, as revised per the drafting note following that section. The reference to "fine" is changed to "civil penalty."**

~~§ 6.1-39.4.~~

**Drafting note: Repealed by Acts 1997, c. 141.**

§ ~~6.1-39.4:1~~ 6.2-832. ~~Electronic fund transfers; authority to utilize~~ Establishment of electronic terminals.

A. A bank may establish and operate electronic, computer, or similar terminals and may otherwise provide for electronic fund transfers by its customers, provided~~:~~ (i) the bank complies with the Electronic Fund Transfer Act (15 U.S.C. § 1693~~, ff.~~ et seq.) and Regulation E of the Federal Reserve Board, and (ii) in the case of any proposed terminal at which deposits are received or recorded or loan proceeds disbursed, the bank files prior written notice of the proposal with the Commission on forms prescribed by the Commission and pays a fee not to exceed $350 per terminal.

B. The Commission shall have ~~twenty-five~~ 25 days from receipt of the notice to review the proposal. The Commission may deny the proposal on grounds that~~:~~ the bank has failed to comply with federal electronic fund transfer laws or regulations, the bank lacks the resources to operate the proposed facilities successfully, or the proposal is not in the public interest. If the Commission does not issue a denial within ~~twenty-five~~ 25 days, the bank may establish the terminal or terminals.

C. The notice required by clause (ii) of subsection A need not be given if (i) the terminal is on bank premises or premises properly considered part of an authorized office of the bank~~, nor shall such notice be required in the case of any~~ or (ii) the terminal ~~which~~ does not receive or record deposits or disburse loan proceeds.

D. ~~Out-of-state banks (~~ An out-of-state bank, as defined in § ~~6.1-44.2)~~ 6.2-836, may establish and operate electronic terminals in ~~this~~ the Commonwealth, provided (i) ~~any such~~ the bank complies with all home state and federal laws applicable to such terminals~~,~~ and (ii) in the case of any proposed terminal at which deposits are received or recorded or loan proceeds disbursed, the bank furnishes to the Commission a copy of any notice or application filed with the bank's home state supervisor or responsible federal banking agency, at the time such notice or application is filed. The Commission may ~~promulgate~~ adopt regulations affecting electronic fund transfers by banks~~,~~ if it finds such regulations necessary for the protection of the public interest.

**Drafting Note: Technical changes.**

§ ~~6.1-39.5~~ 6.2-833. Bank agent for depository institution.

A bank may act as the agent of any other depository institution in receiving deposits and providing other services without being deemed a branch of such other depository institution.

**Drafting Note: No change.**

~~§ 6.1-40.~~

**Drafting note: Repealed by Acts 1978, c. 683.**

§ ~~6.1-41~~ 6.2-834. Operation of branch office under different name; civil penalty.

A. No branch office shall be operated or advertised under any other name than that of the identical name of the bank, unless (i) permission ~~be~~ is first ~~had and~~ obtained from the Commission~~,~~ and ~~unless such~~ (ii) the different name shall contain or have added thereto language clearly indicating that it is a branch office and of which bank it is an office.

B. The Commission may impose a civil penalty not exceeding $2,000 upon any bank that it determines, in proceedings commenced in accordance with the Commission's Rules, has violated the provisions of this section.

**Drafting Note: In proposed subsection A, it is not clear what "had and" adds to the section. Proposed subsection B is the penalty provision currently at § 6.1-113, as revised per the drafting note following that section. The reference to "fine" is changed to "civil penalty."**

~~§ 6.1-41.1. Use of armored vehicles to pick up customers' deposits or deliver currency.~~

~~Any bank holding a certificate of authority from the State Corporation Commission or national bank whose principal office is in Virginia may utilize armored vehicles or other vehicles providing adequate protection for the funds transported for receipt of deposits of its customers. Armored vehicles may also be used by such banks to deliver currency and coin.~~

**Drafting Note: This section is moved to subdivision A 14 of proposed § 6.2-814, as it deals principally with powers of banks than with their branches and facilities.**

§ ~~6.1-42~~ 6.2-835. Banking facilities in certain hospitals or federal areas.

A. The Commission, when in its discretion ~~the same is~~ banking facilities are required (i) for patients in, students at, ~~and~~ or employees of hospitals operated by the Veterans Administration or by the Commonwealth or (ii) for members of the armed forces at any military or naval federal area in ~~Virginia~~ the Commonwealth, may permit any bank ~~which~~ that is authorized to do business in ~~this~~ the Commonwealth to establish and operate such banking facilities as are required in any such hospital or federal area.

B. The banking facilities so established shall be operated in accordance with the laws of ~~this~~ the Commonwealth ~~relative~~ relating thereto ~~and the~~. The Commission may permit only certain specified services to be ~~so~~ established and operated.

**Drafting Note: Technical changes.**

~~§ 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 (§ 13.1-715.1 et seq.) of the Virginia Stock Corporation Act. However, the provisions of § 13.1-716 that relate to a merger with a foreign corporation as foreign eligible entity 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 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, 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.~~

**Drafting Note: Section is moved to proposed subsections A and B of § 6.2-822.**

~~§ 6.1-44. Effect of merger; certificate of authority required.~~

~~In the event of any such merger as is authorized by § 6.1-43 the merged corporation (whether it be one of merging banks, or a new bank formed by means of such merger) shall~~

~~without further act or deed succeed to, and be vested with all offices, rights, obligations and relations of trust or of a fiduciary nature, including appointments, designations and nominations, existing immediately prior to the time at which such merger became effective, or then belonging or pertaining to any one or more of the banks, parties to such merger, or which would then inure to any one or more of such banks. But no state bank resulting from any merger shall do business in Virginia until it shall have obtained from the State Corporation Commission a certificate of authority authorizing it to do so. The provisions of § 6.1-13 shall apply to the issuance, or refusal of the Commission to issue, the certificate herein provided for, to the same extent as if the merged bank were a new bank. In the case of a merger heretofore or hereafter effected, the surviving or new bank shall be deemed to have been in actual operation for the period during which the oldest of the banks involved in the merger has been in actual operation.~~

**Drafting Note: Section is moved to proposed subsections C through E of § 6.2-822.**

Article ~~5.1~~ 6.

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.~~

**Drafting Note: Section is deleted as a policy statement. The Code Commission requests that the publishers of the Code, for historic purposes, include a note that recites the deleted language.**

§ ~~6.1-44.2~~ 6.2-836. 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.

"Affiliate" has the ~~same~~ meaning ~~ascribed~~ assigned to it in 12 U.S.C. § 1841 (k) of the Bank Holding Company Act of 1956~~,~~ (12 U.S.C. § 1841 et seq.), as amended.

"Bank" has the ~~same~~ meaning ~~ascribed~~ assigned to it in 12 U.S.C. § 1813 (a) (1) of the Federal Deposit Insurance Company Act of 1956~~,~~ (12 U.S.C. § 1811 et seq.), as amended.

"Bank holding company" has the ~~same~~ meaning ~~ascribed~~ assigned to it in 12 U.S.C. § 1841 (a) of the Bank Holding Company Act of 1956~~,~~ (12 U.S.C. § 1841 et seq.), as amended.

"Commercial activities" means activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.

"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.

"Financial holding company" has the ~~same~~ meaning ~~ascribed~~ assigned to it in 12 U.S.C. § 1841 (p) of the Bank Holding Company Act of 1956~~,~~ (12 U.S.C. § 1841 et seq.), as amended.

"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~~ the Commonwealth.

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

~~"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.

**Drafting Note: "State" is defined in § 1-245. Other changes are technical.**

§ ~~6.1-44.3~~ 6.2-837. 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~~ the Commonwealth.

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~~ 6.2-908. 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.

**Drafting Note: Technical changes.**

§ ~~6.1-44.4~~ 6.2-838. Interstate branching ~~by de novo entry~~.

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

**Drafting Note: Technical changes**

§ ~~6.1-44.5~~ 6.2-839. Interstate branching through the acquisition of a branch.

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

**Drafting Note: Technical changes.**

§ ~~6.1-44.6~~ 6.2-840. Filing requirements.

An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in ~~this~~ the 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.

**Drafting Note: Technical change.**

§ ~~6.1-44.7~~ 6.2-841. 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.

**Drafting Note: No change.**

§ ~~6.1-44.8~~ 6.2-842. Powers.

A. An out-of-state state bank ~~which~~ that establishes and maintains one or more branches in ~~Virginia~~ the Commonwealth 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.

B. A Virginia state bank may conduct the same activities at a branch outside ~~Virginia~~ the Commonwealth 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.

C. A bank shall not establish or maintain a branch in ~~Virginia~~ the Commonwealth on the premises or property of an affiliate if the affiliate engages in commercial activities.

**Drafting Note: Technical changes.**

§ ~~6.1-44.9~~ 6.2-843. 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~~ the Commonwealth and to ensure that the branch is being operated in a safe and sound manner. The provisions of § ~~6.1-87~~ 6.2-901 shall apply to such examinations.

B. The Commission may require periodic reports from any out-of-state bank that maintains a branch in ~~Virginia~~ the Commonwealth to the extent such reporting requirements (i) apply equally to similarly situated banks having ~~Virginia~~ the Commonwealth 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~~ the Commonwealth 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~~ the 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~~ the 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.

**Drafting Note: Technical changes.**

§ ~~6.1-44.10~~ 6.2-844. Enforcement.

If the Commission determines that there is any violation of ~~Virginia~~ any law of the Commonwealth 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.

**Drafting Note: Technical changes.**

§ ~~6.1-44.11~~ 6.2-845. Additional branches.

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

**Drafting Note: Technical changes.**

§ ~~6.1-44.12~~ 6.2-846. Regulations; ~~certain~~ fees.

The Commission may ~~promulgate~~ adopt 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.

**Drafting Note: Technical change.**

§ ~~6.1-44.13~~ 6.2-847. Notice of subsequent merger~~, etc~~ or other transaction.

An out-of-state state bank that maintains a branch in ~~Virginia~~ the Commonwealth under this article shall give ~~thirty~~ 30 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.

**Drafting Note: Technical changes.**

§ ~~6.1-44.14~~ 6.2-848. 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~~ If any provision of this article is held to be invalid for any reason by a final order of any appropriate Virginia or federal court ~~of competent jurisdiction~~, ~~then~~ the invalidity shall cause the entire article to be invalid. ~~However, any~~ Any transaction that has been lawfully consummated pursuant to this article prior to a determination of invalidity shall be unaffected by such determination.

**Drafting Note: The first two sentences are deleted as a statement of purpose. Other changes are technical or stylistic.**

Article ~~5.2~~ 7.

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.~~

**Drafting Note: Section is deleted as a policy statement. The Code Commission requests that the publishers of the Code, for historic purposes, include a note that recites the deleted language.**

§ ~~6.1-44.16~~ 6.2-849. 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)~~ has the meaning assigned to it in 12 U.S.C. § 1813 (a) (1) of the Federal Deposit Insurance Company Act of 1956 (12 U.S.C. § 1811 et seq.), as amended.

"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)~~ has the meaning assigned to it in § 6.2-836.

"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~~ has the meaning assigned to it in § 6.2-836.

"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~~ has the meaning assigned to it in § 6.2-836.

"Out-of-state state bank" ~~means a bank chartered under the laws of any state other than Virginia~~ has the meaning assigned to it in § 6.2-836.

"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~~ has the meaning assigned to it in § 6.2-836.

**Drafting Note: State is defined in § 1-245. Definitions of terms defined in existing § 6.1-44.2 that are shared with proposed Article 6 are incorporated by reference. The definition of "bank" is conformed to the definition ascribed to the same term in existing § 6.1-44.2 (proposed § 6.2-836), because (i) prior to 2007 amendments to § 6.1-44.2, "bank" had the same definition in both sections, (ii) the provision cited in the existing definition is to "insured bank," and (iii) the failure to make a conforming revision the definition in this section when the definition in § 6.1-44.2 was revised by Chapter 1 of the 2007 Acts of Assembly has been represented to have been an oversight.**

§ ~~6.1-44.17~~ 6.2-850. Authority to branch outside ~~Virginia~~ the Commonwealth by merger.

A. 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~~ the Commonwealth pursuant to an interstate merger transaction in which the Virginia state bank is the resulting bank.

B. The Virginia state bank shall file an application on a form prescribed by the Commission, pay the merger fee prescribed by § ~~6.1-94~~ 6.2-908, and comply with the applicable provisions of Article 12 (§ 13.1-715.1 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.

C. Such an interstate merger transaction may be consummated only after the applicant has received the Commission's written approval.

**Drafting Note: Technical changes.**

§ ~~6.1-44.18~~ 6.2-851. 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~~ the Commonwealth of a merged Virginia bank, provided the requirements of this article are met.

**Drafting Note: Technical change.**

§ ~~6.1-44.19~~ 6.2-852. 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 (§ 13.1-715.1 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.

**Drafting Note: No change.**

§ ~~6.1-44.20~~ 6.2-853. 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~~ the Commonwealth, 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~~ any law of the Commonwealth.

**Drafting Note: Technical changes.**

§ ~~6.1-44.21~~ 6.2-854. Powers.

A. An out-of-state state bank ~~which~~ that 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.

B. A Virginia state bank may conduct any activities at any branch outside ~~Virginia~~ the Commonwealth 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.

**Drafting Note: Technical changes.**

§ ~~6.1-44.22~~ 6.2-855. ~~Examination;~~ Examinations and 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~~ the Commonwealth as the Commission may deem necessary to determine whether the branch is operating in compliance with the laws of ~~this~~ the Commonwealth and to ensure that the branch is being operated in a safe and sound manner. The provisions of § ~~6.1-87~~ 6.2-901 shall apply to such examinations.

B. The Commission may require periodic reports from any out-of-state bank that maintains a branch in ~~Virginia~~ the Commonwealth to the extent such reporting requirements (i) apply equally to similarly situated banks having ~~Virginia~~ the Commonwealth 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.

**Drafting Note: Section, with technical changes, is split; existing subsections C and D of § 6.1-44.22 are set out as proposed § 6.2-856.**

§ 6.2-856. Cooperative agreements; assessment of fees.

~~C~~ A. 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~~ the Commonwealth 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~~ the Commonwealth.

~~D~~ B. Out-of-state state banks may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of ~~this~~ the 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.

**Drafting Note: New section is currently set out as subsections C and D of existing § 6.1-44.22. Changes are technical.**

§ ~~6.1-44.23~~ 6.2-857. Enforcement.

If the Commission determines that there is any violation of ~~Virginia~~ any law of the Commonwealth 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.

**Drafting Note: Technical changes.**

§ ~~6.1-44.24~~ 6.2-858. Regulations;~~ certain~~ fees.

The Commission may ~~promulgate~~ adopt 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.

**Drafting Note: Technical change.**

§ ~~6.1-44.25~~ 6.2-859. Notice of subsequent merger~~, etc~~.

An out-of-state state bank that maintains a branch in ~~Virginia~~ the Commonwealth under this article shall give ~~thirty~~ 30 days' prior written notice of any merger, consolidation, or other transaction involving the bank ~~which~~ that would cause the ~~Virginia~~ branch in the Commonwealth to be maintained by another bank.

**Drafting Note: Technical changes.**

Article ~~6~~ 8.

Directors and Officers; Dividends.

§ ~~6.1-45~~ 6.2-860. Bank to be managed by board of directors; number of directors.

The affairs of every bank ~~or banking institution~~ incorporated under the laws of ~~this~~ the Commonwealth shall be managed by a board of directors ~~which~~. The board shall consist of not less than five ~~persons~~ individuals.

**Drafting Note: The reference to "banking institution" is deleted because it suggests there may be banking institutions incorporated under Virginia law that are not "banks" as defined in § 6.2-800. "Persons" is replaced with "individuals" because the definition of "person" includes various types of business entities.**

§ ~~6.1-46~~ 6.2-861. Application of Virginia Stock Corporation Act.

The provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) relating to officers of a corporation shall apply to banks except that, if a bank shall not appoint a secretary, the cashier of a bank shall be deemed to be the secretary of the corporation.

**Drafting Note: No change.**

§ ~~6.1-47~~ 6.2-862. Directors ~~must be stockholders~~ to own stock in bank.

A. As used in this section, "bank holding company" means (i) a bank holding company as defined in § 6.2-800 or (ii) any corporation organized under the laws of the Commonwealth and doing business in the Commonwealth that owns all of the capital stock of one bank, except those shares issued as directors' qualifying shares, and at least 66 and two-thirds percent of the assets of the holding company, computed on a consolidated basis, consists of assets held by such bank and controlled subsidiaries of such bank.

B. Every director of a bank incorporated under the laws of ~~this~~ the Commonwealth shall be the sole owner ~~in his sole name~~ of, and have in his personal possession or control, shares of stock in such bank having a book value of not less than $5,000, calculated as of the last business day of the calendar year immediately preceding the election of the director. So long as a director shall successively be reelected, there shall be no requirement to increase the shares of stock owned according to this section. Such stock ~~must~~ shall be unpledged and unencumbered at the time such director becomes a director and during the whole of his term as such.

C. When a bank is controlled by a bank holding company, a director may comply with the ~~provisions of this section~~ requirements of subsection B for each bank of which he is a director by ownership, in similar manner, of shares of capital stock of the bank holding company having an aggregate book value equal to the book value of shares of bank stock that he would be obligated to own under ~~the preceding provisions of this section~~ subsection B.

D. A director of a bankers' bank ~~as defined in § 6.1-6.1~~ shall not be required to own or control any shares of stock of such bankers' bank or any shares of stock of a bank holding company that controls such bankers' bank.

~~For the purposes of this section the term "bank holding company" shall mean (i) a bank holding company as defined in § 6.1-4 or (ii) any corporation organized under the laws of this Commonwealth and doing business in this Commonwealth which owns all of the capital stock of one bank except those shares issued as directors' qualifying shares, where at least sixty-six and two-thirds percent of the assets of the holding company, computed on a consolidated basis, consists of assets held by such bank and controlled subsidiaries of such bank.~~

E. Any director violating the provisions of this section shall, immediately, vacate his office.

F. The requirements of this section shall not apply to any person duly elected a director of a bank prior to July 1, 1995, or so long as such person shall successively be reelected a director, and as to such person the requirements of the law prior to such date shall apply.

**Drafting Note: The definition of "bank holding company" is moved to the start of the section, with technical changes. Bankers' bank is defined in § 6.2-800.**

§ ~~6.1-48~~ 6.2-863. Oaths of directors.

A. Every director of a bank incorporated under the laws of ~~this~~ the Commonwealth shall, within ~~thirty~~ 30 days after his election or reelection, take and subscribe to an oath that ~~he~~:

1. He will diligently and honestly perform his duties as director~~, and that he~~; and

2. He is the owner and has in his personal possession or control, standing in his sole name on the books of the bank or bank holding company as defined in subsection A of § 6.2-862, unpledged and unencumbered in any way, shares of stock of the bank of which he is a director or, ~~when~~ if a bank is controlled by a bank holding company as defined in § ~~6.1-4~~ 6.2-800, shares of stock of the bank holding company, having a par value of not less than the amounts respectively prescribed by § ~~6.1-47~~ 6.2-862, and, in case of reelection or reappointment, that during the whole of his immediate previous term as a director, ~~such~~ the stock was not at any time pledged or in any other manner encumbered or hypothecated to secure a loan. ~~Such~~

B. The oath subscribed to by such director, certified by the officer before whom it is taken, shall be transmitted by the cashier of such bank to the Commission. Any director who fails for a period of ~~thirty~~ 30 days after his election or appointment to take the oath as required by this section~~,~~ shall automatically forfeit his office.

**Drafting Note: Changes in proposed subdivision 2 clarify that "bank holding company," when first used in subsection A, refers to the term as defined in proposed § 6.2-862 (which**

**sets for the requirement for ownership of stock) rather than to the definition thereof in proposed § 6.2-800.**

§ ~~6.1-48.1~~ 6.2-864. Report to Commission of election of director.

Within ~~sixty~~ 60 days following the election or reelection of any person as a director of a bank, the bank shall furnish to the Commission such information ~~to the Commission relative to the~~ as the Commission shall from time to time prescribe regarding the director's personal character, integrity, financial condition, and personal and business background~~, as the Commission shall from time to time prescribe~~. ~~Such~~ The report~~, under oath,~~ shall be signed under oath by the director ~~as well as~~ and a designated officer of the bank. Any person knowingly making a false statement in such a report ~~shall be~~ is guilty of perjury ~~and be punished accordingly~~ and punishable as provided in § 18.2-434.

**Drafting Note: Technical changes.**

§ ~~6.1-49~~ 6.2-865. Removal of director or officer; appeals; penalty.

A. Whenever any director or officer of a bank doing business in ~~this~~ the Commonwealth~~,~~ shall ~~have continued~~ continue (i) to violate any law relating to such bank or ~~shall have continued~~ (ii) unsafe or unsound practices in conducting the business of such bank, after the director or officer, and the board of directors of the bank of which he is a director or officer, have been warned in writing by the Commissioner ~~of Financial Institutions~~ to discontinue such violation of law or such unsafe or unsound practices, the Commissioner shall certify the facts to the ~~State Corporation~~ Commission. The ~~State Corporation~~ Commission shall thereupon enter an order requiring such director or officer to appear before the Commission, within not less than ~~ten~~ 10 days, to show cause why he should not be removed from office and thereafter restrained from participating in any manner in the management of such bank. Such order shall contain a brief statement of the facts certified to the Commission by the Commissioner. A copy of such order shall be served upon such director or officer, and a copy thereof shall be sent by registered mail to each director of the bank affected.

B. If, after granting the accused director or officer a reasonable opportunity to be heard, the Commission shall find that he has continued to violate any law relating to such bank~~,~~ or has continued unsafe or unsound practices in conducting the business of such bank~~,~~ after he and the board of directors of the bank~~,~~ of which he is a director or officer have been warned ~~in writing by the Commissioner to discontinue such violation of law or unsafe or unsound practices~~ as provided in subsection A, the Commission shall enter an order removing such director or officer from office and restraining such director or officer from thereafter participating in any manner in the management of such bank. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the bank of which he is a director~~,~~ or officer~~, whereupon such~~. Upon such removal, the director or officer shall cease to be a director or officer of such bank and thereafter shall cease to participate in any manner in the management of such bank.

C. Any director or officer aggrieved by (i) an order of the Commission entered under subsection B or (ii) an order refusing to remove another director or officer from office and to

restrain him from participating in the management of the bank, shall have, of right, an appeal to the Supreme Court of Virginia within 60 days from the date of the order.

D. Any director or officer removed and restrained under the provisions of subsection B from participating in any manner in the management of any bank of which he is a director or officer, and who thereafter participates in any manner in the management of such bank except as a stockholder therein, is guilty of a Class 6 felony.

**Drafting Note: Subsection C is existing § 6.1-50 and subsection D is existing § 6.1-51. They are moved to this section because all pertain to the same procedure. In proposed subsection C, changes clarify that the director or officer authorized to appeal the Commission's entry of an order refusing to remove a director or officer pursuant to this section is not the person who is the subject of the order.**

~~§ 6.1-50. Appeal from order granting or refusing such removal.~~

~~Any director or officer aggrieved by any order of the Commission entered under § 6.1-49 removing such director or officer from office and restraining him from participating in any manner in the management of the bank of which he is a director or officer, or refusing to remove the director or officer from office and to restrain him from participating in any manner in the management of the bank, shall have, of right, an appeal to the Supreme Court of Virginia within sixty days from the date of such order.~~

**Drafting Note: Section is moved to subsection C of proposed § 6.2-865.**

~~§ 6.1-51. Penalty for acting after removal.~~

~~Any director or officer removed and restrained under the provisions of § 6.1-49 from participating in any manner in the management of any bank of which he is a director or officer, who thereafter participates in any manner in the management of such bank except as a stockholder therein shall be guilty of a Class 6 felony.~~

**Drafting Note: Section is moved to subsection D of proposed § 6.2-865.**

~~§ 6.1-51.1. "Bank" construed.~~

~~For the purposes of §§ 6.1-48.1, 6.1-49, 6.1-50 and 6.1-51 the term bank shall include trust companies and trust subsidiaries organized under the laws of this Commonwealth.~~

**Drafting Note: The section is deleted because current §§ 6.1-48.1 through 6.1-51 are made applicable to trust companies and trust subsidiaries under proposed §§ 6.2-1025, 6.2-1026, 6.2-1051, and 6.2-1052, respectively.**

§ ~~6.1-52~~ 6.2-866. Meetings of board of directors.

The board of directors of every bank shall hold meetings at least once in each calendar month~~, at which~~. At each meeting of the board, a majority of the whole board shall be necessary for the lawful transaction of business~~, except that the stockholders~~. Notwithstanding the foregoing, (i) the shareholders, by bylaw, may fix any number not less than five as a quorum, ~~provided that~~ and (ii) the Commission may allow less frequent meetings, but not less often than quarterly.

**Drafting Note: Technical changes.**

§ ~~6.1-53~~ 6.2-867. Discount by officer, director, or employee of paper refused by bank.

No officer, director, or employee of a bank ~~or trust company~~ may purchase or discount any note or paper at a rate of interest in excess of what such bank might charge knowing that such bank has refused to purchase or discount such paper.

**Drafting Note: The reference to "trust companies" is deleted because the section is replicated for trust companies at proposed § 6.2-1030.**

§ ~~6.1-54~~ 6.2-868. Bonds required of officers and employees; blanket bond.

A. The board of directors of every bank~~, trust company and trust subsidiary~~ shall require bonds from all of the active officials and employees of such corporation. In lieu of such bonds, the board may obtain one or more blanket bonds. A bank holding company may obtain a blanket bond covering all affiliate banks within the holding company. The surety on every bond shall be a bonding or surety company authorized to transact business in ~~Virginia, and the~~ the Commonwealth. The penalty of any such bond shall be increased whenever in the opinion of the ~~State Corporation~~ Commission it is necessary for the protection of the public interest.

B. If a bank is unable to obtain the bond required by this section, it shall immediately notify the Commission, which may then direct the bank to have an audit performed at its expense by an independent certified public accounting firm. The bank shall obtain blanket bond coverage as soon as such coverage is available. Failure to obtain blanket bond coverage may be cause for action by the Commission as provided by § ~~6.1-92~~ 6.2-906.

**Drafting Note: The references to "trust companies" and "trust subsidiaries" are deleted because the section (including subsection B, which references only banks) is replicated for trust companies at proposed § 6.2-1027 and for trust subsidiaries at proposed § 6.2-1053.**

~~§ 6.1-55.~~

**Drafting note: Repealed by Acts 1976, c. 658.**

~~§ 6.1-55.1.~~

**Drafting note: Repealed by Acts 1982, c. 328.**

§ ~~6.1-56~~ 6.2-869. Dividends; surplus; undivided profits.

A. The board of directors of any bank may declare a dividend of so much as ~~they~~ the board shall judge expedient of the net undivided profits of the bank, after providing for all expenses, losses, interest and taxes accrued, or due by such bank. ~~But before~~ Before any such dividend is declared, any deficit in capital funds originally paid in shall have been restored by earnings to their initial level, and no dividend shall be declared or paid by any bank which would impair the paid-in capital of the bank.

B. To ascertain the net undivided profits before any dividend shall be declared, all debts due to such bank on which interest is past due and unpaid for a period of ~~twelve~~ 12 months, unless the same are well secured and in process of collection by law, shall be deducted from the undivided profits in addition to all expenses, losses, interest and taxes accrued, and the balance shall be deemed to be the net undivided profits.

C. Notwithstanding the foregoing provisions of this section, the Commission may limit or approve the payment of dividends by the board of directors of any bank when the Commission determines that such limitation or approval is warranted by the financial condition of the bank.

**Drafting Note: Technical changes.**

Article ~~7~~ 9.

Investments and Loans.

§ ~~6.1-57~~ 6.2-870. Limitation of amount invested in bank ~~building, etc~~ premises.

A. No bank, without the approval of the Commission, shall invest in its bank building and premises, ~~or~~ property held for future accommodation, or in stock or other obligations of any corporation holding title to premises of the bank, if the aggregate of such investments and loans, together with the amount of any indebtedness of such corporation, 50 percent or more of ~~whose~~ the stock of which is owned by the bank, will exceed the greater of (i) 50 percent of the capital stock, surplus, and undivided profits of the bank, or (ii) 100 percent of the capital stock of the bank~~, whichever is greater~~. If, subsequent to any investment or loan, the surplus or undivided profits of any such bank ~~be~~ are diminished by losses so that ~~such~~ the investments or loans ~~shall~~ amount to more than the greater of (a) 50 percent of its paid-in capital stock and its remaining surplus and undivided profits~~,~~ or (b) 100 percent of the capital stock~~, whichever is greater~~, ~~such~~ the bank shall not pay dividends without the permission of the Commission until such ~~investment~~ investments or loans ~~shall be~~ are equal to or less than the greater of 50 percent of the capital stock, surplus, and undivided profits, or 100 percent of the capital stock of the bank~~, whichever is greater~~.

B. In computing the bank's investment in depreciable property, the initial price or cost may be reduced by reasonable depreciation.

C. The Commission shall not in any event approve investments and loans in excess of the foregoing if the aggregate amount thereof would exceed 60 percent of the bank's capital stock, surplus, and undivided profits. The Commission in approving such excess investments may impose, as a condition of such approval, restrictions upon dividends or other restrictions upon the bank~~, which~~. The restrictions shall expire automatically when the investment of the bank in building premises shall no longer exceed the greater of (i) 50 percent of the capital stock, surplus, and undivided profits of the bank~~,~~ or (ii) 100 percent of the capital stock~~, whichever is greater~~.

**Drafting Note: The change to the catchline reflects trend of avoiding use of "etc." Other changes are technical.**

§ ~~6.1-58~~ 6.2-871. Investment in stock or securities of bank service corporations.

A. As used in this section, "bank service corporation" means a corporation engaged primarily in rendering services, other than the renting of the bank premises or the furnishing of furniture or fixtures, to two or more banks.

B. A bank may acquire, own, and hold the stock and other securities or obligations of a bank service corporation in an amount not to exceed ~~ten~~ 10 percent of the bank's capital stock and permanent surplus~~; provided that it~~. A bank may not invest in any ~~such~~ bank service corporation unless it uses or intends to use the services of ~~such~~ the bank service corporation. ~~It~~ A bank may not invest in more than one ~~such~~ bank service corporation without the consent of the ~~State Corporation~~ Commission. ~~For purposes of this section, a bank service corporation is~~

~~defined as one engaged primarily in rendering services, other than the renting of the bank premises or the furnishing of furniture or fixtures, to two or more banks.~~

C. Stock in a Federal Reserve Bank shall not be considered stock of a bank service corporation within the meaning of this section.

**Drafting Note: The definition of "bank service corporation" is moved to proposed subsection A.**

~~§ 6.1-58.1. Investment in stock or securities of controlled subsidiary corporations.~~

~~A. A bank may acquire, own and hold the stock, securities or obligations of one or more controlled subsidiary corporations. Such investment in stock, securities or obligations together with any investment of the bank in stock, securities or obligations of a bank service corporation, shall not exceed in the aggregate fifty percent of the bank's capital stock and permanent surplus, without the permission of the State Corporation Commission, except that the foregoing limit shall not include, but shall be in addition to, investment in a real estate subsidiary as provided in § 6.1-59.1, investment in the stock, securities or obligations of a building corporation under § 6.1-57 and investment in controlled subsidiary corporations that are wholly owned by the bank.~~

~~B. 1. A controlled subsidiary corporation is defined as a corporation that is controlled by a bank organized under the laws of this Commonwealth, or by more than one bank, at least one of which is organized under the laws of this Commonwealth. For purposes of this section, "control" shall have the same meaning given that term by section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.).~~

~~2. Such controlled subsidiary corporation shall not be authorized (i) to receive deposits (except as hereafter provided); (ii) to engage in the trust business; or (iii) to conduct any business which is required under § 13.1-620 to be specifically stated in the articles of incorporation, except as may be authorized by subdivision 3.~~

~~3. Such controlled subsidiary corporation may engage in the business of credit card operations, leasing, safe deposit, factoring, credit bureaus, mortgage brokerage or servicing, data processing, international banking and finance, and any other function or business activity in which a bank might engage, except the receipt of deposits, or the trust business. Subject to the provisions of subdivision 2, and with the prior approval of the Commission and subject to such conditions as the Commission may impose, such controlled subsidiary corporation may also engage in any business that is authorized by statute, regulation or official interpretation for a subsidiary of (i) a national bank or (ii) an out-of-state state bank as defined in § 6.1-44.2 to the extent such activity is financial in nature, or incidental or complimentary to a financial activity, and is not otherwise prohibited by state law. However, a controlled subsidiary corporation transacting business as a real estate brokerage firm shall be governed by § 6.1-58.3 and subject to the provisions of this section. Such controlled subsidiary corporation may charge and collect such finance charges and fees or interest rates as are authorized to banks by the laws of this Commonwealth or as otherwise authorized by Chapter 7.3 (§ 6.1-330.49 et seq.) of this title.~~

~~C. A controlled subsidiary corporation engaged solely in the business of international banking and finance, and subject to the regulation and supervision by the Board of Governors of~~

the Federal Reserve System, shall not be prohibited from receiving deposits or from taking any other action which any such regulated international banking and finance institution is permitted to take.

D. The provisions of § 6.1-60.1, relating to investment of funds in shares of stock of another corporation shall be applicable to controlled subsidiary corporations, except that a controlled subsidiary corporation may acquire, own and hold stock in a subsidiary corporation if a bank would be permitted to directly acquire, own or hold the stock hereunder. The provisions of § 6.1-62 relating to loans to officers, directors or employees of the bank shall be applicable both to loans by the subsidiary to officers, directors or employees of the bank and to loans by the bank to officers, directors or employees of the subsidiary, with the approval of the board of directors of the bank only being required for purposes of § 6.1-62. The limitations of §§ 6.1-63, 6.1-64, 6.1-65, 6.1-65.1 and 6.1-66 as they relate to appraisal value, maximum term and amortization on loans secured by real estate shall be applicable to controlled subsidiary corporations. This subsection and subsection E of this section are subject to the proviso that the restrictions of §§ 6.1-60.1 through 6.1-66 are not intended to be imposed upon any controlled subsidiary which has no state banks as shareholders.

E. 1. The provisions of § 6.1-61 relating to limitation upon obligations of any one borrower shall apply to the total obligations of any borrower in the aggregate to the subsidiary corporation and to any bank or bank holding company owning stock securities or obligations of such subsidiary corporation. The loan limit of the subsidiary shall be computed by attributing to the subsidiary a pro rata share of the lending limit of each bank stockholder prorated in accordance with the percentage of stock owned by such bank or in the case of a subsidiary, any of the stock, securities or other obligations of which are owned by a bank holding company, the loan limits of the subsidiary shall be computed by attributing to the subsidiary a pro rata share of the lending limits of all bank subsidiaries of such holding company prorated in accordance with the percentage of stock owned by such holding company and all subsidiary banks thereof. In computing whether a bank or subsidiary (which is not wholly owned) is complying with its lending limit, the loans of the bank and the subsidiary to any common borrower shall be aggregated on a basis pro rata to the percentage of stock of the subsidiary owned by the bank.

2. Such controlled subsidiary corporation shall not otherwise be subject to the provisions of the Virginia Banking Act (§ 6.1-3 et seq.) except where it is expressly so provided.

F. A controlled subsidiary corporation shall be subject to audit and examination by the Commission whether or not it is an affiliate as defined in § 6.1-85. It shall pay such examination fees as shall be imposed under § 6.1-94 for the examination of trust departments. If upon examination, the Commission shall ascertain that the corporation is created or operated in violation of this section or that the manner of operation is detrimental to the business of the parent bank and its depositors, it may order the bank to dispose of all or part of its investment in such corporation upon such terms as the Commission may deem proper.

G. A controlled subsidiary may not merge or consolidate unless the surviving corporation is itself a controlled subsidiary corporation as defined herein, or unless as a result of such merger

or consolidation the bank divests itself of all stock or other securities which are held pursuant to the authority herein granted.

H. The Commission shall have the same powers over controlled subsidiary corporations as it has over banks under §§ 6.1-100, 6.1-101, 6.1-103, 6.1-104 and 6.1-105, excepting those controlled subsidiary corporations which have no state banks as stockholders.

**Drafting note: Section is moved to proposed §§ 6.2-885 and 6.2-886.**

§ 6.1-58.2. Insurance business of controlled subsidiary.

In addition to the types of business authorized in § 6.1-58.1, a controlled subsidiary corporation may be formed (i) to transact the type of insurance business specified in § 38.2-120 and other insurance normally written under the coverage known as financial institution blanket bonds, (ii) to underwrite insurance indemnifying the bank, its holding companies or its affiliates, and their directors and officers against liability, and (iii) subject to such conditions as the Commission may impose, to underwrite reinsurance of mortgage guaranty insurance on loans secured by real estate made or purchased by such controlled reinsurance subsidiary's affiliates or by a bank or banks owning such controlled subsidiary, provided such controlled subsidiary corporations transact only the insurance business specifically permitted by this section. The investment of any bank in the stock, services or other obligations of such a controlled subsidiary shall not exceed two percent of such bank's capital, surplus and undivided profits. Such controlled subsidiary shall be subject to the further provisions of Title 38.2 otherwise applicable to insurance companies transacting a comparable business. For the purpose of this section, a controlled subsidiary corporation may be a domestic or foreign corporation and the majority of its voting stock be owned, directly or indirectly, by (i) a bank or banks organized under the laws of the United States, (ii) a bank or banks organized under the laws of this Commonwealth, (iii) a bank or banks organized under the laws of one of the other states of the United States, or (iv) a "bank holding company" owning a bank or banks in this Commonwealth or in another state.

**Drafting note: Section is moved to proposed § 6.2-887.**

§ 6.1-58.3. Real estate brokerage business of controlled subsidiary.

A. In addition to the types of business authorized in §§ 6.1-58.1 and 6.1-58.2, a controlled subsidiary corporation may be formed and licensed to transact business as a real estate brokerage firm in accordance with § 54.1-2106.1, provided such controlled subsidiary corporation transacts the real estate brokerage business and such services only in accordance with the specific provisions of this section. Such controlled subsidiary corporation shall be subject to the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 that are otherwise applicable to real estate brokerage companies transacting a comparable business.

B. A controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm and provide such services only upon the Commission's determination that the state bank making application to do so is in full compliance with applicable law. The investment of any bank in the stock, securities, or other obligations of a controlled subsidiary corporation shall only be approved by the Commission upon a determination by the Commission that: (i) the depositors of the bank are adequately protected from the risk of such ownership; and

(ii) the ownership is a safe and sound investment for the bank in accordance with applicable law. Such determination shall include but not be limited to providing written notice to the Virginia Real Estate Board and receiving written confirmation from the Virginia Real Estate Board that the real estate brokerage firm, to be owned, and its brokers, are in good standing in accordance with the requirements of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

C. Further, a controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm only in compliance with the following:

1. The controlled subsidiary corporation, or a state bank that owns a controlled subsidiary corporation that engages in real estate brokerage, shall not:

a. Impose a requirement, orally or in writing, that a borrower shall contract for or enter into any other arrangement for real estate services with its affiliated real estate brokerage firm;

b. Impose a requirement, orally or in writing, that as a condition of approving a loan a borrower shall contract or enter into any other arrangement with its affiliated real estate brokerage firm;

c. Impose a requirement, orally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724 (12 U.S.C. § 2601 et seq.), and regulations promulgated thereunder;

d. Impose a requirement, orally or in writing, that a condition of providing real estate brokerage services is that the customer shall make application for a loan or any other arrangement for other services of the bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724 (12 U.S.C. § 2601 et seq.), and regulations promulgated thereunder;

e. Offer or provide more favorable consideration, terms, or conditions for any financial products or services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage services with any particular real estate brokerage firm;

f. Offer or provide more favorable terms or conditions for any real estate brokerage services to induce or attempt to induce a person to apply for a loan or obtain any other services of a particular bank or any of its subsidiaries, affiliates, or service entities;

g. Conduct real estate brokerage activities in the same areas of a building where the bank routinely accepts retail deposits from the general public;

h. Conduct real estate brokerage activities in areas of a building that are identified as areas where banking activities occur;

i. Conduct banking activities in areas of the building that are identified as areas where real estate brokerage activities occur;

j. Make payment to its employees for any referrals of real estate brokerage business;

k. Use confidential credit and other financial information available from the bank for solicitation purposes by a real estate brokerage affiliate, without first having obtained the written consent of the customer;

~~l. Use or transfer from a bank to any affiliated real estate brokerage firm any financial information of or relating to any unaffiliated competing real estate brokerage firm that is an actual or prospective customer; or~~

~~m. Use, directly or indirectly, nonpublic customer information, held or obtained by the bank, for the purpose of soliciting real estate business, without first having obtained the written consent of the customer.~~

~~2. A state bank that makes a referral to its affiliated real estate brokerage firm shall clearly and conspicuously disclose in writing, in a separate document, to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to consult with, contract for, or enter into an arrangement for real estate brokerage services with its affiliated real estate brokerage firm.~~

~~3. A real estate brokerage firm that is affiliated with a bank shall clearly and conspicuously disclose in writing, in a separate document, before the time an agency agreement for real estate brokerage services is executed, that the person is not required to apply, contract for, or enter into any other arrangement for services of a particular bank or any of its subsidiaries, affiliates, or service entities.~~

~~4. The requirements of this section are in addition to the requirements of the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724 (12 U.S.C. § 2601 et seq.), and regulations promulgated thereunder.~~

~~5. State banks owning and transacting business as real estate brokerage firms under this section are subject to the provisions of the Wet Settlement Act, Chapter 1.1 (§ 6.1-2.10 et seq.) of this title.~~

~~6. A state bank that acts as a mortgage broker, as defined in § 6.1-409, and that transacts business as a real estate brokerage through a controlled subsidiary corporation is subject to subdivision B 5 and subsection C of § 6.1-422; however, a state bank that, pursuant to an executed originating agreement with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing Development Authority is or would be the payee on the note evidencing such mortgage loan and that the Virginia Housing Development Authority provides or would provide the funding of such mortgage loan prior to or at the settlement thereof.~~

~~7. In the event of a violation of this section, the Commission may take such action as is authorized in accordance with § 6.1-125, including issuance of an order requiring the state bank to cease and desist the activity that violates this section and imposing penalties.~~

**Drafting note: Section is moved to proposed § 6.2-888.**

§ ~~6.1-59~~ 6.2-872. For what purpose banks may purchase, hold, and convey real estate.

A. In addition to the authority provided in § ~~6.1-59.1~~ 6.2-873, every bank incorporated under the laws of ~~this~~ the Commonwealth may purchase, hold, and convey the following real estate for the ~~following~~ purposes stated and for no other:

1. ~~Such as shall be~~ Real estate that is desirable and prudent for its present or future accommodation in the transaction of its business;

2. ~~Such as shall be~~ Real estate that is mortgaged or otherwise encumbered to it in good faith by way of security for debts contracted;

3. ~~Such as shall be~~ Real estate that is conveyed to it in satisfaction of debts previously contracted in the course of its dealings; and

4. ~~Such as~~ Real estate it ~~shall purchase~~ purchased at sales under judgments, decrees, mortgages, or deeds of trust held by it, in whole or in part, or ~~shall purchase~~ purchased to secure debts due to it. No ~~such~~ bank shall ~~hold the possession of~~ possess any real estate ~~under~~ that is encumbered by a mortgage or other encumbrance, or hold the title to and ~~possession of~~ possess any real estate conveyed to it in satisfaction of debt or purchased by it for the protection of obligations secured thereby, for a longer period than ~~ten~~ 10 years ~~except with~~ without the written ~~consent and~~ approval of the ~~State Corporation~~ Commission~~; however, if,~~. If within such ~~ten~~ 10-year period, a bank shall have reduced upon its books the asset value of such mortgage, deed of trust, or real estate to the nominal sum of one dollar, it may thereafter continue to hold and own the same indefinitely without ~~such consent and~~ the approval of the Commission.

B. Nothing in this section shall affect the validity of the title to any such real estate conveyed or transferred by a bank.

**Drafting Note: Technical changes.**

§ ~~6.1-59.1~~ 6.2-873. ~~Bank's investment~~ Additional permissible investments in real estate ~~other than allowed by § 6.1-59~~.

A. In addition to the ownership of real estate permitted in § ~~6.1-59~~ 6.2-872, a bank may invest:

1. In real estate~~,~~ (i) for the purpose of producing income or for inventory and sale or (ii) for improvement, including the erection of buildings thereon, for sale or rental purposes. ~~Such~~ The bank may hold, sell, lease, operate, or otherwise exercise the rights of an owner of any such property; and

2. In the stock or other securities or obligations of a controlled subsidiary corporation under § ~~6.1-58.1~~ 6.2-885 or 6.2-886 formed or utilized for the purposes in subdivision 1 ~~of this subsection~~.

B. Unless specifically authorized by the Commissioner:

1. A bank shall not invest more than five percent~~,~~ in the aggregate of its assets~~,~~ in the investments authorized in subdivisions A 1 and A 2 ~~of subsection A of this section~~.

2. A bank shall not invest and lend in any one project an amount in excess of the loan limit to one borrower as provided in § ~~6.1-61~~ 6.2-875.

**Drafting note: Catchline is revised to eliminate cross-reference to another Code section. Other changes are technical.**

§ 6.1-60.

**Drafting note: Repealed by Acts 1982, c. 185.**

§ 6.1-60.1 6.2-874. Acquisition of or loans on Prohibited uses of bank's own stock; other investments or loans.

A. No bank shall acquire:

1. Acquire or own its own stock except to protect itself against loss from debts previously contracted, in which case it the stock shall be disposed of within twelve 12 months from the time after it is acquired, and except as herein permitted. No bank shall make;

2. Make loans collaterally secured by the stock of such the bank, except that nothing in this section shall not affect the validity of any such security agreement between the bank and its borrower. No bank shall invest; or

3. Invest any of its funds in shares:

a. Shares of stock of any other corporation, in any;

b. Any security of a limited liability company or in any; or

c. Any notes or other obligations that are secured by real estate on which as security it the bank is prohibited by § 6.1-63 6.2-878 from making any loans secured thereby. This provision

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

1. From acquiring 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. From acquiring 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 § 6.1-57 6.2-870;

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

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

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

7. From acquiring 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. ~~From acquiring~~ Acquiring, owning, and holding stock of a bank service corporation or security of a controlled subsidiary corporation, subject to § ~~6.1-58~~ 6.2-871 or § ~~6.1-58.1~~ 6.2-885, or from investing in a limited liability company, provided such investment conforms to § ~~6.1-58~~ 6.2-871 or § ~~6.1-58.1~~ 6.2-885;

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

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

11. ~~From acquiring~~ Acquiring, owning, and holding stock of a trust subsidiary as defined in § ~~6.1-32.1~~ 6.2-1000 et seq.;

12. ~~From investing~~ Investing up to four percent of its capital and surplus, including undivided profits, in shares of any bankers' bank organized under § ~~6.1-6.1~~ 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 § ~~6.1-381~~ 6.2-700 or a savings institution holding company as defined in § ~~6.1-194.87~~ 6.2-1100;

13. ~~From acquiring~~ 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 ~~criterion~~ limitation. Such purchase may be without the written consent of the ~~State Corporation~~ 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 ~~where~~ if the Commission finds that ~~such~~ the purchase (i) will not impair the safety and solvency of the bank and (ii) is otherwise appropriate ~~and~~. The Commission may require the divestiture of any shares held if deemed necessary and appropriate;

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

15. ~~From acquiring~~ Acquiring, owning, and holding, subject to such conditions as the Commissioner may prescribe, shares of stock in a community development corporation;

16. ~~From acquiring~~ Acquiring, owning, and holding shares of the Federal Agricultural Mortgage Corporation; ~~nor~~ or

17. ~~From acquiring~~ Acquiring, owning, and holding shares of a Federal Home Loan Bank.

~~B~~ 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.

**Drafting Note: Technical changes. Note, in subdivision B 9, that the Student Loan Marketing Association is the former name for Sallie Mae, a federally established entity that is currently an independent, publicly traded corporation.**

§ ~~6.1-61~~ 6.2-875. Limitations on obligations of borrowers.

A. As used in this section:

"Installment consumer paper" shall include installment notes of up to 10 years' duration for the purchase of unimproved real property.

"Obligation" means the direct liability of the maker or acceptor of the paper discounted with or sold to a bank and the liability of the endorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such bank. "Obligation" shall include:

1. In the case of obligations of a corporation or a limited liability company, all obligations of all subsidiaries thereof in which the corporation or limited liability company owns or controls a majority interest; and

2. Any liability of the bank under a letter of credit, other than a letter of credit arising out of transactions involving the importation or exportation of goods or the domestic shipment of goods, except to the extent (i) the bank has a binding participation of another bank, organized under the laws of the Commonwealth or another state or the United States, or a written commitment by another such bank to assume primary liability therefor, or (ii) such bank issuing the letter of credit has in its possession money on deposit to the credit of such customer or securities or assets readily convertible into cash with which to honor such letter of credit.

B. Subject to the exceptions ~~hereinafter stated~~ set forth in subsections D, E, F, and I, the total obligations of any person~~, partnership (~~, including, with respect to a partnership, as ~~hereinafter~~ provided in subsection C, the partners having a five percent or greater interest in either the income or capital ~~thereof~~ of a partnership other than limited partners~~)~~, ~~association, limited liability company or corporation~~ to any bank shall at no time exceed ~~fifteen~~ 15 percent of the sum of the capital, surplus, and loan loss reserve of such bank.

C. For the purposes of this section: ~~the~~

1. The obligation of partners in the partnership and the partnership shall not be combined with each other except ~~to the extent hereafter permitted.~~ if (~~1~~i) ~~If~~ the purpose for which the obligation of any partner was incurred or utilized relates to the partnership or the purposes of the partnership, including acquisition of an interest in the partnership, such obligation shall be combined with the obligation of the partnership~~.~~, or (~~2~~ii) ~~If~~ the primary source of repayment of a partner's individual obligation is the partnership or funds therefrom, the obligation of the partnership shall be combined with the obligation of such partner, other than a limited partner or partner with less than five percent interest, and the limitation specified herein shall apply to the combined obligations of each such partner and the partnership. Except in the two instances specified in clauses (~~1~~i) and (~~2~~ii) ~~of this paragraph~~, the individual liability of the partner shall not be treated as an obligation of the individual ~~hereunder~~, ~~nor shall~~ and the obligations of partner as individual guarantor on partnership obligations shall not be treated as an obligation of the

individual for purposes of computation hereunder when, in either case, the bank has a certificate of a responsible officer, designated by the board of directors for this purpose, stating that the responsibility of the partnership for each obligation has been evaluated and the bank is relying primarily upon such partnership for the payment of such indebtedness. For the purposes of this section there; and

2. There may be counted as part of the surplus (a i) the undivided profits as of the date of the most recent call statement, and (bii) capital notes and debentures, the issuance of which has been approved by the Commission, outstanding as of said date, and consisting of debt obligations subordinate to all other contractual liabilities of the bank.

The term "obligations" shall mean the direct liability of the maker or acceptor of the paper discounted with or sold to such bank and the liability of the endorser, drawer or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such bank, and shall include in the case of obligations of a corporation or a limited liability company all obligations of all subsidiaries thereof in which such corporation or limited liability company owns or controls a majority interest. The term "obligation" shall include any liability of the bank under a letter of credit, other than a letter of credit arising out of transactions involving the importation or exportation of goods or the domestic shipment of goods, except to the extent (i) the bank has a binding participation of another bank, organized under the laws of this Commonwealth or another state or the United States, or a written commitment by another such bank to assume primary liability therefor, or (ii) such bank issuing the letter of credit has in its possession money on deposit to the credit of such customer or securities or assets readily convertible into cash with which to honor such letter of credit.

A D. The following kinds of obligations shall not be subject to any limitation, except as expressly stated in subdivision A (7) of this section 20:

(1). Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values;

(2). Obligations arising out of the discount of commercial or business paper actually owned by the person, partnership, association, limited liability company, or corporation negotiating the same;

(3). Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment;

(4). Obligations in the form of banker's acceptances of other banks of the kind described in section thirteen of the Federal Reserve Act;

(5). Obligations of the United States, obligations of the Commonwealth of Virginia and of its, or any political subdivisions subdivision of the Commonwealth, including sanitary or public facilities districts, obligations

6. Obligations fully guaranteed or insured by a state or by a state authority for the payment of the obligation of which the faith and credit of the state is pledged, obligations issued by the Federal Home Loan Banks, first;

7. First mortgage real estate loans ~~which~~ that are insured by the Federal Housing Administrator~~, obligations~~;

8. Obligations guaranteed as to principal and interest by the United States~~, loans~~;

9. Loans in which the Small Business Administration or a federal reserve bank has definitely agreed or committed itself to participate, to the extent of such participation~~, obligations~~;

10. Obligations guaranteed by the Small Business Administration or Farmers Home Administration, to the extent of such guaranty~~, loans which~~;

11. Loans that the Federal Commodity Credit Corporation has definitely agreed to purchase~~, direct~~;

12. Direct obligations of, and obligations guaranteed by, the Export-Import Bank ~~and loans~~;

13. Loans guaranteed by a federal guaranteeing agency~~,~~ pursuant to the Defense Production Act of 1950~~, or bonds~~;

14. Bonds and notes of the Federal National Mortgage Association ~~or bonds~~;

15. Bonds, debentures, and other similar obligations of Federal Land Banks, Federal Intermediate Credit Banks, or Banks for Cooperatives issues pursuant to acts of Congress~~, obligations~~;

16. Obligations of the Federal Financing Bank, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, the National Credit Union Administration, Farm Credit Banks, the Government National Mortgage Association ~~and~~, or the Commodity Credit Corporation~~, as well as time~~;

17. Time deposits in, or obligations issued by, a Federal Home Loan Bank ~~and repurchase~~;

18. Repurchase agreements of obligations authorized by this subsection;

~~(6)~~ 19. Obligations of any person, ~~partnership, association, limited liability company, or corporation~~ secured by not less than a like amount of bonds or notes or other evidences of indebtedness of the United States or of the Commonwealth ~~of Virginia~~;

~~(7)~~ 20. Obligations as endorser or guarantor of installment consumer paper ~~which carries~~ that carry a full or limited endorsement or guarantee of the person~~, partnership, association, limited liability company, or corporation~~ transferring the same when the bank has a certificate of a responsible officer, designated by its board of directors for that purpose, stating that the responsibility of the maker of such obligation has been evaluated and the bank is relying primarily upon such maker for the payment of such obligation~~, in which~~. In such case the limitations of this section as to the obligations of the maker shall be the sole applicable loan limitation~~. As used in this subdivision, the term "installment consumer paper" shall be deemed to include installment notes of up to ten years' duration for the purchase of unimproved real property~~; and

~~(8)~~ 21. Obligations secured by the pledge or assignment of certificates of deposit or saving certificates of the lending bank, to the extent of the principal amount of such certificates so pledged or assigned.

~~B~~ E. The following kinds of obligations shall be subject to a limitation of ~~thirty~~ 30 percent of such capital and surplus:

~~(~~1~~).~~ Obligations as endorser or guarantor of notes, other than commercial or business paper excepted under subdivision ~~A~~ D ~~(~~2~~) of this section~~ having a maturity of not more than six months, and owned by the person~~, partnership, limited liability company, or corporation~~ endorsing and negotiating the same~~.~~;

~~(~~2~~).~~ Obligations of any person~~, partnership, limited liability company, or corporation~~ in the form of notes or drafts secured by shipping documents or instruments (i) transferring or securing title covering livestock or (ii) giving a lien on livestock when the market value of the livestock securing the obligations is not at any time less than 115 percent of the amount by which the obligations exceed ~~fifteen~~ 15 percent of such capital and surplus~~.~~; and

~~(~~3~~).~~ Obligations secured by bonds or notes of the United States, or bonds of the Commonwealth ~~of Virginia~~ or any of its political subdivisions, if the face value thereof is at least equal to the excess of the obligations over ~~fifteen~~ 15 percent of such capital and surplus.

~~C~~ F. Nonrenewable obligations having not more than ~~ten~~ 10 months to run consisting of notes or drafts secured by shipping documents, warehouse receipts, or similar documents creating a security interest in readily marketable, nonperishable, staple commodities, insured to the extent that insurance is customarily required, shall be subject to a sliding scale limitation up to ~~fifty~~ 50 percent of such capital, surplus, and undivided profits. The sliding scale limitation shall ~~be as follows:~~ require that when the face amount of the obligation exceeds ~~fifteen~~ 15 percent of such capital and surplus by any number of percentage points up to ~~thirty-five~~ 35, the market value of the security for the obligation ~~must~~ shall exceed the face amount of the obligation by at least the same number of percentage points.

~~D~~ G. The Commission shall ~~promulgate~~ adopt necessary ~~rules and~~ regulations to require entities~~, which~~ that would otherwise be treated as separate entities~~,~~ to be treated as related for the purposes of compelling reporting not more frequently than quarterly, to the Commission of the aggregate obligations of such parties to the bank. For the purposes of this ~~subdivision, the~~ subsection:

1. The Commission may treat as related parties~~, persons~~ individuals that are in the same household or ~~which~~ that are the parents, grandparents, children, or ~~grandchild or~~ grandchildren of each other whether or not in the same household~~.~~;

2. Any person owning as much as ~~thirty-four~~ 34 percent of stock of a corporation or being an officer or director of such corporation may be treated as related to such corporation~~.~~;

3. Any person entitled to a share of the profits and losses of or distributions from a limited liability company, or who is a manager of a manager-managed limited liability company or a member of a member-managed limited liability company, may be treated as related to the limited liability company~~.~~; and

4. Any person having an interest in income or capital of a partnership may be treated as a related party.

H. All loans made by a bank in excess of ~~fifteen~~ 15 percent of its capital and surplus shall be approved by the board of directors or the executive committee of the bank by resolution recorded in the bank's minute book.

~~E~~ I. Notwithstanding the limitations in this section, the Commission may by ~~rule or~~ regulation authorize state banks to make loans to one borrower in such amounts as may be authorized under any lending limit laws applicable to national banks.

**Drafting Note: Section is reorganized. Definitions are moved to proposed subsection A. "Person" encompasses partnership, limited liability company, and corporation. In subsection G, "person" is replaced with "individual" based on the context.**

§ ~~6.1-62~~ 6.2-876. Loans to executive officers or directors.

A. The maximum amount of loans and other extensions of credit a bank may make to any of its executive officers or directors, and the conditions and procedures for approval of such extensions of credit, shall be governed by Federal Reserve Board Regulation O, 12 C.F.R. Part 215, whether or not the bank is a member of the Federal Reserve System.

B. The aggregate amount of a bank's extensions of credit to its executive officers or directors, and their interests, shall not be excessive. The Commission shall ~~promulgate~~ adopt such regulations as may be required to prevent excessive aggregate amounts of extensions of credit by a bank to such persons and their interests.

**Drafting Note: Technical change.**

§ ~~6.1-62.1~~ 6.2-877. Overdrafts by bank officer or director.

No bank shall pay an overdraft of an executive officer or director of the bank on an account at the bank~~,~~ unless the payment of funds is made in accordance with (i) a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or (ii) a written, preauthorized transfer of funds from another account of the account holder at the bank. This prohibition does not apply to the payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less~~, provided that~~ if (~~i~~ a) the account is not overdrawn for more than five business days~~,~~ and (~~ii~~ b) the member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

**Drafting Note: Technical changes.**

§ ~~6.1-63~~ 6.2-878. ~~Limitation on amount of loans~~ Loans secured by real estate generally.

A. As used in this section, "loan secured by real estate" means an obligation executed or assumed by the borrower that is secured by mortgage, deed of trust, or similar instrument, encumbering real estate that is owned by the borrower and upon which the bank relies as the principal security for the loan.

B. No bank shall make any loan secured by real estate when such loan, together with all prior liens or encumbrances on such real estate, exceeds 90 percent of the appraised value of the real estate securing such loan.

~~B~~ C. The appraisals necessitated by this section shall be required if the loan shall equal or exceed an amount established from time to time by the Commissioner ~~of Financial Institutions who, in~~. In establishing such amount, the Commissioner shall take into consideration the requirements imposed on banks under applicable federal regulations. Such appraisals shall be in writing, signed by the appraisers, and shall be retained in the files of the bank, subject to examination of bank examiners. The appraisers so appointed shall be experienced persons competent to appraise real estate in the locality where the real estate is located.

~~C~~ D. Any bank may make loans secured by real estate that do not comply with the limitations and restrictions in this section if the total unpaid amount of such loans, exclusive of the loans ~~which~~ that subsequently comply with such limitations and restrictions, does not exceed 10 percent of the total amount of loans secured by real estate.

~~D~~ E. The provisions of this section relating to ratio of loan to appraised value and appraisal shall not ~~relate to the case where~~ apply if:

1. The real estate security is taken solely as an abundance of caution on terms which are not more favorable than they would be in absence of such a lien on real estate;

2. A real estate security conveyance is taken by or ancillary to the assignment of lease obligations upon which the bank is relying primarily and prudently;

3. A subsequent transaction results from an existing extension of credit providing (i) that the borrower has performed satisfactorily, (ii) there is no advance of new money, except as formerly agreed, (iii) the credit standing of the borrower is not deteriorating, and (iv) there is no obvious and noticeable deterioration of marketing conditions or the physical assets which provide collateral security to the bank; or

4. A lien upon real estate is taken to secure a prior advance which was not secured by such real estate.

~~E~~ F. In cases where an appraisal by a state-certified or state-licensed appraiser is not required, under this section or other sections of this chapter in a real estate-related financial transaction, the bank as a matter of prudence may take and preserve a reasonable appraisal, valuation, or analysis of real estate or real property in connection with such transaction.

~~F~~G. The ~~State Corporation~~ Commission may by order or regulation eliminate loans or specific categories of loans from the requirements of this section.

H. The provisions of this section shall not be construed to prohibit any bank from accepting, as security for a loan that it had made in good faith without security or upon security since found to be inadequate, an obligation or obligations secured by mortgage, deed of trust, or other such instrument upon real estate.

**Drafting note: Proposed subsection A is existing subsection A of § 6.1-65, with changes that clarify that, in order for a loan to be a "loan secured by real estate" it shall be in the prescribed form. Proposed subsection H is existing subsection C of § 6.1-65. Other changes are technical.**

§ 6.2-879. Certain loans not considered loans secured by real estate.

A. If the bank reasonably and prudently relies upon factors other than or in addition to the real estate security, such as general credit standing, guarantees, commitments, or tangible or intangible personal property security, and enters in its records a written statement of the factors it relies on, the loan does not constitute a loan secured by real estate within the meaning of § 6.2-878, except that if the terms of the transaction shall be more favorable than in the absence of a lien, an appraisal shall be required as provided under § 6.2-878.

B. Loans made to homeowners for maintenance, repair, landscaping, modernization, alteration, improvement to, and furnishings and equipment for, their homes, whether or not secured, shall not be considered as loans secured by real estate within the meaning of § 6.2-878, provided each such loan shall (i) be payable in approximately equal monthly installments, (ii) not be for a term longer than 12 years, and (iii) not exceed an amount specified in accordance with subsection C of § 6.2-878. Such home loans may otherwise be made under the provisions of § 6.2-878 or 6.2-880. If such loan is in excess of the amount specified under subsection C of § 6.2-878, unless the taking of real estate security is solely in the abundance of caution and the terms are not more favorable than in the absence of such a real estate lien, an appraisal as required by § 6.2-878 or 6.2-880 shall be required by the bank.

**Drafting note: New section combines subsection B of existing § 6.1-65 and existing § 6.1-66 because both deal with types of loans that are not to be considered real estate loans within the meaning of proposed § 6.2-878.**

§ ~~6.1-64~~ 6.2-880. Construction loans.

~~Loans~~ A. As used in this section, "construction loan" means a loan (i) made to finance the construction of a building or otherwise to improve real estate~~, and having maturities of~~ and (ii) with a maturity not ~~to exceed~~ exceeding 60 months.

~~if~~ B. A construction loan that is accompanied by a valid and binding agreement to advance an amount equal to or greater than the construction loan upon the completion of the building or improvement, which agreement is entered into by an individual~~, partnership, association, or corporation~~ or entity acceptable to the bank ~~(and including~~ or the bank itself~~)~~, whether or not secured by a mortgage or similar lien on the real estate upon which the building or improvement is being constructed, shall not be considered as a loan secured by real estate within the meaning of § ~~6.1-63~~ 6.2-878, but shall be classed as an ordinary commercial ~~loans~~ loan, unless the terms of the transaction shall be more favorable than in the absence of a lien, in which case an appraisal shall be required as provided under § ~~6.1-63~~ 6.2-878.

C. No bank shall invest in, or be liable in, ~~any such loans~~ construction loans in an aggregate amount in excess of 100 percent of its capital and surplus, except that any such loans supported by an executed agreement for permanent financing shall not be included in such aggregate amount.

D. Loans ~~made~~ to finance construction of buildings or otherwise to improve real estate may be made under this section or under the provisions of § ~~6.1-65~~ 6.2-878.

E. Loans made under subsection H of § ~~6.1-65~~ 6.2-878 or subsection A of § 6-2-879 shall not be treated as construction loans for purposes of the limitations of this section.

**Drafting note: Technical changes.**

~~§ 6.1-65. Form of loans secured by real estate; certain loans not prohibited by § 6.1-63.~~

~~A. A loan secured by real estate within the meaning of § 6.1-63 shall be in the form of an obligation or obligations executed or assumed by the borrower, secured by mortgage, trust deed or other such instrument upon real estate owned by the borrower, and upon which the bank relies as the principal security for the loan.~~

~~B. Where the bank reasonably and prudently relies upon factors other than or in addition to the real estate security (such as general credit standing, guarantees, commitments, or tangible or intangible personal property security) and enters in its records a written statement of the factors it relies on, the loan does not constitute a loan secured by real estate within the meaning of § 6.1-63, except that if the terms of the transaction shall be more favorable than in the absence of a lien, an appraisal shall be required as provided under § 6.1-63.~~

~~C. The provisions of § 6.1-63 shall not be construed to prohibit any bank from accepting as security for a loan made in good faith without security or upon security since found to be inadequate an obligation or obligations secured by mortgage, trust deed, or other such instrument upon real estate.~~

**Drafting note: Subsection A is set out as the definition of a "loan secured by real estate" in proposed subsection A of § 6.2-878. Subsection B is moved to proposed subsection A of § 6.2-879. Subsection C is moved to proposed subsection H of § 6.2-878.**

§ ~~6.1-65.1~~ 6.2-881. Investment in reverse annuity mortgages.

A bank may invest in reverse annuity mortgages to the extent and in the manner that may be provided in regulations adopted by the Commission.

**Drafting note: No change.**

~~§ 6.1-66. Certain loans for home improvement purposes not considered loans secured by real estate.~~

~~Loans made to home owners for maintenance, repair, landscaping, modernization, alteration, improvement, furnishings and equipment to their homes, whether or not secured, shall not be considered as loans secured by real estate within the meaning of § 6.1-63, provided each such loan shall be payable in approximately equal monthly installments, shall not be for a term longer than 12 years, and shall not exceed an amount specified in accordance with subsection B of § 6.1-63. Such home loans may otherwise be made under the provisions of § 6.1-63, 6.1-64 or 6.1-65. If such loan is in excess of the amount specified under subsection B of § 6.1-63, unless the taking of real estate security is solely in the abundance of caution and the terms are not more favorable than in the absence of such a real estate lien, an appraisal as required by § 6.1-63, 6.1-64 or 6.1-65 shall be required by the bank.~~

**Drafting note: Section is moved to proposed subsection B of § 6.2-879.**

§ ~~6.1-67~~ 6.2-882. Bank borrowing money or rediscounting its notes~~; reports; resolutions~~.

A. Any bank borrowing money or rediscounting any of its notes shall at all times show on its books and accounts and in its reports the amount of such borrowed money or rediscounts.

B. No officer, director, or employee of any bank shall issue the note of such bank for borrowed money or rediscount any note or pledge any of the assets of such bank, except when authorized by resolution of the board of directors of such bank previously made and entered upon the minutes of such bank, under such rules and regulations and in such form as may be prescribed adopted by the Commission.

**Drafting note: Technical changes.**

§ 6.1-68 6.2-883. Acceptance of drafts or bills of exchange; issuance of letters of credit.

A. Any bank doing business in this the Commonwealth may, subject to conditions, limitations, and restrictions imposed by the State Corporation Commission, may (i) accept for payment at a future date drafts or bills of exchange drawn upon it by its customers on time not exceeding six months, and (ii) issue letters of credit, upon such terms and conditions and of such duration as may be deemed appropriate by such bank authorizing, that authorize the holders thereof to draw drafts upon it or its correspondent, which drafts may be payable at sight or may be accepted for payment from the date of presentment on time not exceeding six months.

B. The State Corporation Commission, in adopting said conditions, limitations, and restrictions with respect to such acceptances or letters of credit, shall use as a standard or guide the respective conditions, limitations, and restrictions, if any, imposed from time to time by federal statute or by the Federal Reserve Board on its member banks.

**Drafting note: Technical changes.**

§ 6.1-68.1 6.2-884. Ownership and lease of personal property.

A. As used in this section, "personal property" includes fixtures.

B. A bank may become the owner and lessor of personal property, which term as used herein shall include fixtures, subject to the following limitations:

1. Except in the case of short-term leases where a subsequent sale or reletting is anticipated, the rentals receivable by the bank under the initial lease of any item of personal property shall equal at least equal the cost to the bank of such item of personal property.;

2. Any leasing or rental obligations to any bank of any person, partnership or corporation shall be treated as obligations subject to the limitations imposed by § 6.1-61 6.2-875.;and

3. Upon the expiration of any lease whether by virtue of the lease agreement or by virtue of the retaking of possession by the bank, such the personal property shall be sold or otherwise disposed of, or charged off within one year from the time of expiration of such lease unless it is held for the purpose of reletting.

B C. No personal property acquired pursuant to this section shall be included in computable investment in fixed assets under § 6.1-57 6.2-870.

**Drafting note: Technical changes.**

§ 6.1-58.1 6.2-885. Investment in stock or securities of controlled subsidiary corporations.

A. As used in this section and §§ 6.2-886, 6.2-887, and 6.2-888:

"Control" has the meaning assigned to it in § 2 of the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.).

"Controlled subsidiary corporation" means a corporation that is controlled by a bank organized under the laws of the Commonwealth, or by more than one bank, at least one of which is organized under the laws of the Commonwealth.

B. A bank may acquire, own, and hold the stock, securities, or obligations of one or more controlled subsidiary corporations. Such investment in stock, securities, or obligations, together with any investment of the bank in stock, securities, or obligations of a bank service corporation, shall not exceed in the aggregate ~~fifty~~ 50 percent of the bank's capital stock and permanent surplus, without the permission of the ~~State Corporation~~ Commission, ~~except that the foregoing~~ which limit on investment shall not include, but shall be in addition to, investment in (i) a real estate subsidiary as provided in § ~~6.1-59.1~~ 6.2-873, ~~investment in~~ (ii) the stock, securities, or obligations of a building corporation under § ~~6.1-57~~ 6.2-870, and ~~investment in~~ (iii) controlled subsidiary corporations that are wholly owned by the bank.

~~B. 1. A controlled subsidiary corporation is defined as a corporation that is controlled by a bank organized under the laws of this Commonwealth, or by more than one bank, at least one of which is organized under the laws of this Commonwealth. For purposes of this section, "control" shall have the same meaning given that term by section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.).~~

~~2. Such~~ C. A controlled subsidiary corporation shall not be authorized to (i) ~~to~~ receive deposits ~~(~~except as hereafter provided~~)~~; (ii) ~~to~~ engage in the trust business; or (iii) ~~to~~ conduct any business ~~which~~ that is required under § 13.1-620 to be specifically stated in the articles of incorporation, except ~~as may be authorized by subdivision 3.~~

~~3. Such~~ a controlled subsidiary corporation may engage in the business of credit card operations, leasing, safe deposit, factoring, credit bureaus, mortgage brokerage or servicing, data processing, international banking and finance, and any other function or business activity in which a bank might engage, except the receipt of deposits, or the trust business. Subject to the ~~provisions of subdivision 2~~ foregoing limitations on the businesses that a controlled subsidiary corporation is authorized to conduct, and with the prior approval of the Commission and subject to such conditions as the Commission may impose, ~~such~~ a controlled subsidiary corporation may also engage in any business that is authorized by statute, regulation, or official interpretation for a subsidiary of ~~(i)~~ a national bank or ~~(ii)~~ an out-of-state state bank as defined in § ~~6.1-44.2~~ 6.2-836 to the extent such activity is financial in nature, or incidental or complimentary to a financial activity, and is not otherwise prohibited by state law. ~~However, a~~ A controlled subsidiary corporation transacting business as a real estate brokerage firm shall be governed by § ~~6.1-58.3~~ 6.2-888 and be subject to the provisions of this section. ~~Such~~ A controlled subsidiary corporation may charge and collect such finance charges and fees or interest rates as are authorized to banks by the laws of ~~this~~ the Commonwealth or as otherwise authorized by Chapter ~~7.3~~ 3 (§ ~~6.1-330.49~~ 6.2-300 et seq.) ~~of this title~~.

~~C~~ D. A controlled subsidiary corporation engaged solely in the business of international banking and finance, and subject to the regulation and supervision by the Board of Governors of the Federal Reserve System, shall not be prohibited from receiving deposits or from taking any

other action ~~which~~ that any such regulated international banking and finance institution is permitted to take.

~~D~~ E. The provisions of § ~~6.1-60.1,~~ 6.2-874 relating to investment of funds in shares of stock of another corporation shall be applicable to controlled subsidiary corporations, except that a controlled subsidiary corporation may acquire, own, and hold stock in a subsidiary corporation if a bank would be permitted to directly acquire, own, or hold the stock hereunder. The provisions of § ~~6.1-62~~ 6.2-876 relating to loans to officers, directors, or employees of the bank shall be applicable both to loans by the subsidiary to officers, directors, or employees of the bank and to loans by the bank to officers, directors, or employees of the subsidiary, with the approval of the board of directors of the bank only being required for purposes of § ~~6.1-62~~ 6.2-876. The limitations of §§ ~~6.1-63, 6.1-64, 6.1-65, 6.1-65.1 and 6.1-66~~ 6.2-878 through 6.2-881 as they relate to appraisal value, maximum term, and amortization on loans secured by real estate shall be applicable to controlled subsidiary corporations. ~~This subsection and subsection E of this section are subject to the proviso that~~ Notwithstanding any provisions of this subsection to the contrary, the restrictions ~~of §§ 6.1-60.1 through 6.1-66 are not intended to be~~ set out in §§ 6.2-874 through 6.2-881 shall not be imposed upon any controlled subsidiary ~~which~~ that has no state banks as shareholders.

~~E. 1~~ F. The provisions of § ~~6.1-61~~ 6.2-875 relating to ~~limitation~~ limitations upon obligations of any one borrower shall apply to the total obligations of any borrower in the aggregate to the subsidiary corporation and to any bank or bank holding company owning stock securities or obligations of such subsidiary corporation. The loan limit of the subsidiary shall be computed by attributing to the subsidiary a pro rata share of the lending limit of each bank stockholder prorated in accordance with the percentage of stock owned by such bank ~~or~~. However, in the case of a subsidiary, any of the stock, securities, or other obligations of which are owned by a bank holding company, the loan limits of the subsidiary shall be computed by attributing to the subsidiary a pro rata share of the lending limits of all bank subsidiaries of such holding company, which share shall be prorated ~~in accordance with~~ based on the percentage of stock owned by ~~such~~ the holding company and all subsidiary banks thereof. In computing whether a bank or a subsidiary ~~(which~~ that is not wholly owned~~)~~ is complying with its lending limit, the loans of the bank and the subsidiary to any common borrower shall be aggregated on a basis pro rata to the percentage of stock of the subsidiary owned by the bank.

~~2~~. Such controlled subsidiary corporation shall not otherwise be subject to the provisions of ~~the Virginia Banking Act (§ 6.1-3 et seq.)~~ this chapter except where it is expressly so provided. Notwithstanding any provisions of this subsection to the contrary, the restrictions set out in §§ 6.2-874 through 6.2-881 shall not be imposed upon any controlled subsidiary that has no state banks as shareholders.

**Drafting note: Section is split into this section, which addresses investments in controlled subsidiary corporations, and proposed § 6.2-886, which addresses their regulation. The definition of "controlled subsidiary" is added to acknowledge that several provisions use**

**that term. The last sentence of existing subsection D is set out in both proposed subsections E and F to avoid the possibility of being overlooked.**

§ 6.2-886. Regulation of controlled subsidiary corporations by Commission.

~~F~~ A. A controlled subsidiary corporation shall be subject to audit and examination by the Commission whether or not it is an affiliate as defined in § ~~6.1-85~~ 6.2-899. ~~It~~ The controlled subsidiary corporation shall pay such examination fees as shall be imposed under § ~~6.1-94~~ 6.2-908 for the examination of trust departments. If upon examination~~,~~ the Commission shall ascertain that the corporation is created or operated in violation of this section or that the manner of operation is detrimental to the business of the parent bank and its depositors, it may order the bank to dispose of all or part of its investment in such corporation upon such terms as the Commission may deem proper.

~~G~~ B. A controlled subsidiary may not merge or consolidate unless the surviving corporation is itself a controlled subsidiary corporation ~~as defined herein~~, or unless as a result of such merger or consolidation the bank divests itself of all stock or other securities ~~which~~ that are held pursuant to the authority ~~herein~~ granted by this section.

~~H~~ C. The Commission shall have the same powers over controlled subsidiary corporations as it has over banks under §§ ~~6.1-100~~ 6.2-913, ~~6.1-101~~ 6.2-915, ~~6.1-103~~ 6.2-917, ~~6.1-104~~ 6.2-918, and ~~6.1-105~~ 6.2-919, excepting those controlled subsidiary corporations ~~which~~ that have no state banks as stockholders.

**Drafting note: New section consists of existing subsections F, G, and H of § 6.1-58.1.**

§ ~~6.1-58.2~~ 6.2-887. Insurance business of controlled subsidiary.

A. In addition to the types of business authorized in § ~~6.1-58.1~~ 6.2-885, a controlled subsidiary corporation that is a domestic or foreign corporation, the majority of the voting stock of which is owned, directly or indirectly, by (i) a bank or banks organized under the laws of the United States, (ii) a bank or banks organized under the laws of the Commonwealth, (iii) a bank or banks organized under the laws of another state, or (iv) a bank holding company owning a bank or banks in the Commonwealth or in another state, may be formed ~~(i)~~ to ~~transact:~~

1. Transact the type of insurance business specified in § 38.2-120 and other insurance normally written under the coverage known as financial institution blanket bonds~~, (ii) to underwrite~~;

2. Underwrite insurance indemnifying the bank, its holding companies or its affiliates, and their directors and officers against liability~~,~~; and ~~(iii) subject to such conditions as the Commission may impose, to underwrite~~

3. Underwrite reinsurance of mortgage guaranty insurance, subject to such conditions as the Commission may impose, on loans secured by real estate made or purchased by such controlled reinsurance subsidiary's affiliates or by a bank ~~or banks~~ owning such controlled subsidiary~~, provided such~~.

B. Any such controlled subsidiary ~~corporations~~ corporation shall (i) transact only the insurance business specifically permitted by this section and (ii) be subject to the further

provisions of Title 38.2 otherwise applicable to insurance companies transacting a comparable business.

C. The investment of any bank in the stock, services, or other obligations of such a controlled subsidiary shall not exceed two percent of such bank's capital, surplus, and undivided profits. ~~Such controlled subsidiary shall be subject to the further provisions of Title 38.2 otherwise applicable to insurance companies transacting a comparable business~~. ~~For the purpose of this section, a controlled subsidiary corporation may be a domestic or foreign corporation and the majority of its voting stock be owned, directly or indirectly, by (i) a bank or banks organized under the laws of the United States, (ii) a bank or banks organized under the laws of this Commonwealth, (iii) a bank or banks organized under the laws of one of the other states of the United States, or (iv) a "bank holding company" owning a bank or banks in this Commonwealth or in another state.~~

**Drafting note: The last sentence of the current section ("For the purposes of this section, a controlled subsidiary corporation may be . . . ") is moved to the start of the section, to clarify the types of controlled subsidiary corporations that may engage in insurance business under this section. The provisions regarding conduct of insurance business are combined in proposed subsection B. "Or banks" is deleted in subdivision A 3 because § 1-227 provides that the singular includes the plural.**

§ ~~6.1-58.3~~ 6.2-888. Real estate brokerage business of controlled subsidiary.

A. In addition to the types of business authorized in §§ ~~6.1-58.1~~ 6.2-885 and ~~6.1-58.2~~ 6.2-887, a controlled subsidiary corporation may be formed and licensed to transact business as a real estate brokerage firm in accordance with § 54.1-2106.1, provided such controlled subsidiary corporation transacts the real estate brokerage business and such services only in accordance with the specific provisions of this section. Such controlled subsidiary corporation shall be subject to the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 that are otherwise applicable to real estate brokerage companies transacting a comparable business.

B. A controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm and provide ~~such~~ the services of a real estate brokerage firm, only upon the Commission's determination that the state bank making application to do so is in full compliance with applicable law. The investment of any bank in the stock, securities, or other obligations of a controlled subsidiary corporation shall ~~only~~ be approved by the Commission only upon a determination by the Commission that~~:~~ (i) the depositors of the bank are adequately protected from the risk of such ownership~~;~~ and (ii) the ownership is a safe and sound investment for the bank in accordance with applicable law. Such determination shall include but not be limited to providing written notice to the Virginia Real Estate Board and receiving written confirmation from the Virginia Real Estate Board that the real estate brokerage firm, to be owned, and its brokers, are in good standing in accordance with the requirements of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

C. ~~Further, a~~ A controlled subsidiary corporation of a state bank may own and transact business as a real estate brokerage firm only in compliance with the following:

1. The controlled subsidiary corporation, or a state bank that owns a controlled subsidiary corporation, that engages in real estate brokerage, shall not:

a. Impose a requirement, orally or in writing, that a borrower shall contract for or enter into any other arrangement for real estate services with its affiliated real estate brokerage firm;

b. Impose a requirement, orally or in writing, that as a condition of approving a loan a borrower shall contract or enter into any other arrangement with its affiliated real estate brokerage firm;

c. Impose a requirement, orally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724 (12 U.S.C. § 2601 et seq.), and regulations promulgated adopted thereunder;

d. Impose a requirement, orally or in writing, that a condition of providing real estate brokerage services is that the customer shall make application for a loan or any other arrangement for other services of the bank or any of its subsidiaries, affiliates, or service entities, except as otherwise permitted under the Real Estate Settlement Procedures Act of 1974, Public Law 93-533, 88 Stat. 1724 (12 U.S.C. § 2601 et seq.), and regulations promulgated adopted thereunder;

e. Offer or provide more favorable consideration, terms, or conditions for any financial products or services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage services with any particular real estate brokerage firm;

f. Offer or provide more favorable terms or conditions for any real estate brokerage services to induce or attempt to induce a person to apply for a loan or obtain any other services of a particular bank or any of its subsidiaries, affiliates, or service entities;

g. Conduct real estate brokerage activities in the same areas of a building where the bank routinely accepts retail deposits from the general public;

h. Conduct real estate brokerage activities in areas of a building that are identified as areas where banking activities occur;

i. Conduct banking activities in areas of the building that are identified as areas where real estate brokerage activities occur;

j. Make payment to its employees for any referrals of real estate brokerage business;

k. Use confidential credit and other financial information available from the bank for solicitation purposes by a real estate brokerage affiliate, without first having obtained the written consent of the customer;

l. Use or transfer from a bank to any affiliated real estate brokerage firm any financial information of or relating to any unaffiliated competing real estate brokerage firm that is an actual or prospective customer; or

m. Use, directly or indirectly, nonpublic customer information, that is held or obtained by the bank, for the purpose of soliciting real estate business, without first having obtained the written consent of the customer.;

2. A state bank that makes a referral to its affiliated real estate brokerage firm shall clearly and conspicuously disclose in writing, in a separate document, to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to consult with, contract for, or enter into an arrangement for real estate brokerage services with its affiliated real estate brokerage firm~~.~~; and

3. A real estate brokerage firm that is affiliated with a bank shall clearly and conspicuously disclose in writing, in a separate document, before the time an agency agreement for real estate brokerage services is executed, that the person is not required to apply, contract for, or enter into any other arrangement for services of a particular bank or any of its subsidiaries, affiliates, or service entities.

~~4~~ D. The requirements of this section are in addition to the requirements of the Real Estate Settlement Procedures Act of 1974~~, Public Law 93-533, 88 Stat. 1724~~ (12 U.S.C. § 2601 et seq.), and regulations ~~promulgated~~ adopted thereunder.

~~5~~ E. State banks owning and transacting business as real estate brokerage firms under this section are subject to the provisions of ~~the Wet Settlement Act,~~ Chapter ~~1.1~~ 27.1 (§ ~~6.1-2.10~~ 55-525.1 et seq.) of ~~this title~~ Title 55.

~~6~~ F. A state bank that acts as a mortgage broker, as defined in § ~~6.1-409~~ 6.2-1600, and that transacts business as a real estate brokerage through a controlled subsidiary corporation, is subject to subdivision B 5 and subsection C of § ~~6.1-422~~ 6.2-1616; however, a state bank that, pursuant to an executed originating agreement with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing Development Authority is or would be the payee on the note evidencing such mortgage loan and that the Virginia Housing Development Authority provides or would provide the funding of such mortgage loan prior to or at the settlement thereof.

~~7~~ G. In the event of a violation of this section, the Commission may take such action as is authorized in accordance with § ~~6.1-125~~ 6.2-946, including issuance of an order requiring the state bank to cease and desist the activity that violates this section and imposing penalties.

**Drafting note: Existing subdivisions C 4 through C 7 are redesignated as subsections D through G because they do not enumerate specific restrictions on the conduct of the real estate brokerage business.**

Article ~~8~~ 10.

~~Deposits and~~ Reserves.

§ ~~6.1-69~~ 6.2-889. Required reserves.

A. As used in this section, unless the context requires otherwise:

"Demand deposits" means all deposits the payment of which can be legally required in less than 30 days.

"Time deposits" means all deposits the payment of which cannot be legally required in less than 30 days.

B. Every bank shall maintain a reserve related to its demand deposits and to its time deposits. ~~Such~~ The reserve on ~~demand~~:

1. Demand deposits shall consist of actual cash on hand and balances payable on demand, due from other solvent banks~~. Such reserve on time~~; and

2. Time deposits shall consist of actual cash on hand and balances payable on demand due from other solvent banks; provided that up to 100 percent of such reserve on time deposits may be in the form of short maturity general obligations of the United States, such maximum percentage to be fixed by the Commission. ~~The term "demand deposits" shall mean all deposits the payment of which can be legally required in less than thirty days. The term "time deposits" shall mean all deposits the payment of which cannot be legally required in less than thirty days~~.

C. The Commission shall by regulation establish from time to time the reserve requirements within the following limits:

1. On demand deposits: zero to ~~fifteen~~ 15 ~~per centum on demand deposits,~~ percent; and

2. On time deposits: zero to five ~~per centum on time deposits~~ percent.

D. The reserves required herein for each day shall be computed on the basis of average daily deposits covering a biweekly period, provided that shorter averaging periods may be fixed by regulation of the Commission.

E. Nothing herein shall be construed to relieve any bank which is a member of the Federal Reserve System from maintaining a reserve fund in accordance with the requirements applicable to such member banks.

**Drafting note: Definitions are moved to the start of the section; other changes are technical or to improve organization.**

~~§ 6.1-70. Payment of balance of deceased person or person under disability to personal representative, committee, etc.~~

~~Any bank may pay any balance on deposit to the credit of any deceased person or of any person under disabilities, to the personal representative, curator, conservator or committee of such person upon a letter of qualification as such personal representative, curator, conservator or committee, issued by any court of competent jurisdiction of this Commonwealth, and such letter shall be sufficient authority for such transfer. Any such bank making such transfer shall no longer be liable for such deposit to any person whomsoever. The presentation of a duly certified letter of qualification as personal representative, curator, conservator or committee shall be conclusive proof of the jurisdiction of the court issuing the same. Payment to a fiduciary qualified under the law of a state other than Virginia shall be in accordance with Chapter 5 (§ 26-59 et seq.) of Title 26 and § 64.1-130.~~

**Drafting note: Section is moved to proposed § 6.2-893.**

~~§ 6.1-70.1. Deposits in and withdrawals from accounts of convicts.~~

~~Notwithstanding the provisions of Chapter 11 (§ 53.1-221 et seq.) of Title 53.1, a person convicted of a felony and sentenced to confinement in a state correctional institution for one year~~

~~or longer, with the written consent of the Director of the Department of Corrections or his authorized delegate, may have a bank account, free from control of all persons except the Director of the Department of Corrections and a committee appointed pursuant to the provisions of § 53.1-221. Whenever a deposit shall be made in a bank account by a convict, the deposit shall be held for the exclusive right and benefit of the convict. The check, order or receipt of the convict shall be a complete and sufficient release and discharge for any payments so made from the deposit in the bank, until such time as the bank shall be notified in writing by a duly qualified committee or the Director of the Department of Corrections, or his duly authorized delegate, not to permit further withdrawals from that account. Upon receipt of such written notice or commencing on the banking day following the date of receipt of such written notice, the bank shall not permit further withdrawal, except with the consent of the committee or the Director of the Department of Corrections, or his delegate. A bank may further accept, pay or collect items on account for proceeds of collection of a bank account of a convict, despite his conviction or confinement or the bank's knowledge thereof, until it receives written directions to the contrary from the committee of such convict or the Director of the Department of Corrections.~~

**Drafting note: Section is moved to proposed § 6.2-894.**

~~§ 6.1-71. Payment of small balance to distributees or other persons.~~

~~When the balance in any bank to the credit of a deceased person, upon whose estate there shall have been no qualification, does not exceed $15,000, it shall be lawful for such bank, after sixty days from the death of such person, to pay such balance to his or her spouse, and if none, to the distributees of the decedent or other persons entitled thereto under the laws of this Commonwealth. The receipt therefor shall be a full discharge and acquittance to such bank to all persons whomsoever on account of such deposit. Such sum, not exceeding the amount given priority by § 64.1-157, after thirty days from the death of such person, at the request of the consort, or if no consort, then the distributees of the decedent or other persons entitled under the laws of this Commonwealth, may be paid to the undertaker or mortuary handling the funeral of such decedent and a receipt of the payee shall be a full and final release of the payor.~~

**Drafting note: Section is moved to proposed § 6.2-895.**

~~§ 6.1-72.~~

**Drafting note: Repealed by Acts 1979, c. 407.**

~~§ 6.1-73.~~

**Drafting note: Repealed by Acts 1979, c. 407.**

~~§ 6.1-73.1.~~

**Drafting notes: Repealed by Acts 1988, c. 171.**

~~§ 6.1-74. Deposits of minors.~~

~~A bank may establish a deposit account for a minor as the sole and absolute owner of such account. The bank may receive deposits by or for such minor, honor any withdrawal request of the minor, and act in any other manner with respect to such account on the minor's order. Any payment or delivery of funds from such account to the minor, or the payment of a check or other written order for withdrawal of funds signed by such minor owner, shall be a valid and sufficient~~

~~release and discharge of such bank for any payment or delivery so made. The parent or guardian of such minor shall not in his capacity as parent or guardian have the power to withdraw or transfer funds in any such account unless the minor has given written notice to the bank to accept the signature of such parent or guardian.~~

**Drafting note: Section is moved to proposed § 6.2-896.**

~~§ 6.1-75. Bank need not inquire as to fiduciary funds deposited in fiduciary's personal account.~~

~~If any fiduciary or agent makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks drawn by him upon an account in the name of his principal, if he is empowered to draw checks thereon, or of checks payable to his principal and endorsed by him as fiduciary, the bank receiving such deposit shall not be bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary, in making such deposit or in drawing such check, is committing a breach of his obligation as fiduciary, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.~~

**Drafting note: Section is moved to proposed § 6.2-897.**

~~§ 6.1-76.~~

**Drafting note: Repealed by Acts 1991, c. 429.**

~~§ 6.1-77.~~

**Drafting note: Repealed by Acts 1979, c. 407.**

§ ~~6.1-78~~ 6.2-890. Preferences~~; giving preference~~ by pledging assets.

A. No bank shall give preference to any depositor or creditor by pledging the assets of such bank, except as otherwise authorized ~~in the two succeeding sections~~ by subsection B, or except to secure deposits of trust funds made pursuant to the provisions of § ~~6.1-21~~ 6.2-1005 or ~~§ 6.1-32.8~~ 6.2-1057.

B. Notwithstanding the provisions of subsection A, any bank:

1. May deposit securities for the purpose of securing deposits of:

a. The United States government and its agencies;

b. The Commonwealth, its agencies, and its political subdivisions;

c. Insolvent national bank funds as permitted under 12 U.S.C. § 192;

d. Proceeds of sale of United States obligations as permitted under 31 U.S.C. § 771; and

e. Bankruptcy funds deposited under the provisions of 11 U.S.C. § 15345;

2. May deposit securities for the purpose of securing sureties on surety bonds furnished to secure deposits listed in subdivision 1, or may, in lieu of depositing such securities to secure deposits of political subdivisions of the Commonwealth, by its board of directors, adopt a resolution before such public funds are deposited therein, to the effect that, in the event of the insolvency or failure of such bank, such public funds thereafter deposited therein shall, in the distribution of the assets of such bank, be paid in full before any other depositors shall be paid

deposits thereafter made therein. The adoption of such resolution shall be deemed to constitute an obligation binding on such bank;

3. Is authorized to pledge its assets as security for amounts of borrowed money which shall not, without the approval of the Commission given in advance in writing, exceed in the aggregate the amount of the capital, surplus, and undivided profits of such bank actually paid in or earned and remaining undiminished by losses or otherwise. The amount of assets pledged for the security of such a loan shall not, without such approval, exceed 150 percent of the amount borrowed. No loan in excess of the amount so permitted made to any such bank shall be invalid or illegal as to the lender, even though made without the consent of the Commission. Rediscounting with or without guarantee or endorsement of notes, drafts, bills of exchange, or loans is hereby authorized and shall not be limited by the terms of this section, and shall not be considered as borrowed money within the meaning of this section;

4. Is authorized to borrow from a Federal Reserve Bank or a Federal Home Loan Bank and to rediscount with and sell to a Federal Reserve Bank or a Federal Home Loan Bank any and all notes, drafts, bills of exchange, acceptances, and other securities, and to give security for all money so borrowed and for all liabilities incurred by the discount of such notes, drafts, bills of exchange and other securities without restriction in like manner and to the same extent as national banks may lawfully do under the acts of Congress and regulations of the Board of Governors of the Federal Reserve System and the Federal Housing Finance Board; and

5. Is authorized to pledge its assets in connection with qualified financial contracts, which transactions shall be governed by this subdivision and not subdivision 3. The amount of assets pledged for obligations under such contracts shall not exceed 150 percent of the amount of the obligations, without the consent of the Commission, and the qualified financial contract shall be in writing and approved by the board of directors of such bank or an appropriate committee, which approval shall be reflected in the minutes of such board or committee. At the time any qualified financial contracts consisting of retail repurchase agreements are sold by a state bank, the market value of the underlying security must be at least equal to the amount of the aggregate purchase price paid by the purchasers of the retail repurchase agreements. As used in this subdivision, "qualified financial contract" means a qualified financial contract as defined in 12 U.S.C. § 1821 (e) (8) (D) (i), as the same may be amended, and any contract or transaction that the Commissioner determines to be a qualified financial contract for purposes of this section.

**Drafting Note: Subsection B sets out the exceptions in existing § 6.1-79 and 6.1-80.**

~~§ 6.1-79. Same; exception as to governmental deposits; insolvent national bank funds, proceeds of sale of federal obligations, and bankruptcy funds.~~

~~Notwithstanding the provisions of § 6.1-78, any bank may deposit securities for the purpose of securing deposits of the United States government, and its agencies; the Commonwealth of Virginia, its agencies, and its political subdivisions; insolvent national bank funds as permitted under 12 U.S.C. § 192; proceeds of sale of United States obligations as permitted under 31 U.S.C. § 771; and bankruptcy funds deposited under the provisions of 11 U.S.C. § 15345. Notwithstanding the provisions of § 6.1-78 any bank may deposit securities for~~

~~the purpose of securing sureties on surety bonds furnished to secure such deposits, or may, in lieu of depositing such securities to secure deposits of political subdivisions of the Commonwealth, by its board of directors, adopt a resolution before such public funds are deposited therein, to the effect that, in the event of the insolvency or failure of such bank, such public funds thereafter deposited therein shall, in the distribution of the assets of such bank, be paid in full before any other depositors shall be paid deposits thereafter made therein. The adoption of such resolution shall be deemed to constitute an obligation binding on such bank.~~

**Drafting note: Section is moved to subdivisions B 1 and B 2 of proposed § 6.2-890.**

~~§ 6.1-80. Preferences; exceptions for certain borrowings and for repurchase agreements.~~

~~Notwithstanding the provisions of § 6.1-78, any bank is authorized:~~

~~1. To pledge its assets as security for amounts of borrowed money which shall not, without the approval of the State Corporation Commission given in advance in writing, exceed in the aggregate the amount of the capital, surplus and undivided profits of such bank actually paid in or earned and remaining undiminished by losses or otherwise. The amount of assets pledged for the security of such a loan shall not without such approval, so given, exceed 150 percent of the amount borrowed. No loan in excess of the amount so permitted made to any such bank shall be invalid or illegal as to the lender, even though made without the consent of the Commission. Rediscounting with or without guarantee or endorsement of notes, drafts, bills of exchange or loans is hereby authorized and shall not be limited by the terms of this section, and shall not be considered as borrowed money within the meaning of this section;~~

~~2. To borrow from a Federal Reserve Bank or a Federal Home Loan Bank and to rediscount with and sell to a Federal Reserve Bank or a Federal Home Loan Bank any and all notes, drafts, bills of exchange, acceptances and other securities, and to give security for all money so borrowed and for all liabilities incurred by the discount of such notes, drafts, bills of exchange and other securities without restriction in like manner and to the same extent as national banks may lawfully do under the acts of Congress and regulations of the Board of Governors of the Federal Reserve System and the Federal Housing Finance Board; and~~

~~3. To pledge its assets in connection with qualified financial contracts, which transactions shall be governed by this subdivision and not subdivision 1 of this section. The amount of assets pledged for obligations under such contracts shall not exceed 150 percent of the amount of the obligations, without the consent of the Commission, and the qualified financial contract shall be in writing and approved by the board of directors of such bank or an appropriate committee, which approval shall be reflected in the minutes of such board or committee. At the time any qualified financial contracts consisting of retail repurchase agreements are sold by a state bank, the market value of the underlying security must be at least equal to the amount of the aggregate purchase price paid by the purchasers of the retail repurchase agreements. "Qualified financial contract" means a qualified financial contract as defined in 12 U.S.C. § 1821 (e) (8) (D) (i), as the same may be amended, and any contract or transaction that the Commissioner determines to be a qualified financial contract for purposes of this section.~~

**Drafting note: Section is moved to subdivisions B 3, B 4, and B 5 of proposed § 6.2-890.**

§ ~~6.1-81~~ 6.2-891. Perfection of certain security interests.

When securities are sold by a bank subject to an obligation of repurchase, any security interest or interest of ownership therein may be perfected:

1. As specified by Title 8.8A or Title 8.9A;

2. By designation to the person holding physical custody thereof ~~(~~, which shall include a person keeping the master records, in case of securities identified by book entry only~~)~~, that certain securities identified by serial number or dollar amount are held for the benefit of third parties other than the bank, who may, but need not be, identified by name; or

3. By physical separation on the premises of the bank in a separate drawer, compartment, or other facility. The bank may, from time to time, instruct any third party holding such securities that the previously identified securities or an amount of such securities previously identified as pledged or belonging to third parties~~,~~ have been released from such pledge by payment of all or part of the amount due, or have been repurchased. ~~There shall be an identification on the~~ The records of the bank ~~of~~ shall identify the persons who are pledgees or owners of such securities. Book-entry securities held in a bank's customer-safekeeping account, used for the same purpose, at the Federal Reserve Bank, notwithstanding that other customer securities are held in the same account, shall be deemed in compliance with subdivision 2 ~~of this section~~, provided such securities are identified in the bank's records as required by this section.

**Drafting note: Technical changes.**

~~§ 6.1-82.~~

**Drafting note: Section number is listed as reserved.**

§ ~~6.1-83~~ 6.2-892. Federal deposit insurance a credit towards certain required bonds.

~~In every case in which~~ If a bank is required by the laws of ~~this~~ the Commonwealth to furnish or deposit a surety bond or securities as security for the payment of any funds deposited in ~~such banking institution~~ the bank, other than funds received or held in the trust department of ~~such banking institution~~ the bank awaiting investment or distribution, the amount of the penalty of such bond or the amount of such securities shall be as required by law, less the amount of such deposit ~~as is~~ that, to the satisfaction of the body, officer, or other person ~~charged with the responsibility of~~ responsible for seeing that a surety bond or amount of securities ~~are~~ is furnished as security for such deposit, is insured under the provisions of ~~section twelve-b~~ § 12-b of the Federal Reserve Act, as amended, or any amendments thereto.

**Drafting note: "Banking institution" is replaced with "bank." Other changes are technical.**

Article 11.

Deposit Accounts.

**Article drafting note: Existing Article 8 (Deposits and Reserves) of Chapter 2 is split into proposed Article 10 (Reserves) and this article.**

§ 6.2-893. Payment of balance of deceased person or person under disability ~~to personal representative, committee, etc.~~

Any bank may pay any balance on deposit to the credit of any deceased person or of any person under ~~disabilities~~ disability, to the personal representative, curator, conservator, or committee of such person upon a letter of qualification as such personal representative, curator, conservator or committee, issued by ~~any~~ an appropriate court ~~of competent jurisdiction of this Commonwealth, and such~~. The letter shall be sufficient authority for such transfer. Any such bank making such transfer shall no longer be liable for such deposit to any person ~~whomsoever~~. The presentation of a duly certified letter of qualification as personal representative, curator, conservator, or committee shall be conclusive proof of the jurisdiction of the court issuing the same. Payment to a fiduciary qualified under the law of a state other than ~~Virginia~~ the Commonwealth shall be in accordance with Chapter 5 (§ 26-59 et seq.) of Title 26 and § 64.1-130.

**Drafting note: Section is existing § 6.1-70, with technical changes.**

§ 6.2-894. Deposits in and withdrawals from accounts of convicts.

A. Notwithstanding the provisions of Chapter 11 (§ 53.1-221 et seq.) of Title 53.1, a person convicted of a felony and sentenced to confinement in a state correctional institution for one year or longer, with the written consent of the Director of the Department of Corrections ~~or his authorized delegate~~, may have a bank account, free from control of all persons except the Director of the Department of Corrections and a committee appointed pursuant to the provisions of § 53.1-221. ~~Whenever a~~ A deposit ~~shall be~~ made in a bank account by a convict~~, the deposit~~ shall be held for the exclusive right and benefit of the convict. The check, order, or receipt of the convict shall be a complete and sufficient release and discharge for any payments ~~so~~ made from the deposit in the bank, until ~~such time as~~ the bank ~~shall be~~ is notified in writing by a duly qualified committee or the Director of the Department of Corrections~~, or his duly authorized delegate,~~ not to permit further withdrawals from that account.

B. Upon receipt of such written notice or commencing on the banking day following the date of receipt of such written notice, the bank shall not permit further withdrawal, except with the consent of the committee or the Director of the Department of Corrections~~, or his delegate~~. A bank may further accept, pay or collect items on account for proceeds of collection of a bank account of a convict, despite his conviction or confinement or the bank's knowledge thereof, until it receives written directions to the contrary from the committee of such convict or the Director of the Department of Corrections.

**Drafting note: Section is existing § 6.1-70.1, with technical changes. References to the designed of the Director of the Department of Corrections are not necessary because the Director has the general authority to delegate such duties.**

§ 6.2-895. Payment of small balance to distributees or other persons.

A. When the balance in any bank to the credit of a deceased person~~,~~ upon whose estate there ~~shall have~~ has been no qualification~~,~~ does not exceed $15,000, it shall be lawful for ~~such~~ the bank, after ~~sixty~~ 60 days from the death of such person, to pay such balance to ~~his or her~~ the decedent's spouse~~, and if none,~~. If the decedent does not have a surviving spouse, the bank may pay the balance to the distributees of the decedent or other persons entitled thereto under the laws

of ~~this~~ the Commonwealth. The receipt ~~therefor~~ for such payment shall ~~be a full~~ discharge and ~~acquittance to such~~ acquit the bank in full to all persons ~~whomsoever~~ on account of ~~such~~ the deposit. ~~Such sum, not exceeding~~

B. The balance of an account described in subsection A, or any part thereof not to exceed the amount given priority by § 64.1-157, after ~~thirty~~ 30 days from the death of such person, at the request of the ~~consort~~ decedent's spouse, or if ~~no consort~~ there is none, then at the request of the distributees of the decedent or other persons entitled under the laws of this Commonwealth, may be paid to the undertaker or mortuary handling the funeral of ~~such~~ the decedent ~~and a~~. A receipt of the payee shall be a full and final release of the payor.

**Drafting note: Section is existing § 6.1-71, with amendments that conform its style to proposed § 6.2-1175, a parallel provision applicable to savings institutions.**

§ 6.2-896. Deposits of minors.

A bank may establish a deposit account for a minor as the sole and absolute owner of such account. The bank may receive deposits by or for such minor, honor any withdrawal request of the minor, and act in any other manner with respect to such account on the minor's order. Any payment or delivery of funds from such account to the minor, or the payment of a check or other written order for withdrawal of funds signed by such minor owner, shall be a valid and sufficient release and discharge of such bank for any payment or delivery so made. The parent or guardian of such minor shall not in his capacity as parent or guardian have the power to withdraw or transfer funds in any such account unless the minor has given written notice to the bank to accept the signature of such parent or guardian.

**Drafting note: Section is existing § 6.1-74, as amended in the 2009 Session, without change.**

§ 6.2-897. Bank need not inquire as to fiduciary funds deposited in fiduciary's personal account.

If any fiduciary or agent makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks drawn by him upon an account in the name of his principal, if he is empowered to draw checks thereon, or of checks payable to his principal and endorsed by him as fiduciary, the bank receiving the deposit:

1. Shall not be required to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and

2. Is authorized to pay the amount of the deposit or any part thereof upon the withdrawal by the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the withdrawal with (i) actual knowledge that the fiduciary, in making such deposit or in making such withdrawal, is committing a breach of his obligation as fiduciary, or (ii) knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

**Drafting note: Section is existing § 6.1-75, with technical changes that conform the section to proposed § 6.2-1177, a parallel provision applicable to savings institutions. References to personal checks are replaced with "withdrawals."**

Article ~~9~~ 12.

Examinations and ~~Periodical Statements~~ Reports.

§ ~~6.1-84~~ 6.2-898. Examinations.

The Commission, as often as it deems necessary in the public interest, shall examine or cause to be examined each bank incorporated under the laws of, and doing business in, ~~this~~ the Commonwealth~~, provided that such~~. Such examination shall be conducted at least once in every three-year period.

**Drafting note: Technical changes. "Examine or" is inserted in the first sentence to conform it to a similar provision in proposed § 6.2-899 (existing § 6.1-85).**

§ ~~6.1-85~~ 6.2-899. Examination of affiliates.

A. As used in this section, "affiliate" of any bank means any entity (i) of which such bank, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions, (ii) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of such bank who own or control either a majority of the shares of such bank or more than 50 percent of the number of shares voted for the election of directors of such bank at the preceding election, or by trustees for the benefit of the shareholders of any such bank, or (iii) of which a majority of the directors, trustees, or other persons exercising similar functions are directors of such bank.

B. The Commission ~~may~~, ~~also~~ in connection with the examination of any bank, may make or cause to be made such examination of the affiliates of the bank as shall be necessary to ascertain the financial condition of the bank and to disclose fully the relations between the bank and its affiliates and the effect of such relations upon the affairs of the bank.

~~For the purpose of this section the term "affiliate" of any bank shall mean any corporation, business trust, association, or other similar organization (1) of which such bank, directly or indirectly owns or controls either a majority of the voting shares or more than fifty per centum of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions, or (2) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of such bank who own or control either a majority of the shares of such bank or more than fifty per centum of the number of shares voted for the election of directors of such bank at the preceding election, or by trustees for the benefit of the shareholders of any such bank, or (3) of which a majority of the directors, trustees, or other persons exercising similar functions are directors of such bank.~~

**Drafting note: "Also" is deleted in the first sentence. The definition of affiliate is moved to the start of the section with technical changes, and "corporation, business trust, association, or other similar organization" is replaced with "entity." Other changes are technical.**

§ ~~6.1-86~~ 6.2-900. Special examinations.

The Commission ~~shall also~~, ~~upon~~ when (i) written application made to it by the board of directors or by the stockholders representing two-fifths of the total outstanding capital stock of any bank incorporated under the laws of, and doing business in, ~~this~~ the Commonwealth, or ~~whenever,~~ (ii) in the judgment of the Commission~~,~~ it may be necessary for the protection of the public or of persons depositing or dealing with such bank, shall make or cause to be made a special examination of ~~such~~ the bank. All expenses incident to such special examination may be charged to the bank so examined and shall be paid by the bank so charged.

**Drafting note: "Also" is deleted in the first sentence. "Examine or" is inserted in the first sentence to conform it to a similar provision in proposed § 6.2-899 (existing § 6.1-85).**

§ ~~6.1-87~~ 6.2-901. Assistance in making examinations.

A. Upon the making of any examination under the provisions of ~~any of the three preceding sections (§§ 6.1-84, 6.1-85, 6.1-86)~~ § 6.2-898, 6.2-899, or 6.2-900, the officers, directors and employees of the bank being examined or ~~whose~~ the affiliate of which is being examined ~~shall~~, upon the demand of the person or officer designated to make such examination~~,~~ ~~give~~ shall:

1. Give to such examiner full access to all the money, books, papers, notes, bills, and other evidences of debts due ~~said~~ to the bank; ~~and shall also disclose~~

2. Disclose fully and ~~truly~~ accurately all indebtedness and liability thereof~~, and shall furnish~~; and

3. Furnish all information ~~which such~~ that the examiner may deem necessary to a full investigation into the affairs of such bank. ~~And such~~

B. The examiner shall have the right to examine, under oath, any and all of the directors, officers, clerks, and employees in any manner connected with the operation of any ~~such~~ bank touching any matter or thing pertaining to ~~such~~ the examination, and for that purpose shall have authority to administer oaths to them.

C. When any bank shall utilize an independent data processing service, the operations of such independent data processing firm and its records pertaining to any bank being examined shall be open to inspection by examiners~~, and access~~. Access to such operations and information shall be a prerequisite to the use of such independent data processing services by any bank regulated hereunder.

D. The Commission may impose a civil penalty of not less than $25 but not exceeding $100 per day for each day of noncompliance upon any officer of any bank who it determines, in proceedings commenced in accordance with the Commission's Rules, has refused to give any examiner the information, or refuse to be sworn, as required by this section.

**Drafting note: Subsection D is relocated from the second part of existing § 6.1-114, with revisions to comport to uniform usage regarding Commission-assessed fees and penalties, which are revised to be civil penalties. In proposed subdivision A 2, "accurately" is substituted for "truly." Other changes are technical. Proposed subsection D is duplicated in proposed §§ 6.2-1041 and 6.2-1061 to address trust companies and trust subsidiaries as provided in existing § 6.1-114.**

§ ~~6.1-88~~ 6.2-902. Notice of examination.

No ~~previous~~ prior or advance notice of any examination shall be given any bank or any of its directors, officers, or employees~~; provided, however, that if~~ unless the Bureau ~~of Financial Institutions~~ determines that notice will facilitate and not diminish the effectiveness of an examination~~, such notice may be given~~.

**Drafting note: Proposed restructuring attempts to simplify the sentence. The qualifier "previous" as it applies to notices is replaced with "prior or advance" to reflect current usage.**

§ ~~6.1-89~~ 6.2-903. Revaluation of assets after examination.

~~Whenever~~ If it ~~shall appear~~ appears to the Commission, from an examination of any bank, that any of the bank's assets ~~thereof~~ are valued by the bank at an amount in excess of their fair and reasonable value, the Commission ~~may~~, after ~~such~~ the bank ~~shall have~~ has been given an opportunity ~~to be heard by~~ for a hearing before the Commission, may require ~~such~~ the bank to revalue ~~such~~ the assets on the basis of their fair and reasonable value.

**Drafting note: Technical changes.**

§ ~~6.1-90~~ 6.2-904. Report of examination; inspection and dissemination to directors.

A. When any bank is examined under the provisions of this article, a copy of the report of ~~such~~ the examination, at any time after its completion ~~thereof,~~ shall be open ~~to the~~ for inspection ~~of~~ by the officers and directors of the bank. No other copies of the report of examination shall be made except as necessary for the inspection. The copies of the report made for officers and directors of the bank shall not be removed from the premises of ~~such~~ the bank ~~and~~. The other such copies shall be destroyed after the inspection has been completed. The original examination report shall be ~~kept among~~ retained in the records of the Bureau ~~of Financial Institutions~~.

B. Upon resolution of the board of directors of ~~such~~ the bank, ~~such~~ the report ~~may,~~ at any time during ~~such~~ the established period, may be inspected in the bank by the officers and directors of any other bank or by any other person designated in ~~such~~ the resolution.

**Drafting note: Technical changes.**

§ ~~6.1-91~~ 6.2-905. Communications ~~to be submitted~~ to board or executive committee.

Each official communication directed by the Commission~~,~~ or any state bank examiner~~,~~ to any bank, or to any officer thereof, relating to an examination or investigation ~~conducted or~~ made or caused to be made by the Commission, or containing suggestions or recommendations as to the conduct of the bank, shall, if required by the ~~authority submitting same~~ Commission or examiner submitting the communication, be submitted by the officer or director of the bank receiving it, to the executive committee or board of directors of ~~such~~ the bank ~~and~~. The communication shall be duly noted in the minutes of ~~such~~ the meeting of the board or executive committee.

**Drafting note: Technical changes.**

§ ~~6.1-92~~ 6.2-906. Disclosure of irregularities~~, etc.~~; Commission's powers.

A. If upon the examination of any bank, the Commission ~~shall ascertain~~ ascertains that the banking laws of ~~this~~ the Commonwealth are not being fully observed, ~~or~~ that any

irregularities are being practiced, or that ~~its~~ the bank's capital has been or is in danger of being impaired, the Commission shall give immediate notice thereof to the officers and directors of ~~such~~ the bank ~~and, if~~. In addition, if it is deemed necessary in order to conserve the assets of such bank or to protect the interests of depositors and creditors thereof, the Commission may do any one or more of the following:

~~(~~1~~).~~ Temporarily suspend the right of such bank to receive any further deposits;

~~(~~2~~).~~ Temporarily close such bank, for a period not exceeding ~~sixty~~ 60 days, ~~and such~~ which period may be further extended for ~~a like period or~~ one or more 60-day periods as the Commission may deem necessary;

~~(~~3~~).~~ Require the officers and directors of ~~such~~ the bank to liquidate its outstanding loans insofar as shall be required;

~~(~~4~~).~~ Require that any ~~such~~ impairment of the capital stock be made good;

~~(~~5~~).~~ Require that any ~~such~~ irregularities be promptly corrected;

~~(~~6~~).~~ Require ~~such~~ the bank to make reports, daily or at such other times as may be required to the Commission, as to the results achieved in carrying out the orders of the Commission; and ~~/or~~

~~(~~7~~).~~ Without examination, close, for such period ~~or periods~~ as the Commission may deem necessary, any bank facing an emergency due to withdrawal of deposits or otherwise, or, without closing such bank, grant to it the right to suspend or limit the withdrawal of deposits, for such period as the Commission may determine.

B. If any ~~such~~ bank ~~shall fail~~ fails or ~~refuse~~ refuses to comply with any such order ~~or orders~~ of the Commission, or if the Commission shall determine that a receiver for any such bank should be appointed, the Commission may apply for the appointment of a receiver to take charge of the business affairs and assets of ~~such~~ the bank and to wind up its affairs as ~~hereinafter~~ provided in this chapter.

**Drafting note: Catchline is amended to delete "etc." The language authorizing the Commission to do any one or more of the following is submitted in lieu of the existing "and/or." "Or orders" and "or periods" are deleted per § 1-227.**

§ ~~6.1-93~~ 6.2-907. Reports of condition and other statements.

A. Every bank shall make to the ~~State Corporation~~ Commission statements of its financial condition at such times as the Commission may require. Such statements shall be (i) made in accordance with forms prescribed by the Commission, (ii) certified under oath by the president or cashier of the bank, or, if there is no cashier, by the treasurer, and (iii) attested by at least three of its directors.

B. The Commission shall ~~call upon~~ require all ~~such~~ banks doing business in ~~Virginia for~~ the Commonwealth to make the statements ~~hereinbefore mentioned~~ described in subsection A, and at the time prescribed ~~, and shall have prepared~~. The Commission shall prepare such forms as may be necessary to carry out the provisions of this section.

C. Whenever the Commission calls for statements ~~are made by the Commission~~, it shall forward to each such bank two forms, one of which, after being properly filled out and certified ~~,~~

as ~~hereinbefore~~ required by subsection A, shall be returned to the Commission within a time prescribed by ~~it, and the~~ the Commission. The other ~~of which~~ form, filed out in like manner, shall be filed with the records of the bank. The Commission shall allow banks to submit such statements electronically. Any bank that submits such statements electronically shall maintain a copy of the statement with the required certified signatures affixed.

D. The Commission may require any bank to prepare and submit such other reports and material as it deems necessary to protect and promote the public interest.

E. The Commission may impose a civil penalty of not less than $100 but not exceeding $1,000 per day for each day of noncompliance upon any bank that it determines, in proceedings commenced in accordance with the Commission's Rules, has failed to comply with any of the provisions of this section, for a period of longer than 30 days, after being called upon by the Commission for a statement, or to do such other act as is herein provided.

**Drafting note: Subsection E is relocated from the first part of existing § 6.1-114, with revisions to comport to uniform usage regarding Commission-assessed civil penalties. Other changes are technical. Subsection E is replicated at proposed §§ 6.2-1041 and 6.2-1061 to address its applicability to trust companies and trust subsidiaries.**

§ ~~6.1-94~~ 6.2-908. Fees for supervision and regulation and for certain examinations and investigations.

A. ~~Every bank shall pay for its~~ For the purpose of defraying the expenses of supervision and regulation of banks, the Commission shall assess against each bank an annual ~~and additional fees as follows:~~

~~1. A bank's annual~~ fee. A bank's annual fee shall be calculated according to a schedule set by the Commission~~; such~~. The schedule shall bear a reasonable relationship to the assets of various individual banks and to other factors relating to their respective costs for supervision, regulation, and examination.

B. The Commission shall also charge additional fees:

~~2~~ 1. ~~For~~ Of $330 per day per examiner during examinations for the supervision and regulation of trust departments~~, the Commission shall charge an additional fee of $330 per day per examiner during examinations.~~;

~~3~~ 2. ~~For~~ Of $10,000 for investigating an application for a certificate of authority pursuant to § ~~6.1-13~~ 6.2-816~~, the Commission shall charge a fee of $10,000.~~;

~~4~~ 3. ~~For~~ Of $1,800 for investigating an application for authority to establish a branch pursuant to § ~~6.1-39.3~~ 6.2-831 or a facility pursuant to § ~~6.1-42~~ 6.2-835~~, the Commission shall charge a fee of $1,800.~~;

~~5~~ 4. ~~For~~ Of $7,500 for investigating an application of merger~~, the Commission shall charge a fee of $7,500 and~~. The Commission shall not be entitled to any further fees for investigating any application to retain existing branches of the applying banks as branches of the merged bank~~.~~;

~~6~~ 5. ~~For~~ Of $1,000 for investigating an application for authority to change the location of an existing bank or branch bank~~, the Commission shall charge a fee of $1,000.~~; and

~~7~~ 6. ~~For~~ Of $2,000 for investigating an application for authority to exercise trust powers~~, the Commission shall charge a fee of $2,000~~.

~~B~~ C. Notwithstanding the designation of the ~~several~~ fees set forth in subdivisions ~~2~~ B 1 through ~~7 of subsection A~~ B 6, the Commission may reduce by regulation or order any ~~such~~ fee ~~or fees~~, if the Commission concludes that there is a reasonable basis for doing so and that the reduction of the fee will not be detrimental to the effectiveness of the Bureau ~~of Financial Institutions~~.

**Drafting note: Technical changes. Proposed subsection C is in addition to the Commission's authority to reduce fees under existing § 6.1-96 (proposed § 6.2-910).**

§ ~~6.1-95~~ 6.2-909. Assessment and payment of fees; lien.

A. Except as ~~hereinafter~~ provided in subsections B and C, all ~~such~~ fees and charges assessed pursuant to § 6.2-908 shall be assessed against each ~~such~~ bank by the Commission on or before July 1 of each year and shall be paid into the state treasury on or before the following July 31 ~~following~~. ~~All fees so assessed shall be a lien on the assets of the bank, and if not paid when due may be recovered in any court of the county or city in which such bank or institution is located having original jurisdiction of civil cases on motion of and in the name of the Commission.~~ The Commission shall mail the assessment to each bank on or before July 1 of each year.

B. Fees for investigating applications for a certificate of authority shall be paid before the investigation is made.

C. Fees for the examination of trust departments shall be paid into the state treasury within ~~thirty~~ 30 days after the Commission notifies the bank ~~or trust company~~ of the amount of the fee.

D. All fees so assessed shall be a lien on the assets of the bank, and if not paid when due may be recovered in any court of the county or city in which such bank or institution is located having original jurisdiction of civil cases on motion of and in the name of the Commission.

**Drafting note: The provision in existing subsection A regarding fees being a lien and actions for their recovery is moved to proposed subsection D. In proposed subsection C, "or trust company" is deleted because the section addresses fees assessed with respect to a bank's trust department, but not trust companies (fees on which are set out at proposed § 6.2-1033). Other changes are clarifying.**

§ ~~6.1-96~~ 6.2-910. Reduction of fees.

If the Commission is of the opinion that the amounts of the several charges and fees ~~fixed by~~ set forth in § ~~6.1-94~~ 6.2-908 will produce ~~a greater sum~~ more revenue than is required to cover the costs and expenses to be paid ~~thereby~~ from such charges and fees, the Commission ~~may~~, in its discretion, may reduce on a pro rata basis the amount of such charges ~~so fixed~~ and fees.

**Drafting note: Technical changes.**

~~§ 6.1-97.~~

**Drafting note: Repealed by Acts 1984, c. 343.**

~~§ 6.1-98.~~

**Drafting note: Repealed by Acts 1994, c. 312.**

§ ~~6.1-99~~ 6.2-911. Examination of national banks.

Every national bank ~~which~~ that is now or may be designated as a state depository, ~~shall,~~ so long as it acts as such, shall be subject to the examination provided for state banks, when, in the opinion of the State Treasurer, such examination is necessary for the protection of the Commonwealth. ~~But~~ However, no fees or charges shall be imposed upon national banks for such examinations.

**Drafting note: Technical changes.**

Article ~~10~~ 13.

Receiverships.

§ 6.2-912. Definition.

As used in this article, "insolvent" means incapable of meeting the current demands of creditors or having liabilities which, in total, exceed the book value of assets.

**Drafting note: New section. Definition is moved from the second paragraph of existing § 6.1-100.**

§ ~~6.1-100~~ 6.2-913. Closing bank upon insolvency~~, etc.~~; appointment of receiver.

A. If (i) any bank, upon ~~the~~ its examination ~~of any bank it shall be~~ by the Commission, is found to be insolvent~~,~~ or ~~it is deemed necessary by~~ (ii) the Commission deems it necessary with respect to any bank for the protection of the public interests, the Commission (a) may ~~at once~~ close immediately the doors of ~~such~~ the bank without any notice ~~whatsoever~~, and ~~the Commission~~ (b) by its duly appointed agent shall take charge of the books, assets, and affairs of ~~such~~ the bank until the appointment of a receiver as provided by law.

~~For purposes of this article, "insolvent" means incapable of meeting the current demands of creditors or having liabilities which, in total, exceed the book value of assets.~~

~~In any case in which~~ B. If a bank has been closed by the Commission, the Commission may proceed (i) to have a receiver for the closed bank appointed in accordance with § ~~6.1-102~~ 6.2-916, or ~~it may proceed in its discretion~~ (ii) as provided in Article ~~10.1~~ 14 (§ ~~6.1-110.1~~ 6.2-925 et seq.) ~~of this chapter~~.

**Drafting note: Definition of "insolvent" is moved to proposed § 6.2-912. The phrase "in its discretion" in proposed subsection B is deleted as unnecessary, because the existing provision states that the Commission "may" take such action.**

§ ~~6.1-100.1~~ 6.2-914. Merger or transfer of assets of insolvent bank.

A. If the Commission ~~shall find~~ finds that ~~any~~ a bank is insolvent, that its merger into another bank is desirable for the protection of its depositors, and that an emergency exists, and, if the board of directors of such insolvent bank ~~shall approve~~ approves a plan of merger of such bank into another bank, (i) compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent bank and (ii) the approval by the Commission of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding

shares of such insolvent bank for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1.

B. If the Commission finds that a bank is insolvent, that the acquisition of its assets by another bank is in the best interests of its depositors, and that an emergency exists, ~~it may~~ the Commission, with the consent of the boards of directors of both banks as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, may enter an order transferring some or all of the assets of such insolvent bank to such other bank ~~and no~~, in which event (i) compliance with the provisions of §§ 13.1-723 and 13.1-724 shall not be required ~~, nor shall~~ and (ii) §§ 13.1-730 through 13.1-741 shall not be applicable to such transfer.

C. In the case either of ~~such~~ a merger as provided in subsection A or of ~~such~~ a sale of assets as provided in subsection B, the Commission shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent bank for the purpose of providing such shareholders an opportunity to challenge the finding that the bank is insolvent. The relevant books and records of such insolvent bank shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Commission's finding of insolvency shall become final if a hearing before the Commission is not requested by any such shareholder within such 30-day period.

D. If, after such hearing provided in subsection C, the Commission finds that such bank was solvent, it shall rescind its order entered pursuant to subsection A or subsection B and the merger or transfer of assets shall be rescinded. ~~But~~ However, if ~~,~~ after such hearing ~~,~~ the Commission finds that such bank was insolvent, its order shall be final.

~~E. Repealed.~~

**Drafting note: Technical changes. Proposed changes to subsection A conform it to language in subsection B. Subsection E was repealed by Chapter 507 of the Acts of Assembly of 1983.**

§ ~~6.1-101~~ 6.2-915. Protection of state deposits upon insolvency ~~, etc~~.

If, upon the examination of any bank that is designated as a state depository, it ~~shall appear~~ appears to the Commission that ~~any such~~ the bank ~~, which is designated as a state depository,~~ is insolvent or is unable to meet its obligations and the legal demands upon it in the ordinary course of its business, the Commission shall forthwith notify the State Treasurer, who shall discontinue further deposits therein of state funds and take such action as may be necessary to protect the deposits of the Commonwealth therein.

**Drafting note: Technical changes.**

§ ~~6.1-102~~ 6.2-916. Appointment of receiver.

~~In any case the Commission shall, whenever,~~ When, in ~~its~~ the judgment of the Commission, it is necessary for the protection of the interests of the Commonwealth or of the depositors and creditors of any bank doing business in ~~this~~ the Commonwealth, or of the creditors of any trust company doing business in ~~this~~ the Commonwealth, the Commission shall apply to any court in ~~this~~ the Commonwealth having jurisdiction to appoint receivers for the appointment of a receiver to take charge of the business affairs and assets, and to wind up the

affairs and business, of any such bank or trust company (i) failing to comply with the requirements of the Commission, or (ii) found upon examination to be insolvent or unable to meet its obligations and the legal demands made upon it in the ordinary course and conduct of its business.

**Drafting note: Technical changes. A parallel provision is set out in as proposed subsection B of § 6.2-1038 to provide notice that the provisions of this article apply to trust companies.**

§ 6.1-103 6.2-917. Execution of powers of sale by receivers.

And when A. When any receiver shall be is appointed under the provisions of this article for any bank authorized to do a trust business or for any trust company he, the receiver may be empowered by the court by which he is appointed to:

1. To act for and on behalf of such bank or trust company in the execution of any power of sale conferred upon such bank or trust company by any instrument, and, when;

2. When such sale is made, to execute, acknowledge and deliver for and on behalf of such bank or trust company such deed as may be proper under the provisions of such instrument for the conveyance of title to the property conveyed therein; and upon

3. Upon payment of the amount secured under any such instrument, to execute, acknowledge, and deliver for and on behalf of such bank or trust company a proper release deed for the property conveyed therein. And any

B. Any such sale made by such receiver and any such deed or release executed by him, when so authorized and empowered, shall be as effective and as binding as if the same had been made or executed by such bank or trust company before the appointment of such receiver. And all

C. All sales which that have been made by any such receivers within the Commonwealth of Virginia, and all such deeds and release deeds which that have been executed by any such receivers within this the Commonwealth under the authority of the court by which they were appointed, since June 19, 1936, shall be as effective and as binding as if the same had been made by such bank or trust company before the appointment of such receiver.

**Drafting note: Technical changes. The reference to deeds executed since June 19, 1936, is retained in order to avoid any unintended consequences that may result from its deletion.**

§ 6.1-104 6.2-918. Rights and powers of receivers generally.

Any receiver appointed under the provisions of this article shall be and become assignee of the assets and property of the bank or trust company of which he has been so appointed receiver, with power to prosecute and defend, in the name of the bank or trust company or in his name as such receiver or otherwise, in Virginia the Commonwealth or elsewhere, all such suits as may be necessary to wind up the affairs and business of such bank or trust company, and to appoint such agents or attorneys for any such purpose as the court may approve.

**Drafting note: Technical change.**

§ 6.1-105 6.2-919. Interest on deposits; distribution of surplus remaining after payment of depositors.

When ~~any~~ an appropriate court ~~of competent jurisdiction shall~~, on a proper application therefor, shall appoint a receiver for any ~~state~~ bank~~, banking institution,~~ or trust company, ~~such~~ the court may prescribe and direct, by order or decree entered of record, that the rate of interest to be paid by ~~such~~ the receiver upon the claims of depositors of ~~such~~ the bank~~, or banking institution,~~ or trust company~~,~~ shall not exceed the current or contracted rate of interest paid by ~~such~~ the state bank~~, banking institution~~ or trust company on deposits ~~and may also~~. In addition, the court may fix the interest to be so paid at such lower rate as ~~such~~ the court may deem proper under all the circumstances of the case. In ~~any~~ such event ~~such~~, the court shall also direct that any surplus remaining after the payment in full of ~~such~~ the depositors, together with the interest thereon as so prescribed and fixed, shall be distributed pro rata among the shareholders of ~~such~~ the bank~~, banking institution,~~ or trust company~~,~~ as of the date of the appointment of ~~such~~ the receiver.

**Drafting note: Term "banking institution" is deleted because the term is not used in this chapter, and under this article provides for the appointment of receivers only for banks. The use of the procedure established by this article for the appointment of a receiver for a trust company is set out in proposed § 6.2-1038.**

§ ~~6.1-106~~ 6.2-920. Proceedings to bar certain claims against banks in liquidation.

~~Whenever~~ If, in a ~~pending~~ suit~~,~~ having ~~for~~ as its object the administration or liquidation of the assets of an insolvent bank or trust company operating in ~~this~~ the Commonwealth, the court ~~shall have ordered~~ orders the payment to creditors of dividends on, or other payments of, claims as therein ascertained and established, and (i) the receiver~~, special commissioner~~ or other person ~~or officer~~ charged with ~~the duty of~~ making the ordered payment to creditors ~~shall have been~~ is unable to ~~effect such~~ make the payment by reason of his inability to ascertain the address of any creditor ~~or~~, the failure of any creditor to apply to such disbursing official for payment when so directed by the order of the court, or ~~for~~ any other similar reason; or ~~whenever~~ (ii) a trustee engaged in the voluntary liquidation of the assets of an insolvent bank or trust company operating in ~~this~~ the Commonwealth, by petition to ~~any~~ an appropriate court ~~of general jurisdiction~~ in the ~~county or city~~ locality wherein the principal office of ~~such~~ the insolvent bank or trust company is located, ~~shall allege~~ alleges and ~~show~~ shows to the satisfaction of the court his inability to make payment to creditors for any of the reasons specified ~~herein~~ in clause (i), the court, in its discretion, may enter an order directing its receiver~~, special commissioner~~ or other person ~~or officer~~ charged with the duty of making such payment, or the trustee, to publish at least twice in ~~some~~ a newspaper~~,~~ having a general circulation in the ~~county or city~~ locality where ~~such~~ the suit or petition is pending~~, at least twice,~~ a list of creditors to whom dividends or payments are due and unpaid and the amount thereof~~, together with~~. The publication shall include a notice that any creditor therein named who ~~shall fail~~ fails to apply to the disbursing official for payment of the amount due him within six months from the date of the last publication of such notice will be barred from his right thereafter to receive payment of amounts then due and from participation in any future dividends or payments ~~which~~ that may thereafter be ordered.

**Drafting note: Technical changes. References to "other persons" include special commissioners and officers, so the terms are deleted.**

§ ~~6.1-107~~ 6.2-921. ~~Same; when~~ When publication of list of creditors unnecessary.

If any bank or trust company under the circumstances ~~referred to~~ set forth in ~~the preceding section (§ 6.1-106) shall have been~~ clause (i) or (ii) of § 6.2-920 is in liquidation for a period of more than ~~ten~~ 10 years, and more than five years ~~shall~~ have elapsed since the date of the entry of the last court order directing the payment to creditors of dividends on or other payments of claims as therein ascertained and established, then it shall be unnecessary to publish a list of creditors to whom dividends or payments are due and unpaid and the amount thereof~~,~~ ~~and~~. In such event, it shall only be necessary to publish a notice stating (i) the total amount of dividends ordered paid and unclaimed ~~and the fact~~; (ii) that a list of such creditors may be seen at the office of the receiver, liquidating agent, or other disbursing officer~~,~~; and (iii) that any creditor who ~~shall fail~~ fails to apply to such disbursing official for payment of the amount due him within six months from the date of the last publication of such notice ~~will~~ shall be barred from his right thereafter to receive payment of amounts then due and from participation in any future dividends or payments ~~which~~ that may thereafter be ordered.

**Drafting Note: Technical changes.**

§ ~~6.1-108~~ 6.2-922. ~~Same; when~~ When publication once in two newspapers sufficient.

~~Whenever~~ If there are two or more newspapers having general circulation in the ~~county or city~~ locality where ~~such~~ a suit or petition ~~as is referred to~~ described in § ~~6.1-106~~ 6.2-920 is pending, the court, in its discretion, ~~may,~~ in lieu of the publication provided for therein or in § ~~6.1-107~~ 6.2-921, may direct that the list of creditors~~, together with~~ and the notice, ~~shall~~ be published once in at least two of ~~such~~ the newspapers having general circulation in ~~such county or city~~ the locality.

**Drafting Note: Technical changes.**

§ ~~6.1-109~~ 6.2-923. ~~Same; when such~~ When claims barred.

After the lapse of six months from the date of the last publication of the notice prescribed by §§ ~~6.1-106~~ 6.2-920, ~~6.1-107~~ 6.2-921 or ~~6.1-108~~ 6.2-922, the court shall enter an order barring the claims of all creditors who have not theretofore applied for payment of their claims~~, and thereafter~~. Thereafter, (i) no creditor who ~~shall have~~ failed to apply for payment within such period shall bring or maintain any action, suit, or proceeding~~, nor shall any~~ and (ii) no process shall issue, for the enforcement of any claim to dividends or payments previously ordered paid to such creditor ~~nor shall~~. In addition, no such creditor shall participate in future dividends or payments thereafter ordered in the suit or petition to be paid~~; provided, however, that the~~. The court in which any such suit or petition is pending may, in its discretion, before final distribution and for good cause shown, reinstate any claim barred ~~as aforesaid~~ pursuant to the foregoing provisions of this section.

**Drafting Note: Technical changes.**

§ ~~6.1-110~~ 6.2-924. Power of receivers to contract for loans and make investments.

A. Any court in ~~this~~ the Commonwealth ~~having~~ that has jurisdiction to appoint receivers ~~may~~, in its discretion, may authorize any receiver appointed by such court for any bank or trust company, ~~in pursuance of~~ pursuant to the provisions of this ~~chapter~~ article:

~~(~~1~~).~~ To ~~make application for~~ apply and contract for a loan from any corporation or agency that is (i) organized or provided for by, or pursuant to, federal law and (ii) authorized, among other purposes, to make loans upon the application of the receiver or liquidating agent of any bank that is closed, or in process of liquidation, secured by the assets of any such bank, ~~if such corporation or agency is organized, or provided for by, or pursuant to, legislation enacted by the Congress of the United States~~, and if such loan ~~shall be~~ is for the purpose of aiding in the reorganization or liquidation of any such bank, ~~including~~ secured by the payment of liquidating dividends from the proceeds thereof~~,~~; and

~~(~~2~~).~~ To secure any ~~such~~ loan ~~or advance~~ described in subdivision 1 by the pledge, hypothecation or mortgage of any or all of the assets of ~~such~~ the bank or trust company, or in such other manner as such court, in its discretion, may authorize.

B. Any such court ~~may also~~, in its discretion, also may authorize any ~~such~~ receiver so appointed by it~~,~~ to invest any funds in the hands of such receiver~~,~~ in bonds of the United States or of the Commonwealth ~~of Virginia~~.

**Drafting note: In proposed subdivision A 2, "such loan or advance" is replaced with "loan described in subdivision 1" in order to clarify to what "such" refers, and "advance" is not used elsewhere in the section. Other changes are technical.**

Article ~~10.1~~ 14.

Appointment of FDIC ~~Receivership~~ as Receiver.

§ ~~6.1-110.1~~ 6.2-925. Definitions.

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

"Bank" means any bank~~,~~ or trust company~~, or bank and trust company which is now~~ organized ~~or may be organized hereafter~~ under the laws of ~~this~~ the Commonwealth.

~~Except where otherwise specified,~~ "FDIC~~,~~" or ~~"receiver,"~~ "Corporation" means the Federal Deposit Insurance Corporation ~~and~~. The term includes any successor to the Corporation or any other agency or instrumentality of the United States ~~which~~ that undertakes to discharge the purposes of the Corporation.

"Receivership court" means the circuit court ~~of record which~~ that appoints a receiver for a bank pursuant to this article.

**Drafting note: In the definition of "bank," "bank and trust company" is deleted because this title does not provide for such an entity. In the definition of "FDIC," the term "receiver" is deleted because it is awkward when a section states, for example, that the Commission may apply for "the appointment of the FDIC as receiver."**

§ ~~6.1-110.2~~ 6.2-926. Appointment of FDIC as receiver.

In any case where the Commission has closed and taken possession of a bank, the deposits in which are insured by the FDIC, the Commission may apply to any court in the Commonwealth having jurisdiction to appoint receivers for the appointment of the FDIC as

receiver ~~if any deposits in the closed bank are insured by the FDIC~~. The court, if it finds that to do so will be in the public interest, may appoint the FDIC receiver. Upon acceptance of the court's appointment of the FDIC as receiver, the FDIC shall not be required to post bond.

**Drafting note: The first sentence is restructured to group the conditions precedent for the appointment of the FDIC as a receiver.**

§ ~~6.1-110.3~~ 6.2-927. Transfer of title to bank assets.

Upon the appointment of the FDIC as receiver, title to all assets of the bank shall vest in the FDIC without the execution of any instruments of conveyance, assignment, transfer, or endorsement.

**Drafting note: No change.**

§ ~~6.1-110.4~~ 6.2-928. Posting of notice; effect of posting notice.

Immediately upon closing any bank with the intention of proceeding under the provisions of this article, the Commissioner shall post an appropriate notice of closing at the main entrance of the bank. Upon the posting of said notice, (i) no judgment lien, attachment lien, or voluntary lien shall thereafter attach to any asset of ~~said~~ the bank~~, nor shall any~~ and (ii) no director, officer, or agent of ~~such~~ the bank thereafter shall have authority to act on behalf of the bank or to convey, transfer, assign, pledge, mortgage, or encumber any asset thereof.

**Drafting note: Technical changes.**

§ ~~6.1-110.5~~ 6.2-929. Powers of receiver.

The FDIC as receiver shall have the following powers:

1. To take possession of all books, records, and assets of the bank;

2. To collect all debts, claims, and judgments belonging to the bank, and to do such other acts as are necessary to preserve or liquidate its assets;

3. To execute in the name of the bank any instrument necessary or proper to effectuate its powers as receiver or perform its duties as such;

4. To initiate, pursue, and defend litigation involving any right, claim, interest, or liability of the bank;

5. To exercise any and all fiduciary functions of the bank as of the date of its appointment as receiver;

6. To borrow money as necessary in the liquidation of the bank, and to secure such borrowings by the pledge or mortgage of bank assets. The repayment of money borrowed under this ~~subsection~~ subdivision and interest thereon shall be considered an expense of administration for purposes of § ~~6.1-110.9~~ 6.2-933;

7. To abandon or convey title to any holder of a mortgage, security deed, security interest, or lien against property in which the bank has an interest, whenever the FDIC as receiver determines that to continue to claim such interest is burdensome and of no advantage to the bank, its depositors, creditors, or shareholders;

8. Subject to the approval of the receivership court, to (i) sell, lease, or exchange any and all real and personal property, ~~to~~ (ii) compromise any debt, claim, or judgment due the bank, and ~~to~~ (iii) discontinue any action or other proceeding pending therefor; and

9. Subject to the approval of the receivership court, to (i) pay off all mortgages, security deeds, security agreements, and liens upon any real or personal property belonging to the bank~~,~~ and ~~to~~ (ii) purchase at judicial sale or sale authorized by court order any real or personal property in order to protect the bank's equity therein.

**Drafting note: Technical changes.**

§ ~~6.1-110.6~~ 6.2-930. Emergency sale of assets.

The FDIC as receiver, with ex parte approval of the receivership court, may sell all or any part of the closed bank's assets. All or any part of such assets may be sold to the Federal Deposit Insurance Corporation in its capacity as a corporation. The FDIC as receiver may also borrow from the FDIC, in its corporate capacity, any amount necessary to facilitate the assumption of deposit liabilities by an existing bank or a newly chartered bank, ~~assigning~~ and may assign any part or all of the assets of the closed bank as security for such loan.

**Drafting note: Technical change.**

§ ~~6.1-110.7~~ 6.2-931. Notice and proof of claim; notice of rejection of claim; petition for hearing.

All parties having claims against the closed bank shall present their claims, substantiated by legal proof, to the FDIC as receiver within 180 days after the closing of the bank. The FDIC as receiver shall cause notice of the claims procedure prescribed by this section to be published once a week for ~~twelve~~ 12 consecutive weeks in a newspaper of general circulation in one or more localities as the receivership court may direct, and shall mail such notice to the last address of record of each person whose name appears as a creditor upon books of the bank. The receiver shall notify in writing any claimant whose claim has been rejected within 180 days following receipt of the claim. Any claimant whose claim has been rejected by the receiver may petition the receivership court for a hearing on his claim within ~~sixty~~ 60 days of the date of notice his claim is rejected. Notice shall be deemed given when mailed.

**Drafting note: Proposed change underscores that this section applies only in cases where the FDIC is appointed as receiver; the changes conform to usage in proposed §§ 6.2-927, 6.2-929, and 6.2-930.**

§ ~~6.1-110.8~~ 6.2-932. Payment of claims filed after prescribed period.

Any claim filed after the 180-day claim period prescribed by § ~~6.1-110.7~~ 6.2-931, and subsequently accepted by the FDIC as receiver or allowed by the receivership court, shall be entitled to share in the distribution of assets only to the extent of the undistributed assets in the hands of the FDIC as receiver on the date such claim is accepted or allowed.

**Drafting note: See comment to proposed § 6.2-931.**

§ ~~6.1-110.9~~ 6.2-933. Distribution of assets.

A. All claims against the bank's estate, proved to the ~~receiver's~~ satisfaction of the FDIC as receiver or approved by the receivership court, shall be paid in the following order:

1. Administration expenses of the liquidation;

2. Claims given priority under other provisions of state or federal law;

3. Deposit obligations;

4. Other general liabilities;

5. Debt subordinated to the claims of depositors and general creditors; and

6. Equity capital securities.

B. No interest on any claim shall be paid until all claims within the same class have received the full principal amount of claim.

**Drafting Note: See comment to proposed § 6.2-931.**

§ ~~6.1-110.10~~ 6.2-934. Receivership procedures involving assets~~, etc.,~~ held by closed bank as fiduciary.

The FDIC as receiver, with the approval of the receivership court, has the authority to appoint a successor to all rights, obligations, assets, deposits, agreements, and trusts held by the closed bank as trustee, administrator, executor, guardian, agent, or in any other fiduciary or representative capacity. The successor's duties and obligations commence upon appointment and are to the same extent binding upon the former bank as though the successor had originally assumed such duties and obligations. Specifically, the successor shall succeed to and be entitled to administer all trusteeships, administrations, executorships, guardianships, agencies, and all other fiduciary or representative proceedings to which the closed bank is named or appointed in wills, whenever probated, or to which it is appointed by any other instrument, court order, or by operation of law. Nothing in this section shall be construed to impair any right of the grantor or beneficiary of trust assets to secure the appointment of a substitute trustee or manager. Within ~~thirty~~ 30 days after appointment, the successor shall (i) give written notice, insofar as practicable, to all interested parties named in the books and records of the bank or in trust documents held by it that such successor has been appointed in accordance with state law~~,~~ and ~~shall~~ (ii) cause the fact of its appointment to be recorded in appropriate courts of record.

**Drafting note: Technical changes.**

§ ~~6.1-110.11~~ 6.2-935. Termination of executory contracts and leases; liability; extension of statute of limitations.

Within 180 days of the date of the closing of the bank, the FDIC~~,~~ as receiver~~, may~~ at its election may reject (i) any executory contract to which the closed bank is party without further liability to the closed bank or the receiver~~,~~ or ~~may reject~~ (ii) any obligation of the bank as a lessee of real or personal property. The receiver's election to reject a lease creates no claim (a) for rent other than rent accrued to the date of termination~~,~~ or (b) for actual damages, if any, for such termination, not to exceed the equivalent of six months' payment. Notwithstanding any other law of the Commonwealth, the statute of limitations shall be extended for a period of six months on all causes of action which may accrue to the FDIC as receiver.

**Drafting note: Technical changes.**

§ ~~6.1-110.12~~ 6.2-936. Subrogation to rights of bank depositors.

Whenever the FDIC pays, or makes available for payment, the insured deposit liabilities of a closed bank, the FDIC, whether or not it acts as receiver, shall be subrogated to all rights of depositors against the closed bank to the same extent as subrogation is provided for by the Federal Deposit Insurance Act~~,~~ (12 U.S.C. § 1811 et seq.~~,~~) in the case of a national bank.

**Drafting note: Technical changes.**

§ ~~6.1-110.13~~ 6.2-937. Destruction of records.

Subject to the approval of the receivership court, the closed bank's records may be destroyed after the FDIC, as receiver, determines that there is no further need for them.

**Drafting note: No change.**

Article ~~11~~ 15.

Banking Offenses.

§ ~~6.1-111~~ 6.2-938. ~~Doing~~ Engaging in banking ~~or trust~~ business without authority; Commission may examine accounts~~, etc.,~~ of suspected person; penalty.

A. Every person~~, association or company~~ who ~~shall trade~~ trades or ~~deal~~ deals as a bank ~~or trust company~~, or ~~carry~~ carries on banking ~~or do a trust business~~, without authority of law, and their officers and agents ~~therein~~, ~~shall be~~ is guilty of a Class 6 felony.

B. The Commission shall have authority to examine the accounts, books, and papers of any person~~, copartnership or corporation~~ who it has reason to suspect is doing a banking business ~~or a trust business~~, in order to ascertain whether such person~~, copartnership, or corporation~~ has violated, or is violating, any provision of this title~~, and the~~. The refusal to submit such accounts, books, and papers shall be prima facie evidence of such violation.

**Drafting note: "Person" includes any copartnership or corporation. Other changes conform language to current drafting style. Use of "engage in" tracks usage in existing § 6.1-112. Section is duplicated at proposed § 6.2-1039 with respect to conducting trust business without authority.**

§ ~~6.1-112~~ 6.2-939. Unlawful use of terms indicating that business is bank~~, trust company, etc.~~; penalty.

A. ~~No~~ A person~~, entity or organization~~ not authorized to engage in the banking business ~~or trust business~~ in ~~this~~ the Commonwealth by the provisions of this title or under the laws of the United States, ~~or a business trust~~, shall not (i) use any office sign having thereon any name or other words indicating that any such office is the office of a bank ~~or trust company~~; (ii) use or circulate any letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or printed paper ~~whatever~~, having thereon any name or word indicating that such person~~, entity or organization~~ is a bank ~~or trust company~~; or (iii) use the word "bank," "banking," "banker," or "trust," or the equivalent thereof in any foreign language, or the plural thereof in connection with any business other than a banking ~~or trust~~ business.

B. The foregoing prohibitions shall not apply to use by a bank holding company, as defined in § ~~6.1-47~~ 6.2-800, of the word "bank," "banks," "banking," "banker," "trust," or the equivalent thereof in its name, or of a name similar to that of a subsidiary bank of such bank holding company.

C. The use of the above-mentioned words in the name of, or in connection with, any other business shall not be prohibited if the context or remaining words show clearly and definitely that the business is not a bank ~~or trust company~~, and is not carrying on a banking ~~or trust~~ business.

D. Any person~~, entity or organization~~ violating the provisions of this section, either individually or as an interested party, ~~shall be~~ is guilty of a Class 6 felony.

**Drafting note: "Business trust" in subsection A is deleted because "person" includes trusts. Section is duplicated at proposed § 6.2-1040 with respect to trust companies.**

~~§ 6.1-113. Penalty for violation of § 6.1-39.3 or § 6.1-41.~~

~~Any bank violating the provisions of § 6.1-39.3 or § 6.1-41 shall be fined up to $2,000 to be imposed and judgment entered therefor by the Commission, and enforced by its process~~.

**Drafting note: This section has been duplicated and relocated within the two referenced sections, with respect to banks, in order to provide greater notice of the penalty for a violation, which is set out as a civil penalty. The language is relocated to proposed subsection E of § 6.2-831 and subsection B of § 6.2-834.**

~~§ 6.1-114. Penalty for failure to comply with § 6.1-93 or § 6.1-87.~~

~~Any such bank, trust company or trust subsidiary failing to comply with any of the provisions of § 6.1-93, for a period of longer than thirty days, after being called upon by the Commission for a statement, or to do such other act as is therein provided, shall be fined not less than $100 nor more than $1,000 per day for each day of noncompliance. Any officer of any such bank, trust company or trust subsidiary, who shall refuse to give any examiner the information or refuse to be sworn, as required by § 6.1-87, shall be fined not less than $25 nor more than $100 per day for each day of noncompliance.~~

**Drafting note: Section is split and relocated within the two referenced sections (proposed §§ 6.2-901 and 6.2-907), in order to provide easier notice of the penalty provisions as they apply to banks. Parallel provisions are set out at proposed §§ 6.2-1041 and 6.2-1061 to address trust companies and trust subsidiaries.**

~~§ 6.1-115.~~

**Drafting note: Repealed by Acts 1975, c. 589.**

~~§ 6.1-116.~~

**Drafting note: Repealed by Acts 1975, c. 589.**

~~§ 6.1-117.~~

**Drafting note: Repealed by Acts 1975, c. 589.**

~~§ 6.1-118.~~

**Drafting note: Repealed by Acts 1975, c. 589.**

~~§ 6.1-118.1. Recovery of costs in civil actions for bad checks.~~

~~A. In any civil action by a holder to recover the sum payable of a check drawn by the defendant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds, or in any civil action following an arrest under § 18.2-181 or § 18.2-182, the court, upon a determination that the plaintiff has prevailed, shall add the following amounts, as costs, to the amount due to the plaintiff for the check: (i) the sum of ten dollars to defray the cost of processing the returned check; and (ii) the base wage of one employee for time actually spent acting as a witness for the Commonwealth; provided, however, that the total~~

~~amount of allowable costs granted under the provisions of this section shall not exceed the sum of $250 excluding restitution for the amount of the check.~~

~~B. Such award of costs shall be contingent upon a finding (i) that the plaintiff complied with the provisions in § 18.2-183 relating to notice and (ii) that the defendant failed to deliver payment or evidence of bank error to the plaintiff within five days after receipt of such notice.~~

**Drafting note: Section is moved to Title 17.1 (Courts of Record) at § 17.1-626.1 because it (i) deals with the imposition of court costs and (ii) applies to bad checks written on all types of accounts, not only those at banks. This provision requires the payment of sums that are in addition to the additional amounts recoverable in a civil action on a bad check under § 8.01-27.1.**

§ ~~6.1-119~~ 6.2-940. Making derogatory statements affecting banks; penalty.

Any person who willfully and maliciously makes, circulates, or transmits to another~~,~~ any statement, rumor, or suggestion~~, written, printed or by word of mouth, which~~ that is directly or by reference derogatory to the financial condition, or affects the solvency or financial standing of, any bank ~~or trust company~~ doing business in ~~this~~ the Commonwealth, or who counsels, aids, procures, or induces another to start, transmit, or circulate any such statement or rumor, ~~shall be~~ is guilty of a Class 1 misdemeanor ~~and, upon conviction thereof, shall be sentenced to pay a fine of not more than $2,500 or to be confined in jail for not more than one year, or both~~.

**Drafting note: The phrase "written, printed, or by word of mouth" is deleted; as revised, the means by which statements are made, circulated, or transmitted is irrelevant. The one year in jail and/or $2,500 fine corresponds to the penalty for a Class 1 misdemeanor. Other changes are technical. Parallel provision is set out at proposed § 6.2-1042 to address trust companies. The Code Commission concluded that this section and proposed §§ 6.2-1042, 6.2-1107, and 6.2-1305 should be substantively revised to standardize the elements of the offenses and review the penalties, but observed that the issue should be addressed in separate legislation.**

§ ~~6.1-119.1~~ 6.2-941. Use of bank ~~or trust company~~ name, logo, or symbol for marketing purposes; penalty.

A. As used in this section, "name, logo, or symbol, or any combination thereof, of a bank" includes any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or symbol, or any combination thereof of a bank.

B. Except as provided in subsection ~~B~~C, no person shall use the name, logo, or symbol, or any combination thereof, of a bank ~~or trust company, or any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or symbol of a bank or trust company,~~ in marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the bank ~~or trust company~~ or that the bank ~~or trust company~~ is responsible for the marketing material or solicitation.

~~B~~ C. This section shall not apply to (i) an affiliate or agent of the bank ~~or trust company~~ or (ii) a person who uses the name, logo, or symbol of a bank ~~or trust company~~ with the consent of the bank ~~or trust company~~.

~~C~~ D. Any person violating the provisions of this section, either individually or as an interested party, ~~shall be~~ is guilty of a Class 1 misdemeanor. This section shall not affect the availability of any remedies otherwise available to a bank ~~or trust company~~.

**Drafting note: New subsection A is created in order to simplify the first sentence of proposed subsection B. Parallel provision is set out at proposed § 6.2-1043 to address trust companies.**

§ ~~6.1-120~~ 6.2-942. False certification of checks; penalty.

~~Whoever, being an~~ Any officer, employee, agent, or director of a bank~~,~~ who (i) certifies a check drawn on such bank and willfully fails forthwith to charge the amount thereof against the account of the drawer thereof~~,~~ or (ii) willfully certifies a check drawn on such bank when the drawer of such check ~~has not~~ does not have on deposit with the bank the amount of money subject to the payment of such check ~~and equivalent to the amount therein specified~~, ~~shall be~~ is guilty of a Class 1 misdemeanor.

**Drafting note: Revisions attempt to update archaic usage. The phrase "and equivalent to the amount therein specified" is deleted as redundant. The penalty is specified as a Class 1 misdemeanor pursuant to § 18.2-12.**

~~§ 6.1-121.~~

**Drafting note: Repealed by Acts 1981, c. 339.**

§ ~~6.1-122~~ 6.2-943. ~~Embezzlement, fraud, false statements, etc.~~Offenses~~,~~ by officer, director, agent, or employee of bank~~, trust company or trust subsidiary~~; penalties.

A. Any officer, director, agent, or employee of any bank~~, trust company or trust subsidiary~~ who embezzles, abstracts, or willfully misapplies any of the moneys, funds, or credits of, or in the possession or control of, ~~such corporation, shall be~~ the bank is guilty of larceny and ~~punished as provided by law~~ subject to the penalties provided in § 18.2-95 or 18.2-96.

B. Any officer, director, agent, or employee of any bank~~, trust company or trust subsidiary~~ who (i) issues or puts forth any certificate of deposit, (ii) draws any order or bill of exchange, (iii) makes any acceptance, (iv) assigns any note, bond, draft, bill of exchange, mortgage, judgment, decree, or other instrument in writing, or ~~who~~ (v) makes any false entry in any book, report, or statement of such bank, ~~trust company or trust subsidiary~~ with intent in any case to injure or defraud ~~such corporation,~~ the bank or any other ~~company, body politic or corporate, or any~~ individual ~~person~~ or entity, or to deceive any officer of ~~such corporation,~~ the bank or the ~~State Corporation~~ Commission, or any agent or examiner authorized to examine the affairs of ~~such corporation~~ the bank, and any person, who, with ~~like~~ the same intent, aids or abets any such officer, director, agent, or employee of such bank~~, trust company or trust subsidiary~~ in any ~~such violation~~ act described in clauses (i) through (v), ~~shall be~~ is guilty of a Class 5 felony ~~and upon conviction thereof shall be confined in a state correctional facility not less than one~~

~~year or more than ten years, or be confined in jail not exceeding twelve months and fined not exceeding $5,000~~.

C. Any ~~such~~ officer of a bank who knowingly makes a false statement of the condition of any ~~such~~ bank ~~or institution, shall be deemed~~ is guilty of a Class 5 felony ~~and upon conviction shall be fined not less than $100 nor more than $5,000, and be imprisoned in a state correctional facility not less than one nor more than ten years~~.

**Drafting note: In subsections B and C, the crimes are designated as a Class 5 felony because it is the class, of those set out in §§ 18.2-10 and 18.2-11, for which the existing penalties most closely correspond. A Class 5 felony is punishable by one to 10 years in prison or up to 12 months in jail and a fine of up to $2,500. Parallel provisions are set out at proposed §§ 6.2-1044 and 6.2-1062 to address trust companies and trust subsidiaries.**

§ ~~6.1-123~~ 6.2-944. Officers, directors, agents, and employees violating or causing bank~~, trust company or trust subsidiary~~ to violate laws; civil liability not affected.

Any officer, director, agent, or employee of any bank~~, trust company or trust subsidiary~~ who knowingly violates or who knowingly causes any bank~~, trust company or trust subsidiary~~ to violate any provision of this chapter, or knowingly participates or knowingly acquiesces in any such violation, ~~shall,~~ unless other punishment ~~be~~ is provided for the offense of such officer, agent, or employee, ~~be~~ is guilty of a Class 1 misdemeanor ~~and be punished accordingly~~. The provisions of this section shall not affect the civil liability of any such officer, director, agent, or employee.

**Drafting note: The penalty is specified as a Class 1 misdemeanor pursuant to § 18.2-12. The phrase "and punished accordingly" is deleted as archaic. Parallel provisions are set out at proposed §§ 6.2-1045 and 6.2-1063 to address trust companies and trust subsidiaries.**

§ ~~6.1-124~~ 6.2-945. Receiving deposit knowing bank ~~or broker~~ to be insolvent; penalty.

A. Any officer ~~or~~, director. or employee of any bank ~~and any private banker~~, or broker ~~or any employee of any such bank, banker or broker~~, who ~~shall take~~ takes and ~~receive~~ receives, or ~~permit~~ permits to be received, a deposit from any person with the actual knowledge that the bank~~, banker~~ or broker is at the time insolvent, ~~shall be~~ is guilty of embezzlement~~, and~~ . Notwithstanding the provisions of § 18.2-111, an individual convicted of embezzlement pursuant to this section shall be ~~punished by a fine~~ fined double the amount so received~~,~~ and be ~~confined in a state correctional facility~~ subject to a term of imprisonment of not less than one nor more than three years, in the discretion of the jury, for each offense.

B. On the trial of any indictment under this section, it shall be the duty of ~~any such~~ the bank~~, banker~~ or broker, and its agent or officers, to produce in court, on demand of the attorney for the Commonwealth, all books and papers of ~~such~~ the bank~~, banker~~ or broker, to be read as evidence on the trial of such indictment~~; but in~~. In determining the question of the solvency of any bank, the capital stock thereof shall not be considered as a liability due by it.

**Drafting note: References to "private banker" are deleted from this section because there is no consensus as to what it means. Language regarding confinement in a state**

**correctional facility is revised to reflect current drafting style. Other changes attempt to update archaic usage.**

§ ~~6.1-125~~ 6.2-946. ~~Penalties~~ Civil penalties for violation of Commission's orders.

A. The Commission may impose, enter judgment for, and enforce by its process, a ~~fine~~ civil penalty not ~~in excess of~~ exceeding $10,000 ~~against~~ upon any bank, ~~trust company or trust subsidiary~~ or against any of its directors, officers, or employees ~~for violating~~, who it determines, in proceedings commenced in accordance with the Commission's Rules, has violated any lawful order of the Commission~~; and~~.

B. The Commission may remove from office any director or officer ~~who a second time violates~~ of a bank for a second or subsequent violation by him of any such order~~; but in~~.

C. In all cases the defendant shall have an opportunity to be heard and to introduce evidence, and the right to appeal as provided by law.

**Drafting note: Substituting "civil penalty" for "fine" comports to changes made in other chapters of proposed Title 6.2. The disposition of civil penalties is addressed in proposed § 6.2-106. Parallel provisions are set out at proposed §§ 6.2-1046 and 6.2-1064 to address trust companies and trust subsidiaries.**

## CHAPTER 9.
## RESERVED.

**Chapter Drafting Note: Chapter 9 is reserved because the numbering in Chapter 8 extends beyond 6.2-900.**

## CHAPTER 10.
## ENTITIES CONDUCTING TRUST BUSINESS.

**Chapter Drafting Note: Chapter 10 is a new chapter, and consists principally of all or major portions of existing Articles 3, 3.1, 3.2, 3.2:1, and 3.3 of Chapter 2 (Banking Act) and of Chapter 3.2 (Virginia Savings and Loan Trust Powers Act). Provisions relating specifically to the exercise of trust powers by bank departments remain in proposed Chapter 8 as Article 3 (Conduct of Trust Business by Banks).**

### Article 1.
### Trust Powers and Trust Business.

§ 6.2-1000. Definitions.

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

"Affiliated trust company" means a trust company that is controlled by a trust company holding company.

"Trust business" means the holding out by a person or legal entity to the public at large by advertising, solicitation or other means that the person or legal entity is available to act as a fiduciary in the Commonwealth ~~of Virginia~~ or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business. ~~For the purposes of this article, a~~ A person ~~or legal entity~~ does not engage in ~~the~~ trust business by:

1. Rendering services as an attorney at law in the performance of duties as a fiduciary;

2. Rendering services as a certified or registered public accountant in the performance of duties as such;

3. Acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;

4. Acting as a trustee in bankruptcy or as a receiver;

5. Holding trusts of real estate for the primary purpose of subdivision, development or sale, or to facilitate any business transaction with respect to such real estate;

6. Engaging in the business of an escrow agent;

7. Holding assets as trustee of a trust created for charitable purposes~~. This subdivision 7 shall apply only~~ if:

~~(~~a~~).~~ ~~the~~ The trustee is an entity exempt from federal income tax under § 501 (c) (3) of the Internal Revenue Code; and

~~(~~b~~).~~ ~~the~~ The trust is (i) exempt from federal income taxes under § 501 (c) (3) of the Internal Revenue Code; (ii) a charitable remainder trust described in § 664 of the Internal Revenue Code; (iii) a pooled income fund described in § 642 (c) (5) of the Internal Revenue Code; or (iv) a trust the charitable interest in which is either a guaranteed annuity or a fixed percentage distributed yearly of the fair market value of the trust property, described in § 2055 (e) (2) (B) or § 2522 (c) (2) (B) of the Internal Revenue Code;

8. Receiving rents and proceeds of sale as a licensed real estate broker on behalf of the principal; or

9. Engaging in securities transactions as a broker-dealer or salesman.

"Trust company" means a corporation, including an affiliated trust company, that is authorized to engage in the trust business under Article 2 (§ 6.2-1013 et seq.) of this chapter, the powers of which are expressly restricted to the conduct of trust business.

"Trust company holding company" means a corporation that controls a trust company. A trust company holding company shall not be deemed a financial institution holding company for any purpose under this title unless it controls a financial institution other than an affiliated trust company or another financial institution holding company.

"Trust institution" means any (i) bank authorized to engage in the trust business, (ii) trust company, or (iii) trust subsidiary.

"Trust subsidiary" or "subsidiary trust company" means a corporation organized under Chapter 9 (§ 13.1-601 et seq.) of Title 13.1, or an association organized under the National Banking Act with its main office located in the Commonwealth, that is authorized to transact trust business and business incidental thereto, but not to accept deposits except as incidental to such trust business.

**Drafting note: New section. The definitions of "affiliated trust company" and "trust company holding company" are moved from existing § 6.1-32.11. The definition of "trust business" is moved from § 6.1-32.11 and includes the exemptions set out in § 6.1-32.12; these are shown as existing language in order to make the proposed changes easier to identify. The definition of "trust company" is moved from existing § 6.1-32.11, which**

**provided that its powers be restricted to the conduct of "general" trust business; the word "general" has been deleted because it may generate confusion regarding whether it is the same as "trust business." In the definition of "trust company," the phrase "including an affiliated trust company" is relocated within the definition. The definition of "trust institution" is new and provides a shorthand replacement for "bank, trust company or trust subsidiary." The definitions for "trust subsidiary" and "subsidiary trust company" are moved from existing § 6.1-32.2.**

§ ~~6.1-5~~ 6.2-1001. ~~Who shall not do a banking or~~ Entities authorized to engage in trust business.

A. No ~~person, copartnership or corporation~~ entities, except (i) corporations duly chartered and already conducting ~~the banking business or~~ trust business in ~~this~~ the Commonwealth under authority of the laws of ~~this~~ the Commonwealth or the United States, ~~or which shall~~ (ii) banks hereafter ~~be~~ incorporated under the laws of ~~this~~ the Commonwealth ~~or~~ that are authorized to engage in the trust business through a separate trust department pursuant to Article 3 (§ 6.2-819 et seq.) of Chapter 8, (iii) corporations authorized to ~~do~~ engage in the trust business in ~~this~~ the 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~~ (iv) trust companies ~~or institutions that may be~~ authorized to establish and operate one or more trust offices or ~~conduct~~ engage in trust business in ~~this~~ the Commonwealth under Article ~~3.1~~ 2 (§ ~~6.1-32.1~~ 6.2-1013 et seq.), (v) trust subsidiaries authorized to engage in trust business under Article ~~3.2~~ 3 (§ ~~6.1-32.11~~ 6.2-1047 et seq.), (vi) multistate trust institutions authorized to engage in trust business under Article ~~3.2:1~~ 4 (§ ~~6.1-32.30:1~~ 6.2-1065 et seq.), (vii) private trust companies authorized to engage in trust business under Article 5 (§ 6.2-1074 et seq.), or (viii) savings institutions authorized to engage in the trust business pursuant to Article ~~3.3~~ 6 (§ ~~6.1-32.31~~ 6.2-1081 et seq.) of this chapter, shall engage in the ~~banking business or~~ trust business in ~~this~~ the Commonwealth~~, and no~~. No foreign corporation, except as permitted in Chapter ~~14~~ 7 (§ ~~6.1-390~~ 6.2-700 et seq.) ~~and Chapter 15 (§ 6.1-398 et seq.) of this title~~, shall ~~do a banking or~~ engage in trust business in ~~this~~ the Commonwealth.

B. Nothing in this chapter~~, however,~~ shall prevent:

1. ~~Prevent a~~ A natural person from qualifying and acting as trustee, personal representative, guardian, conservator, committee or in any other fiduciary capacity;

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

3. ~~Prevent any~~ Any bank or trust company organized under the laws of ~~this~~ the 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~~; or

4. ~~Prevent an~~ An incorporated association that is authorized to sell burial association group life insurance certificates in the Commonwealth, as described in the definition of limited burial insurance authority in § 38.2-1800, ~~whose~~ the principal purpose of which is to assist its members in (i) financial planning for their funerals and burials and (ii) obtaining insurance for the payment, in whole or in part, for funeral, burial, and related expenses, from serving as trustee of a trust established pursuant to § 54.1-2822.

C. Nothing in this section shall be construed ~~to~~:

1. To prevent ~~banks or trust companies~~ any bank or trust company organized in ~~this~~ the Commonwealth and chartered under the laws of the United States from transacting business in ~~Virginia.~~ the Commonwealth; or

~~Nothing in this section shall be construed to~~ 2. To prevent a real estate broker as defined in § 54.1-2100 from owning or operating a bank provided that the requirements of this chapter are met.

D. Except as permitted by this chapter or by Article 3 (§ 6.2-819 et seq.) of Chapter 8, or by federal law in the case of a national banking association having its main office in the Commonwealth, no entity shall qualify or act (i) as a personal representative of a deceased person; (ii) as a guardian for an infant or an incapacitated person; (iii) as a committee; (iv) as a conservator for an incapacitated person; (v) as a testamentary trustee, or trustee for any other trust if required by law to account to the commissioner of accounts of a circuit court in the Commonwealth; or (vi) in any other fiduciary capacity required to account to the commissioner of accounts of a circuit court in the Commonwealth.

**Drafting note: Existing § 6.1-5 applies to both the banking business and the trust business; the provisions applicable to the conduct of banking business are set out at proposed § 6.2-803. The list of entities authorized to engage in trust business is expanded to include savings associations authorized to conduct such business pursuant to existing Chapter 3.2 (proposed Article 6 of this chapter). In subsection A, "entity" is defined in proposed § 6.2-100 as including partnerships and corporations, but excludes individuals; in this context, removing individuals is not a substantive change. Per § 1-245, "state" includes the District of Columbia. Subsection D is the last sentence of existing § 6.1-32.5; it is relocated to this section, with technical amendments, because it applies generally to the authorization to act in the enumerated fiduciary capacities.**

§ ~~6.1-17~~ 6.2-1002. Powers of ~~banks and~~ trust ~~companies; national banks as fiduciaries~~ institutions.

A. All banks that are authorized to do a trust business~~,~~ and all trust companies ~~heretofore and hereafter chartered,~~ shall have the following rights, powers, and privileges, and shall be subject to the following regulations and restrictions:

~~(~~1~~).~~ To act as agent for any person, corporation, municipality, or state, for the collection or disbursement of interest, or income or principal of securities~~.~~;

(2). To act as the fiscal or transfer agent of any state, municipality, or body politic or corporate, and in such capacity to receive and disburse money; to transfer, register, and countersign certificates of stock, bonds, or other evidences of indebtedness, and to;

3. To act as agent of any corporation, foreign or domestic, for any lawful purpose.;

(3) 4. To act as trustee under any mortgage or bond issued by an individual, municipality, or body politic or corporate, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this the Commonwealth.;

(4) To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

(5). To act as guardian, receiver, or trustee of the estate of any minor and as depository of any money paid into court, whether for the benefit of any minor or other person, corporation or party.;

(6). To take, accept, and execute any and all such lawful trusts, duties, and powers in regard to the holding and management and disposition of any estate, real and personal, and the rents and profits thereof, or the sale or lease thereof, as may be granted or confided to it by any circuit court, judge, or clerk, or by any person, corporation, municipality, or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty, or power which it may so accept.;

(7). To take, accept, and execute any and all such trusts and powers, of whatever nature and description, as may be conferred upon or entrusted or committed to it by any person or persons, or including any body politic or corporate, or by other authority, by grant, assignment, transfer, devise, bequest, or otherwise or as may be entrusted or committed or transferred to it or vested in it by order of any circuit court, judge, or clerk, and to receive and hold any property or estate, real or personal, which may be the subject of any such trust.; and

(8). To act as executor:

a. Executor under the last will and testament or administrator of the estate of any deceased person, under appointment of any circuit court, judge or clerk thereof, having jurisdiction of the estate of such deceased person; or as guardian

b. Guardian of the person or of the estate of any infant; or as, guardian, or conservator of any incapacitated person, or habitual drunkard, or any person who by reason of advanced age or impaired health or physical disability has become mentally or physically incapable of taking proper care of his person or properly handling and managing his estate, under appointment of any circuit court, judge or clerk thereof, having jurisdiction of the estate of such person; or trustee

c. Trustee or committee for any convict in the penitentiary, under appointment of any circuit court, judge, or clerk thereof, having jurisdiction of the estate of such deceased person or other person. In the case of qualification before or after July 1, 1984, if the order of qualification of a bank as committee or guardian fails to specify that the bank is to be guardian or committee

~~of the person, it shall be deemed a qualification solely as committee, conservator or guardian of the estate.~~

B. Nothing in this section shall ever be construed as authorizing the creation of a trust not lawful as between individuals nor to prohibit the deposit of funds by court and fiduciaries in banks of deposit and discount and savings banks.

~~All national banks which have been, or hereafter may be, permitted by law to act as trustee and in other fiduciary capacities, shall have the rights, powers, privileges and immunities conferred upon trust companies by this chapter.~~

C. Every trust company doing business in the Commonwealth is authorized temporarily to suspend its usual business during a period of actual or threatened enemy attack, civil insurrection or riot, affecting the community in which such institution is doing business or other emergency justifying temporary closing, such as fire, flood or hurricane.

**Drafting Note: Existing subdivision (4) is deleted as an anachronism. Existing subdivision (8) is divided into separate clauses. The last sentence of existing subdivision (8) is moved to proposed § 26-7.5, as it pertains to the qualification of a fiduciary rather than to trust powers; the reference in that sentence to "before or after July 1, 1984" is deleted as obsolete. In proposed subdivision 7, "or persons" is deleted because per § 1-227, the singular includes the plural. The last paragraph of existing § 6.1-17 is set out at proposed § 6.2-820; the catchline is amended to reflect this relocation. Proposed subsection C is moved from existing § 6.1-12, because it grants a power to trust companies.**

§ ~~6.1-18~~ 6.2-1003. When security not required; payment of probate taxes and fees.

A. No bank or trust company ~~of this Commonwealth,~~ with a minimum unimpaired capital stock of $50,000 or more~~,~~ shall be required by any officer or court of ~~this~~ the Commonwealth to (i) give security upon appointment to or acceptance of any office of trust which it may, by law, be authorized to execute or ~~to~~ (ii) give security upon any bond given pursuant to § 4.1-341 or similar statute; ~~provided,~~ however, no bank or trust company shall qualify on an estate having a value in excess of its combined unimpaired capital and surplus without giving bond for such excess.

B. When such bank or trust company shall qualify on any office of trust, the clerk in lieu of collecting the fees under Title 17.1 and probate taxes may render a bill or statement to ~~such~~ the bank or trust company to be paid within five business days.

**Drafting Note: Technical changes.**

§ ~~6.1-19~~ 6.2-1004. Who may take oath for corporate fiduciary.

In all cases where any ~~bank, trust company or trust subsidiary in this Commonwealth~~ trust institution shall be appointed to act as trustee, executor, or administrator of any estate or guardian for any infant, or in any other fiduciary capacity, it shall be lawful for ~~the president, vice-president, cashier, treasurer, secretary, or~~ any ~~other~~ officer of ~~such bank, trust company or trust subsidiary~~ the trust institution to take and subscribe for ~~such corporation~~ the institution any and all oaths required to be taken or subscribed by such executor, administrator, trustee, guardian, or other fiduciary.

**Drafting Note: The deletion of references to specific offices simplifies the language, which currently covers, in addition to the named officers, any other officer of the institution. The reference to corporation is changed to institution to address entities other than corporations that may qualify as trust institutions.**

§ ~~6.1-21~~ 6.2-1005. Deposit or other use of trust funds.

A. Funds received or held in the trust department of a bank or by a trust company awaiting investment or distribution shall not be used by the bank or ~~a~~ trust company in the conduct of its business ~~except that such~~.

B. Notwithstanding subsection A, such funds may be deposited by a bank~~,~~ in its commercial or savings department to the credit of its trust department, if the bank first delivers to the trust department, as collateral security therefor, securities of any of the following classes:

~~(~~1~~).~~ Bonds, notes, or certificates of indebtedness of the United States; ~~or~~

~~(~~2~~).~~ Other readily marketable securities of the classes in which fiduciaries are authorized or permitted to invest trust funds, as set forth in § 26-40.01; or

~~(~~3~~).~~ Other readily marketable bonds, notes, or debentures, commonly known as investment securities, meeting the following requirements:

~~(~~a~~).~~ That the issue be of a sufficiently large total to make marketability possible;

~~(~~b~~).~~ Such a public distribution of the securities must have been provided for or made in a manner to protect or insure the marketability of the issue; and

~~(~~c~~).~~ That the trust agreement under which the security is issued provides for a trustee independent of the obligor, which trustee must be a ~~bank or~~ trust ~~company~~ institution.

C. The securities ~~so~~ deposited as collateral pursuant to subsection B shall be owned by the bank and shall at all times be at least equal in market value to the amount of trust funds so used in the conduct of the business of the bank less such amount thereof as shall be insured by the Federal Deposit Insurance Corporation under existing or future federal law.

D. In the event of the failure or liquidation of such bank, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

**Drafting Note: Changes are technical.**

§ ~~6.1-22~~ 6.2-1006. ~~Trust~~ Custody of trust securities to be kept separate; ~~custody thereof;~~ federal securities and obligations.

A. The securities and investments held in each trust shall be kept separate and distinct from the securities owned by the ~~bank, trust company or trust subsidiary~~ trust institution. The ~~bank, trust company or trust subsidiary must~~ trust institution shall at all times show upon its trust records the interests of each separate fiduciary account and trust in each particular security or investment held by it in a fiduciary capacity. Trust securities and investments shall be placed in the joint custody or control of two or more officers or other employees designated by the board of directors of the ~~bank, trust company, or trust subsidiary and such~~ trust institution. Such joint custody shall be interpreted to mean that neither of such officers or employees shall have access

alone at any time to such securities and investments~~, and all~~. All such officers and employees shall be bonded.

B. Securities and obligations of the United States and of agencies of the United States government may be held for the account of ~~such bank, trust company or trust subsidiary~~ the trust institution by a Federal Reserve Bank in a book-entry custody account, without the requirement of the ~~bank, trust company or trust subsidiary~~ trust institution having physical possession of such securities, provided at all times that the records of the Federal Reserve Bank and the ~~bank, trust company or trust subsidiary~~ trust institution shall at all times identify separately those securities held for the account of the ~~bank, trust company or trust subsidiary~~ trust institution and those held by the ~~bank, trust company or trust subsidiary~~ trust institution in a fiduciary capacity.

**Drafting Note: Technical changes.**

§ ~~6.1-23~~ 6.2-1007. Investment of trust funds.

A. Funds received or held by ~~the trust department of a bank or a trust company, or in a trust subsidiary,~~ a trust institution awaiting investment or distribution~~,~~ shall be invested or distributed as soon as practicable and shall not be held uninvested by ~~such bank, trust company or trust subsidiary~~ the trust institution any longer than is reasonably necessary.

B. ~~Where~~ If the instrument creating the trust does not specify the character or class of investments to be made, and does not expressly ~~invest in~~ grant to the ~~bank, trust company or trust subsidiary~~ trust institution, its officers or directors ~~a~~ discretion in the matter of investments, funds held in trust shall be invested in any securities in which corporate or individual fiduciaries may lawfully invest.

C. ~~Where~~ If the instrument under which a ~~bank, trust company or trust subsidiary~~ trust institution is serving as fiduciary or cofiduciary does authorize it to retain ~~its~~:

1. Its own stock or securities, it shall be authorized to retain in like manner the stock or securities of a bank holding company of which it is a subsidiary; or

2. ~~Where the instrument under which a bank, trust company or trust subsidiary is serving as fiduciary or cofiduciary does authorize it to retain the~~ The stock or securities of a bank or trust company to the business of which the fiduciary has succeeded, or the stock or securities of a bank or trust company which has become a subsidiary of a bank holding company, such fiduciary shall be authorized in like manner to retain the stock of the successor bank or trust company or bank holding company.

**Drafting Note: Technical changes. In subsection B, "invest in [them] the discretion to" is replaced by "grant to [them] the discretion to" to update language and the reference to "invest in" is confusing in the context of the section.**

§ ~~6.1-24~~ 6.2-1008. Dealings with self or affiliates.

A. No trust ~~company or bank doing a trust business or trust subsidiary~~ institution shall buy any property for a trust or estate from itself, or a department or branch thereof, or from an affiliate or subsidiary corporation, or from a director, officer, or employee of such trust ~~company, bank or trust subsidiary~~ institution. Any such purchase shall be voidable at the election of any beneficiary or successor trustee, unless (i) approved by an appropriate court, (ii) consented to by

all beneficiaries after full and fair disclosure, (iii) authorized by the instrument creating the fiduciary relationship, or (iv) permitted by ruling of the Commissioner ~~of Financial Institutions~~.

B. A sale of any trust or fiduciary property by a trust ~~company or bank doing a trust business or trust subsidiary~~ institution to itself, or a department or branch of such trust ~~company, bank or trust subsidiary~~ institution, or to an affiliate or subsidiary corporation, or to a director, officer, or employee of such trust ~~company, bank or trust subsidiary~~ institution, except as (i) approved by an appropriate court, (ii) consented to by all beneficiaries after full and fair disclosure, (iii) authorized by the instrument creating the fiduciary relationship, or (iv) permitted by ruling of the Commissioner ~~of Financial Institutions~~, shall be a breach of trust and voidable at the election of any beneficiary or successor trustee.

~~But~~C. Notwithstanding the provisions of subsections A and B, a trust ~~company, bank or trust subsidiary~~ institution, as fiduciary of one estate or trust, may buy or sell from or to itself, as fiduciary of another estate or trust, assets which at the time of sale are permissible fiduciary investments under Title 26, if the transaction is fair to both estates or trusts and is not prohibited by the terms of any instrument under which the fiduciary is acting.

**Drafting Note: Technical changes.**

§ ~~6.1-30.1~~ 6.2-1009. ~~Establishment of common~~ Common trust and collective investment funds.

A. As used in this section:

"Common trust fund" means a common trust fund described under § 584 of the Internal Revenue Code of 1986, as amended, as well as any other type of collective investment fund that is exempt from federal income taxation under any other provision of the Internal Revenue Code or regulations issued pursuant thereto.

"Maintaining bank" means a trust institution that establishes and maintains a common trust fund for the collective investment of qualified employee benefit trusts or funds held in a fiduciary capacity by it, including agency accounts under which the institution exercises investment discretion and assumes fiduciary responsibilities.

"Participating bank" means a trust institution duly authorized to act as a fiduciary, wherever located, that is owned, controlled by, or affiliated with (i) a maintaining bank or (ii) a bank holding company that also owns, controls, or is affiliated with a maintaining bank.

B. Any ~~bank, trust company or trust subsidiary~~ trust institution may establish and maintain one or more common trust funds for the collective investment of qualified employee benefit trusts or funds held in a fiduciary capacity by it, including agency accounts under which the ~~bank~~ institution exercises investment discretion and assumes fiduciary responsibilities ~~(hereafter referred to as the "maintaining bank")~~.

C. The maintaining bank may include, for the purposes of collective investment in ~~such~~ a common trust fund or funds established and maintained by it, funds held in a fiduciary capacity by any ~~other bank, trust company or trust subsidiary duly authorized to act as a fiduciary, wherever located, which other bank or trust company is hereafter referred to as the~~ "participating bank~~", provided that the relationship between the maintaining bank and the participating bank is~~

~~(i) the maintaining bank owns, controls or is affiliated with the participating bank or (ii) a bank holding company owns, controls or is affiliated with both the maintaining bank and the participating bank~~.

~~B~~ D. ~~Such~~ A maintaining bank may invest the funds held by it in any fiduciary capacity in one or more common trust funds, provided (i) such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship or amendment thereof; (ii) in the case of co-fiduciaries the written consent of the co-fiduciary is obtained by the maintaining bank; and (iii) the maintaining bank has no interest in the assets of the common trust fund other than as a fiduciary.

~~C. As used in this chapter "common trust funds" shall mean common trust funds which are described under § 584 of the Internal Revenue Code of 1954 as amended, as well as any other type of collective investment fund which is exempt from federal income taxation under any other provision of the Internal Revenue Code or regulations issued pursuant thereto~~.

E. Unless ordered by an appropriate court, the maintaining bank operating a common trust fund shall not be required to render a court accounting with regard to such fund; but, by application to an appropriate court, it may secure approval of such an accounting on such conditions as the court may establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts.

F. All common trust funds shall be operated in conformity with the regulations issued from time to time by the Commission, which regulations shall conform substantially to the regulations of the Comptroller of the Currency governing the operations of common trust funds.

**Drafting Note: The section is reorganized so as to put the defined terms at the start of the section. Existing §§ 6.1-30.2 and 6.1-30.3 are added to this proposed section as subsections E and F. In proposed subsection E, "or funds" is deleted after "fund" because per § 1-227, the singular includes the plural. "Appropriate court" replaces "court of competent jurisdiction."**

~~§ 6.1-30.2. Court accountings.~~

~~Unless ordered by a court of competent jurisdiction the maintaining bank operating such common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds; but, by application to a court of competent jurisdiction, it may secure approval of such an accounting on such conditions as the court may establish. This section shall not affect the duties of the trustees of the participating trusts under the common trust fund to render accounts of their several trusts.~~

**Drafting Note: Relocated as subsection E of § 6.2-1009.**

~~§ 6.1-30.3. Supervision by Commission.~~

~~All common trust funds established under the provisions of § 6.1-30.1 shall be operated in conformity with the regulations issued from time to time by the Commission, which regulations shall conform substantially to the regulations of the Comptroller of the Currency governing the operations of common trust funds.~~

**Drafting Note: Relocated as subsection F of § 6.2-1009.**

§ ~~6.1-31~~ 6.2-1010. ~~Bank, trust company or trust subsidiary holding~~ Holding stock or other securities as fiduciary.

A. A ~~bank, trust company or~~ trust ~~subsidiary~~ institution holding stock or other securities as fiduciary may hold it in the name of a nominee without mention of the trust in the stock certificate or stock registry book or other book in which such securities are registered. A fiduciary registering stock or other securities in the name of a nominee as herein permitted, shall (~~1~~i) clearly show upon its trust records the ownership of the stock or other securities by the fiduciary and the facts regarding its holding, and (~~2~~ii) shall provide that the nominee shall not have possession of the stock certificate or other securities nor access thereto except under the immediate supervision of the fiduciary. The fiduciary shall be personally liable for any loss to the trust resulting from any act of such nominee in connection with stock or other securities so held. Any individual serving as cofiduciary with a ~~bank, trust company or~~ trust ~~subsidiary~~ institution may consent to the ~~bank, trust company or~~ trust ~~subsidiary~~ institution holding such stock or other securities in the name of a nominee as herein provided~~, but provided further~~; however, in such case ~~said bank, trust company or~~ the trust ~~subsidiary~~ institution shall forthwith upon demand of ~~said~~ the individual cofiduciary cause ~~said~~ the stock or other securities to be transferred into the name of the fiduciaries in their fiduciary capacity.

B. Notwithstanding the provision relating to possession of the nominee, ~~such bank fiduciary, trust company or~~ the trust ~~subsidiary~~ institution may permit such certificates or other securities to remain in the possession of the nominee or a clearing corporation as defined in § 8.8A-102, within or without the Commonwealth, if ~~such bank fiduciary, trust company or~~ the trust ~~subsidiary obtain~~ institution obtains adequate protection, through insurance or otherwise, against loss of such certificates or securities due to lack of possession by the fiduciary or possession thereof by the nominee or a clearing corporation.

C. The Commissioner ~~of Financial Institutions~~ or other appropriate regulatory official ~~shall have the power to~~ may review in advance and approve the protection through insurance or otherwise against loss due to lack of possession of these certificates or securities by the fiduciary.

**Drafting Note: Technical changes.**

§ ~~6.1-31.1~~ 6.2-1011. Voting of bank shares held by ~~bank, trust company or~~ trust ~~subsidiary~~ institution as fiduciary; when ~~bank, trust company or trust subsidiary~~ disqualified.

A. As used in this section, "banking corporation" includes a bank or a corporation or company that is a bank holding company under 12 U.S.C. § 1841, as amended from time to time.

B. When shares of a national banking association or of a banking corporation organized under the laws of ~~Virginia~~ the Commonwealth or another state are held by a ~~bank, trust company or~~ trust ~~subsidiary which~~ institution that is serving as a personal representative of a decedent, trustee, guardian of any infant, agent or in any other fiduciary capacity, ~~such bank fiduciary, trust company or~~ the trust ~~subsidiary~~ institution may not (i) vote or participate in the voting of any voting securities of such bank if the securities held in such fiduciary capacity, together with all the other voting securities of such bank held in a fiduciary capacity, exceed ~~twenty-five per centum~~ 25 percent of the outstanding voting securities of such bank ~~and may not~~ or (ii) vote such

voting securities, if the voting securities of such bank held as a personal representative of the decedent, together with all other voting securities of such bank held in a fiduciary capacity, exceed five ~~per centum~~ percent, unless there has been a determination by the Board of Governors of the Federal Reserve System that the right to vote five ~~per centum~~ percent or more of the voting securities but less than ~~twenty-five per centum~~ 25 percent thereof does not constitute control of ~~the particular~~ that bank ~~in question~~.

C. If there ~~be~~ is any personal representative, trustee, guardian of any infant or other fiduciary in addition to the ~~bank, trust company or~~ trust ~~subsidiary~~ institution in such fiduciary capacity, ~~such~~ the other fiduciary, if not a director, officer, or employee of the ~~bank fiduciary, trust company or~~ trust ~~subsidiary~~ institution, may vote such shares. If the ~~bank, trust company or~~ trust ~~subsidiary~~ institution is the sole fiduciary, or if the ~~bank, trust company or~~ trust ~~subsidiary~~ institution is serving along with a director, officer, or employee of the ~~bank, trust company or~~ trust ~~subsidiary~~ institution, it may petition the court, as provided in ~~§ 6.1-31.2~~ subsection D, for the appointment of a cofiduciary for the sole purpose of voting such bank shares.

~~A banking corporation as used herein and in § 6.1-31.2 shall include a bank, or a corporation or company which is a bank holding company under 12 U.S.C. § 1841, as it may be amended from time to time.~~

~~§ 6.1-31.2. Same; appointment of cofiduciary for purpose of voting.~~

D. When a ~~bank, trust company or~~ trust ~~subsidiary~~ institution has qualified or is serving under the laws of ~~this~~ the Commonwealth as personal representative of a decedent, trustee, guardian of any infant, or in any other fiduciary capacity, and in such estate or trust, there are shares of stock of a national banking association or ~~other~~ a banking corporation ~~described in § 6.1-31.1~~ organized under the laws of the Commonwealth or another state, and the ~~bank, trust company or~~ trust ~~subsidiary~~ institution is disqualified under ~~such section~~ subsection B from voting such shares, ~~such bank fiduciary, trust company or~~ the trust ~~subsidiary~~ institution or any interested party may petition the court in which the ~~bank~~ institution qualified or is capable to qualify to appoint a cofiduciary for the sole purpose of voting the shares of the banking association or banking corporation held by the estate or trust, which the ~~bank fiduciary, trust company or~~ trust ~~subsidiary~~ institution is disqualified from voting. ~~Such~~ The appointment and qualification may be ex parte, and no prior notice to the beneficiary shall be required. The court at the time of such qualification may relieve the cofiduciary of any obligation for the giving of surety on his bond, and if the appointment of the cofiduciary is limited to voting of the bank stock, such order may provide that the cofiduciary shall not be liable or accountable as a fiduciary in the administration of such estate or trust except for the breach of any fiduciary duty in voting or failing to vote such bank stock. No director, officer, or employee of a ~~bank fiduciary, trust company or~~ trust ~~subsidiary~~ institution shall be eligible to be named cofiduciary under the provisions of this ~~section~~ subsection.

**Drafting Note: Existing §§ 6.1-31.1 and 6.1-31.2 are combined because they are integrally related and their combination eliminates the needs for cross-references between the sections.**

§ ~~6.1-32~~ 6.2-1012. Suspension or prohibition of ~~bank, trust company or~~ trust ~~subsidiary~~ institutions.

~~Any~~ The Commission may prohibit or suspend from engaging in trust business any (i) trust company ~~or~~ that fails to comply with any of the provisions of § 6.2-1005, 6.2-1006, or 6.2-1008; (ii) any bank doing a trust business~~, failing~~ that fails to comply with any of the provisions of ~~§§ 6.1-20 to 6.1-22 and 6.1-24 or any one or more of them~~ § 6.2-821, 6.2-1005, 6.2-1006, or 6.2-1008, or (iii) any trust subsidiary ~~failing~~ that fails to comply with the provisions of ~~§§ 6.1-22 and 6.1-24, or either of them, may be suspended or prohibited, or suspended and prohibited from doing a trust business by the State Corporation Commission~~ § 6.2-1006 or 6.2-1008.

**Drafting Note: The section is reorganized to specify the grounds for suspension or prohibition for each type of trust institution. The reference to existing § 6.1-20 as applicable to trust companies is not continued because that section applies only to banks doing trust business. The section is reorganized to put it in active voice; other changes are technical and grammatical.**

Article ~~3.2~~ 2.

Trust ~~Company Act~~ Companies.

§ ~~6.1-32.11~~ 6.2-1013. Definitions.

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

~~"Affiliated trust company" means a trust company that is controlled by a trust company holding company.~~

"Agent" ~~shall have~~ has the ~~same~~ meaning assigned to ~~that term~~ it in § 13.1-501 of the Virginia Securities Act (§ 13.1-501 et seq.).

"Broker-dealer" ~~shall have~~ has the ~~same~~ meaning assigned to ~~that term~~ it in § 13.1-501 of the Virginia Securities Act.

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

"Control" means (i) ownership by a person of 25 percent or more of the voting stock of a trust company ~~or entity~~; control as defined in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.); or~~,~~ (iii) as determined by the Commission, the exercise of a controlling influence over the management and policies of a trust company ~~or entity~~.

"Fiduciary" means executor, administrator, conservator, guardian of a minor, committee, or trustee.

"Investment advisor" ~~shall have~~ has the ~~same~~ meaning assigned to ~~that term~~ it in § 13.1-501 of the Virginia Securities Act.

"Investment advisor representative" ~~shall have~~ has the ~~same~~ meaning assigned to ~~that term~~ it in § 13.1-501 of the Virginia Securities Act.

"Investment company" ~~shall have~~ has the ~~same~~ meaning assigned to ~~that term~~ it in the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.).

"Operating plan" means a plan submitted by an applicant for a certificate of authority, which plan establishes the policies and procedures a trust company will have in effect when the

institution opens for business and thereafter (i) to avoid or resolve conflicts of interests, (ii) to prevent improper influences from affecting the actions of the trustee, (iii) to ensure that trust accounts are handled in accordance with recognized standards of fiduciary conduct, and (iv) to assure compliance with applicable laws and regulations.

~~"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals, however organized.~~

"Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a nonstock corporation or a limited liability company.

~~"Trust business" means the holding out by a person or legal entity to the public at large by advertising, solicitation or other means that the person or legal entity is available to act as a fiduciary in the Commonwealth of Virginia or is accepting and undertaking to perform the duties of a fiduciary in the regular course of its business.~~

~~"Trust company" means a corporation, including an affiliated trust company, authorized to engage in the trust business under this article with powers expressly restricted to the conduct of general trust business.~~

~~"Trust company holding company" means a corporation that controls a trust company. A trust company holding company shall not be deemed a financial institution holding company for any purpose under this title unless it controls a financial institution other than an affiliated trust company or another financial institution holding company.~~

**Drafting note: "Commission" and "person" are defined in proposed § 6.2-100; "affiliated trust company," "trust business," "trust company," and "trust holding company" are defined in proposed § 6.2-1000. In the definition of "control," the phrase "trust company or entity" is revised to delete "or entity" because it is not defined and implies that it applies to entities other than trust companies.**

~~§ 6.1-32.12. Exemptions.~~

~~For the purposes of this article, a person or legal entity does not engage in the trust business by:~~

~~1. Rendering services as an attorney at law in the performance of duties as a fiduciary;~~

~~2. Rendering services as a certified or registered public accountant in the performance of duties as such;~~

~~3. Acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;~~

~~4. Acting as a trustee in bankruptcy or as a receiver;~~

~~5. Holding trusts of real estate for the primary purpose of subdivision, development or sale, or to facilitate any business transaction with respect to such real estate;~~

~~6. Engaging in the business of an escrow agent;~~

~~7. Holding assets as trustee of a trust created for charitable purposes. This subdivision 7 shall apply only if:~~

~~(a) the trustee is an entity exempt from federal income tax under § 501 (c) (3) of the Internal Revenue Code; and~~

~~(b) the trust is (i) exempt from federal income taxes under § 501 (c) (3) of the Internal Revenue Code; (ii) a charitable remainder trust described in § 664 of the Internal Revenue Code; (iii) a pooled income fund described in § 642 (c) (5) of the Internal Revenue Code; or (iv) a trust the charitable interest in which is either a guaranteed annuity or a fixed percentage distributed yearly of the fair market value of the trust property, described in § 2055 (e) (2) (B) or § 2522 (c) (2) (B) of the Internal Revenue Code;~~

~~8. Receiving rents and proceeds of sale as a licensed real estate broker on behalf of the principal; or~~

~~9. Engaging in securities transactions as a broker-dealer or salesman.~~

**Drafting note: This section is incorporated into the definition of "trust business" at proposed § 6.2-1000.**

§ ~~6.1-32.13~~ 6.2-1014. Certificate required.

No person ~~or legal entity~~ shall engage in the trust business without first obtaining a certificate of authority from the Commission; however, a bank or savings ~~and loan~~ institution authorized under state or federal laws to engage in the trust business or a trust subsidiary ~~as defined in the Trust Subsidiary Act (§ 6.1-32.1 et seq.) of this title~~ may engage in such business to the extent permitted by law without obtaining a certificate under this article.

**Drafting note: "Or legal entity" is deleted, as entities are included in the definition of person in proposed § 6.2-100. "Trust subsidiary" is defined in proposed § 6.2-1000.**

§ ~~6.1-32.14~~ 6.2-1015. Application for certificate; fee.

A. An application for a certificate shall (i) be in writing, in such form as the Commission prescribes, (ii) be verified under oath ~~and~~, (iii) be supported by such information, data, and records as the Commission may require~~. The application shall~~, and (iv) include an operating plan.

B. Each application for a certificate of authority shall be accompanied by an investigation fee of $10,000~~, made payable to the Treasurer of the Commonwealth~~.

**Drafting note: Technical changes. The statement in subsection B directing to whom the fee is made payable is deleted to conform to usage in other chapters.**

~~§ 6.1-32.14:2. Certain transactions prohibited.~~

~~An affiliated trust company shall not, during the underwriting period, purchase from an affiliated broker-dealer, for any trust account or for its own account, any security that is being underwritten by that broker-dealer. An affiliated trust company may not purchase for any trust account or for its own account any security that is issued by a company that owns five percent or more of the capital stock of, or is affiliated with, the affiliated trust company.~~

**Drafting note: This section is relocated to proposed § 6.2-1020; it does not fit with sections pertaining to the issuance of certificates.**

§ ~~6.1-32.15. Minimum capital.~~

~~A certificate shall not be issued to an applicant unless it meets the minimum capital requirement for a trust company prescribed by § 6.1-32.18.~~

**Drafting note: Section is relocated to proposed § 6.2-1018, and combined with existing § 6.1-32.16.**

~~§ 6.1-32.16. State of incorporation; form of entity.~~

~~A certificate shall not be issued to an applicant other than a corporation organized under the laws of this Commonwealth.~~

**Drafting note: Section is relocated to proposed § 6.2-1018, and combined with existing § 6.1-32.15.**

§ ~~6.1-32.17~~ 6.2-1016. Bond required.

A. No ~~corporation~~ applicant shall obtain a certificate without filing with the Commission, and maintaining continuously thereafter, a surety bond in such amount as the Commission may from time to time require.

B. In no event shall the amount of the surety bond be less than ~~one~~ $1 million ~~dollars~~.

C. The surety bond required by this section shall be for the benefit of:

1. Any person damaged as a result of a violation of the provisions of, or any regulation ~~or rule promulgated~~ adopted pursuant to, this chapter;

2. Any person damaged by the negligence, fraud, or embezzlement of a trust company organized under this article or its directors, officers, or employees; and

3. Any person damaged by any other breach of trust of any trust company organized under this article or its directors, officers, or employees.

D. The Commission may revoke the certificate of any trust company ~~which~~ that the Commission finds has failed to maintain a bond as required by this section.

**Drafting note: A cross-reference to the requirements of this section is set out at subdivision 10 of proposed § 6.2-1017. Replacing "corporation" with "applicant" in subsection A conforms the section to similar provisions in this article; see proposed § 6.2-1015. Other changes are technical.**

§ ~~6.1-32.18~~ 6.2-1017. Procedure for granting or denying certificate.

Before any trust company shall begin business, it shall obtain from the Commission a certificate of authority authorizing it to do so. Prior to the issuance of such a certificate to a trust company or affiliated trust company, the Commission shall ascertain that:

1. All of the provisions of law have been complied with;

2. The ~~trust company~~ applicant is formed as a trust company for no other reason than ~~a~~ to engage in legitimate trust business;

3. Financially responsible persons have subscribed for capital stock, surplus and a reserve for operation in an amount deemed by the Commission to be sufficient to warrant successful operation, but the capital stock shall not be less than $500,000~~. The Commission shall also ascertain that each~~;

4. Each principal of an applicant has the financial responsibility, character, reputation, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law;

~~4~~ 5. Oaths of all the directors have been taken and filed in accordance with § ~~6.1-32.22~~ 6.2-1029;

~~5~~ 6. The moral fitness, financial responsibility and business qualifications of those named as officers and directors of the ~~proposed trust company~~ applicant are such as to command the confidence of the community in which the trust company is proposed to be located~~.~~;

7. If the applicant is an affiliated trust company, ~~the Commission shall also determine that~~ the trust company holding company of the applicant is qualified by virtue of its business record, experience, and financial responsibility to control a trust company;

~~6~~ 8. In its opinion, the public interest will be served by the formation of a trust company in the community where it is proposed. ~~The addition of such~~ Authorizing the applicant to engage in the trust business as a trust company shall be deemed in the public interest if, based on all relevant evidence and information, advantages such as, but not limited to, increased competition, additional convenience, or gains in efficiency outweigh possible adverse effects such as, but not limited to, diminished or unfair competition, undue concentration of resources, conflicts of interests, or unsafe or unsound practices;

~~7~~ 9. The operating plan and any other relevant evidence and information warrant belief that the ~~trust company~~ applicant will conduct its business in accordance with generally accepted fiduciary standards;

10. The applicant has provided a bond as required by § 6.2-1016;

11. The applicant is not in violation of § 6.2-1021; and

~~8~~ 12. ~~Any other facts~~ Anything else deemed pertinent ~~are present~~.

**Drafting note: Proposed subdivision 11 adds a cross-reference to the provisions of existing § 6.1-32.18:2, which prohibit the issuance of a certificate in certain instances. Proposed subdivision 12 is revised to conform to the corresponding section in proposed Chapter 8 (§ 6.2-816).**

§ ~~6.1-32.15~~ 6.2-1018. Minimum capital; state of incorporation; form of entity.

A certificate shall not be issued under § 6.2-1017 to an applicant ~~unless~~:

1. Unless it meets the minimum capital requirement for a trust company prescribed by § ~~6.1-32.18~~ 6.2-1017; and

2. ~~A certificate shall~~ That is not ~~be issued to an applicant other than~~ a corporation organized under the laws of ~~this~~ the Commonwealth.

**Drafting note: Existing §§ 6.1-32.15 and 6.1-32.16 are moved here, and are set out as existing language to assist in identifying the technical changes.**

§ ~~6.1-32.18:1~~ 6.2-1019. ~~Par value of shares; payment~~ Issuance of shares; ~~reacquisition of shares~~; ~~how~~ subscriptions to stock ~~to be paid; disposition of money received before institution opens~~; stock option plans.

A. A trust company shall not issue no-par stock. The stock of a trust company shall be paid for in money at not less than par value, and a trust company shall not begin business until it has received payment in full of the amounts of initial capital specified in its certificate of authority.

B. Money received for subscriptions to or purchases of stock of a trust company before it opens for business shall be deposited in escrow in one or more insured financial institutions or invested in United States government obligations~~,~~. Such funds shall be under the joint control of at least two organizing directors of the trust company, each of whom shall be bonded for an amount not less than the total amount of money under their control. Such funds, together with any income thereon, less such organizational expenses as have been approved by the trust company's board of directors, shall be remitted to the trust company on the day it opens for business. ~~In the event~~

C. If the trust company is denied a certificate of authority, or it is otherwise determined that the trust company will not open for business, such funds, after payment of any amount owing for expenses in connection with such attempted organization, including reasonable consulting fees, ~~attorneys'~~ attorney fees, salaries, filing fees and other expenses, shall be refunded to subscribers or shareholders. The directors of the trust company, individually, jointly and severally, shall be liable for any failure of the trust company to refund such funds to the subscribers or shareholders. This liability may be enforced by a suit in equity instituted by one or more of the subscribers or stockholders on behalf of all subscribers or stockholders against the trust company and one or more of its directors.

~~C~~ D. The requirement that capital stock be paid for in money shall not be construed to prohibit the establishment, as otherwise authorized by law, of stock option plans and stock purchase plans, or the issuance of stock pursuant to such plans. Such plans shall be established only after the trust company has opened for business and shall be approved by the shareholders of the company in accordance with applicable provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.).

**Drafting note: Technical changes.**

§ 6.2-1020. Certain transactions by affiliated trust companies prohibited.

An affiliated trust company shall not~~, during:~~

1. During the underwriting period, purchase from an affiliated broker-dealer, for any trust account or for its own account, any security that is being underwritten by that broker-dealer~~. An affiliated trust company may not purchase~~; or

2. Purchase for any trust account or for its own account any security that is issued by a company that owns five percent or more of the capital stock of, or is affiliated with, the affiliated trust company.

**Drafting note: Existing § 6.1-32.14:2 is moved here, and is set out as existing language to assist in identifying the technical changes.**

§ ~~6.1-32.18:2~~ 6.2-1021. Commissions~~,~~ or fees~~, etc.,~~ for sale of stock not permitted.

The Commission shall not issue a certificate of authority to a trust company if any commissions, fees, brokerage, or other compensation by whatever name have been paid or contracted to be paid by the trust company, or by anyone in its behalf, directly or indirectly, to any person~~, partnership, corporation or other entity~~ for the sale of stock in such trust company. Nothing herein shall be construed to prohibit a trust company ~~which~~ that has been issued a certificate of authority and is conducting operations from paying or contracting to pay such commissions or fees in connection with the issue or reissue of shares of stock of the trust company.

**Drafting note: Technical changes. The section is cross-referenced in subdivision 11 of proposed § 6.2-1017. The term "person" includes the other enumerated entities, per § 6.2-100.**

§ ~~6.1-32.18:3~~ 6.2-1022. Reacquisition of shares; dividends.

A. A trust company may not purchase, redeem or otherwise reacquire shares of stock it has issued, except that the Commission, upon the petition of a trust company, may permit the company to reacquire its own stock~~,~~ if the Commission finds that the proposed reacquisition will not jeopardize the safety and soundness of the trust company and will not be contrary to the public interest.

B. The board of directors of any trust company may declare a dividend of so much as it ~~judges~~ finds expedient of the net undivided profits of the trust company, after providing for all expenses, losses, interest, and taxes owed by the trust company. However, before any dividend is declared, capital funds originally paid in shall have been restored by earnings to their initial level, and no dividend shall be declared or paid by the trust company that would impair the paid-in capital of the trust company. Notwithstanding the foregoing provisions of this section, the Commission may limit the payment of dividends by a trust company when it is determined that the limitation is in the public interest and is necessary to ensure the financial soundness of the trust company.

**Drafting note: Technical changes.**

§ ~~6.1-32.19~~ 6.2-1023. Acquisition of stock; application.

A. Except as provided in this section, no person shall acquire, directly or indirectly, 10 percent or more of the voting shares of a trust company unless such person first:

1. Files an application with the Commission in such form as the Commission may prescribe;

2. Delivers such other information to the Commission as the Commission may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers and principals and of any proposed new directors, senior officers and principals of the trust company; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the acquisition, subject to § ~~6.1-32.20~~ 6.2-1024, if it finds that the applicant and (i) its members if applicable, (ii) its directors, senior officers, and principals, and (iii) any proposed new directors,

senior officers, and principals, have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within 60 days from the date a completed application, accompanied by the required fee, is filed, unless the period is extended by order of the Commission reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The foregoing provisions of this section shall not apply to a person owning 51 percent or more of the capital stock of the trust company at the time of the proposed acquisition; however, such person shall give the Commission 30 days advance written notice of the proposed acquisition and provide such additional information as the Commission may require.

**Drafting note: Technical changes.**

§ ~~6.1-32.20~~ 6.2-1024. Restrictions on control, officers and directors.

A. None of the following individuals or entities shall acquire control of any trust company under § ~~6.1-32.19~~ 6.2-1023:

1. An agent;

2. A broker-dealer;

3. An investment advisor;

4. An investment advisor representative;

5. An investment company; or

6. Any corporation, limited liability company, partnership, business trust, association, or similar organization.

B. Nothing in this section shall prohibit (i) the formation of a trust company holding company by a trust company, (ii) any officer, director, or employee of a trust company holding company or a subsidiary of a trust company holding company from owning, indirectly, five percent or more of any class of capital stock of an affiliated trust company, or (iii) the acquisition of a trust company pursuant to § ~~6.1-32.19~~ 6.2-1023 by a bank holding company as defined in 12 U.S.C. § 1841~~,~~ or by a corporation that controls a subsidiary authorized to engage in the trust business under federal law or the laws of any state.

**Drafting note: Technical changes.**

§ 6.2-1025. Report to Commission of election of director.

Within 60 days following the election or reelection of any person as a director of a trust company, the trust company shall furnish such information to the Commission relative to his personal character, integrity, financial condition, and personal and business background as the Commission shall from time to time prescribe. Such report, under oath, shall be signed by the director as well as a designated officer of the trust company. Any person knowingly making a false statement in such a report is guilty of perjury.

**Drafting note: New section. Existing § 6.1-51.1 states that for the purposes of §§ 6.1-48.1, 6.1-49, 6.1-50 and 6.1-51, the term "bank" includes trust companies and trust subsidiaries. This section sets out the requirements of § 6.1-48.1 for trust companies.**

§ 6.2-1026. Removal of director or officer; appeals; penalty.

A. Whenever any director or officer of a trust company doing business in the Commonwealth, shall have continued to violate any law relating to such trust company or shall have continued unsafe or unsound practices in conducting the business of such trust company, after the director or officer, and the board of directors of the trust company of which he is a director or officer, have been warned in writing by the Commissioner to discontinue such violation of law or such unsafe or unsound practices, the Commissioner shall certify the facts to the Commission. The Commission shall thereupon enter an order requiring such director or officer to appear before the Commission, within not less than 10 days, to show cause why he should not be removed from office and thereafter restrained from participating in any manner in the management of such trust company. Such order shall contain a brief statement of the facts certified to the Commission by the Commissioner. A copy of such order shall be served upon such director or officer, and a copy thereof shall be sent by registered mail to each director of the trust company affected.

B. If, after granting the accused director or officer a reasonable opportunity to be heard, the Commission shall find that he has continued to violate any law relating to such trust company, or has continued unsafe or unsound practices in conducting the business of such trust company, after he and the board of directors of the trust company of which he is a director or officer have been warned in writing by the Commissioner to discontinue such violation of law or unsafe or unsound practices, the Commission shall enter an order removing such director or officer from office and restraining such director or officer from thereafter participating in any manner in the management of such trust company. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the trust company of which he is a director, or officer. Upon such removal the director or officer shall cease to be a director or officer of such trust company and thereafter cease to participate in any manner in the management of such trust company.

C. Any director or officer aggrieved (i) by any order of the Commission entered under subsection B, or (ii) by an order refusing to remove another director or officer from office or to restrain him from participating in the management of the trust company, shall have, of right, an appeal to the Supreme Court of Virginia within 60 days from the date of the order.

D. Any director or officer removed or restrained under the provisions of subsection B from participating in any manner in the management of any trust company of which he is a director or officer, and who thereafter participates in any manner in the management of such trust company except as a stockholder therein, is guilty of a Class 6 felony.

**Drafting note: New section. Existing § 6.1-51.1 states that for the purposes of §§ 6.1-48.1, 6.1-49, 6.1-50 and 6.1-51, the term "bank" includes trust companies and trust subsidiaries. This section sets out the requirements of §§ 6.1-49 (at subsections A and B), 6.1-50 (at subsection C), and 6.1-51 (at subsection D) for trust companies. The sections are combined in this section because they pertain to the same procedure. In proposed subsection C, the "and" that precedes preceding "to restrain him from" is changed to "or."**

§ 6.2-1027. Bonds required of officers and employees; blanket bond.

A. The board of directors of every trust company shall require bonds from all of the active officials and employees of such corporation. In lieu of such bonds, the board may obtain one or more blanket bonds. The surety on every bond shall be a bonding or surety company authorized to transact business in Virginia, and the penalty of any such bond shall be increased whenever in the opinion of the Commission it is necessary for the protection of the public interest.

B. If a trust company is unable to obtain the bond required by this section, it shall immediately notify the Commission. The Commission may then direct the trust company to have an audit performed at its expense by an independent certified public accounting firm. The trust company shall obtain blanket bond coverage as soon as such coverage is available. Failure to obtain blanket bond coverage may be cause for action by the Commission as provided by § 6.2-1036.

**Drafting note: New section. Existing § 6.1-54 (Bonds required of officers and employees; blanket bond) applies to banks, trust companies and trust subsidiaries. This section sets out the requirements of § 6.1-54 for trust companies, and eliminates the duplicative references to banks and bank holding companies. Section 6.1-54 provides that failure to obtain the required coverage may be cause for action as provided in existing § 6.1-92; the parallel section for trust companies is proposed § 6.2-1036 (existing § 6.1-32.28).**

§ ~~6.1-32.21~~ 6.2-1028. Offices.

A. When satisfied that the public interest, as defined in subdivision ~~4 of subsection A~~ 8 of § ~~6.1-13~~ 6.2-1017, will be served, the Commission may authorize ~~a~~:

1. A trust company having paid-up and unimpaired capital and surplus in an amount deemed sufficient to warrant expansion to establish additional offices~~. The Commission may also authorize, when satisfied the public interest will be served, the~~; and

2. The relocation of any office.

B. The office at which a trust company begins business shall be designated initially as its principal office. The board of directors of a trust company may thereafter redesignate as the principal office another authorized office of the trust company in the Commonwealth. The trust company shall notify the Commission of any such redesignation not later than ~~thirty~~ 30 days before its effective date and shall confirm to the Commission any redesignation within ~~ten~~10 days of its occurrence.

**Drafting note: The standard for the public interest as set forth in current subdivision A 4 of § 6.1-13 is duplicated at current subdivision 6 of § 6.1-32.18; rather than reference the standard in a section in another chapter, the reference is made to proposed § 6.2-1017 (existing § 6.1-32.18). The other changes are technical.**

§ ~~6.1-32.22~~ 6.2-1029. Directors.

A. The affairs of every trust company shall be directed by a board of directors ~~which~~. The board shall consist of not less than five nor more than ~~twenty-five persons~~ 25 individuals. A majority of the directors shall be citizens of ~~this~~ the Commonwealth.

B. Every director of a trust company shall be the sole owner, and have in his personal possession or control shares, of stock of such trust company having a ~~par~~ book value of not less than $2,000 and, within ~~thirty~~ 30 days of election, shall take ~~and subscribe to~~ an oath that he will diligently and honestly perform his duties as a director and that he is the sole owner and has in his possession or control the required amount of stock, unencumbered in any way. When a director is reelected or reappointed, ~~the~~ he shall take an oath ~~shall certify~~ certifying his ownership and control of the required amount of unencumbered stock throughout his previous term.

C. Any director who (i) fails, for a period of ~~thirty~~ 30 days, to take the oath ~~required by this section~~ or ~~who~~ (ii) does not comply with the requirement for ownership of stock ~~in this section~~, both as required by subsection B, shall automatically forfeit his office.

D. Within ~~sixty~~ 60 days following the election or reelection of any ~~person~~ individual as a director of a trust company, the trust company shall furnish such information to the Commission relative to ~~the~~ his personal character, integrity, financial condition, and personal and business background, as the Commission shall from time to time prescribe. Such report, under oath, shall be signed by the director as well as a designated officer of the trust company. Any person knowingly making a false statement in such a report ~~shall be~~ is guilty of perjury ~~and be punished accordingly~~.

**Drafting note: Style changes in subsection A. In subsection B, the "par value" is replaced with "book value" in order to use the same standard for measuring the required investment that applies to banks. Existing § 6.1-47 (proposed § 6.2-862) requires that a bank director's shares have a book value, rather than par value, of the stated amount. Prior to 1995, § 6.1-47 used "par value;" it was changed to "book value" by Senate Bill 740. While it is a substantive change, the change would not affect any existing entities because there are no existing independent Virginia trust companies. Throughout the chapter, "shall be guilty of" is replaced with "is guilty of."**

§ 6.2-1030. Discount by officer, director, or employee of refused paper.

No officer, director, or employee of a trust company may purchase or discount any note or paper at a rate of interest in excess of what the trust company might charge knowing that the trust company has refused to purchase or discount such paper.

**Drafting note: Current § 6.1-53 imposes this requirement on banks and trust companies; the section is duplicated here as it applies to trust companies.**

§ ~~6.1-32.23~~ 6.2-1031. Reports.

Each trust company and ~~each~~ trust company holding company shall file statements of condition and other reports with the Commission in accordance with requirements established by regulation.

**Drafting note: Technical change.**

§ ~~6.1-32.24~~ 6.2-1032. Investigations; examinations.

A. The Commission may, by its designated officers and employees, as often as it deems necessary, investigate and examine the affairs, business, premises, and records of any trust

company and of any trust company holding company. Examinations of such trust companies shall be conducted at least twice in each three-year period.

B. In the course of such investigations and examination, the principals, officers, directors, and employees of such trust company or trust company holding company being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information ~~which~~ that the person making such investigation or examination deems necessary. For the foregoing purposes, the person making ~~such~~ the investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

**Drafting note: Technical changes.**

§ ~~6.1-32.25~~ 6.2-1033. Fees.

A. In order to defray the costs of their examination, supervision, and regulation, every trust company shall pay a fee ~~in the same amount as that prescribed for the supervision and regulation of trust departments by § 6.1-94~~ of $330 per day per examiner during examinations.

B. Each trust company and each trust company holding company shall also pay ~~such~~ to the Commission:

1. Such additional or special costs as the Commission may incur in connection with its examination ~~.~~;

2. For investigating an application for authority to establish a branch office pursuant to § ~~6.1-32.21~~ 6.2-1028, ~~the Commission shall charge~~ a fee of $1,800 ~~.~~;

3. For investigating an application to change the location of a principal office or branch office, ~~the Commission shall charge~~ a fee of $1,000 ~~.~~; and

4. For investigating an application made pursuant to § ~~6.1-32.19~~ 6.2-1023, ~~the Commission shall charge~~ a fee of $7,000.

**Drafting note: Section is reorganized to clarify the charges and fees. The incorporation by reference of the fees for supervising and regulating trust departments in existing § 6.1-94 (proposed § 6.2-908) is deleted, and the fees set out in subdivision 2 of that section are set out in subsection A.**

§ ~~6.1-32.26~~ 6.2-1034. Regulations.

The Commission may ~~promulgate~~ adopt such regulations as it deems appropriate to effect the purposes of this article. Before ~~promulgating~~ adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard in accordance with the Commission's Rules. In ~~promulgating~~ adopting regulations applicable to affiliated trust companies, the Commission shall be guided, where appropriate, by those standards and requirements concerning self-dealing and conflicts of interests that apply to banks, bank holding companies, and their subsidiaries when engaged in both trust and securities activities.

**Drafting note: Technical changes. The addition of the reference to the Commission's Rules conforms the section to similar sections in other chapters.**

§ ~~6.1-32.27~~ 6.2-1035. Audits.

The Commission may require trust companies or trust company holding companies to have audits made of their books, records, and methods of operation annually~~, or whenever~~. The Commission may require such audits to be conducted at any other time that it appears to the Commission that (i) the internal controls of a trust company or trust company holding company are not adequate, ~~that~~ (ii) it is engaging in unsound practices, or ~~that~~ (iii) its financial condition makes such audit necessary.

**Drafting note: Technical changes to clarify that the enumerated events authorize more frequent audits.**

§ ~~6.1-32.28~~ 6.2-1036. Commission's remedial powers.

A. If the Commission finds that a trust company (i) has failed to fully observe the laws of ~~this~~ the Commonwealth, (ii) is being operated in an unsafe or unsound manner, (iii) has failed to comply with any Commission order or regulation, (iv) is engaging in any irregular practices, or (v) is, or is about to become, insolvent or its capital has been, or is in danger of being, impaired, the Commission shall give notice thereof to the officers and directors of the company. If necessary to conserve the assets of the company or protect the public interest, the Commission may:

1. Close the company for a period not exceeding ~~sixty~~ 60 days, which period may be further extended for a like period or periods as the Commission deems necessary;

2. Require that all orders and regulations of the Commission be complied with;

3. Require that the company make reports daily or at such other times as may be required as to the results achieved in carrying out the Commission's orders;

4. Require that any irregularities be promptly corrected;

5. Require that any impairment of capital be made good; or

6. Temporarily suspend the right of the company to receive any further property in a fiduciary capacity.

B. If the Commission determines that a receiver should be appointed for a trust company, the Commission may close the company; take charge of the books, assets and affairs of the company; and apply to any circuit court in the Commonwealth for the appointment of a receiver to take charge of the company's business, assets and affairs. Proceedings for appointment of a receiver for a trust company shall not be entertained by any court except on application of the Commission.

C. ~~1.~~ The Commissioner ~~of Financial Institutions~~ may issue and serve upon a trust company a cease and desist order if, in the opinion of the Commissioner, the company is engaging, has engaged, or, there is reasonable cause to believe, is about to engage in an unsafe or unsound practice, irregularity, or any violation of law, rule, or regulation applicable to the conduct of its business, or any Commission order. The cease and desist order shall contain a statement of the facts upon which it is based and may require, in terms that may be mandatory or otherwise, the company and its directors, officers, employees, and agents to cease and desist from the practice or violation. The order shall specify its effective date and shall notify the

company of its right to request a hearing in accordance with the Commission's Rules ~~of Practice and Procedure~~.

~~2~~ D. When the practice or violation specified in ~~the~~ an order issued pursuant to subsection C, or any continuation thereof, is likely to prejudice the company's stockholders, or persons having an interest in property held by the company in a fiduciary capacity, the Commissioner may make the order effective immediately. An order shall remain in effect until withdrawn by the Commissioner or terminated by the Commission after a hearing. A request for a hearing shall be given expeditious treatment on the Commission's docket, and the Commission need not allow ~~ten~~ 10 days' notice to the company.

**Drafting note: Technical changes. The Commission's Rules is defined in proposed § 6.2-100.**

§ ~~6.1-32.29~~ 6.2-1037. ~~Continuation of provisions~~ Effect of surrender or revocation of certificate.

If a trust company surrenders its certificate or its certificate is revoked, the trust company, its assets, and the assets it holds in trust shall nevertheless continue to be subject to the provisions of this article, including~~, but not limited to,~~ the provisions of § ~~6.1-32.28~~ 6.2-1036.

**Drafting note: Proposed catchline suggested as more descriptive of the section's scope. Per § 1-218, "but not limited to" is deleted because it is included within "includes."**

§ ~~6.1-102~~ 6.2-1038. Appointment of receiver.

~~In any case~~ A. When in the judgment of the Commission ~~shall, whenever, in its judgment,~~ it is necessary for the protection of the interests of the Commonwealth or of ~~the depositors and creditors of any bank doing business in this Commonwealth, or of~~ the creditors of any trust company doing business in this Commonwealth, the Commission shall apply to any court in this Commonwealth having jurisdiction to appoint receivers for the appointment of a receiver to take charge of the business affairs and assets and to wind up the affairs and business of any such ~~bank or~~ trust company failing to comply with the requirements of the Commission, or found upon examination to be insolvent or unable to meet its obligations and the legal demands made upon it in the ordinary course and conduct of its business.

B. Reference is hereby made to §§ 6.2-916 through 6.2-924 and Article 14 (§ 6.2-925 et seq.) of Chapter 8 for provisions applicable to receiverships of trust companies.

**Drafting note: Existing section 6.1-102, which is carried in proposed Chapter 8 as § 6.2-916, is duplicated in subsection A as it applies to trust companies. Subsection B refers to provisions in existing Articles 10 and 10.1 of Chapter 2 that are applicable to trust companies.**

§ ~~6.1-111~~ 6.2-1039. ~~Doing banking or~~ Engaging in trust business without authority; Commission may examine accounts~~, etc.,~~ of suspected person; penalty.

A. Every person~~, association or company~~ who ~~shall trade~~ trades or ~~deal~~ deals as a ~~bank or~~ trust company, or ~~carry on banking or do~~ conducts a trust business, without authority of law, and their officers and agents ~~therein~~~~, shall be~~ is guilty of a Class 6 felony.

B. The Commission shall have authority to examine the accounts, books, and papers of any person~~, copartnership or corporation~~ who it has reason to suspect is doing a ~~banking business or a~~ trust business, in order to ascertain whether such person~~, copartnership, or corporation~~ has violated, or is violating, any provision of this title~~, and the~~. The refusal to submit such accounts, books, and papers shall be prima facie evidence of such violation.

**Drafting note: Existing section 6.1-111, which is carried in proposed Chapter 8 as § 6.2-938, is duplicated in this section as it applies to trust business.**

§ ~~6.1-112~~ 6.2-1040. Unlawful use of terms indicating that business is ~~bank,~~ trust company~~, etc.~~; penalty.

A. ~~No~~ A person~~, entity or organization~~ not authorized to engage in the ~~banking business or~~ trust business in ~~this~~ the Commonwealth by the provisions of this title or under the laws of the United States, ~~or a business trust,~~ shall not (i) use any office sign having thereon any name or other words indicating that any such office is the office of a ~~bank or~~ trust company; (ii) use or circulate any letterheads, billheads, blank notes, blank receipts, certificates, circulars or any written or printed paper ~~whatever~~, having thereon any name or word indicating that such person~~, entity or organization~~ is a ~~bank or~~ trust company; or (iii) use the word ~~"bank," "banking," "banker," or~~ "trust" or the equivalent thereof in any foreign language, or the plural thereof in connection with any business other than a ~~banking or~~ trust business.

B. The foregoing prohibitions shall not apply to use by a ~~bank~~ trust company holding company~~, as defined in § 6.1-47,~~ of the word ~~"bank," "banks," "banking," "banker,"~~ "trust" or the equivalent thereof in its name, or of a name similar to that of a subsidiary ~~bank~~ trust company of such ~~bank~~ trust company holding company.

C. The use of the above-mentioned words in the name of, or in connection with, any other business shall not be prohibited if the context or remaining words show clearly and definitely that the business is not a ~~bank or~~ trust company, and is not carrying on a ~~banking or~~ trust business.

D. Any person~~, entity or organization~~ violating the provisions of this section, either individually or as an interested party, ~~shall be~~ is guilty of a Class 6 felony.

**Drafting note: Existing section 6.1-112, which is carried in proposed Chapter 8 as § 6.2-939, is duplicated in this section as it applies to trust business. The exception in subsection B is expanded to specifically exclude trust company holding companies, as exists for bank holding companies.**

§ ~~6.1-114~~ 6.2-1041. ~~Penalty~~ Civil penalties for failure to comply with § ~~6.1-93~~ 6.2-1031 or § ~~6.1-87~~ 6.2-1032.

A. Any ~~such bank,~~ trust company ~~or trust subsidiary~~ failing to comply with any of the provisions of § ~~6.1-93~~ 6.2-1031, for a period of longer than ~~thirty~~ 30 days, after being called upon by the Commission for a statement, or to do such other act as is therein provided, shall be ~~fined~~ subject to assessment by the Commission of a civil penalty of not less than $100 nor more than $1,000 per day for each day of noncompliance.

B. Any officer of any ~~such bank,~~ trust company ~~or trust subsidiary,~~ who shall refuse to give any examiner the information or refuse to be sworn, as required by § ~~6.1-87~~ 6.2-1032, shall be ~~fined~~ subject to assessment by the Commission of a civil penalty of not less than $25 nor more than $100 per day for each day of noncompliance.

**Drafting note: Existing § 6.1-114 is duplicated in this section as it applies to trust companies. Note that while § 6.1-114 provides fines for violations by trust companies and trust subsidiaries of existing §§ 6.1-93 and 6.1-87, those sections do not specifically apply to trust companies or trust subsidiaries. This section replaces references to those sections with corresponding sections of this chapter that require trust companies to files reports with the Commission and require a trust company's officers to afford full access to premises, books, records, and information deemed necessary, and providing authority to administer oaths. References to fines are replaced with civil penalties.**

§ ~~6.1-119~~ 6.2-1042. Making derogatory statements affecting ~~banks~~ trust companies; penalty.

Any person who willfully and maliciously makes, circulates or transmits to another, any statement, rumor or suggestion~~, written, printed or by word of mouth, which~~ that is directly or by reference derogatory to the financial condition, or affects the solvency or financial standing of, any ~~bank or~~ trust company doing business in ~~this~~ the Commonwealth, or who counsels, aids, procures or induces another to start, transmit, or circulate any such statement or rumor, ~~shall be~~ is guilty of a Class 1 misdemeanor ~~and, upon conviction thereof, shall be sentenced to pay a fine of not more than $2,500 or to be confined in jail for not more than one year, or both~~.

**Drafting note: Existing section 6.1-119, which is carried in proposed Chapter 8 as § 6.2-940, is duplicated in this section as it applies to trust companies. The phrase "written, printed, or by word of mouth" is deleted; as revised, the means by which statements are made, circulated, or transmitted is irrelevant. The one year in jail and/or $2,500 fine corresponds to the penalty for a Class 1 misdemeanor.**

§ ~~6.1-119.1~~ 6.2-1043. Use of ~~bank or~~ trust company name, logo, or symbol for marketing purposes; penalty.

A. As used in this section, "name, logo, or symbol, or any combination thereof, of a trust company" includes any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or symbol of a trust company.

B. Except as provided in subsection ~~B~~ C, no person shall use the name, logo, or symbol, or any combination thereof, of a ~~bank or~~ trust company~~, or any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or symbol of a bank or trust company,~~ in marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the ~~bank or~~ trust company or that the ~~bank or~~ trust company is responsible for the marketing material or solicitation.

~~B~~ C. This section shall not apply to (i) an affiliate or agent of the ~~bank or~~ trust company or (ii) a person who uses the name, logo, or symbol of a ~~bank or~~ trust company with the consent of the ~~bank or~~ trust company.

~~C~~ D. Any person violating the provisions of this section, either individually or as an interested party, ~~shall be~~ is guilty of a Class 1 misdemeanor. This section shall not affect the availability of any remedies otherwise available to a ~~bank or~~ trust company.

**Drafting note: Existing section 6.1-119.1, which is carried in proposed Chapter 8 as § 6.2-941, is duplicated in this section as it applies to trust companies.**

§ ~~6.1-122~~ 6.2-1044. ~~Embezzlement, fraud, false statements, etc.;~~ Offenses by officer, director, agent or employee of ~~bank,~~ trust company ~~or trust subsidiary~~; penalties.

A. Any officer, director, agent, or employee of any ~~bank,~~ trust company ~~or trust subsidiary~~ who embezzles, abstracts, or willfully misapplies any of the moneys, funds or credits of, or in the possession or control of ~~such corporation, shall be~~ the trust company is guilty of larceny and ~~punished as provided by law~~ subject to the penalties provided in § 18.2-95 or 18.2-96.

B. Any officer, director, agent or employee of any ~~bank,~~ trust company ~~or trust subsidiary~~ who (i) issues or puts forth any certificate of deposit, (ii) draws any order or bill of exchange, (iii) makes any acceptance, (iv) assigns any note, bond, draft, bill of exchange, mortgage, judgment, decree or other instrument in writing, or ~~who~~ (v) makes any false entry in any book, report or statement of such ~~bank,~~ trust company ~~or trust subsidiary~~ with intent in any case to injure or defraud ~~such corporation~~ the trust company, or any other ~~company, body politic or corporate, or any~~ individual ~~person~~ or entity, or to deceive any officer of ~~such corporation,~~ the trust company or the ~~State Corporation~~ Commission, or any agent or examiner authorized to examine the affairs of ~~such corporation~~ the trust company, and any person, who, with like intent, aids or abets any such officer, director, agent or employee of such ~~bank,~~ trust company ~~or trust subsidiary~~ in any ~~such violation~~ act described in clauses (i) through (v), ~~shall be~~ is guilty of a Class 5 felony ~~and upon conviction thereof shall be confined in a state correctional facility not less than one year or more than ten years, or be confined in jail not exceeding twelve months and fined not exceeding $5,000~~.

C. Any ~~such~~ officer of a trust company who knowingly makes a false statement of the condition of any ~~such bank or institution, shall be deemed~~ trust company is guilty of a Class 5 felony ~~and upon conviction shall be fined not less than $100 nor more than $5,000, and be imprisoned in a state correctional facility not less than one nor more than ten years~~.

**Drafting note: Existing section 6.1-122, which is carried in proposed Chapter 8 as § 6.2-943, is duplicated in this section as it applies to trust companies.**

§ ~~6.1-123~~ 6.2-1045. Officers, directors, agents and employees violating or causing ~~bank,~~ trust company ~~or trust subsidiary~~ to violate laws; civil liability not affected.

Any officer, director, agent, or employee of any ~~bank,~~ trust company ~~or trust subsidiary~~ who knowingly violates or who knowingly causes any ~~bank,~~ trust company ~~or trust subsidiary~~ to violate any provision of this chapter, or knowingly participates or knowingly acquiesces in any

such violation, ~~shall,~~ unless other punishment ~~be~~ is provided for the offense of such officer, agent, or employee, ~~be~~ is guilty of a Class 1 misdemeanor ~~and be punished accordingly~~. The provisions of this section shall not affect the civil liability of any such officer, director, agent or employee.

**Drafting note: Existing section 6.1-123, which is carried in proposed Chapter 8 as § 6.2-944, is duplicated in this section as it applies to trust business. The penalty is specified as a Class 1 misdemeanor pursuant to § 18.2-12.**

§ ~~6.1-125~~ 6.2-1046. ~~Penalties~~ Civil penalties for violation of Commission's orders.

A. The Commission may impose, enter judgment for, and enforce by its process, a ~~fine~~ civil penalty not ~~in excess of~~ exceeding $10,000 ~~against~~ upon any ~~bank,~~ trust company ~~or trust subsidiary~~ or against any of its directors, officers, or employees ~~for violating~~, who it determines, in proceedings commenced in accordance with the Commission's Rules, has violated any lawful order of the Commission~~; and~~.

B. The Commission may remove from office any director or officer ~~who a second time violates~~ of a trust company for a second or subsequent violation by him of any such order~~; but in~~.

C. In all cases the defendant shall have an opportunity to be heard and to introduce evidence, and the right to appeal as provided by law.

**Drafting note: Existing section 6.1-125, which is carried in proposed Chapter 8 as § 6.2-946 is duplicated in this section as it applies to trust companies. "Civil penalty" replaces "fine" to comport with similar changes made in other chapters. The disposition of civil penalties is addressed in proposed § 6.2-106.**

Article ~~3.1~~ 3.

Trust ~~Subsidiary Act~~ Subsidiaries.

~~§ 6.1-32.1. Title of article.~~

~~This Article 3.1 consisting of §§ 6.1-32.1 through 6.1-32.10 shall be known as the "Trust Subsidiary Act."~~

**Drafting Note: This section is deleted because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

§ ~~6.1-32.2~~ 6.2-1047. Definitions.

As used in this article, unless the context requires ~~otherwise,~~ a different meaning:

"Bank" has the meaning ~~specified~~ assigned to it in § ~~6.1-4~~ 6.2-800~~;~~.

"Affiliate bank" with respect to a trust subsidiary means (i) a bank of which more than 50 percent of the shares are owned directly or indirectly through a subsidiary by the same Virginia bank holding company that owns directly or indirectly through a subsidiary all the shares, except directors' qualifying shares, of a trust subsidiary or a subsidiary bank, or (ii) a bank that owns some or all of the shares of a trust subsidiary or a subsidiary bank.

"Bank holding company" has the meaning ~~specified~~ assigned to it in § ~~6.1-4;~~6.2-800.

"Bank under common ownership" means a bank of which ~~eighty~~ 80 percent or more of its common stock is owned, directly or indirectly through a subsidiary, by the same Virginia bank

holding company as owns, directly or indirectly through a subsidiary, at least ~~eighty~~ 80 percent of the stock of the subsidiary bank substituted as fiduciary~~;~~.

"Fiduciary capacity" means every capacity in which a trust institution is granted the right to act pursuant to § 6.2-1002 and every other capacity in which a bank acts, or may act, through its trust department, including, without limitation, trusteeship with respect to common trust funds.

"Main office" is the place designated in the articles of incorporation or articles of association as the main office of the bank or trust subsidiary at which the principal functions of the bank or trust subsidiary are to be conducted.

"Owning bank" means a bank owning 10 percent or more of the shares of a trust subsidiary.

"Subsidiary bank" means a bank authorized to exercise trust powers, at least 80 percent of the outstanding shares of which are owned directly or indirectly through a subsidiary by a Virginia bank holding company.

"Trust office" means, with regard to a trust subsidiary or a bank having trust powers, an office for trust purposes only, at which the trust subsidiary or bank holds itself out as dealing with the public in the solicitation and conduct of its trust business.

"Virginia bank holding company" means a bank holding company ~~which~~ that, directly or indirectly through a subsidiary, owns or controls a bank ~~whose~~ the main office of which is located in ~~this~~ the Commonwealth;

~~"Subsidiary trust company" or "trust subsidiary" means a corporation organized under Chapter 9 (§ 13.1-601 et seq.) of Title 13.1 or an association organized under the National Banking Act with its main office located in this Commonwealth, which is authorized to transact a trust business and business incidental thereto, but not to accept deposits except as incidental to such trust business;~~

~~"Affiliate bank" with respect to a trust subsidiary means a bank of which more than fifty percent of the shares are owned directly or indirectly through a subsidiary by the same Virginia bank holding company that owns directly or indirectly through a subsidiary all the shares (except directors' qualifying shares) of a trust subsidiary or a subsidiary bank, or a bank which owns some or all of the shares of a trust subsidiary or a subsidiary bank;~~

~~"Trust office" of a trust subsidiary or of a bank having trust powers is an office for trust purposes only, at which such trust subsidiary or bank holds itself out as dealing with the public in the solicitation and conduct of its trust business;~~

~~"Owning bank" means a bank owning ten percent or more of the shares of a trust subsidiary;~~

~~"Fiduciary capacity" means every capacity specified in § 6.1-17 and every other capacity in which a bank acts or may act through its trust department including, without limitation, trusteeship with respect to common trust funds;~~

"Main office" is the place designated in the articles of incorporation or articles of association as the main office of the bank or trust subsidiary at which the principal functions of the bank or trust subsidiary are to be conducted;

"Subsidiary bank" means a bank authorized to exercise trust powers, at least eighty percent of the outstanding shares of which are owned directly or indirectly through a subsidiary by a Virginia bank holding company.

**Drafting Note: The definition of "subsidiary trust company" is moved to proposed § 6.2-1000. Other definitions are alphabetized. The definition of "fiduciary capacity" is re-written because § 6.1-17 does not specify capacities.**

§ 6.1-32.3 6.2-1048. Organization of subsidiary trust companies.

A. A subsidiary trust company may be incorporated and organized under Article 3 (§ 13.1-618 et seq.) of Chapter 9 of Title 13.1 or under federal laws relating to national banking associations for the purpose of conducting a trust business and other activities and business incidental thereto, as defined in which a trust subsidiary is permitted to engage as provided in § 6.1-32.5 6.2-1049.

B. All the outstanding voting shares of such a subsidiary trust company (, other than directors' qualifying shares), shall be owned directly or indirectly through a subsidiary by (i) one or more Virginia bank holding companies, by (ii) one or more banks authorized to have a main or parent office in Virginia, or (iii) both.

C. Such A trust subsidiary shall be subject to regular examination and supervision by the State Corporation Commission or by the Comptroller of the Currency of the United States.

D. If incorporated under Title 13.1, the a trust subsidiary shall pay such examination fees as may be from time to time imposed upon trust departments of banks that are subject to examination by the State Corporation Commission.

**Drafting Note: Subsection A is revised because existing § 6.1-32.5 does not define "business incidental" to trust business.**

§ 6.1-32.5 6.2-1049. Permissible business.

The permissible business of a A trust subsidiary shall be permitted to engage in such trust business and activities as that may be engaged in by a bank under pursuant to § 6.1-17 6.2-1002, and business incidental thereto. Such A trust subsidiary shall not accept deposits or conduct any other business except as may be incidental to the trust business being conducted by it. No trust subsidiary, other than a wholly owned subsidiary of a national banking association, shall engage in such trust business without first obtaining a certificate of authority from the State Corporation Commission, or the Comptroller of the Currency if it is organized as a national banking association. The Commission shall not grant such certificate unless the capital and surplus of the trust subsidiary equal or exceed $200,000 and the Commission is satisfied that the trust subsidiary is capable of complying with the provisions of this chapter and that the officers and directors have the moral fitness, and business qualifications necessary to manage the trust subsidiary. Except as permitted by this article, or by § 6.1-16, or § 6.1-17 or by federal law in the case of a national banking association having its main office in Virginia, no corporation,

~~partnership or association shall qualify or act as a personal representative of a deceased person; guardian for an infant or an incapacitated person; committee; conservator for an incapacitated person; testamentary trustee, or trustee for any other trust if required by law to account to the commissioner of accounts of a circuit court in Virginia; or in any other fiduciary capacity required so to account.~~

**Drafting Note: This is the first two sentences of existing § 6.1-32.5; the remainder of the section is set out in proposed §§ 6.2-1054 and subsection D of § 6.2-1001.**

§ ~~6.1-32.4~~ 6.2-1050. Directors ~~of such companies~~.

The affairs of every trust subsidiary incorporated under the laws of ~~this~~ the Commonwealth shall be managed by a board of directors ~~which~~. The board shall consist of not ~~less~~ fewer than five ~~persons~~ individuals. A majority of the directors shall be citizens of ~~this~~ the Commonwealth~~, but directors~~. Directors need not be stockholders of the trust subsidiary unless the articles of incorporation so require.

**Drafting Note: Technical changes.**

§ 6.2-1051. Report to Commission of election of director.

Within 60 days following the election or reelection of any person as a director of a trust subsidiary, the trust subsidiary shall furnish such information to the Commission relative to his personal character, integrity, financial condition, and personal and business background as the Commission shall from time to time prescribe. Such report, under oath, shall be signed by the director as well as a designated officer of the trust subsidiary. Any person knowingly making a false statement in such a report is guilty of perjury.

**Drafting note: New section. Current § 6.1-51.1 states that for the purposes of §§ 6.1-48.1, 6.1-49, 6.1-50 and 6.1-51, the term bank includes trust companies and trust subsidiaries. This section sets out the requirements of § 6.1-48.1 for trust subsidiaries. Section 6.2-1025 is a parallel section for trust companies.**

§ 6.2-1052. Removal of director or officer; appeals; penalty.

A. Whenever any director or officer of a trust subsidiary doing business in the Commonwealth, shall have continued to violate any law relating to such trust subsidiary or shall have continued unsafe or unsound practices in conducting the business of such trust subsidiary, after the director or officer, and the board of directors of the trust subsidiary of which he is a director or officer, have been warned in writing by the Commissioner to discontinue such violation of law or such unsafe or unsound practices, the Commissioner shall certify the facts to the Commission. The Commission shall thereupon enter an order requiring such director or officer to appear before the Commission, within not less than 10 days, to show cause why he should not be removed from office and thereafter restrained from participating in any manner in the management of such trust subsidiary. Such order shall contain a brief statement of the facts certified to the Commission by the Commissioner. A copy of such order shall be served upon such director or officer, and a copy thereof shall be sent by registered mail to each director of the trust subsidiary affected.

B. If, after granting the accused director or officer a reasonable opportunity to be heard, the Commission shall find that he has continued to violate any law relating to such trust subsidiary, or has continued unsafe or unsound practices in conducting the business of such trust subsidiary, after he and the board of directors of the trust subsidiary of which he is a director or officer have been warned in writing by the Commissioner to discontinue such violation of law or unsafe or unsound practices, the Commission shall enter an order removing such director or officer from office and restraining such director or officer from thereafter participating in any manner in the management of such trust subsidiary. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the trust subsidiary of which he is a director or officer. Upon such removal the director or officer shall cease to be a director or officer of such trust subsidiary and thereafter cease to participate in any manner in the management of such trust subsidiary.

C. Any director or officer aggrieved by (i) any order of the Commission entered under subsection B or (ii) an order refusing to remove another director or officer from office or to restrain him from participating in the management of the trust subsidiary, shall have, of right, an appeal to the Supreme Court of Virginia within 60 days from the date of the order.

D. Any director or officer removed or restrained under the provisions of subsection B from participating in any manner in the management of any trust subsidiary of which he is a director or officer, and who thereafter participates in any manner in the management of such trust subsidiary except as a stockholder therein, is guilty of a Class 6 felony.

**Drafting note: New section. Existing § 6.1-51.1 states that for the purposes of §§ 6.1-48.1, 6.1-49, 6.1-50 and 6.1-51, the term bank includes trust companies and trust subsidiaries. This section sets out the requirements of existing §§ 6.1-49 (at subsections A and B), 6.1-50 (at subsection C), and 6.1-51 (at subsection D) for trust subsidiaries. The sections are combined in this section because they all pertain to the same procedure. Section 6.2-1026 is a parallel section for trust companies.**

§ 6.2-1053. Bonds required of officers and employees; blanket bond.

A. The board of directors of every trust subsidiary shall require bonds from all of the active officials and employees of such corporation. In lieu of such bonds, the board may obtain one or more blanket bonds. The surety on every bond shall be a bonding or surety company authorized to transact business in Virginia, and the penalty of any such bond shall be increased whenever in the opinion of the Commission it is necessary for the protection of the public interest.

B. If a trust subsidiary is unable to obtain the bond required by this section, it shall immediately notify the Commission, which may then direct the trust subsidiary to have an audit performed at its expense by an independent certified public accounting firm. The trust subsidiary shall obtain blanket bond coverage as soon as such coverage is available. Failure to obtain blanket bond coverage may be cause for action by the Commission as provided by § 6.2-906.

**Drafting note: New section. Existing § 6.1-54 applies to banks, trust companies and trust subsidiaries. This section sets out the requirements of § 6.1-54 for trust subsidiaries, and**

**eliminates the duplicative references to banks and bank holding companies. Section 6.2-1027 is a parallel section for trust companies. Existing § 6.1-54 provides that failure to obtain the required coverage may be cause for action as provided in existing § 6.1-92 (proposed § 6.2-906).**

§ 6.2-1054. Certificate required.

No trust subsidiary, other than a wholly owned subsidiary of a national banking association, shall engage in ~~such~~ trust business without first obtaining a certificate of authority from the ~~State Corporation~~ Commission, or the Comptroller of the Currency if it is organized as a national banking association. The Commission shall not grant such certificate unless ~~the~~:

1. The capital and surplus of the trust subsidiary equal or exceed $200,000; and ~~the~~

2. The Commission is satisfied that (i) the trust subsidiary is capable of complying with the provisions of this chapter and ~~that~~ (ii) the officers and directors have the moral fitness~~,~~ and business qualifications necessary to manage the trust subsidiary.

**Drafting note: Provision is set forth in existing § 6.1-32.5; changes from existing language are shown. Technical changes.**

§ ~~6.1-32.6~~ 6.2-1055. Trust offices.

~~Such~~ A trust subsidiary may have trust offices at locations where branches are permitted under § ~~6.1-39.3~~ 6.2-831, upon approval of the Commission.

**Drafting note: Technical changes.**

§ ~~6.1-32.7~~ 6.2-1056. When security not required of trust subsidiaries.

No trust subsidiary with combined unimpaired capital stock and surplus of $200,000 or more shall be required by any officer or court of ~~this~~ the Commonwealth to give security upon appointment to or acceptance of any office or trust ~~which~~ that it may, by law, be authorized to execute~~; provided that no~~. No trust subsidiary shall qualify in a fiduciary capacity on an estate ~~having~~ that has a value in excess of its combined unimpaired capital and surplus, without giving security for such excess, unless:

1. The requirement that the trust subsidiary give security for such excess is waived by the person creating such fiduciary relationship ~~or unless there is compliance with the further provisions of this section.~~;

~~(a)~~ 2. A Virginia bank holding company or a bank owning, directly or indirectly through a subsidiary bank, 100 percent of the stock, exclusive of directors' qualifying shares, of ~~such~~ the trust subsidiary ~~may file~~ files with the ~~State Corporation~~ Commission and with the circuit court for the jurisdiction in which the main office of ~~such~~ the bank holding company or bank is located an undertaking to be fully responsible for the existing and future fiduciary acts and omissions of its trust subsidiary. If such undertaking is filed, a trust subsidiary may qualify in a fiduciary capacity without giving security if the assets it is to receive in such capacity have a value not greater than the combined and unimpaired capital and surplus of the parent Virginia bank holding company or parent bank ~~which shall have~~ that has undertaken to be responsible for the acts of such trust subsidiary. If no such undertaking shall have been filed, and corporate surety is

provided, the premium thereof shall be borne by the trust subsidiary and not the fiduciary estate~~.~~; or

~~(b)~~ 3. If an affiliate bank shall already have qualified in any fiduciary capacity and given bond, without security, and the trust subsidiary or subsidiary bank shall qualify as successor fiduciary, then, if the order of substitution ~~shall~~ so ~~provide~~ provides, ~~but only with the consent of~~ and the fiduciary for which there is to be substitution consents, the predecessor fiduciary shall remain liable on its bond for the acts of its named successor~~,~~ and no security shall be required of the successor fiduciary, if the bond of the fiduciary for which there is to be substitution is otherwise sufficient.

**Drafting note: Technical changes.**

§ ~~6.1-32.8~~ 6.2-1057. Deposits ~~of funds~~ held or received by trust subsidiaries or subsidiary bank with affiliate banks~~; security therefor~~.

A. Funds received or held by ~~such~~ a trust subsidiary or subsidiary bank while awaiting investment or distribution shall not be used by an affiliate bank or owning bank in the conduct of its business or deposited in such bank, unless the bank first delivers to its trust department or to the trust subsidiary or subsidiary bank, as collateral security therefor, securities ~~as defined in~~ of any of the classes described in subdivision B 1, B 2, or B 3 of § ~~6.1-21~~ 6.2-1005, in an amount described ~~below~~ in subsection B.

B. The securities ~~so~~ deposited as collateral as required by subsection A shall be owned by the bank and shall at all times be at least equal in market value to the amount of trust funds held on deposit by such trust subsidiary or subsidiary bank, less such amount thereof as ~~shall be~~ are insured by the Federal Deposit Insurance Corporation.

C. In the event of the failure or liquidation of such bank, the trust subsidiary or subsidiary bank and the owners of the beneficial interest in such trust funds shall have a lien on the bonds or other securities so set apart, in addition to their claims against the estate of the bank.

**Drafting note: The last phrase in proposed subsection A is reworded because current § 6.1-21 does not define "securities." Other changes are technical.**

§ ~~6.1-32.9~~ 6.2-1058. Substitution of trust subsidiary ~~or subsidiary bank under common ownership~~ as fiduciary.

A. Upon ~~the grant to a trust subsidiary of permission~~ obtaining a certificate to engage in the trust business, ~~the~~ a trust subsidiary may file an application in the circuit court of the jurisdiction in which its main office is located requesting that it be substituted, except as may be excluded in such application, in every fiduciary capacity for each of its owning banks, or, in the case of a Virginia bank holding company, for any one or more of its affiliate banks specified in the application.

B. Upon ~~a~~ finding that (i) the trust subsidiary has ~~been granted permission~~ obtained a certificate to engage in the trust business by the ~~State Corporation~~ Commission, or by the Comptroller of the Currency if the trust subsidiary is a national banking association, the main office of which is in ~~Virginia,~~ the Commonwealth and (ii) the requirements of § ~~6.1-32.7~~ 6.2-1056 have been met, the court shall enter an order substituting the trust subsidiary in every

fiduciary capacity for each of its specified affiliate banks, or specified owning banks, except as may be otherwise specified in the application.

C. Upon entry of such order, the trust subsidiary shall, without further act, be substituted in every fiduciary capacity~~, and such~~. The substitution shall be evidenced by filing a copy of the order with the clerk of any circuit court in the Commonwealth. ~~Such~~ The order shall be indexed in each index in the records of such court in which substitutions of fiduciaries are otherwise indexed. ~~Such~~ The application may be made ex parte and need not list the fiduciary capacities in which substitution is made. If the requirements of § ~~6.1-32.7~~ 6.2-1056 have been met, the order of substitution shall specify that the trust subsidiary shall be deemed without further act to have given bond with open penalty with respect to each fiduciary capacity in which there is substitution.

~~C~~ D. Any bond, with corporate surety, posted under ~~subsection A or B of~~ this section ~~or under § 6.1-32.7~~ 6.2-1056 may be a blanket bond conditioned as otherwise contemplated by law.

~~D~~ E. Each designation in a will or other instrument heretofore or hereafter executed of a bank as fiduciary shall be deemed a designation of the trust subsidiary ~~or subsidiary bank under common ownership~~ substituted for such bank pursuant to this section except when the instrument is executed after such substitution and expressly negates the application of this section ~~and except that no~~. No waiver of surety with respect to any fiduciary bond shall be effective~~,~~ except in such case when the bond would be otherwise sufficient as contemplated by § ~~6.1-32.7~~ 6.2-1056 or ~~subsection B of this section~~ 6.2-1059. Any grant in such an instrument of any discretionary power shall be deemed conferred upon the fiduciary deemed to have been nominated hereunder.

~~E~~ F. A bank shall account jointly with the trust subsidiary ~~or subsidiary bank which~~ that has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the trust subsidiary ~~or subsidiary bank~~ is initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the trust subsidiary ~~or to the substituted subsidiary bank under common ownership~~ all assets held by the bank as fiduciary, ~~(~~except assets held for accounts to which there has been no substitution~~), and upon~~. Upon such substitution, all such assets shall become the property of the trust subsidiary ~~or subsidiary bank~~ as fiduciary without the necessity of any instrument of transfer or conveyance.

**Drafting note: Existing § 6.1-32.9 is split into proposed this section (pertaining to substitution by a trust subsidiary) and proposed § 6.2-1059 (substitution by a subsidiary bank under common ownership).**

§ 6.2-1059. Substitution of subsidiary bank under common ownership as fiduciary.

~~B~~ A. Upon ~~the grant to a subsidiary bank of permission~~ obtaining permission to engage in the trust business, ~~such~~ a subsidiary bank may file an application in the circuit court of the jurisdiction in which its main office is located~~,~~ requesting that it be substituted, except as may be specified in such application, in every fiduciary capacity for a bank under common ownership.

B. Upon a finding that (i) the subsidiary bank has been granted such permission to engage in the trust business by the ~~State Corporation~~ Commission or the Comptroller of the Currency~~,~~

and (ii) the unimpaired capital and surplus of such subsidiary bank is sufficient as prescribed in § ~~6.1-18~~ 6.2-1003, or bond with corporate surety has been posted for any excess, or has been validly waived, the court shall enter an order substituting the subsidiary bank in every fiduciary capacity for each of the specified banks under common ownership, except as may be otherwise specified in the application.

C. Upon entry of such order, such subsidiary bank shall, without further act, be substituted in every such fiduciary capacity ~~and such~~. The substitution shall be evidenced by filing a copy of the order with the clerk of any circuit court in the Commonwealth. ~~Such~~ The order shall be indexed in each index in the records of such court in which substitutions of fiduciaries are otherwise indexed. ~~Such~~ The application may be made ex parte and need not list the fiduciary capacities in which substitution is made. If a bank under common ownership with the subsidiary bank shall already have qualified in any fiduciary capacity and given bond, without surety, then if the order of substitution shall so provide, ~~but~~ which it may provide only ~~with the consent of~~ if the fiduciary for which there is to be substitution consents, the predecessor fiduciary shall remain liable on its bond for the acts of its named successor, and no security or corporate surety shall be required of the successor fiduciary on its bond.

~~C~~ D. Any bond, with corporate surety, posted under ~~subsection A or B of~~ this section or under § ~~6.1-32.7~~ 6.2-1056 may be a blanket bond conditioned as otherwise contemplated by law.

~~D~~ E. Each designation in a will or other instrument heretofore or hereafter executed of a bank as fiduciary shall be deemed a designation of the ~~trust subsidiary or~~ subsidiary bank under common ownership substituted for such bank pursuant to this section except when the instrument is executed after such substitution and expressly negates the application of this section ~~and except that no~~. No waiver of surety with respect to any fiduciary bond shall be effective~~,~~ except in such case when the bond would be otherwise sufficient as contemplated by § ~~6.1-32.7~~ 6.2-1056 or ~~subsection B of~~ this section. Any grant in such an instrument of any discretionary power shall be deemed conferred upon the fiduciary deemed to have been nominated hereunder.

~~E~~ F. A bank shall account jointly with the ~~trust subsidiary or~~ subsidiary bank ~~which~~ that has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the ~~trust subsidiary or~~ subsidiary bank is initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the ~~trust subsidiary or to the~~ substituted subsidiary bank under common ownership all assets held by the bank as fiduciary, ~~(~~except assets held for accounts to which there has been no substitution~~), and upon~~. Upon such substitution, all such assets shall become the property of the ~~trust subsidiary or~~ subsidiary bank as fiduciary without the necessity of any instrument of transfer or conveyance.

**Drafting note: Section is existing subsections B through E of § 6.1-32.9; see drafting note for proposed § 6.2-1058.**

§ ~~6.1-32.10~~ 6.2-1060. Trust subsidiaries to have same powers and restrictions as bank trust departments.

Wherever there is granted to or imposed upon a bank having and exercising trust powers any further powers in the nature of trust powers or any restriction upon any such powers,

whether under this title or otherwise, it is intended that such grant to or restriction upon a bank in its trust powers shall be equally applicable to a trust subsidiary, unless context shall otherwise require or unless this chapter or Chapter ~~2~~ 8 (§ ~~6.1-3~~ 6.2-800 et seq.)~~, Title 6.1~~ specifically covers such situation or provides otherwise.

**Drafting note: Technical changes reflect that the applicable portions of existing Chapter 2 are set either in proposed Chapter 8 (Banks) or this chapter.**

§ ~~6.1-114~~ 6.2-1061. ~~Penalty for failure to comply with § 6.1-93 or § 6.1-87~~ Reports; investigations and examinations; civil penalties.

A. Each trust subsidiary shall file statements of condition and other reports with the Commission in accordance with the requirements established by regulation.

B. The Commission may, by its designated officers and employees, as often as it deems necessary, investigate and examine the affairs, business, premises, and records of any trust subsidiary. Examinations of such trust subsidiaries shall be conducted at least twice in each three-year period.

C. In the course of such investigations and examination, the principals, officers, directors, and employees of such trust subsidiary being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information that the person making such investigation or examination deems necessary. For the foregoing purposes, the person making the investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

D. Any ~~such bank, trust company or~~ trust subsidiary ~~failing~~ that fails to comply with ~~any of~~ the provisions of ~~§ 6.1-93~~ subsection A, for a period of longer than ~~thirty~~ 30 days, after being called upon by the Commission for a statement, or to do such other act as is therein provided, shall be ~~fined~~ subject to assessment by the Commission of a civil penalty of not less than $100 nor more than $1,000 per day for each day of noncompliance.

E. Any officer of any ~~such bank, trust company or~~ trust subsidiary~~,~~ being investigated or examined by the Commission who shall refuse to give any examiner the information or refuse to be sworn, as required by ~~§ 6.1-87~~ subsections B and C, shall be ~~fined~~ subject to assessment by the Commission of a civil penalty of not less than $25 nor more than $100 per day for each day of noncompliance.

**Drafting note: Existing § 6.1-114 is duplicated in this section as it applies to trust subsidiaries. Note that while § 6.1-114 provides fines for violations by trust companies and trust subsidiaries of existing §§ 6.1-93 and 6.1-87, those sections do not apply to trust subsidiaries. This section restates the requirements applicable to trust companies to file reports with the Commission and require a trust company's officers to afford full access to premises, books, records, and information deemed necessary, and providing authority to administer oaths, as set forth in proposed §§ 6.2-1031 and 6.2-1032. References to fines are replaced with civil penalties.**

§ ~~6.1-122~~ 6.2-1062. ~~Embezzlement, fraud, false statements, etc.,~~ Offenses by officer, director, agent or employee of ~~bank, trust company or~~ trust subsidiary; penalties.

A. Any officer, director, agent, or employee of any ~~bank, trust company or~~ trust subsidiary who embezzles, abstracts, or willfully misapplies any of the moneys, funds or credits of, or in the possession or control of ~~such corporation, shall be~~ the trust subsidiary is guilty of larceny and ~~punished as provided by law~~ subject to the penalties provided in § 18.2-95 or 18.2-96.

B. Any officer, director, agent or employee of any ~~bank, trust company or~~ trust subsidiary who (i) issues or puts forth any certificate of deposit, (ii) draws any order or bill of exchange, (iii) makes any acceptance, (iv) assigns any note, bond, draft, bill of exchange, mortgage, judgment, decree or other instrument in writing, or ~~who~~ (v) makes any false entry in any book, report or statement of such ~~bank, trust company or~~ trust subsidiary with intent in any case to injure or defraud ~~such corporation~~ the trust subsidiary, or any other ~~company, body politic or corporate, or any~~ individual ~~person~~ or entity, or to deceive any officer of ~~such corporation,~~ the trust subsidiary or the ~~State Corporation~~ Commission, or any agent or examiner authorized to examine the affairs of ~~such corporation~~ the trust subsidiary, and any person, who, with like intent, aids or abets any such officer, director, agent or employee of such ~~bank, trust company or~~ trust subsidiary in any ~~such violation~~ act described in clauses (i) through (v), ~~shall be~~ is guilty of a Class 5 felony ~~and upon conviction thereof shall be confined in a state correctional facility not less than one year or more than ten years, or be confined in jail not exceeding twelve months and fined not exceeding $5,000~~.

C. Any ~~such~~ officer of a trust subsidiary who knowingly makes a false statement of the condition of any ~~such bank or institution, shall be deemed~~ trust subsidiary is guilty of a Class 5 felony ~~and upon conviction shall be fined not less than $100 nor more than $5,000, and be imprisoned in a state correctional facility not less than one nor more than ten years~~.

**Drafting note: Existing section 6.1-122, which is carried in proposed Chapter 8 as § 6.2-943, is duplicated in this section as it applies to trust subsidiary.**

§ ~~6.1-123~~ 6.2-1063. Officers, directors, agents and employees violating or causing ~~bank, trust company or~~ trust subsidiary to violate laws; civil liability not affected.

Any officer, director, agent, or employee of any ~~bank, trust company or~~ trust subsidiary who knowingly violates or who knowingly causes any ~~bank, trust company or~~ trust subsidiary to violate any provision of this chapter, or knowingly participates or knowingly acquiesces in any such violation, ~~shall,~~ unless other punishment ~~be~~ is provided for the offense of such officer, agent, or employee, ~~be~~ is guilty of a Class 1 misdemeanor ~~and be punished accordingly~~. The provisions of this section shall not affect the civil liability of any such officer, director, agent or employee.

**Drafting note: Existing section 6.1-123, which is carried in proposed Chapter 8 as § 6.2-944, is duplicated in this section as it applies to trust subsidiaries. The penalty is specified as a Class 1 misdemeanor pursuant to § 18.2-12.**

§ ~~6.1-125~~ 6.2-1064. ~~Penalties~~ Civil penalties for violation of Commission's orders.

A. The Commission may impose, enter judgment for, and enforce by its process, a ~~fine~~ civil penalty not ~~in excess of~~ exceeding $10,000 ~~against~~ upon any ~~bank, trust company or~~ trust subsidiary or against any of its directors, officers, or employees ~~for violating~~, who it determines, in proceedings commenced in accordance with the Commission's Rules, has violated any lawful order of the Commission~~; and~~.

B. The Commission may remove from office any director or officer ~~who a second time violates~~ of a trust subsidiary for a second or subsequent violation by him of any such order~~; but in~~.

C. In all cases the defendant shall have an opportunity to be heard and to introduce evidence, and the right to appeal as provided by law.

**Drafting note: Existing section 6.1-125, which is carried in proposed Chapter 8 as § 6.2-946 is duplicated in this section as it applies to trust subsidiaries. "Civil penalty" replaces "fine" to comport with similar changes made in other chapters.**

Article ~~3.3~~ 4.

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.~~

**Drafting note: Subsection A is deleted because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation. Subsection B is deleted because policy statements are not generally set out.**

§ ~~6.1-32.32~~ 6.2-1065. Definitions.

As used in this article, unless the context requires ~~otherwise~~ a different meaning:

"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~~ assigned to it in 12 U.S.C. § 1813 ~~(h)~~ (a) (1) of the Federal Deposit Insurance Company Act of 1956 (12 U.S.C. § 1811 et seq.), as amended.

"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~~ where such institution maintains its principal office and (ii) with respect to any other trust institution, the state ~~which~~ that chartered such institution.

"Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

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

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

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

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

"Out-of-state trust company" means a trust company or trust subsidiary whose home state is a state other than ~~Virginia~~ the Commonwealth.

"Out-of-state trust institution" means a trust institution whose home state is a state other than ~~Virginia~~ the Commonwealth.

"Principal office" with respect to (i) a state trust company, means a location ~~so~~ designated by such trust company as its main office pursuant to § ~~6.1-32.21 of the Virginia Trust Company Act~~ 6.2-1028 or § ~~6.1-32.2 of the Virginia Trust Subsidiary Act~~ 6.2-1047 or (ii) a trust institution other than a state trust company, means its principal place of business in the United States.

~~"State" means any 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.~~

"State bank" or "Virginia state bank" means a bank chartered under the laws of ~~Virginia~~ the Commonwealth and permitted to engage in the trust business pursuant to § ~~6.1-16 of the Virginia Banking Act~~ 6.2-819.

"State trust company" means a corporation organized or reorganized as a trust company under ~~the Virginia Trust Subsidiary Act~~ Article 2 (§ ~~6.1-32.1~~ 6.2-1013 et seq.) or ~~the Virginia Trust Company Act~~ Article 3 (§ ~~6.1-32.11~~ 6.2-1047 et seq.) of this chapter.

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

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

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

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

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

**Drafting note: The definition of "bank" is revised to conform to the same change made to the definition of the term in proposed § 6.2-849. The definition for "company" is deleted because the term is used in one place (the definition of "trust company" where the term "entity" (defined in § 6.2-100) is substituted therefor. "Trust business" is defined in § 6.2-1000. The definition of "trust institution" is retained because it differs from the chapter-wide definition for such term in proposed § 6.2-1000. The definition of "state" is deleted because the term is defined in § 1-245.**

§ ~~6.1-32.33~~ 6.2-1066. Interstate trust offices by Virginia state banks.

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

B. A Virginia state bank or state trust company desiring to establish and maintain a trust office in another state under this section shall file an application or notice on a form prescribed by the Commission and pay the branch application fee set forth in subdivision A 4 of § ~~6.1-94~~ 6.2-908. 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 trust office, 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 trust office is proposed to be located.

**Drafting note: Technical changes.**

§ ~~6.1-32.34~~ 6.2-1067. Trust business of out-of-state trust institution.

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

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

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

**Drafting note: Existing §§ 6.1-32.34 and 6.1-32.35 are combined because they deal with the same subject. Technical changes.**

§ ~~6.1-32.36~~ 6.2-1068. Establishing or acquiring an interstate trust office; additional trust offices; notice of closure.

A. An out-of-state trust institution that does not already maintain a trust office in ~~this~~ the Commonwealth and that meets the requirements of this article may ~~establish~~:

1. Establish and maintain a new trust office in ~~this~~ the Commonwealth; or

2. Acquire and maintain a trust office in the Commonwealth.

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

C. An out-of-state trust institution that maintains an office the Commonwealth under this article shall give at least 30 days' prior written notice, or in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law, to the Commission of any merger, consolidation, or other transaction involving the trust institution that would cause any trust office operated by the institution in this state to be maintained by another trust institution or cause the operation of such an office to cease.

**Drafting note: Existing §§ 6.1-32.37, 6.1-32.42, and 6.1-32.44 are combined with § 6.1-32.36 to form this new section, as each section pertains to offices.**

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

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

**Drafting note: This section is set out as subdivision A 2 of proposed § 6.2-1068.**

§ ~~6.1-32.38~~ 6.2-1069. 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~~ the 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.

**Drafting note: Technical change.**

§ ~~6.1-32.39~~ 6.2-1070. Conditions for approval.

~~No~~ A trust office of an out-of-state trust institution ~~may~~ shall not 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.

**Drafting note: Technical changes.**

§ ~~6.1-32.40~~ 6.2-1071. Examinations; periodic reports; cooperative agreements; assessment of fees.

A. The Commission may make such examinations of any office established and maintained in ~~this~~ the 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~~ the Commonwealth and to ensure the office is being operated in a safe and sound manner. The provisions of § ~~6.1-87~~ 6.2-901 that apply to examinations of banks shall apply to ~~such~~ examinations of an office conducted under this section. The Commission shall also have authority to examine the principal office of an out-of-state trust institution, as necessary~~, and when~~. 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~~ 30 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~~ the Commonwealth 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~~ the 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~~ the 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~~ the 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.

**Drafting note: Technical changes.**

§ ~~6.1-32.41~~ 6.2-1072. 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.

**Drafting note: No change.**

~~§ 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.~~

**Drafting note: This section is set out as subsection B of proposed § 6.2-1068.**

§ ~~6.1-32.43~~ 6.2-1073. Regulations; ~~certain~~ fees.

The Commission may ~~promulgate~~ adopt 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.

**Drafting note: Technical change.**

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

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

**Drafting note: This section is set out as subsection C of proposed § 6.2-1068.**

~~§ 6.1-32.45. Severability.~~

~~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, or to be superseded by federal law, the remaining provisions of this article shall not be affected and shall continue to apply.~~

**Drafting note: This section is deleted because it is not necessary due to § 1-243, which states that the provisions of acts of the General Assembly or the application thereof to any person or circumstances that are held invalid shall not affect the validity of other acts, provisions, or applications that can be given effect without the invalid provisions or applications.**

Article ~~3.2:1~~ 5.

Private Trust ~~Company Act~~ Companies.

§ ~~6.1-32.30:1~~ 6.2-1074. Definitions.

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

"Degrees of kinship" means, with respect to two persons, (i) degrees of lineal kinship computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins and (ii) degrees of collateral kinship computed by commencing with one of the persons and ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the

line of ascent and in the line of descent, exclusive of the person from whom the computation begins, the total to represent the degree of such kinship.

"Designated relative" means the individual to or through whom the family members are related.

"Family" means a designated relative and family members of that designated relative.

"Family member" means the designated relative and:

1. Any individual within (i) the fifth degree of lineal kinship to the designated relative or (ii) the ninth degree of collateral kinship to the designated relative, for which purposes only a legally adopted individual shall be treated as a natural child of the adoptive parents;

2. The present or past spouse of the designated relative and of any individual qualifying as a family member under subdivision 1;

3. A trust established (i) by a family member or (ii) exclusively for the benefit of one or more family members;

4. A stock corporation, limited partnership or limited liability company, all of the capital stock, partnership interests, membership interests, or other equity interests of which are owned by one or more family members, their spouses qualifying under subdivision 2, their trusts qualifying under subdivision 3, or their estates qualifying under subdivision 5;

5. The estate of a family member; or

6. A charitable foundation or other charitable entity created by a family member.

~~"Degrees of kinship" means, with respect to two persons, (i) degrees of lineal kinship computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins and (ii) degrees of collateral kinship computed by commencing with one of the persons and ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins, the total to represent the degree of such kinship.~~

"Fiduciary" means executor, administrator, conservator, guardian, committee, or trustee.

"Operating plan" means a plan that establishes the policies and procedures a private trust company will have in effect when the institution opens for business and thereafter (i) to ensure that trust accounts are handled in accordance with recognized standards of fiduciary conduct and (ii) to assure compliance with applicable laws and regulations.

~~"Person" means any individual, firm, corporation, partnership, limited liability company, association, trust, or legal or commercial entity or group of individuals, however organized.~~

"Private trust business" means acting as or performing the duties of a fiduciary in the regular course of its business for family members.

"Private trust company" means a corporation or limited liability company that is organized to engage in private trust business under this article with one or more family members and that does not transact business with the general public.

"Tax" includes, but is not limited to, federal, state or local income, gift, estate, generation-skipping transfer, or inheritance tax.

**Drafting note: The definition of "degrees of kinship" is placed first in alphabetical order. Person is defined in proposed § 6.2-100. The definition of tax is moved from subsection C of current § 6.1-32.30:7.**

§ ~~6.1-32.30:2~~ 6.2-1075. Organization; minimum capital; notice to Bureau ~~of Financial Institutions~~; control.

A. No person other than a corporation or limited liability company organized under the laws of ~~this~~ the Commonwealth to engage exclusively in the private trust business shall act as a private trust company.

B. No person may act as a private trust company unless and until family members have subscribed for capital stock or interests, surplus, and a reserve for operation in an amount equal to or in excess of $500,000.

C. No person shall engage in business as a private trust company without first giving written notice to the ~~Commission's~~ Bureau ~~of Financial Institutions~~. The notice shall identify (i) the designated relative whose relationship to other individuals determines whether the individuals are family members and (ii) the location of the principal office and additional office, if any, within the Commonwealth. The notice shall be accompanied by an operating plan and such other books, records, documents, or information as the Commissioner ~~of Financial Institutions~~ may require. The notice shall also certify that (a) all provisions of law have been complied with; (b) the private trust company is formed for no other reason than to engage in the private trust business; and (c) family members have subscribed for capital stock, surplus, and a reserve for operation in an amount equal to or in excess of $500,000.

D. All of the capital stock, membership interests, or other equity interests of a private trust company shall be and shall remain owned by, and under the voting control of, family members, including any spouses, trusts, stock corporations, limited partnerships, limited liability companies, or estates qualifying under subdivisions 2, 3, 4 or 5 of the definition of "family member" set forth in § ~~6.1-32.30:1~~ 6.2-1074, of one or more families.

**Drafting note: "Commissioner" and "Bureau" are defined in § 6.2-100.**

§ ~~6.1-32.30:3~~ 6.2-1076. Operation and powers.

Every private trust company shall have and shall conduct its business in accordance with an operating plan and in accordance with generally accepted fiduciary standards. A private trust company when engaging in a private trust business shall have the same rights, powers, and privileges ~~as set forth in~~ as a trust institution pursuant to § ~~6.1-17~~ 6.2-1002, including the power to act as executor under the last will and testament or administrator of the estate of any deceased family member.

**Drafting note: Technical changes.**

§ ~~6.1-32.30:4~~ 6.2-1077. Reacquisition of shares or interests; dividends.

A private trust company shall not purchase, redeem, or otherwise reacquire shares of stock or membership interests that the private trust company has issued, or declare a dividend or other distribution to its stockholders, members, or holders of equity interests, to the extent that

such purchase, redemption, reacquisition, dividend, or distribution shall cause the private trust company's paid-in capital, retained surplus and reserves to be reduced below $500,000.

**Drafting note: No change.**

§ ~~6.1-32.30:5~~ 6.2-1078. Offices.

A. The office at which a private trust company begins business shall be designated initially as its principal office. The board of directors or managers of a private trust company may thereafter redesignate as the principal office another authorized office of the private trust company in the Commonwealth.

B. The board of directors or managers of a private trust company may designate, and from time to time redesignate, one additional office at which the private trust company may conduct business in the Commonwealth.

C. The private trust company shall notify the ~~Commission's~~ Bureau ~~of Financial Institutions~~ of any such redesignation of its principal office or designation or redesignation of an additional office not later than 30 days before its effective date and shall confirm to the Bureau ~~of Financial Institutions~~ any such designation or redesignation within 10 days of its occurrence.

**Drafting note: Technical changes.**

§ ~~6.1-32.30:6~~ 6.2-1079. Directors or managers.

The affairs of every private trust company shall be directed by a board of directors if a corporation, ~~and~~ or managers ~~or board of directors~~ if a limited liability company, ~~which shall consist~~ consisting of not less than five nor more than ~~twenty-five~~ 25 persons. At least one director or manager shall be a citizen of ~~this~~ the Commonwealth.

**Drafting note: Changes clarify that a limited liability company would not be managed by a board of directors.**

§ ~~6.1-32.30:7~~ 6.2-1080. Limitation on powers.

A. In the exercise of any power held by a private trust company in its capacity as a fiduciary, the private trust company shall have a duty not to exercise any power in such a way as to deprive the estate, trust, or other entity for which it acts as a fiduciary of an otherwise available tax exemption, deduction, or credit for tax purposes or deprive a donor of trust assets of a tax exemption, deduction, or credit or operate to impose a tax upon a donor or other person as owner of any portion of the estate, trust or otherwise.

B. Without limitation to subsection A, no family member who is a stockholder or member or who otherwise holds an equity interest in, or is serving as a director, officer, manager, or employee of, a private trust company shall participate in or otherwise have a voice in any discretionary decision by the private trust company to distribute income or principal of any trust in order to discharge a legal obligation of the family member or for the family member's pecuniary benefit, unless:

1. The exercise of the discretion is limited by an ascertainable standard relating to the health, education, support, or maintenance of that family member;

2. The distribution is necessary for that family member's support, health, or education; or

3. The instrument governing the administration of that trust clearly so provides.

~~C. "Tax" includes, but is not limited to, federal, state or local income, gift, estate, generation-skipping transfer, or inheritance tax.~~

**Drafting note: Subsection C, which defines "tax," is relocated to proposed § 6.2-1074.**

~~Chapter 3.2~~ Article 6.

~~VIRGINIA SAVINGS AND LOAN TRUST POWERS ACT~~ Trust Powers of Savings Institutions.

**Drafting note: Article consists of existing Chapter 3.2, which pertains to the trust powers of savings and loan associations and building and loan associations, and § 6.1-194.138, which authorizes state savings banks and their subsidiaries to exercise fiduciary powers as state associations under existing Chapter 3.2.**

~~§ 6.1-195.77. Short title.~~

~~The short title of the law embraced in this chapter is the "Virginia Savings and Loan Trust Powers Act."~~

**Drafting note: This section is unnecessary because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

§ ~~6.1-195.78~~ 6.2-1081. Definitions.

~~In addition to those definitions contained in § 6.1-194.2, the following definitions shall apply to~~ As used in this ~~chapter~~ article, unless the context requires a different meaning ~~is required by the context~~:

"Affiliate" means, with respect to an association, a bank holding company, as defined in 12 U.S.C. § 1841, or savings and loan holding company~~, as defined in § 6.1-194.87,~~ of which the association is a subsidiary, a corporation ~~which~~ that is also a subsidiary of a bank holding company or savings and loan holding company of which the association is a subsidiary, a corporation with respect to which the association owns ~~twenty-five~~ 25 percent or more of the outstanding voting shares of such corporation, or any other corporation ~~which~~ that the Commissioner determines is, in fact, controlled by the association.

"Association" has the meaning assigned to it in § 6.2-1100.

"Common trust funds" means common trust funds that are described under § 584 of the Internal Revenue Code of 1954, as well as any other type of collective investment fund that is exempt from federal income taxation under any other provision of the Internal Revenue Code or regulations issued pursuant thereto.

"Fiduciary" means the status resulting from an association's undertaking to act alone, through an affiliate, or jointly with others, primarily for the benefit of another, and includes an association's acting as trustee, executor, administrator, committee, guardian, conservator, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, or paying agent, trustee of employee pension, welfare and profit sharing trusts, and in any other similar capacity.

"Fiduciary records" means all matters which are written, transcribed, recorded, received or otherwise come into the possession of an association and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of an association.

"Governing instrument" means the written document or documents pursuant to which an association undertakes to act in a fiduciary capacity, and includes a will, codicil, deed of trust, trust deed, and other similar instruments.

"Investment authority" means the responsibility conferred by action of law or a provision of a governing instrument to make, select, or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.

"Managing agent" means the fiduciary relationship assumed by an association upon the creation of an account ~~which~~ that names the association as agent and confers investment authority upon the association.

"Savings institution holding company" has the meaning assigned to it in § 6.2-1100.

"Trust account" means the account established pursuant to a trust, estate or other fiduciary relationship ~~which~~ that has been established with an association.

"Trust department" means that group or groups of officers and employees of an association, or of an affiliate of an association, to whom are assigned the performance of fiduciary services by the association.

"Uniform Transfers to Minors Act" means Chapter 6 (§ 31-37 et seq.) of Title 31 or any comparable act in effect in any other state ~~or territory of the United States or the District of Columbia~~.

**Drafting note: The definition of common trust funds is moved from subsection D of existing § 6.1-195.91. In the definition of "Uniform Transfers to Minors Act" the words after "state" are deleted as redundant per § 1-245. Other changes are technical.**

§ ~~6.1-195.79~~ 6.2-1082. Applications for permission to offer trust services.

A. An association desiring to exercise fiduciary powers, either through a trust department or through an affiliate, shall file with the Commission an application indicating which trust services it wishes to offer and providing the information necessary to make the determinations required under subsection B ~~of this section~~.

B. In addition to assessing any other facts or circumstances deemed proper, the Commission, in passing upon an application to exercise trust powers, shall not grant such application unless the Commission finds that:

1. The association's capital structure is sufficiently strong to support such additional undertaking;

2. The personnel who will direct the proposed trust department have adequate experience and training, and will devote sufficient time to its affairs to ensure compliance with the law and to protect the association against surcharge;

3. The granting of trust powers to the association will be in the public interest; and

4. The association has available legal counsel to advise and pass upon fiduciary matters wherever necessary.

**Drafting note: Technical change.**

§ ~~6.1-195.80~~ 6.2-1083. Commission to issue certificate; powers of associations authorized to offer trust services.

A. Upon granting the application of an association to exercise trust powers, the Commission shall issue a certificate authorizing the association or affiliate to exercise trust powers and offer fiduciary services. Unless such certificate otherwise provides, such association shall have the following rights, powers, and privileges, and shall be subject to the following regulations and restrictions:

1. To act as agent for any person, ~~corporation, municipality~~ including any locality or state, for the collection or disbursement of interest, or income or principal of securities;

2. To act as the fiscal or transfer agent of any state, ~~municipality~~ locality, or other body public or corporate, and in such capacity to receive and disburse money, to transfer, register and countersign certificates of stock, bonds, or other evidences of indebtedness~~, and to;~~

3. To act as agent of any corporation, foreign or domestic, for any lawful purpose;

~~3~~ 4. To act as trustee under any deed of trust, mortgage, or bond issued by an individual, municipality, or body politic or corporate, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of ~~this~~ the Commonwealth;

~~4. To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, and to transact any business in relation thereto;~~

5. To act as a guardian, conservator, as a custodian under the Uniform Transfers to Minors Act (§ 31-37 et seq.), and as depository of any money paid into court, whether for the benefit of a person under a disability or other person~~, corporation or party~~;

6. To take, accept, and execute any and all trusts and powers, of whatever nature and description, as may be conferred upon or entrusted or committed to it by any person ~~or persons~~, or any body politic or corporate, or by other authority, by grant, assignment, transfer, devise, bequest, or otherwise or as may be entrusted or committed or transferred to it or vested in it by order of any circuit court ~~of record~~, judge, or clerk; to receive and hold any property or estate, real or personal, which may be the subject of any such trust; and to be accountable to all parties in interest for the faithful discharge of every such trust, duty, or power which it may so accept; and

7. To act as executor under the last will and testament, or administrator of the estate, of any deceased person, under appointment of any circuit court ~~of record~~, judge, or clerk thereof, having jurisdiction of the estate of such deceased person.

B. Nothing in this chapter shall be construed as authorizing the creation of a trust not lawful as between individuals, nor to prohibit the deposit of funds by courts and fiduciaries in savings and loan associations and savings banks.

C. All rights, powers, and privileges, and all regulations, restrictions, and limitations, granted to or made applicable to associations by the provisions of this chapter shall likewise apply to any affiliate of an association which is authorized by the Commission to exercise trust powers. ~~However, any~~ Any such affiliate shall be organized and operated solely for the purpose of offering trust services pursuant to the provisions of this chapter.

D. All federal savings and loan associations and federal savings banks, ~~which~~ that have been, or hereafter may be, permitted by law to act in any fiduciary capacity, shall have the rights, powers, privileges, and immunities conferred by this chapter to the extent permitted by federal law.

**Drafting note: Changes to the enumerated powers make the provisions parallel to similar provisions of § 6.2-1002. Subdivision 4 is deleted as obsolete.**

§ ~~6.1-195.81~~ 6.2-1084. Continuation of trust powers in the event of consolidation or merger of two or more associations.

~~Where~~ If an association consolidates or merges with another association or a bank and ~~such~~ the association has, prior to such consolidation or merger, exercised trust powers under a certificate issued by the Commission, which certificate is in effect at the time of the consolidation or merger, the rights existing under such certificate shall pass to the resulting corporation~~, and the~~. The resulting corporation may exercise such trust powers in the same manner and to the same extent as the association to which such certificate was originally issued. No new application to continue to exercise such powers is necessary. ~~However, when~~ If the name of the resulting corporation differs from that of the association to which the right to exercise trust powers was originally granted, the Commission shall issue a certificate showing the right of such resulting corporation to exercise the trust powers theretofore granted to any of the associations participating in the consolidation or merger.

**Drafting note: Technical changes.**

§ ~~6.1-195.82~~ 6.2-1085. When security not required.

No association with a minimum combined unimpaired capital and surplus of $50,000 or more shall be required by any officer or court of ~~this~~ the Commonwealth to give security upon appointment to or acceptance of any fiduciary office which it may, by law, be authorized to execute, or to give security upon any bond given pursuant to § 4.1-341 or similar statute. ~~However, no~~ No association shall qualify on an estate having a value in excess of its combined unimpaired capital and surplus without giving security for such excess on its bond, unless the giving of such security is waived under the terms of the governing instrument or by court order.

**Drafting note: Technical changes.**

§ ~~6.1-195.83~~ 6.2-1086. Association's operation and supervision of trust department.

A. The board of directors of an association is responsible for the proper exercise of fiduciary powers by the association. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the association in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the association's trust powers as it may consider proper to assign to such directors, officers, employees, or committees as it may designate.

B. No fiduciary account shall be accepted without the approval of the directors, officers, or committees to whom the board may have assigned the performance of that responsibility. A

written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts.

C. Upon the establishment of a trust account for which the association has investment authority, a prompt review of the assets of such account shall be made. The board of directors shall also ensure that at least once during every calendar year thereafter, and within ~~fifteen~~ 15 months of the last review, all the assets held in or held for each trust account for which the association has investment authority are reviewed to determine the advisability of retaining or disposing of such assets. The board of directors shall act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument and in accordance with applicable law.

D. The trust department may utilize personnel and facilities of other departments of the association, and other departments of the association may utilize personnel and facilities of the trust department to the extent not otherwise prohibited by the law.

E. Every association exercising trust powers shall adopt written policies and procedures to ensure that the securities laws of the United States and the Commonwealth are complied with in connection with any decision or recommendation to purchase or sell any security. Such policies and procedures, in particular, shall ensure that the association's trust department shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

F. Every association exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the association and its trust department.

**Drafting note: Technical change.**

§ ~~6.1-195.84~~ 6.2-1087. Books and accounts.

Every association exercising trust powers shall keep its fiduciary records separate and distinct from other records of the association. All fiduciary records shall be so kept and retained for such time as to enable the association to furnish such information or reports with respect thereto as may be required by the Commissioner. The fiduciary records shall contain full information relative to each account. Every association shall also keep an adequate record of all pending litigation to which the association is a party in connection with its exercise of trust powers.

**Drafting note: No change.**

§ ~~6.1-195.85~~ 6.2-1088. Investment of funds and assets held as fiduciary.

Funds and assets held by an association in a fiduciary capacity shall be invested in accordance with the provisions of the governing instrument. When such instrument does not specify the character or class of investments to be made and does not vest in the association, its directors, or its officers absolute and uncontrolled investment discretion in the matter, funds and assets held pursuant to such instrument shall be invested in any investment in which fiduciaries may invest under the provisions of Chapter 3 (§ 26-38 et seq.) of Title 26. An association acting as fiduciary under appointment by a court may likewise invest in any investments in which

fiduciaries may invest under the provisions of Chapter 3 (§ 26-38 et seq.) of Title 26 unless otherwise provided by order of the appointing court. Unless the governing instrument or order establishing the fiduciary relationship provides otherwise, funds and assets held by an association in a fiduciary capacity may also be invested in common trust funds and collective investment funds pursuant to the provisions of § ~~6.1-195.92~~ 6.2-1095.

**Drafting note: Technical change.**

§ ~~6.1-195.86~~ 6.2-1089. Funds awaiting investment or distribution.

A. Funds and assets held in a fiduciary capacity by an association awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the trust account.

B. Funds and assets held in trust by an association, including managing agency accounts, awaiting investment or distribution ~~may~~, unless prohibited by the governing instrument, may be deposited in other departments of the association, provided that the association shall first set aside under the sole control of the trust department, as collateral security:

1. Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

2. Readily marketable securities of the classes in which fiduciaries are authorized or permitted to invest trust funds, as set forth in § 26-40.01; or

3. Other readily marketable securities as may be authorized by the Commissioner.

Such collateral securities, or securities substituted therefor as collateral, shall at all times be at least equal in face value to the amount of trust funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation or other federal insurance agency. The requirements of this subsection are met when qualifying assets of the association are pledged in such manner as to fully secure all trust account funds deposited by the trust department of the association in another department of the association.

C. Any funds held by an association as fiduciary awaiting investment or distribution and deposited in other departments of the association shall be made productive.

D. In the event of the failure or liquidation of an association, the owners of the funds held in trust and deposited in another department of the association shall have a first lien on the securities set apart as collateral for such funds, in addition to any other claim ~~which~~ that such owners may have against the association.

**Drafting note: Changes are technical.**

§ ~~6.1-195.87~~ 6.2-1090. Dealings with self or affiliates.

A. Unless authorized by the governing instrument or by court order, funds held by an association as fiduciary shall not be invested in stock or obligations of, or property acquired from, the association or its affiliates or their directors, officers, or employees, or organizations in which the association or its affiliates or their officers, directors, or employees possess such an interest as might affect the exercise of the best judgment of the association in acquiring the stock, obligations, or property.

B. Property held by an association as fiduciary shall not be sold or transferred, by loan or otherwise, to the association or its affiliates or their directors, officers, or employees, or to organizations in which the association or its affiliates or their officers, directors, or employees possess such an interest as might affect the exercise of the best judgment of the association in selling or transferring such property, except:

1. When lawfully authorized by the governing instrument or by court order;

2. In cases in which the association has been advised by its legal counsel in writing that it has incurred, as fiduciary, a contingent or potential liability, and the association desires to relieve itself from such liability, in which case such sale or transfer may be made with the approval of the board of directors and the Commissioner, provided that in all such cases the association, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the trust account;

3. As provided in §§ ~~6.1-195.86~~ 6.2-1089 and ~~6.1-195.91~~ 6.2-1094; or

4. When required by the Commissioner.

C. If the retention of stock or obligations of the association or its affiliates is authorized by the governing instrument or court order, the association may exercise rights to purchase its own stock or the stock of its affiliates, or securities convertible into such stock, when such rights are offered pro rata to all stockholders of the association or its affiliates, as the case may be. When the exercise of such rights or the receipt of a stock dividend results in fractional shareholdings, additional fractional shares may be purchased to complement the fractional shares so acquired. In elections of directors, shares of an association or its affiliates held by the association as sole fiduciary, whether in its own name as fiduciary or in the name of its nominee, may not be voted by the association or its nominee unless, under the terms of the governing instrument or a court order, the manner in which such shares shall be voted may be directed by a donor or beneficiary of the trust account, and the donor or beneficiary actually directs how the shares will be voted. In addition, where the association is acting as sole fiduciary with respect to a trust account containing voting shares of the association or its affiliates, the association may, in accordance with the provisions of subsection B of § ~~6.1-195.88~~ 6.2-1091, petition ~~a~~ an appropriate court ~~of the competent jurisdiction~~ for appointment of a co-fiduciary for the purpose of voting such shares.

**Drafting note: Technical changes.**

§ ~~6.1-195.88~~ 6.2-1091. Voting of financial institution stock held by association as fiduciary; when association disqualified from voting.

A. When voting shares of a financial institution are held by an association in a trust account, ~~such~~ the association may not vote or participate in the voting of any such shares if the securities held in such fiduciary capacity, together with all the other voting securities of such financial institution held in a fiduciary capacity by the association and its affiliates, exceed ~~twenty-five~~ 25 percent of the outstanding voting securities of such financial institution. If the voting securities of any financial institution held by an association in a trust account, together with all other voting securities of such financial institution held in a fiduciary capacity by the

association and its affiliates, exceed five percent of the outstanding voting securities of such financial institution, but less than ~~twenty-five~~ 25 percent thereof, the association may not vote or participate in the voting of any such voting securities unless there has been a determination by the Commissioner that the right to vote such shares does not constitute control of the particular financial institution in question.

B. If ~~there is~~ any person ~~or entity~~ is acting as fiduciary, in addition to the association, for the trust account containing such voting securities, such other fiduciary, if not a director, officer, or employee of the association or its affiliates, may vote such shares. If the association is the sole fiduciary for the trust account, the association may petition ~~a~~ an appropriate court ~~of competent jurisdiction~~ for the appointment of a co-fiduciary for the sole purpose of voting such shares. Such appointment and qualification may be ex parte, and no prior notice to the beneficiaries of the trust account shall be required. The court at the time of such qualifications may relieve the co-fiduciary of any obligation for the giving of security on his ~~or her~~ bond. If the appointment of the co-fiduciary is limited to voting such shares, such order may provide that the co-fiduciary shall not be liable or accountable in the administration of the trust account, except for the breach of any fiduciary duty in voting or failing to vote such shares. No director, officer, or employee of the petitioning association or its affiliates shall be eligible to be named co-fiduciary under the provisions of this section.

C. The provisions of this section shall also apply in the case of voting shares of a bank holding company, as defined in 12 U.S.C. § 1841, or a savings and loan holding company~~, as defined in § 6.1-194.87,~~ held by an association in a fiduciary capacity.

**Drafting note: Technical changes. In subsection B, "or her" is deleted per § 1-216, which provides that a word used in the masculine includes the feminine and neuter.**

§ ~~6.1-195.89~~ 6.2-1092. Transactions between trust accounts.

A. An association may sell assets held by it as fiduciary in one trust account to itself as fiduciary in another trust account if the transaction is fair to both accounts and if such transaction is not prohibited by the terms of the governing instruments, court order, or the law of the Commonwealth.

B. An association may make a loan to a trust account from the funds belonging to another such account, when the making of such loan to a designated trust account is authorized by the governing instrument creating the account from which such loans are made, or by court order, and the terms of the transaction are fair to all of the trust accounts involved.

C. An association may make a loan to a trust account and may take as security therefor assets of the account, provided such transaction is fair to such account and is not otherwise prohibited by the governing instrument, by court order, or by the law of the Commonwealth.

**Drafting note: Technical changes.**

§ ~~6.1-195.90~~ 6.2-1093. Custody of assets and investments held in trust.

A. The assets and investments of each trust account shall be kept separate from the assets of the association~~,~~ and shall be placed in the joint custody or control of not fewer than two of the

officers or employees of the association designated for that purpose by the board of directors of the association. All such officers and employees shall be adequately bonded.

B. The assets and investments of each trust account shall be either kept separate from those of all other trust accounts, except as provided in § ~~6.1-195.92~~ 6.2-1095, or otherwise adequately identified as the property of the relevant account.

**Drafting note: Technical changes.**

§ ~~6.1-195.91~~ 6.2-1094. Establishment of common trust funds and collective investment funds; court accountings.

A. Any association authorized by the Commission to offer fiduciary services may establish and maintain one or more common trust funds for the collective investment of funds held in a fiduciary capacity by it. ~~Such~~ The association may include, in such common trust fund or funds established and maintained by it, funds held in a fiduciary capacity by any affiliate of the association.

B. An association may invest funds held by it in any fiduciary capacity in one or more common trust funds, provided (i) such investment is not prohibited by the governing instrument or court order creating such fiduciary relationship; (ii) in the case of co-fiduciaries, the written consent of the co-fiduciary is obtained by the association; and (iii) the association has no interest in the assets of the common trust fund other than as a fiduciary.

C. Unless ordered by ~~a~~ an appropriate court ~~of competent jurisdiction~~, an association operating a common trust fund or funds shall not be required to render a court accounting with regard to such fund or funds, but, by application to ~~a~~ an appropriate court ~~of competent jurisdiction~~, such association may secure approval of such an accounting on such conditions as the court may establish. ~~However, nothing~~ Nothing contained herein shall affect the duties of the fiduciaries of the trust accounts participating in the common trust fund to render accounts of their several trusts.

~~D. As used in this section, "common trust funds" shall mean common trust funds which are described under § 584 of the Internal Revenue Code of 1954, as well as any other type of collective investment fund which is exempt from federal income taxation under any other provision of the Internal Revenue Code or regulations issued pursuant thereto.~~

**Drafting note: The definition of common trust fund in subsection D is relocated to proposed § 6.2-1081.**

§ ~~6.1-195.92~~ 6.2-1095. Compensation of association acting as fiduciary.

A. If the amount of the compensation for acting in a fiduciary capacity is not provided for in the governing instrument or otherwise agreed to by the parties, an association acting in such capacity may charge or deduct reasonable compensation for its services. When the association is acting in a fiduciary capacity under appointment by a court, it shall receive such compensation as may be allowed or approved by that court.

B. No association ~~shall~~, except with the specific approval of its board of directors, shall permit any of its officers or employees, while serving as such, to retain any compensation for

acting as a co-fiduciary with the association in the administration of any trust account undertaken by it.

C. No association shall permit an officer or employee engaged in the operation of its trust department to accept a devise, bequest, or gift of trust account assets, unless the devise, bequest, or gift is directed or made by a relative of such officer or employee, or is approved by the board of directors of the association.

**Drafting note: Technical changes.**

§ ~~6.1-195.93~~ 6.2-1096. Surrender of trust powers by association.

Any association ~~which~~ that has been granted the right to exercise trust powers and ~~which~~ that desires to surrender such rights shall file with the Commission a certified copy of the resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Commission shall make an investigation~~, and if it~~. If the Commission is satisfied that the association has been properly discharged from all fiduciary duties ~~which~~ that it has undertaken, the Commission shall issue a certificate to such association certifying that it is no longer authorized to exercise fiduciary powers. Upon issuance of such a certificate by the Commission, an association shall no longer be subject to the provisions of this article and shall not exercise thereafter any of the powers granted by this article without first applying for and obtaining a new authorization to exercise such powers.

**Drafting note: Technical changes.**

§ ~~6.1-195.94~~ 6.2-1097. Effect on trust accounts of appointment of receiver for association or of voluntary dissolution of association.

A. ~~Whenever~~ If a receiver is appointed for an association, ~~such~~ the receiver shall, pursuant to the orders of the Commission and of any court having jurisdiction, proceed to close such of the association's trust accounts as can be closed promptly and shall promptly transfer all other such accounts to substitute fiduciaries.

B. ~~Whenever~~ If an association exercising trust powers commences a voluntary dissolution, the liquidating agent shall proceed at once to liquidate the affairs of the trust department as follows:

1. All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practicable in accordance with the orders or instructions of such court;

2. All other trust accounts which can be closed promptly shall be closed as soon as practicable and final accountings made therefor; and

3. All remaining trust accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

**Drafting note: Technical changes.**

§ ~~6.1-195.95~~ 6.2-1098. Revocation of trust powers.

A. If, in the opinion of the Commission, an association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this chapter, or otherwise fails or has failed to comply with the requirements of this chapter, the Commission may issue and serve upon the

association a notice of intent to revoke the authority of the association to exercise the powers granted by this chapter. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held before the Commission to determine whether an order revoking authority to exercise such powers should issue against the association.

B. Such hearing shall be conducted in accordance with the ~~Rules of Procedure of the Commission~~ Commission's Rules, and shall be fixed for a date not earlier than ~~thirty~~ 30 days and not later than ~~sixty~~ 60 days after the service of such notice, unless an earlier or later date is set by the Commission at the request of the association so served.

C. Unless the association so served shall appear by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent or if, upon the record made at any such hearing, the Commission shall find that any allegation specified in the notice of charges has been established, the Commission shall issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this chapter, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

D. A revocation order shall become effective not later than the expiration of ~~thirty~~ 30 days after service of such order upon the association and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Commission or a reviewing court. In the case of a revocation order issued upon the consent of an association, such order shall become effective at the time specified therein.

**Drafting note: Technical changes.**

§ ~~6.1-194.138~~ 6.2-1099. Trust powers of state savings banks.

State savings banks, and their subsidiaries and affiliates, may exercise fiduciary powers in the same manner as ~~state~~ associations pursuant to ~~the provisions of Chapter 3.2 (§ 6.1-195.77 et seq.) of~~ this ~~title~~ article.

**Drafting note: Existing § 6.1-194.138 is moved to this article because it addresses the exercise of fiduciary powers. Changes are technical.**

~~CHAPTER 3.~~

~~VIRGINIA SAVINGS AND LOAN ACT.~~

~~§ 6.1-194.~~

**Drafting note: Deleted; section number is carried as "reserved." Chapter 3 (§§ 6.1-126 through 6.1-193) was repealed in 1972.**

CHAPTER ~~3.01~~ 11.

~~VIRGINIA~~ SAVINGS INSTITUTIONS ~~ACT~~.

**Chapter drafting note: The provisions of existing Article 10 (Miscellaneous) are integrated into Article 1 (General Provisions). Existing Chapter 1.2 (Compliance Review**

**Committees), as it applies to savings institutions, is set out at proposed § 6.2-1113. Existing Article 11 (Acquisition by Out-of-State Savings Institutions or Out-of-State Savings Institution Holding Companies) is incorporated into (existing and proposed) Article 5 (Foreign Savings Institutions) because, per existing § 6.1-194.96, both articles share the same definitions section. Existing Article 12 (Virginia Savings Bank Act) is incorporated into the provisions of other articles of this chapter. The revised caption reflects the disinclination to use the terms "Act" and "Virginia" in chapter headings.**

Article 1.

General Provisions.

~~§ 6.1-194.1. Short title.~~

~~The short title of the law embraced in this chapter is the "Virginia Savings Institutions Act of 1985."~~

**Drafting note: This section is unnecessary because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter or article serves as a short title citation.**

§ ~~6.1-194.2~~ 6.2-1100. Definitions.

As used in this chapter, ~~the following definitions shall apply~~ unless the context requires a different meaning ~~is required by the context~~:

"Account" means any account with a savings institution and includes a checking, time, interest, or savings account.

"Association" means a savings and loan association~~,~~ or building and loan association ~~or building association which~~ that is authorized by law to accept deposits and to hold itself out to the public as engaged in the savings and loan business.

"Branch office" means an office of a savings institution where, in addition to conducting other business activities of the institution, the institution accepts deposits.

~~"Commission" means the State Corporation Commission.~~

~~"Commissioner" means the Commissioner of Financial Institutions.~~

"Federal financial institution" means a financial institution incorporated or organized in accordance with the laws of the United States.

"Federal savings institution" means a savings institution incorporated or organized in accordance with the laws of the United States.

~~"Financial institution" means a savings institution, commercial bank, trust company, industrial loan association or credit union.~~

"Financial institution holding company" has the meaning assigned to it in § 6.2-700.

"Foreign savings institution" means a savings institution incorporated under the laws of a state~~, territory or possession of the United States,~~ other than the Commonwealth ~~of Virginia~~, ~~whose~~ the principal business office of which is located outside the ~~territorial limits of the~~ Commonwealth. ~~The term "foreign~~ "Foreign savings institution" does not include a savings institution incorporated under the laws of the United States.

"Home loan" means a real estate loan the security for which is a lien on real estate comprising a single-family dwelling or a dwelling unit for four or fewer families in the aggregate.

"Insured savings institution" means a savings institution whose accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency.

"Liquid assets" means (i) cash on hand; (ii) cash on deposit in Federal Home Loan Banks, Federal Reserve Banks, savings institutions, or in commercial banks~~, which~~ that is withdrawable upon not more than ~~thirty~~ 30 days' notice and ~~which~~ that is not pledged as security for indebtedness; (iii) the liquid asset fund of the United States League of Saving Institutions; (iv) obligations of, or obligations ~~which~~ that are fully guaranteed as to principal and interest by, the United States; or (v) any other asset ~~which~~ that the Commissioner designates as a liquid asset. Any deposits in financial institutions under the control or in the possession of any supervisory authority ~~shall not be considered as~~ are not liquid assets.

"Main office" means the office where a savings institution first commences to do business or, ~~where~~ if the savings institution has more than one office, the office designated by the institution's board of directors as the institution's main office.

"Manufactured building" means a manufactured home or other ~~building or~~ structure designed for use as a dwelling or business facility ~~which~~ that is manufactured and assembled at a location other than the site where such manufactured home~~, building~~ or other structure is placed for use as a dwelling or business facility, or both.

"Member" means a person (i) holding a savings account of a mutual association, ~~and a person~~ (ii) borrowing from ~~or~~ a mutual association, (iii) assuming or obligated upon a loan or interest therein held by ~~such~~ a mutual association, or ~~a person~~ (iv) purchasing real estate securing a loan or interest therein held by ~~such~~ a mutual association. ~~A~~ "Member" includes such persons with a joint and survivorship or other multiple owner or borrower relationship ~~constitutes~~, which persons shall constitute a single membership for purposes of this chapter.

"Mutual association" means an association ~~which~~ that is organized and operated exclusively for the benefit of its members and ~~which~~ that does not issue shares of capital stock.

"Mutual savings institution" means a savings institution ~~which~~ that is organized and operated exclusively for the benefit of its members and ~~which~~ that does not issue shares of capital stock.

"Real estate loan" means ~~a~~:

1. A loan on the security of any instrument, whether a mortgage, deed of trust, or land contract, ~~which~~ that makes the interest in real estate described therein, whether in fee or in a leasehold or subleasehold extending or renewable automatically or at the option of the holder, or at the option of the savings institution, for a period of at least ~~ten~~ 10 years beyond the maturity of the loan, specific security for the payment of the obligations secured by ~~such~~ the instrument~~. The term also includes a~~; or

2. A loan, or interest therein, secured by cooperative housing units on the security of (i) a security interest in the stock or membership certificate issued to a tenant-stockholder or resident

member of a cooperative housing corporation ~~(~~, as defined in § 13.1-501~~)~~, coupled with (ii) the assignment by way of security of the borrower's interest in the proprietary lease or other right of tenancy in the property owned by such corporation.

"Savings account" means an interest-bearing account not subject to withdrawal by check or other negotiable instrument.

"Savings bank" means a savings institution specifically chartered under the laws of the Commonwealth, another state or a territory of the United States, the District of Columbia, or the United States as a savings bank. The term savings bank does not include a savings and loan association or building and loan association.

"Savings institution" means a savings and loan association, a building and loan association, ~~building association,~~ or savings bank, whether organized as a capital stock corporation or a nonstock corporation ~~which~~, that is authorized by law to accept deposits and to hold itself out to the public as engaged in the savings institution business.

"Savings institution holding company" means any person who, directly or indirectly, or acting in concert with one or more other companies or with one or more subsidiaries or affiliates, acquires, owns, controls or holds with power to vote 25 percent or more of the voting shares of a stock savings institution, or which controls in any manner the election of a majority of the directors of such institution.

"Service corporation" means a stock corporation ~~whose entire~~, all of the stock of which is owned (i) directly by one or more savings institutions~~,~~ or ~~any such corporation which is owned~~ (ii) indirectly through a subsidiary or subsidiaries of one or more savings institutions.

"State association" means ~~a savings and loan~~ an association ~~or building and loan association~~ incorporated under the laws of the Commonwealth ~~of Virginia~~. ~~"State association" includes such an association which uses the term "savings bank" as a part of its corporate name.~~

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

"State savings bank" means a savings bank organized and incorporated under the provisions of this chapter. A state savings bank shall not be subject to the provisions of this chapter applicable only to state associations.

"State savings institution" means a savings institution incorporated under the laws of the Commonwealth.

"Stock association" means an association ~~which~~ that issues shares of capital stock.

"Stock institution" means a savings institution ~~which~~ that issues shares of capital stock.

"Withdrawal value" means the amount credited to an account less lawful deductions therefrom, as shown by the records of the savings institution.

**Drafting note: The definitions of "Commission," "Commissioner," and "financial institution" are deleted because they are defined on a title-wide basis in proposed § 6.2-100. In the definition of "foreign savings institution," the references to a territory or possession of the United States are deleted under the provisions of § 1-245. The definition of "state association" deletes references to savings and loan and building and loan associations**

**because they are included in the definition provided for "association." The definition of "state bank" is existing subsection B of § 6.1-194.40 and existing subsection B of § 6.1-194.131 (with "principal business office" replacing "main office.") Those subsections provide that the definition of the term is limited to those sections; this proposed change makes it applicable to the entire chapter. The definition of "state savings institution" is new, and is derived from the definitions of state association and state savings bank. The provision in the definition of "member" that addresses multiple relationships constituting a single membership is recast as an expansion of the definition. The definition of "savings institution holding company" is relocated from existing § 6.1-194.87. In the definitions of "association" and "savings institution," the references to "building association" are deleted because the Federal Deposit Insurance Corporation Act does not include building associations as a form of savings institution entity. In the definition of "state association," the second sentence is deleted because there is currently only one state association, and it does not have the term "savings bank" in its name. The definitions of "federal financial institution," "financial institution holding company," "savings bank," and "state savings bank" are moved here from existing § 6.1-194.110. In the definition of "state savings bank," (i) the statement that such an institution is a savings institution is deleted as unnecessary, because the definition of "savings institution" includes savings banks, and (ii) the statement that such an institution is subject to the provisions of Articles 1 through 11 is deleted because there is no longer a separate article for provisions applicable only to savings banks. Other changes are technical.**

§ 6.2-1101. Construction and application of chapter.

A. It is the intention of the General Assembly that this chapter shall be liberally construed to effect the purposes set out herein.

B. The provisions of this chapter shall apply to federal savings institutions and foreign savings institutions doing business in the Commonwealth insofar as the Commonwealth has the power to enact legislation with regard to them.

**Drafting note: Subsection A is the second sentence of existing § 6.1-194.89, and incorporates similar language in existing § 6.1-194.153. Subsection B is existing § 6.1-194.90, and incorporates similar language in existing § 6.1-194.154.**

§ 6.2-1102. Associations operating share accumulation loan plans; continued operation.

Notwithstanding any other provision of law with respect to the rates of interest which that may be charged, an association that on September 1, 1959, was operating on a share accumulation loan plan whereby its earnings were equitably distributed to both its borrowers and its shareholders may continue to operate upon the same plan, but no additional loans shall be made or shares issued under such plan after July 1, 1974.

**Drafting note: Section is existing subsection B of § 6.1-194.91.**

§ 6.2-1103. Prohibitions on conduct of savings institution business; exceptions; penalty.

A. No person shall engage in the savings institution business in the Commonwealth except entities that are state associations, savings banks, federal savings institutions authorized to

transact business in the Commonwealth or foreign savings institutions that have been authorized to transact a savings institution business in the Commonwealth pursuant to the provisions of Article 5 (§ 6.2-1148 et seq.) of this chapter.

B. Nothing in this chapter shall prevent any person who is not authorized to engage in the savings institution business from lending money on real estate or personal security or collateral, or from guaranteeing the payment of bonds, notes, bills or other obligations, or from purchasing or selling stocks and bonds, so long as such person does not hold himself out as being engaged in the savings institution business.

C. Any person who violates this section is guilty of a Class 6 felony.

**Drafting note: Section is existing subsections A and C of § 6.1-194.95. In subsection A, "savings banks" is inserted to clarify that such savings institutions are authorized to engage in the savings institution business.**

§ 6.2-1104. False statements and similar actions prohibited; penalty.

Any person who knowingly makes or causes to be made, directly or indirectly, or through any agency, any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of any savings institution upon any application, advance, discount, purchase or repurchase agreement, commitment, or loan or any change or extension thereof, by renewal, deferment of action or otherwise, or the acceptance, release or substitution of security therefor, is guilty of a Class 1 misdemeanor.

**Drafting note: Section is existing § 6.1-194.93, with technical changes.**

§ 6.2-1105. Use of savings institution name, logo, or symbol for marketing purposes; penalty.

A. Except as provided in subsection B, no person shall use the name, logo, or symbol, or any combination thereof, of a savings institution, or any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or symbol of a savings institution, in marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the savings institution or that the savings institution is responsible for the marketing material or solicitation.

B. This section shall not apply to (i) an affiliate or agent of the savings institution or (ii) a person who uses the name, logo, or symbol of a savings institution with the consent of the savings institution.

C. Any person violating the provisions of this section, either individually or as an interested party, is guilty of a Class 1 misdemeanor.

D. This section shall not affect the availability of any remedies otherwise available to a savings institution.

**Drafting note: Section is existing § 6.1-194.93:1, with technical changes.**

§ 6.2-1106. Prohibitions on the use of certain terms; exceptions; penalty.

A. No person not engaged in the business of a savings institution in the Commonwealth under the provisions of this chapter shall use any sign having thereon any assumed or corporate

name containing the words "savings and loan," "building and loan," "savings bank," or other words indicating that its office is the office of a savings institution; nor shall any such person use or circulate any written or printed material having thereon any assumed or corporate name or word or words indicating that the business of such person is that of a savings institution. However, the use of any of these terms in the name of any other corporation or in connection with any other business is not prohibited when additional words show clearly and definitely that the corporation is not, and that the business is not that of, a savings institution.

B. Any person who violates this section is guilty of a Class 6 felony.

**Drafting note: Section is existing subsections B and C of § 6.1-194.95.**

§ 6.2-1107. Defamation of savings institutions and certain federal agencies prohibited; penalty.

No person shall willfully and knowingly make, issue, circulate, or transmit, or cause or knowingly permit to be made, issued, circulated, or transmitted, any statement or rumor, written, printed, reproduced in any manner, or by word of mouth, that is untrue in fact and is (i) malicious, in that it is calculated to injure reputation or business, and (ii) derogatory to the financial condition or standing of any savings institution or Federal Home Loan Bank. Any person who violates this section is guilty of a Class 2 misdemeanor.

**Drafting note: Section is existing § 6.1-194.94, with technical changes.**

§ ~~6.1-194.3~~ 6.2-1108. Membership in Federal Home Loan Bank and Federal Deposit Insurance Corporation authorized; insurance required as a condition to receiving deposits; representations that accounts are insured; misleading advertisements.

A. A savings institution may become a member of the Federal Home Loan Bank and the Federal Deposit Insurance Corporation or other federal insurance agency and conform to the provisions~~, rules~~ and regulations thereof.

B. Any savings institution doing business in the Commonwealth that does not have its accounts insured by the Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the insurance provided thereby, shall not accept any deposits.

**Drafting note: Subsection B is subsection C of existing § 6.1-194.91.**

§ 6.2-1109. Representations that accounts are insured; misleading advertisements

A. A savings institution shall not make any representation, oral or written, that any of its accounts are insured or guaranteed unless such accounts are insured or guaranteed by an instrumentality of the United States or other insurer approved by the Commission.

B. A savings institution shall not publish any misleading advertisement.

**Drafting note: Section is existing § 6.1-194.92, with the second sentence set out as a separate subsection. Proposed subsection A is reworded to state its purpose more clearly.**

§ ~~6.1-194.4~~ 6.2-1110. ~~Facilitating~~ Membership in facilitating organizations or instrumentalities.

~~Every~~ A savings institution ~~shall have the power to~~ may become a member of, deal with, maintain reserves or deposits with, or make reasonable payments or contributions to, and comply with any reasonable requirements or conditions of eligibility of, any government or private

organization or instrumentality~~, government or private,~~ to the extent that ~~such~~ the organization or instrumentality assists in furthering or facilitating the institution's purposes, powers, services or community responsibilities~~, and to comply with any reasonable requirements or conditions of eligibility~~. ~~However, this~~ This section shall not be construed ~~so as~~ to permit a savings institution to establish deposit or reserve accounts with any financial institution or other entity ~~the~~ if its accounts ~~of which~~ are not insured by federal agency or other insurer approved by the Commissioner.

**Drafting note: Technical changes.**

§ ~~6.1-194.5~~ 6.2-1111. ~~State association may~~ Authority to purchase, convey or manage property in which ~~it~~ state savings institution has a security interest; time limitation.

A. A state ~~association~~ savings institution may ~~purchase~~:

1. Purchase at any sale, public or private, any real estate or personal property upon which it has a mortgage, judgment, deed of trust, pledge, lien or other encumbrance or in which it has any interest~~. It may acquire~~; and

2. Acquire any real or personal property ~~which may be~~ that is conveyed or transferred to it in full or partial satisfaction, discharge or release of loans for which such property is security.

B. ~~An association~~ A state savings institution may sell, convey, lease, exchange, improve, repair, mortgage, convey in trust, pledge or encumber any real or personal property purchased or acquired by it as authorized by subsection A ~~of this section~~.

C. ~~An association~~ A state savings institution may invest its funds~~, operate a business,~~ in or manage or deal in property or invest its funds in or operate a business, when any of these 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 ~~is~~ shall not ~~to~~ be held or operated by the ~~association~~ state savings institution for a period in excess of six years~~,~~ unless specifically authorized by the Commissioner.

**Drafting note: Section is amended to provide that it applies to state savings banks, per existing subdivision 16 of § 6.1-194.136.**

~~§ 6.1-194.6. Rate of interest chargeable by savings institutions.~~

~~In addition to the permissible interest rates and charges specifically granted to savings institutions by this title, savings institutions may take, receive, reserve, and charge on any loan any rate of interest, finance charge or other loan charge permitted to any other lender under the laws of the Commonwealth, other than those rates or charges permitted to consumer finance companies.~~

**Drafting note: Section is combined with existing § 6.1-5.3 (Rate of interest chargeable by state banks) and moved to proposed § 6.2-310.**

§ ~~6.1-194.7~~ 6.2-1112. Applicability of Virginia Uniform Commercial Code to commercial paper and depository activities of savings institutions.

The definitions and provisions contained in Title 8.3A (§ 8.3A-101 et seq.) and Title 8.4 (§ 8.4-101 et seq.) shall apply to the commercial paper and deposit account activities of savings institutions doing business in the Commonwealth, to the extent that such definitions and

provisions are not inconsistent with the provisions of this chapter. ~~As applied to savings institutions, whenever the term "bank" shall appear in the provisions of Title 8.3A (§ 8.3A-101 et seq.) and Title 8.4 (§ 8.4-101 et seq.), such term shall be deemed to include savings institutions, unless the context otherwise requires.~~

**Drafting note: The second sentence is deleted because § 8.4-105, which defines "bank," as used in Titles 8.3A and 8.4, is amended to clarify that "bank" includes savings institutions. In § 8.4-105, "savings bank, savings and loan association" is replaced with "savings institution."**

~~CHAPTER 1.2.~~

~~COMPLIANCE REVIEW COMMITTEES.~~

**Drafting note: Existing Chapter 1.2 is limited in scope to banks and savings institutions. It is of such limited length and scope that it is preferable to be set out in this proposed chapter and proposed Chapters 8 (Banks). The three sections in the existing chapter are combined into one section (§ 6.2-1113).**

~~§ 6.1-2.16. Definitions.~~

~~As used in this chapter, the following terms shall have the following meanings:~~

~~"Bank" means a bank as defined in § 6.1-4.~~

~~"Compliance Review Committee" means a committee appointed by a bank's or by a savings institution's board of directors for the purpose of evaluating and improving the bank's or savings institution's compliance with federal and state laws and adherence to its own established ethical and financial standards. The definition of compliance review committee includes any other person when that person acts in an investigatory capacity at the direction of a compliance review committee; however, the work product created by any person prior to his participation in the work of the compliance review committee or at the direction of the compliance review committee shall be subject to the rules governing discovery in accordance with the Rules of the Virginia Supreme Court~~.

~~"Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation or other entity.~~

~~"Savings institution" means a savings institution as defined in § 6.1-194.2~~.

**Drafting note: The definition of person is set out in existing § 1-230. The definition of "bank" is deleted because the term is not used in this article. Savings institution is defined in proposed § 6.2-1100. The definition of "compliance review committee" is moved to proposed subsections A and E of § 6.2-1113.**

§ ~~6.1-2.17~~ 6.2-1113. ~~Compliance~~ Discoverability or admissibility of compliance review committee documents.

A. As used in this section, "compliance review committee" means a committee appointed by the board of directors of a savings institution for the purpose of evaluating and improving the savings institution's compliance with federal and state laws and adherence to its own established ethical and financial standards, and includes any other person when that person acts in an investigatory capacity at the direction of a compliance review committee.

B. Any records, reports or other documents created by a compliance review committee are confidential and ~~are~~ shall not be discoverable or admissible in evidence in any civil action ~~except~~ unless, upon motion ~~and in the discretion of,~~ the trial court ~~if it~~ determines in its discretion that there has been an abuse of the provisions of this ~~chapter~~ section.

~~B~~ C. Any records, reports or other documents produced by a compliance review committee and delivered to a federal or state governmental agency remain confidential and ~~are~~ shall not be discoverable or admissible in evidence in any civil action, except to the extent that ~~they are not protected from disclosure under~~ applicable ~~laws~~ law provides that such records, reports or other documents are not protected from disclosure.

~~C~~ D. In no event shall the existence of or any action by a compliance review committee serve as a basis or justification for delay of, or limit upon, the discovery process set forth in state or federal rules.

E. The work product created by any person acting in an investigatory capacity at the direction of a compliance review committee prior to his participation in the work of the compliance review committee or at the direction of the compliance review committee shall be subject to the rules governing discovery in accordance with the Rules of the Virginia Supreme Court.

F. This section shall not be construed to limit the discovery or admissibility:

1. In any civil action of any records, reports or other documents that are not created by a compliance review committee; or

2. Of any factual information which may be reviewed by a compliance review committee.

**Drafting note: Proposed subsection A contains the only remaining defined term from existing § 6.1-2.16. Existing subsections A and B are updated and clarified. Proposed subsection E is relocated from the definition of "compliance review committee" in existing § 6.1-2.16, with the qualification contained in that definition that limits it to persons acting in an investigatory capacity at the direction of a compliance review committee. Proposed subsection F is relocated from existing § 6.1-2.18.**

~~§ 6.1-2.18. Effect of chapter; discovery or admissibility not limited under certain circumstances.~~

~~This chapter shall not be construed to limit the discovery or admissibility in any civil action of any records, reports or other documents that are not created by a compliance review committee, nor shall it be construed to limit the discovery or admissibility of any factual information which may be reviewed by a compliance review committee.~~

**Drafting note: This section, with technical changes, is moved to proposed subsection F of § 6.2-1113.**

Article 2.

Incorporation; Certificate of Authority; Corporate Administration.

§ ~~6.1-194.8~~ 6.2-1114. Application of Virginia Stock Corporation Act and Virginia Nonstock Corporation Act.

A. The provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) shall apply to all stock ~~savings~~ institutions in all cases not inconsistent with the provisions of this chapter, except the provisions of Article 15 (§ 13.1-729 et seq.) of Chapter 9 of Title 13.1 shall not apply.

B. The provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) shall apply to all mutual savings institutions in all cases not inconsistent with the provisions of this chapter including mutual savings and loan associations heretofore incorporated under the Virginia Stock Corporation Act or prior laws relating to stock corporations.

**Drafting note: Technical change.**

§ ~~6.1-194.9~~ 6.2-1115. Formation of state savings ~~and loan associations~~ institutions.

A. A stock savings and loan association may be incorporated as provided in the Virginia Stock Corporation Act (§ 13.1-601 et seq.). A mutual savings and loan association may be incorporated as provided in the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.).

B. A stock savings bank may be formed by being incorporated as provided in the Virginia Stock Corporation Act (§ 13.1-601 et seq.). A mutual savings bank may be formed by being incorporated as provided in the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.).

**Drafting note: Subsection B is existing § 6.1-194.111; changes are technical.**

§ ~~6.1-194.10~~ 6.2-1116. Corporation name.

A. Every association incorporated under the laws of ~~this~~ the Commonwealth shall have as a part of its corporate name the words "building and loan association" or "savings and loan association." ~~In lieu of the foregoing provisions of this section, and notwithstanding the provisions of § 6.1-112, a state association may also use the words "savings bank" as a part of its corporate name.~~ No state association shall use the words "savings bank" as part of its corporate name.

B. Every savings bank incorporated under the laws of the Commonwealth shall have as a part of its corporate name the words "savings bank."

C. ~~No association, however, need comply with the~~ The provisions of subsection A of § 13.1-630 shall not apply to any association or state savings bank.

**Drafting note: The second sentence of existing subsection A is deleted because it is in conflict with existing § 6.1-194.112. The second sentence of proposed subsection A is the third sentence of existing § 6.1-194.112. Subsection B is the first sentence of existing § 6.1-194.112. Revisions in proposed subsection C incorporate the provisions of the second sentence of § 6.1-194.112.**

§ ~~6.1-194.11~~ 6.2-1117. Par value of shares; payment of shares; reacquisitions of shares or acceptance thereof as security; how subscriptions to stock to be paid; disposition of money received before institution opens; stock option plans.

A. Shares of stock issued by a stock ~~association~~ institution shall be paid for in full in cash at not less than their par value upon issuance or, in the case of ~~an association~~ a stock institution then actively conducting operations, in property or services valued, with the approval of the Commission, at an amount not less than the aggregate value of the shares issued in exchange therefor. ~~An association~~ A stock institution may not purchase, redeem or otherwise reacquire

shares of stock that it has issued and may not accept its shares of stock as security~~; provided, that a~~. A stock ~~association~~ institution shall have the power to redeem or otherwise reacquire shares of its common or preferred stock to the same extent as commercial banks incorporated under the laws of the Commonwealth are permitted to do under this title.

B. Subscriptions to the capital stock of a stock institution shall be paid in money at not less than par. No stock institution shall begin business until the amount specified in its certificate of authority to commence business has been received by it.

C. All money received for subscriptions to or for purchases of stock of a stock institution before it opens for business shall be deposited in an escrow account in an insured financial institution or invested in United States government obligations, under the joint control of two organizing directors of the stock institution, both of whom shall be bonded for an amount not less than the total amount of money under their control. Such funds, together with any income thereon, less such organizational expenses as have been approved by the ~~association's~~ stock institution's board of directors, shall be remitted to the stock institution on the day it opens for business. ~~In the event~~ If the stock institution is denied a certificate of authority, is refused insurance of accounts, or it is otherwise determined that the stock institution will not open for business, such funds, after payment of any amount owing for expenses in connection with such attempted organization, including reasonable consulting fees, ~~attorneys'~~ attorney fees, salaries, filing fees and other expenses, shall be refunded to subscribers or shareholders. The directors of the stock institution, individually, jointly and severally, shall be liable for any failure of the savings institution to refund such funds to the subscribers or shareholders. This liability may be enforced by a suit in equity instituted by one or more of the subscribers or stockholders on behalf of all against the stock institution and one or more of its directors.

~~C~~ D. The requirement that capital stock be paid in money shall not be construed to prohibit the establishment, as otherwise authorized by law, of stock option plans and stock purchase plans, and the issuance of stock pursuant to such plans. Such plans shall be established only after the stock institution has opened for business. Any such plan with respect to a stock association shall be established as follows:

1. The board of directors shall by resolution propose the stock option or stock purchase plan. The plan shall describe any effect the adoption of the plan is expected to have on the value of issued and outstanding shares of the association~~.~~;

2. Notice of a meeting of stockholders, stating that the purpose or one of the purposes of the meeting is to consider the plan so proposed by the board of directors, shall be given to each stockholder of record entitled to vote thereon within the time and in the manner provided in Chapter 9 (§ 13.1-601 et seq.) of Title 13.1 for giving of notice of meetings of stockholders. A copy of the plan shall be included with such notice~~.~~; and

3. At such meeting, the plan shall be adopted if approved by the affirmative vote of the holders of more than two-thirds of the shares entitled to vote thereon.

Any such plan with respect to a savings bank shall be adopted if approved by a majority vote of the institution's shareholders. In no event shall such a plan established by a stock savings

bank provide that a stock option be granted at a price which is less than 100 percent of the book value per share of the stock as shown by the stock institution's last published statement prior to the granting of the option.

**Drafting note: Section incorporates the provisions of existing § 6.1-194.113.**

§ ~~6.1-194.12~~ 6.2-1118. Certificate of authority to do business.

A. Before any ~~organizing~~ state ~~association~~ savings institution may begin business in the Commonwealth, it shall obtain from the Commission a certificate of authority to do so~~, and prior~~. Prior to ~~the issuance of such~~ issuing a certificate, the Commission shall ascertain that:

1. All applicable provisions of law have been complied with;

2. ~~In~~ If a mutual association, deposits in a total amount deemed by the Commission to be sufficient to warrant successful operation but not less than ~~two~~ $2 million ~~dollars~~, have been pledged or deposited and that such deposits shall not be withdrawable for at least one year~~, or, in~~;

3. If a stock association, that financially responsible persons have subscribed for capital stock and surplus in an amount deemed by the Commission to be sufficient to warrant successful operation, provided that the capital stock shall have a paid-in value of not less than ~~two~~ $2 million ~~dollars. The minimum capital stock requirement under this subdivision shall apply in cases in which a state association is being organized to begin business; it shall not be applicable when this section is referred to or used in connection with the conversion of an operating savings institution or bank to a state association, or when this section is used in connection with the reorganization of an operating state association under a holding company~~;

~~3~~ 4. If a mutual savings bank, deposits in such amount as the Commission deems necessary for safe and sound operation, but not less than $1 million have been pledged or deposited and that such deposits are not subject to withdrawal for at least one year;

5. If a stock savings bank, that financially responsible persons have subscribed for capital stock in an amount deemed by the Commission to be sufficient to warrant successful operation, provided that the capital stock shall have a paid-in value of not less than $1 million;

6. Regulations governing directors of the association have been complied with;

~~4~~ 7. The public interest will be served by the addition of the proposed savings institution facilities in the community where the savings institution is to be located. The addition of such facilities shall be deemed in the public interest if, based on all relevant evidence and information, advantages such as increased competition, additional convenience, or gains in efficiency outweigh possible adverse effects such as diminished or unfair competition, undue concentration of resources, conflicts of interests, or unsafe or unsound practices; ~~and~~

~~5~~ 8. The officers and directors of the proposed savings institution ~~are of~~ demonstrate (i) moral fitness, (ii) financial responsibility, and (iii) business ability; and

9. The applicant has submitted evidence of (i) being fully insured by the Federal Deposit Insurance Corporation or other federal insurance agency or (ii) commitment by the Federal Deposit Insurance Corporation or other federal insurance agency that the applicant will be issued insurance of accounts immediately subsequent to the issuance of the certificate of authority. The Commission may issue a certificate conditioned upon the fact that the savings institution shall

not commence to do business until it is issued insurance of accounts by the Federal Deposit Insurance Corporation or other federal insurance agency.

~~As used herein, "public interest" shall have the meaning set forth in subdivision 4 of subsection A of § 6.1-13.~~

B. The minimum capital stock requirement under:

1. Subdivisions A 2 and A 3 shall apply when a state association is being organized to begin business and shall not apply when this section is referred to or used in connection with the conversion of an operating savings institution or bank to a state association, or when this section is used in connection with the reorganization of an operating state association under a holding company; and

2. Subdivisions A 4 and A 5 shall apply when a state savings bank is being organized to begin business and shall not apply when this section is referred to or used in connection with the conversion of an operating savings institution or bank to a state savings bank, or when this section is used in connection with the reorganization of an operating state savings bank under a holding company

~~B. No certificate of authority shall be issued on or after June 1, 1973, unless the applicant for such certificate:~~

~~1. Submits evidence of being fully insured by the Federal Deposit Insurance Corporation or other federal insurance agency; or~~

~~2. Submits sufficient evidence of commitment by the Federal Deposit Insurance Corporation or other federal insurance agency that the applicant will be issued insurance of accounts immediately subsequent to the issuance of the certificate of authority.~~

~~The Commission may issue such certificate conditioned upon the fact that the association shall not commence to do business until it is issued insurance of accounts by the Federal Deposit Insurance Corporation or other federal insurance agency.~~

~~C. Any interested person may appeal to the Supreme Court of Virginia from any order of the Commission granting or denying such certificate of authority.~~

**Drafting note: Section incorporates existing § 6.1-194.114. In subsection A, "organizing" is deleted as unnecessary; as revised, it conforms to the parallel provision of existing § 6.1-194.114. In subdivision A 7, the test for whether facilities are in the public interest, set out in existing § 6.1-13, is set out. Existing subsection B is set out as subdivision 8. Existing subsection C is deleted as unnecessary, because final decisions of Commission action may be appealed only to the Supreme Court in all instances.**

§ ~~6.1-194.13~~ 6.2-1119. Commissions~~,~~ and other fees~~, etc.,~~ for sale of stock not permitted.

The ~~State Corporation~~ Commission shall not issue a certificate of authority to any state ~~association~~ savings institution to commence business if commissions, fees, brokerage, or other compensation,~~ by whatever name it may be called~~ however designated, have been paid or contracted to be paid by the savings~~ and loan association,~~ institution or by anyone in its behalf, either directly or indirectly, to any person~~, partnership, association or corporation~~ for the sale of stock in such savings~~ and loan association~~ institution. ~~Nothing herein~~ This section shall not be

construed to prohibit ~~an association which~~ a savings institution that has been issued a certificate of authority and has commenced operations from paying or contracting to pay such commissions or fees in connection with the issue or reissue of shares of stock of the ~~association~~ savings institution.

**Drafting note: Section incorporates provisions of existing § 6.1-194.115, by making it applicable to savings institutions, which encompasses both associations and savings banks. Per § 1-230, "person" includes the other entities listed. Other changes are technical.**

§ 6.2-1120. Minimum capital requirement.

A state savings bank shall comply with the applicable minimum capital requirements of the Federal Deposit Insurance Corporation. The Commission may impose such additional minimum capital requirements as it deems necessary in order to insure the safe and sound operation of state savings banks.

**Drafting note: Section is existing § 6.1-194.116, with technical changes.**

§ ~~6.1-194.14~~ 6.2-1121. Board of directors ~~generally; report to Commission; oaths of directors~~.

A. The affairs of every state ~~association~~ savings institution shall be managed by a board of directors of not less than five nor more than ~~twenty-five~~ 25 persons. Every director of a stock ~~association~~ savings institution shall be the owner in his own name and have in his personal possession or control, shares of stock in the ~~association~~ savings institution of which he is a director ~~which~~ that have a market value at the time such director is first elected to the board of not less than $500. Such shares of stock shall be unpledged, except as required to be pledged to a Federal Home Loan Bank, Federal Reserve Bank, or other federal agency, and unencumbered at the time of his becoming a director and during the whole of his term as ~~such~~ director. ~~When~~ If a stock ~~association~~ savings institution is controlled by a savings institution holding company ~~as defined in § 6.1-194.87~~, a director may comply with the provisions of this section for each stock ~~association~~ savings institution of which he is a director by ownership, in similar manner, of shares of capital stock of the holding company ~~which~~ that have a market value at the time such director is first elected to the board of not less than $500.

B. Every director of a mutual state association shall have a savings account in the association of which he is a director, in his own name or jointly with his spouse, of not less than $500. ~~Such~~ A mutual state savings bank shall be subject to the requirements of subsection A, except that, in lieu of owning qualifying shares of stock in the savings bank, each director shall maintain, while a director, a savings account in the savings bank of not less than $500. Any account ~~must~~ required by this subsection shall be unpledged, except as required to be pledged to a Federal Home Loan Bank, and unencumbered at the time of his becoming a director and during the whole term as ~~such~~ director. The office of any director violating the provisions of subsection A or this ~~section~~ subsection shall immediately become vacant.

C. Every director of a state ~~association~~ savings institution, within ~~thirty~~ 30 days after his election or reelection, shall take and subscribe to an oath that he (i) will diligently and honestly perform his duties as director and (ii) is the owner and has in his personal possession or control

the shares of stock or savings account in the ~~association~~ savings institution required by this section and, in the case of reelection or reappointment, that, during the whole of his immediate previous term as a director, such stock or account was not at any time pledged or encumbered in any other manner to secure a loan. The oath, subscribed to by the director~~,~~ and certified by the officer before whom it is taken, shall be transmitted to the Commission. Any director who fails for a period of ~~thirty~~ 30 days after his election, reelection, appointment or reappointment to take the oath required by this ~~section~~ subsection shall forfeit his office.

D. Within ~~sixty~~ 60 days following the election or reelection of any person as a director of a state ~~association~~ savings institution, the ~~association~~ savings institution shall furnish such information to the Commission relative to the personal character, integrity, financial condition, and personal and business background of the director as the Commission shall from time to time prescribe. The report, under oath, shall be signed by the director as well as by a designated officer of the ~~association~~ savings institution. Any person knowingly making a false statement in such a report shall be guilty of perjury ~~and be punished accordingly~~, punishable as provided in § 18.2-434.

**Drafting note: Section incorporates the provisions of existing § 6.1-194.117, by making it applicable to savings institutions. In subsection B, the amendment in the last sentence clarifies that the sanction applies only to violations of subsection A or B. The phrase "shall be punished accordingly" is replaced with the reference to punishment for perjury. Other changes are technical or stylistic.**

§ ~~6.1-194.15~~ 6.2-1122. Meetings of board of directors.

The board of directors of every state ~~association~~ savings institution shall hold meetings at least once in every calendar month~~, at which~~. At any meeting a majority of the whole board shall be necessary for the lawful transaction of business, ~~except that~~ unless the stockholders or members, by bylaw, ~~may fix any~~ have fixed another number, which in the case of a state savings bank shall be not less than five, as a quorum. The Commission may allow less frequent meetings, but not less often than quarterly.

**Drafting note: Section incorporates the provisions of existing § 6.1-194.118. Changes are technical.**

§ ~~6.1-194.16~~ 6.2-1123. Notice of meetings of members; determining members entitled to notice or to vote.

A. A mutual savings ~~and loan association~~ institution shall give notice of its meetings of members as required by § 13.1-842~~,~~ and~~, in addition,~~ shall post a copy of the notice ~~shall be posted~~ in a conspicuous place in each office of the ~~association~~ institution during the ~~fourteen~~ 14 days preceding the date of the meeting.

B. For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other purpose, the board of directors of a mutual ~~association~~ savings institution may provide that the membership shall be closed for a stated period but not to exceed, in any case, ~~fifty~~ 50 days. In lieu of closing the membership, the bylaws~~,~~ or, in the absence of any applicable bylaw, the board

of directors may fix in advance a date as the record date for any such determination of membership. Such date in any case shall not be more than ~~fifty~~ 50 days prior to the date on which the particular action, requiring such determination of members, is to be taken. If the membership is not closed and no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of members, the date on which notice of the meeting is mailed shall be the record date for such determination of membership. When a determination of members entitled to vote at any meeting of members has been made as provided in this section, ~~such a~~ the determination shall apply to any adjournment thereof.

**Drafting note: Section is made applicable to mutual savings banks by changing the reference to "mutual association" to "mutual savings institution." Note that there is no existing comparable provision in Article 12 that address the issue with respect to mutual savings banks.**

§ ~~6.1-194.17~~ 6.2-1124. Voting rights; proxies.

~~In~~ The right of members of a mutual savings ~~and loan associations the right of members~~ institution to vote may not be conferred or limited by the articles of incorporation. In the determination of all questions requiring action by the members, each member shall be entitled to cast one vote, plus an additional vote for each $100 or fraction thereof of the withdrawal value of savings accounts, if any, held by such member. No member, however, shall be entitled to cast more than ~~fifty~~ 50 votes. At any meeting of the members, voting may be in person or by proxy, provided that no proxy shall be eligible to be voted at any meeting unless such proxy shall have been filed with the secretary of the ~~association~~ institution, for verification, at least five days prior to the date of such meeting. Each proxy shall be in writing and signed by the member or his duly authorized attorney-in-fact and, when filed with the secretary, shall, unless otherwise specified in the proxy, continue in force from year to year until revoked by a writing duly delivered to the secretary of the ~~association~~ institution or until superseded by subsequent proxies or upon the member's ceasing to be a member of the ~~association~~ institution.

**Drafting note: Section is made applicable to mutual savings banks by changing the reference to "mutual savings and loan association" to "mutual savings institution." Note that there is no existing comparable provision in Article 12 that address the issue with respect to mutual savings banks.**

§ ~~6.1-194.18~~ 6.2-1125. Access to books and records; communication with members.

A. ~~1~~. Every person having an account or loan with a savings institution shall have the right to inspect ~~such~~ the books and records of the institution ~~insofar as they~~ that pertain to his loan or account. ~~Otherwise,~~ In all other situations the right ~~of inspection and examination of~~ to inspect and examine the institution's books and records shall be limited to:

~~a~~ 1. ~~To the~~ The Commissioner or his duly authorized representatives;

~~b~~ 2. ~~To persons~~ Persons duly authorized to act for the institution; and

~~c~~ 3. ~~To any~~ Any federal or state instrumentality or agency authorized to inspect or examine the books and records of such institution.

~~2~~ B. The books and records pertaining to the accounts and loans of a savings institution shall be kept confidential by the institution, its directors, officers, and employees except where the disclosure thereof shall be compelled by ~~a~~ an appropriate court ~~of competent jurisdiction~~ or otherwise required by law. No person shall have access to the books and records of the institution or shall be furnished or shall possess information concerning individual accounts or loans of the institution or concerning the owners of such accounts or borrowers, except as authorized in writing by the account owner or borrower or as otherwise expressly authorized by law. ~~However, a~~ A savings institution is authorized to release, publish or furnish general information and statistical data concerning its accounts and loans, ~~so long as~~ provided the identity of individual account owners or borrowers, ~~or~~ and other confidential information, is not revealed.

~~B~~ C. ~~In the event, however, that~~ If any member ~~or members~~ of a mutual savings institution ~~desire~~ desires to communicate with other members with reference to any questions pending or to be presented for consideration at a meeting of the members, the institution shall furnish upon request a statement of the approximate number of members of the institution at the time of such request~~,~~ and an estimate of the cost of forwarding such communication. The requesting member ~~or members~~ shall then submit the communication, together with a sworn statement that the proposed communication is not for any reason other than the business welfare of the institution, to the Commissioner. If the Commissioner finds the communication to be appropriate, truthful and in the best interest of the institution and its members, he shall execute a certificate setting out such findings, forward the certificate together with the communication to the institution, and direct that the communication be prepared and mailed by the institution to the members upon the requesting member's ~~or members'~~ payment to it of the expenses of such preparation and mailing. If the Commissioner finds such proposed communication to be inappropriate, untruthful, or contrary to the best interest of the institution and its members, he ~~shall have the discretion to~~ may make any disposition of the request to communicate ~~which~~ that he deems proper and he shall execute a certificate setting out such findings and deliver it to the requesting member together with his order making disposition of the request.

~~C~~ D. Insofar as the provisions of this section are not inconsistent with federal law, such provisions shall apply to federal savings institutions whose home offices are located in the Commonwealth, except that the communication and statement provided for in subsection ~~B of this section~~ C shall be tendered to the appropriate federal agency in the case of a federal savings institution and forwarded only upon that agency's certificate and direction.

~~D~~ E. Nothing in this section shall be construed to prohibit a savings institution from furnishing the names, addresses and telephone numbers of its customers to an affiliate of the institution or an entity with whom the institution has a direct contractual relationship, for purposes of furnishing financial services to the institution's customers. Such affiliate or entity shall not furnish such customer information to any third party without the written authorization of the customer.

**Drafting note: The phrase "or members" is deleted because § 1-227 provides that any word in the singular includes the plural and vice versa. "Court of competent jurisdiction" is replaced with "appropriate court" per current style. Other changes are technical.**

§ ~~6.1-194.19~~ 6.2-1126. Audit of ~~association~~ savings institution; report.

The directors of every savings institution shall, at least once in each calendar year, cause an independent audit by a certified public accountant to be made of the institution, its operation and its general books of account. The report of such audit shall be presented to the institution's board of directors at its next regular meeting after completion of the audit. The minutes of such meeting shall reflect that the audit report was presented and reviewed by the board, and a copy of the audit report shall be filed with the Bureau ~~of Financial Institutions~~ within two weeks from the date such report is received by the institution from the auditor.

**Drafting note: "Bureau" is defined in proposed § 6.2-100. Amendment to catchline conforms it to the text of the section.**

§ ~~6.1-194.20~~ 6.2-1127. Bonds of officers and employees.

A. The directors of every savings institution shall require a bond with corporate surety from each of the active officers and employees of the institution as an indemnity for any loss the institution may sustain as a result of such person's fraud, dishonesty, theft or embezzlement. In lieu of individual bonds a blanket bond with corporate surety covering all active officers and employees of the institution may, with the approval of the board of directors, be obtained. The Commission shall, not less than twice during any period of three consecutive calendar years, examine all such bonds and pass on their sufficiency and either the board of directors or the Commission may require new or additional bonds at any time. The corporate surety shall have a license issued by the Commission.

B. If a savings institution determines that it is unable to obtain the surety bond coverage required by ~~this section~~ subsection A, it shall immediately notify the Commission~~, which~~. The Commission shall forthwith investigate to determine whether such coverage is available to the institution. If the Commission determines, after such investigation, that such coverage is not reasonably available to the institution, the Commission may, but shall not be required to, close the institution solely because of the unavailability of such coverage~~, but may do so~~ under § ~~6.1-194.83~~ 6.2-1199. If the institution is not closed because of the unavailability of such coverage, the Commission shall closely monitor the institution to ensure that such coverage is obtained as soon as possible, and shall take such further action under § ~~6.1-194.83~~ 6.2-1199 or ~~§ 6.1-194.84~~ 6.2-1200 as the Commission deems necessary.

~~B~~ C. The institution, at its cost, may also obtain insurance to protect its directors, officers and employees against lawsuits arising out of claims of negligence or misconduct.

**Drafting note: In subsection B, the proposed penultimate sentence attempts to clarify the awkward phrase "but may do so under § 6.1-194.83," which section does not enumerate the failure to obtain the bond as grounds for closing an institution, and authorizes such closings, among other grounds, generally for failure to fully observe the laws of the Commonwealth. Other changes are technical.**

§ ~~6.1-194.21~~ 6.2-1128. Loans to executive officers or directors.

A. As used in this section, "executive officer" means an officer of a savings institution who participates or has authority to participate in the major policy-making functions of the savings institution.

B. No executive officer or director of any savings institution shall borrow any amount more than $25,000 from the institution until such loan has been approved by (i) ~~by~~ a majority of the directors of the institution or (ii) ~~by~~ a committee of officers and directors~~, which shall include~~ that includes at least one director appointed by the board of directors with authority to approve loans. ~~An executive officer is one who participates or has authority to participate in the major policy-making functions of the savings institution~~.

~~B~~ C. ~~1.~~ The following loans or lines of credit shall not be made by an institution unless specifically approved by (i) a majority of the directors of the institution or ~~by the~~ (ii) a committee of officers and directors ~~as described in subsection A of this section, in which case such approval shall be reported to the board of directors at its next regular meeting~~ that includes at least one director appointed by the board of directors with authority to approve loans:

~~a~~ 1. Any loan in an amount of $25,000 or more made to any executive officer or director of an institution or any entity ~~which~~ that the Commission determines is controlled by one or more executive officers or directors;

~~b~~ 2. Any loan made to the persons or entities described in subdivision 1 ~~a of this subsection~~, the amount of which together with all other obligations, direct or indirect, of such executive officer, director or controlled entity is $100,000 or more;

~~c~~ 3. Any line of credit for $25,000 or more made to the persons or entities described in subdivision 1 ~~a of this subsection~~; or

~~d~~ 4. Any line of credit made to the persons or entities described in subdivision 1 ~~a of this subsection~~, the amount of which together with all ~~the~~ other obligations, direct or indirect, of such executive officer, director or controlled entity is $100,000 or more.

If approved by the committee described in clause (ii), the approval shall be specifically reported to the board of directors at its next regular meeting.

~~2~~ D. No extension, renewal or renegotiation of any loan or line of credit in excess of the amounts described in ~~subdivision 1 of this~~ subsection C shall be made to any of those individuals or entities or their interests~~,~~ unless it is approved by a majority of the board of directors or by the committee of officers and directors appointed by the board. ~~In the case of approval~~ If approved by the committee, such approval shall be specifically reported to the board of directors at its next regular meeting.

~~3~~ E. The prohibitions set forth in ~~this subsection~~ subsections C and D shall not be construed to require approval by the board of directors for advances under previously authorized lines of credit.

~~C~~ F. The aggregate amount of a savings institution's loans to its executive officers or directors or their interests shall not be excessive. The Commission may ~~promulgate~~ adopt such

~~rules and~~ regulations as may be required to prevent excessive aggregate amounts of lending by savings institutions to those individuals or entities.

**Drafting note: Technical changes include (i) moving the definition of "executive officer" to a new subsection A; (ii) making the structure of proposed subdivisions C 2 and C 4 parallel; and (iii) moving the reporting requirement in proposed subsection C for loans approved by a committee to a separate sentence, as is done in proposed subsection D. The reference to "rules" in conjunction with "regulations" is deleted throughout proposed Title 6.2.**

§ ~~6.1-194.22~~ 6.2-1129. Overdrafts by savings institution officers, directors or employees.

A. No savings institution shall pay an overdraft of an officer, director, or employee of the institution on any account ~~or accounts~~ at the institution unless the payment of funds is made in accordance with (i) a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or (ii) a written, preauthorized transfer of funds from another account of the account holder at the institution.

B. The prohibition set forth in subsection A ~~of this section~~ does not apply to the payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less~~, provided that~~ if (i) the account is not overdrawn for more than five business days~~,~~ and (ii) the savings institution charges the officer, director, or employee the same fee charged any other customer of the institution in similar circumstances.

**Drafting note: Technical changes; the phrase "or accounts" is deleted because § 1-227 provides that any word in the singular includes the plural and vice versa.**

§ ~~6.1-194.23~~ 6.2-1130. Reserves; surplus and undivided profits.

A. Every savings institution doing business in the Commonwealth shall maintain an adequate net worth appropriate for the conduct of its business and the protection of its account holders. Every savings institution (i) shall set up and maintain the reserves required by~~,~~ this chapter and (ii) may set up and maintain such additional reserves as are permitted by~~,~~ this chapter.

B. On or before the closing date of each accounting period, after payment of or provision for all expenses, every savings institution shall transfer to a separate reserve account~~, which~~ that shall be set up and maintained for the sole purpose of absorbing losses, ~~termed~~ referred to in this section as the "general reserve," an amount equal to at least five percent of its net income. ~~In the case of a~~ A savings institution ~~which~~ that at the close of such accounting period has assets in excess of ~~twenty~~ $20 million ~~dollars~~ or ~~which~~ that has done business as a savings institution in the Commonwealth for more than ~~twenty~~ 20 years~~, such savings institution~~ shall transfer to such separate reserve account the greater of five percent of its net income or an amount obtained by subtracting an amount equal to its general reserve at the beginning of the period from an amount equal to four percent of its assets, excluding liquid assets, at the end of the period, until the general reserve is equal to at least five percent of the total amount of its deposit accounts at the beginning of such accounting period. Upon advanced written application of a savings institution, the Commissioner may approve the transfer to the general reserve of a lesser amount for such

accounting period. ~~In the event that~~ If any credit to the general reserve is made after July 1, 1985, in excess of the minimum requirement, the dollar amount of any such excess may be carried over as a credit toward the minimum requirement of any subsequent period.

C. When the general reserve of a savings institution does not equal at least five percent of the deposit account liability of the institution, credits, as ~~above~~ provided in subsection B, shall again be made to the general reserve until it again equals at least five percent of the institution's deposit account liability.

D. In the case of stock savings institutions, the capital stock account, to the extent that the capital has not been impaired, shall be treated as part of the reserve and the board of directors may, by resolution, permanently or conditionally designate all or part of the capital stock, capital surplus, earned surplus or undivided profit accounts as a part of its general reserve. A savings institution may retain its undivided profits in such amounts as may from time to time be fixed by resolution of its board of directors.

E. The Commission may temporarily reduce the reserve requirements for a savings institution if it finds such reduction to be in the best interest of the institution and its stockholders or members.

~~B~~ F. Notwithstanding the requirements of this section, an insured savings institution may maintain its reserves in accordance with the requirements of the Federal Deposit Insurance Corporation or other federal agency.

**Drafting note: Technical changes. Existing subsection A is divided into five new subsections to enhance its readability.**

§ ~~6.1-194.24~~ 6.2-1131. Liability of members of mutual savings institutions.

A. No member of a mutual savings institution shall be responsible for any losses ~~which his~~ that the savings account deposits shall not be sufficient to satisfy~~, and no~~.

B. No savings account shall be subject to assessment~~, nor shall the~~ for any unpaid installments on his account.

C. The holder ~~thereof~~ of a savings account shall not be liable for any unpaid installments on his account.

D. No preference between savings account members of a mutual savings institution shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of such institution.

**Drafting note: The first sentence is divided into three subsections; the changes are technical.**

§ ~~6.1-194.25~~ 6.2-1132. Mutual capital certificates.

A. A mutual ~~association~~ savings institution shall have the power to issue and to sell, directly or through underwriters, capital certificates ~~which shall~~ that (i) represent nonwithdrawable capital contributions~~,~~ and (ii) constitute part of the reserves and net worth of the ~~association~~ institution. ~~Such~~

B. Capital certificates ~~shall~~:

1. Shall have no voting rights~~, shall~~;

2. Shall be subordinate to all savings accounts, debt obligations and claims of creditors of the ~~association and shall~~ institution;

3. Shall constitute a claim in liquidation against any reserves, surplus and other net worth accounts remaining after the payment in full of all savings accounts, debt obligations and claims of creditors~~. Such capital certificates shall~~;

4. Shall be entitled to the payment of earnings prior to the allocation of any income to surplus or other net worth accounts of the ~~association~~ institution; and ~~may~~

5. May be issued with a fixed rate of earnings or with a prior claim to distribution of a specified percentage of any net income remaining after required allocations to reserves, or a combination thereof.

C. Losses shall be charged against capital certificates only after reserves, surplus, and other net worth accounts have been exhausted.

**Drafting note: Technical changes; made applicable to all mutual savings institutions. Note that there is no existing comparable provision in Article 12 that addresses the issue with respect to mutual savings banks.**

Article 3.

~~Main Office;~~ Offices, Branches~~; Other Offices,~~ and Facilities.

§ ~~6.1-194.26~~ 6.2-1133. Offices and other facilities of state ~~associations~~ and foreign savings institutions; approval of branch offices required.

A. A state ~~association~~ savings institution may establish and operate such offices and other facilities as are authorized by its board of directors. ~~However, a~~ A state ~~association~~ savings institution shall not establish a branch office~~,~~ or other office or facility where deposits are accepted~~,~~ without obtaining the prior approval of the Commission as provided in subsection B ~~of this section~~. Prior to establishing or permanently closing any office or other facility, ~~the~~ a state association shall give at least ~~thirty~~ 30 days' written notice to the Commissioner, in such form as may be prescribed by the Commissioner. Prior to establishing, relocating, or permanently closing any office or other facility of the savings bank or any of its affiliates, a savings bank shall give at least 30 days' written notice to the Commissioner, in such form as may be prescribed by the Commissioner. ~~The association~~ A savings institution shall also give written notice to the Commission, in such form as may be prescribed by the Commission, within ~~ten~~ 10 days after it has established or permanently closed an office or other facility, and if the institution is a savings bank, it shall give such written notice to the Commission within 10 days after it has relocated any such office or other facility.

B. Applications for authorization to establish a branch office~~,~~ or other office or facility where deposits are accepted~~,~~ shall be made in writing, in such form as may be prescribed by the Commission. Upon review of ~~an association's~~ a savings institution's application and any other information ~~which~~ that the Commission may reasonably require, the Commission shall approve the establishment of such office or facility if it is satisfied that the public interest will be served thereby and, if the applicant is a savings bank, that it has sufficient capital to warrant additional expansion. Such offices or facilities may be closed without the prior approval of the

Commission. However, written notice of the closing of such an office shall be given to the Commissioner as provided in subsection A ~~of this section~~.

C. The requirements of subsections A and B ~~of this section~~ shall also apply to the establishment and closing of the offices of a foreign savings institution authorized to transact business in the Commonwealth.

**Drafting note: Section incorporates provisions of existing § 6.1-194.119; three provisions specifically applicable to savings banks are set out.**

§ ~~6.1-194.27~~ 6.2-1134. Facilities associated with ~~home or~~ branch office.

A state ~~association~~ or foreign savings institution authorized to transact business in the Commonwealth may establish without prior approval of the Commission a drive-in or pedestrian office opened in conjunction with an approved branch office of the institution, if such drive-in or pedestrian office is to be located (i) within 500 feet of a public entrance of the approved branch office and (ii) closer to that entrance than to a public entrance of any other financial institution. The functions of ~~such~~ a drive-in or pedestrian office shall be limited to the ordinary functions performed at a ~~teller-window~~ teller window.

**Drafting note: Section incorporates provisions of existing § 6.1-194.120, with technical changes. The change to the catchline reflects that the text of the section provides that the drive-in or pedestrian offices may be opened in conjunction with "an approved branch office;" there is no reference to home offices. The hyphen in "teller-window" is removed.**

§ ~~6.1-194.28~~ 6.2-1135. Change of branch office location.

A. A state ~~association~~ savings institution shall not change the permanent location of a branch office without the prior approval of the Commission. An application to change the location of a branch office shall be made in writing in such form as may be prescribed by the Commission. Such application shall be approved by the Commission if the Commission finds that the change in location is in the public interest.

B. ~~1.~~ Notwithstanding the provisions of subsection A ~~of this section~~, a state ~~association~~ savings institution may change the permanent location of a branch office, without applying for the approval of the Commission, if the new location will be within a one mile radius of the old location of such branch office.

~~2. An association~~ In such event, the state savings institution shall notify the Commissioner in writing, in such form as may be prescribed by the Commissioner, at least ~~sixty~~ 60 days before such office relocation and may proceed with the relocation unless, within ~~thirty~~ 30 days of receipt of the notice, the Commissioner notifies the ~~association~~ institution that the relocation ~~does not satisfy the criteria set forth in the last sentence of subsection A of this section, in which case~~ is not in the public interest. In that event, the ~~association must~~ institution shall be required to file an application and obtain the approval of the Commission in accordance with subsection A ~~of this section~~. The ~~association~~ institution shall also notify the Commissioner in writing that the office relocation has been completed within ~~ten~~ 10 days after the opening of the office at its new location.

C. The provisions of subsections A and B ~~of this section~~ shall also apply to foreign savings institutions authorized to transact business in the Commonwealth.

D. The provisions of this section shall also apply to the relocation of the main office of a state ~~association~~ savings institution if ~~the association~~ it intends to accept deposits at the new location of the main office.

**Drafting note: Section incorporates existing § 6.1-194.121. Rather than incorporate the criteria for approval of a relocation of a branch office by reference, it is set out in subsection B. Other changes are technical.**

§ ~~6.1-194.29~~ 6.2-1136. Remote service units.

A. As used in this section~~, the following terms shall have the meanings indicated~~:

"Personal security identifier" or "PSI" or "PIN" means any word, number, or other security identifier essential for an account holder to gain access to an account through a remote service unit.

"Remote service unit" or "RSU" means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a state ~~association~~ savings institution that, for activation and account access, requires use of a machine-readable instrument and personal security identifier in the possession and control of an account holder, is an RSU. The term includes, without limitation, point-of-sale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. ~~It excludes~~ The term does not include automated teller machines on the premises of a state ~~association~~ savings institution, unless shared with other financial institutions. ~~An RSU shall not be considered to be a branch office of an association.~~

~~"Personal security identifier" or "PSI" or "PIN" means any word, number, or other security identifier essential for an account holder to gain access to an account through a remote service unit.~~

B. Subject to the requirements of the Electronic Funds Transfer Act (15 U.S.C. § 1693~~,~~ et seq.) and Regulation E of the Federal Reserve Board, a state ~~association~~ savings institution may establish or use remote service units and participate with others in remote service unit operations on an unrestricted geographic basis. A state ~~association~~ savings institution may establish a remote service unit without prior approval of the Commission, provided that notice is given to the Commissioner in accordance with the provisions of subsection A of § ~~6.1-194.26~~ 6.2-1133. No remote service unit may be used to open a savings account~~,~~ or a demand account or to establish a loan account.

C. Before permitting an account holder to use a remote service unit, the ~~association~~ savings institution shall provide a personal security identifier to the account holder and require its use when accessing a remote service unit. An ~~association~~ institution may not employ RSU access techniques that require the account holder to disclose a PSI to another person.

D. A state ~~association~~ savings institution shall not share an RSU with any financial institution or other entity the accounts of which ~~is~~ are not insured by an agency of the federal government or by some other insuring agency approved by the Commissioner.

E. A state ~~association~~ savings institution shall not share an RSU located in the Commonwealth with any foreign savings institution, or other financial institution ~~which~~ that is not incorporated under the laws of the Commonwealth, unless ~~such~~ the foreign savings institution or other financial institution has been authorized by the Commission to conduct its business in the Commonwealth. Nothing herein shall be deemed to prohibit a state ~~association~~ savings institution from sharing an RSU with a federal savings institution~~,~~ or other federally chartered financial institution~~,~~ authorized to conduct its business in the Commonwealth.

F. An RSU shall not be considered to be a branch office of a state savings institution.

**Drafting note: Section incorporates existing § 6.1-194.122. The statement in the definition of an RSU that an RSU shall not be considered a branch office is set out as subsection F in order to avoid putting substantive provisions in a definition. Defined terms are alphabetized. Other changes are technical.**

§ ~~6.1-194.30~~ 6.2-1137. ~~Home~~ Off premises financial services.

A. As used in this section, "off premises financial services" means the transfer of funds or financial information or the performance of other transactions initiated by the customer by means of an electronic terminal, such as a telephone, a computer terminal, or a television set that is linked to a state savings institution's electronic network by telephone or cable television lines or other electronic means.

B. A state ~~association~~ savings institution may utilize any electronic technology to provide its customers with ~~home~~ off premises financial services. Any such services provided under this section are subject to the Electronic Funds Transfer Act (15 U.S.C. § 1693 et seq.) and Regulation E of the Federal Reserve Board. ~~As used in this section, the term "home financial services" means the transfer of funds or financial information, or the performance of other transactions initiated by the customer by means of an electronic terminal located in such customer's residence, such as a telephone, a computer terminal or a television set that is linked to an association's computer by telephone or cable television lines.~~

**Drafting note: Section incorporates existing § 6.1-194.123, which is broader than the existing § 6.1-194.30 (which is limited to terminals located at a customer's home). The definition of "off premises financial service" is set out as subsection A, with "electronic network" replacing "computer" to reflect current technology. The electronic terminal used to perform transactions may be located in the customer's residence or place of business, to reflect the fact that Internet access may be through a portable device located at other types of locations.**

§ ~~6.1-194.31~~ 6.2-1138. Suspension of business during actual or threatened emergency.

In the event of an actual or threatened enemy attack or civil insurrection or fire, flood, hurricane, earthquake or other similar natural disaster, affecting the community in which a savings institution is doing business, the offices of the savings institution thereby affected may

be temporarily closed by appropriate officers of the savings institution without prior approval of the board of directors or the Commissioner.

**Drafting note: No change.**

Article 4.

~~Changes in Corporate Form;~~ Conversions, Reorganizations, Mergers, and Acquisitions.

§ ~~6.1-194.32~~ 6.2-1139. Conversion from mutual savings institution to stock ~~association~~ institution.

A. With the approval of the ~~Commissioner~~ Commission, and in accordance with provisions of this section and regulations ~~promulgated~~ adopted hereunder, a state ~~association which is a~~ mutual ~~association~~ savings institution may convert to a stock ~~association~~ institution. ~~Such~~ The conversion shall be conducted in a manner equitable to all parties thereto ~~in the following manner~~ as follows: ~~the~~

1. The board of directors of ~~such~~ the mutual ~~association~~ savings institution shall first adopt by two-thirds vote a conversion plan ~~the~~. The provisions of ~~which~~ the plan shall comply with ~~requirements set forth in~~ regulations ~~promulgated~~ adopted by the Commission~~. Such~~;

2. The plan shall provide that holders of savings accounts in the mutual ~~association~~ savings institution will be afforded the opportunity to preserve their interest in the ~~association's~~ institution's net worth by subscribing to stock~~.~~; and

3. The ~~Commissioner~~ Commission shall approve any such plan of conversion if the ~~Commissioner~~ Commission ascertains that such conversion will not have an adverse effect on the stability of the ~~association~~ institution and that all other ~~rules and~~ regulations of the Commission relating to the conversion of a mutual ~~association~~ savings institution to a stock ~~association~~ institution have been complied with.

B. The Commission shall adopt regulations governing the procedures to be followed in completing the conversion ~~once~~ after a satisfactory plan has been adopted. ~~Such~~ The regulations shall ensure that any ~~association~~ institution in ~~so~~ converting shall continue to have its accounts insured by the Federal Deposit Insurance Corporation or other federal insurance agency.

**Drafting note: Section incorporates existing § 6.1-194.123:1. References to "Commissioner" are changed to "Commission" to comport with current practice, which permits the Commission to delegate duties to the Commissioner. In the first sentence, the proposed change simplifies the awkward phrase "a state association which is a mutual association." Other changes are technical.**

§ ~~6.1-194.32:1~~ 6.2-1140. Reorganization of mutual association into mutual holding company; approval by Commissioner; powers; issuance of stock.

A. Notwithstanding any other provision of law, with the approval of the ~~Commissioner~~ Commission, and in accordance with the provisions of this section and any regulations ~~promulgated~~ adopted pursuant to this section, any mutual association may reorganize to become a mutual holding company by:

1. Causing a stock association to be formed by incorporating a stock corporation and obtaining a certificate of authority to begin business as a savings institution pursuant to the provisions of Chapter 9 (§ 13.1-601 et seq.) of Title 13.1 and Article 2 (§ ~~6.1-194.8~~ 6.2-1114 et seq.) of this chapter; and

2. Transferring the substantial part of its assets and liabilities, including all of its deposit liabilities, to the stock association created, in exchange for receipt of no less than ~~fifty-one~~ 51 percent of the capital stock of the stock association; and

3. Adopting an amended charter changing its name and conforming its organization, governance and powers to those prescribed hereunder for a mutual holding company.

B. In connection with the transfer of assets and liabilities, the resulting mutual holding company may retain assets to the extent such assets are not required to be transferred to the stock association created in order to satisfy any capital or reserve requirements imposed by applicable state or federal law.

C. Upon such transfer, all persons who prior thereto held depository rights with respect to or other rights as creditors of the reorganized mutual association shall have such rights solely with respect to the stock association created, and the corresponding liability or obligation of the reorganized mutual association to such persons shall be assumed by the stock association. Persons who prior thereto had any ownership, liquidation or voting rights with respect to the reorganized mutual association, in their capacities as savings depositors, and pursuant to provision of law, or pursuant to the articles of incorporation and bylaws of that association, shall continue to have such rights but solely with respect to the mutual association in its reorganized form as a mutual holding company. The ownership or liquidation interest of any savings depositor of the subsidiary stock association in the net earnings and net worth of the resulting mutual holding company, and the voting rights of any such depositor in the mutual holding company, shall terminate, or otherwise be limited, in the same manner and on the happening of the same events as was the case prior thereto with the interest held by that depositor in the mutual association.

D. The reorganization of a mutual association into a mutual holding company shall be conducted in a manner that is equitable to all parties. The board of directors of the mutual association shall first adopt by a two-thirds vote a plan of reorganization, the provisions of which shall comply with requirements set forth in regulations ~~promulgated~~ adopted by the Commission. Such plan shall provide that holders of savings deposits in the reorganized mutual association shall be afforded an opportunity to preserve their interests by subscribing to the minority stock of the subsidiary stock association. The ~~Commissioner~~ Commission shall approve any such plan of reorganization if the ~~Commissioner~~ Commission ascertains that the reorganization shall not have an adverse effect on the stability of the association and that the reorganized mutual association has complied with all laws and regulations of the Commission relating to the reorganization of a mutual association into a mutual holding company. The Commission shall adopt regulations governing the procedures to be followed in completing the reorganization after the Commission has approved a plan of reorganization. Such regulations shall ensure that the subsidiary

association resulting from such reorganization shall continue to have its accounts insured by the Federal Deposit Insurance Corporation or other federal insurance agency.

E. Upon reorganization, the resulting mutual holding company (i) shall continue to possess and may exercise all the rights, powers and privileges, except deposit-taking powers, of a mutual association under the laws of ~~this~~ the Commonwealth, and (ii) shall be subject to the limitations and restrictions imposed on savings institution holding companies by §§ ~~6.1-194.87~~ 6.2-1147 and 6.2-1192, as well as all limitations and restrictions applicable to mutual savings institutions.

F. Upon reorganization, the association chartered as a stock corporation shall have the power to issue to persons other than the mutual holding company of which it is a subsidiary, an amount of common stock which in the aggregate does not exceed ~~forty-nine~~ 49 percent of the issued and outstanding common stock of the association. For purposes of this percentage limitation, any issued and outstanding securities that are convertible into common stock shall be considered as issued and outstanding common stock. If at any time, the mutual holding company resulting from reorganization sells or otherwise disposes of outstanding shares in its stock association subsidiary, and as a result such mutual holding company no longer owns more than ~~fifty-one~~ 51 percent of the outstanding shares of such association, or if the subsidiary stock association sells substantially all of its assets in a transaction in which substantially all deposit liabilities of such association are assumed and become liabilities of the purchaser of those assets, the Commission, on application of the Commissioner, may, after reasonable notice to the mutual holding company and its subsidiary stock association, appoint a receiver to wind up the affairs of the mutual holding company.

G. Any mutual holding company having its principal place of business in ~~this~~ the Commonwealth may convert into a stock savings institution holding company, with the approval of the Commissioner, and in accordance with any regulations ~~promulgated~~ adopted by the Commission.

**Drafting note: In subsections A and D, references to "Commissioner" are changed to "Commission" to comport with current practice. Other changes are technical. Subsection A does not include reorganizations of mutual savings banks.**

§ ~~6.1-194.33~~ 6.2-1141. ~~How~~ Conversion of state ~~association or bank may convert~~ savings institution into federal ~~savings~~ financial institution.

A. A state ~~association or state bank~~ savings institution may convert into a federal ~~savings~~ financial institution as follows:

1. At any meeting of the members or stockholders called and held in accordance with the Virginia Stock Corporation Act (§ 13.1-601 et seq.) or the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) to consider such action, the members or stockholders, by an affirmative vote of those holding and voting two-thirds of the votes present in person or by proxy, may resolve to convert the ~~association or bank~~ state savings institution into a federal ~~savings~~ financial institution;

2. A copy of the minutes of the meeting duly certified by the president or vice-president and the secretary or assistant secretary of the state ~~association or bank~~ savings institution shall be transmitted to the Commission;

3. Thereafter, the state ~~association or bank~~ savings institution shall take such action as is necessary under federal law to make it a federal ~~savings~~ financial institution; and

4. ~~It~~ The savings institution shall file with the Commission a certified copy of the charter issued to it by the federal chartering authority~~,~~ or a certificate of that authority showing the organization of the state ~~association or bank~~ savings institution as a federal ~~savings~~ financial institution~~, and~~.

B. Upon the filing of the certified copy of a charter or certificate of authority as provided in subdivision A 4, the ~~association or bank~~ savings institution shall ~~thereupon~~ cease to be a state ~~association or bank;~~ savings institution.

~~5~~ C. No state ~~association or bank~~ savings institution shall convert into a federal ~~savings~~ financial institution until it has been in operation as a state ~~association or bank~~ savings institution for a period of at least five years.

D. When a conversion of a state savings institution into federal financial institution becomes effective, the state savings institution shall cease to be a Virginia corporation and all its property, by operation of law and without any further act or deed, shall continue to be vested in it under its new name as a federal financial institution and under its federal charter. The federal financial institution shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state savings institution. The federal financial institution, at the time of the taking effect of the conversion, shall become, and continue to be, responsible for all of the obligations of the state savings institution, including taxes and other liabilities created by law or incurred by it before becoming a federal financial institution, to the same extent as though the conversion had not taken place.

**Drafting note: Section incorporates existing §§ 6.1-194.124 and 6.1-194.125, which address conversions of state savings banks into federal financial institutions. Proposed subsection D is moved from existing § 6.1-194.34. This section has been limited in scope to state savings institutions, and parallel provisions are set out in proposed Chapter 8 at proposed § 6.2-828 to address conversions of banks to federal financial institutions. Provisions in existing subdivisions 4 and 5 are made separate subsections B and C because they do not fit with the serial list of steps to accomplish a conversion. Other changes are technical.**

~~§ 6.1-194.34. Effect of conversion of state association or bank into federal savings institution.~~

~~When such conversion becomes effective, the state association or bank shall cease to be a Virginia corporation and all its property shall by operation of law and without any further act or deed continue to be vested in it under its new name as a federal savings institution and under its federal charter. The federal savings institution shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state association or bank. Such federal savings institution, at the time of the taking effect of the~~

~~conversion, shall become and continue responsible for all of the obligations of the state association or bank including taxes and other liabilities created by law or incurred by it before becoming a federal savings institution to the same extent as though the conversion had not taken place.~~

**Drafting note: Section is set out as subsection D of proposed § 6.2-1141 and proposed § 6.2-828.**

§ ~~6.1-194.35~~ 6.2-1142. ~~How~~ Conversion of federal ~~savings~~ financial institution ~~may convert~~ into state ~~association~~ savings institution or state bank.

A. A federal ~~savings~~ financial institution doing business in the Commonwealth may become a state ~~association~~ savings institution, and such a federal ~~savings~~ financial institution that is a stock institution may become a state bank, as follows:

1. In either case, the federal ~~savings~~ financial institution shall take such action as will under federal law and regulations terminate its existence as a federal ~~savings~~ financial institution ~~when the conversion is effective.~~ on a specified date;

2. In the case of a conversion to a state ~~association~~ savings institution, the directors of the federal financial institution shall organize a corporation under this chapter and, if a stock institution, the Virginia Stock Corporation Act (§ 13.1-601 et seq.), or if a mutual savings institution, the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), and the new corporation shall apply for a certificate of authority to do business under § ~~6.1-194.12.~~ 6.2-1118; and

3. In the case of a conversion to a state bank, the directors of the federal ~~savings~~ financial institution shall organize a corporation under Chapter ~~2~~ 8 (§ ~~6.1-3~~ 6.2-800 et seq.) ~~of this title~~ and the Virginia Stock Corporation Act, and the new corporation shall apply for a certificate of authority to do business under § ~~6.1-13~~ 6.2-816. If the applicant meets the standards established by § ~~6.1-13~~ 6.2-816, the Commission may issue it a certificate of authority to begin a banking business. The order shall designate the main office of the federal ~~savings~~ financial institution as the main office of the resulting bank, and the resulting bank shall be permitted to operate all branch offices of the former federal ~~savings~~ financial institution. Within one year of the date of such a conversion, the resulting bank shall conform its assets and operations to the provisions of law regulating the operation of banks. The Commission may grant such resulting bank additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of law regulating the operation of banks.

B. The former federal financial institution converting to a state savings institution or a state bank shall transact no business as a state savings institution or as a state bank other than that relating to its organization until its certificate of authority to do business has been granted and its dissolution as a federal financial institution has become effective.

C. As soon as the certificate of authority to do business has been granted and its dissolution as a federal financial institution has become effective, all the property of the federal financial institution shall by operation of law and without any further act or deed be vested in and become the property of the state savings institution or state bank. The state savings institution or state bank shall (i) have, hold and enjoy the same in its own right as fully and to the

same extent as the same was possessed, held or enjoyed by the federal financial institution and (ii) become, and continue to be, responsible for all the obligations, duties and agreements of the federal financial institution, including taxes and other liabilities created by law or incurred by it before becoming a state savings institution or state bank to the same extent as though the conversion had not taken place.

D. Upon conversion of a federal financial institution to a state savings bank, the state savings bank shall have the right to continue to operate all branch offices then in existence without having to obtain the approval of the Commission pursuant to § 6.2-1133.

**Drafting note: Section incorporates existing §§ 6.1-194.126, 6.1-194.127, and 6.1-194.128, which address conversions of federal financial institutions into state savings banks. Proposed subsection B is existing § 6.1-194.36. Proposed subsection C is existing § 6.1-194.37. Proposed subsection D is the last sentence of existing § 6.1-194.128, which applies only to conversions to state savings banks; there is no parallel provision for state associations.**

~~§ 6.1-194.36. When former federal savings institution may do business as state association or state bank.~~

~~The former federal savings institution converting to a state association or a state bank shall transact no business as a state association or a state bank other than that relating to its organization until its certificate of authority to do business has been granted and its dissolution as a federal savings institution has become effective.~~

**Drafting note: Section is set out as subsection B of proposed § 6.2-1142.**

~~§ 6.1-194.37. Effect of conversion of federal savings institution into state association or state bank on property rights, obligations, etc.~~

~~As soon as the certificate of authority to do business has been granted and its dissolution as a federal savings institution has become effective, all the property of the federal savings institution shall by operation of law and without any further act or deed, be vested in and become the property of the state association or state bank, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held or enjoyed by the federal savings institution. The state association or state bank shall become and continue responsible for all the obligations, duties and agreements of the federal savings institution including taxes and other liabilities created by law or incurred by it before becoming a state association or state bank to the same extent as though the conversion had not taken place.~~

**Drafting note: Section is set out as subsection C of proposed § 6.2-1142.**

§ ~~6.1-194.129~~ 6.2-1143. Conversion from state savings bank to state association ~~or commercial bank~~; conversion from state association ~~or commercial bank~~ to state savings bank.

A. A state savings bank may be converted into a state association ~~or a state bank~~ by the amendment of its articles of incorporation in compliance with the procedure established by Title 13.1, provided that such conversion is approved in advance by the Commission. Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a savings and loan

association ~~or banking~~ business, ~~as the case may be,~~ and approval shall not be granted unless the applicant meets the standards established by § ~~6.1-194.12 or § 6.1-13, as applicable~~ 6.2-1118. The order granting a certificate of authority to do a savings and loan ~~or banking~~ business shall designate the main office of the state savings bank as the main office of the resulting financial institution. The resulting financial institution shall be permitted to operate all branch offices of the state savings bank that could have been established de novo by such financial institution having its main office at such location or which were in operation for at least five years prior to the date of the order permitting conversion. Within one year of the date of a conversion, the resulting financial institution shall conform its assets and operations to the provisions of law regulating the operation of state associations ~~or banks, as the case may be~~. The Commission may grant such resulting financial institution additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations as required by this section.

B. A state association ~~or state bank~~ may be converted into a state savings bank by the amendment of its articles of incorporation in compliance with the procedure established by Title 13.1, provided that such conversion is approved in advance by the Commission. Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a savings bank, and approval shall not be granted unless the applicant meets the standards established by § ~~6.1-194.114~~ 6.2-1118. Within one year of the date of the conversion, the resulting state savings bank shall conform its assets and operations to the provisions of law regulating the operation of state savings banks. The Commission may grant such resulting state savings bank additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of law regulating the operation of state savings banks.

**Drafting note: New section that sets out § 6.1-194.129 with revisions that limit its scope to conversions from associations to savings banks and vice versa. The provisions of § 6.1-194.129 that permit conversions of state stock savings associations and state savings banks to state banks are set out in proposed § 6.2-1144. Provisions regarding conversions of state banks to state savings banks set out at proposed §§ 6.2-829, and provisions regarding conversions of state banks to state savings associations are set out in proposed § 6.2-830.**

§ ~~6.1-194.38~~ 6.2-1144. Conversion from stock ~~association~~ savings institution to bank~~; conversion from bank to stock association~~.

A. A state stock association or state savings bank may be converted into a bank by the amendment of its articles of incorporation in compliance with the procedure established by Title 13.1, provided that such conversion is approved in advance by the Commission. Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a banking business, and approval shall not be granted unless the applicant meets the standards established by § ~~6.1-13~~ 6.2-816. The order granting a certificate of authority to do a banking business shall designate the main office of the ~~association~~ savings institution as the main office of the resulting bank, and the resulting bank shall be permitted to operate all branch offices of the ~~association~~ savings

institution that could have been established de novo by a bank having its main office at such location or which were in operation for at least five years prior to the date of the order permitting conversion. Within one year of the date of a conversion, the resulting bank shall conform its assets and operations to the provisions of law regulating the operation of banks. The Commission may grant such resulting bank additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of laws regulating the operation of banks.

B. A bank may be converted into a savings bank upon compliance with the procedure set forth in § 6.2-829, or into a stock association ~~by the amendment of its articles of incorporation in~~ upon compliance with the procedure ~~established by Title 13.1, provided that such conversion is approved in advance by the Commission~~ set forth in § 6.2-830. ~~Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a savings and loan business, and approval shall not be granted unless the applicant meets the standards established by § 6.1-194.12. Within one year of the date of the conversion, the resulting stock association shall conform its assets and operations to the provisions of law regulating the operation of savings and loan associations. The Commission may grant such resulting stock association additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of law regulating the operation of savings and loan associations.~~

**Drafting note: Subsection A incorporates portions of existing § 6.1-194.129 regarding conversions of a state savings bank to a state bank. This section has been revised to limit its scope to conversion to state banks; provisions in existing § 6.1-194.129 that address conversions of state banks to state savings banks set out at proposed § 6.2-829, and provisions in existing § 6.1-194.38 that address conversions of state banks to stock savings associations are set out in proposed § 6.2-830.**

§ ~~6.1-194.39~~ 6.2-1145. Merger or consolidation of savings institutions.

A. Two or more mutual savings institutions or two or more stock ~~savings~~ institutions may merge, subject to the approval of the Commission, when the Commission finds that the merger will be in the public interest and in accordance with applicable laws and regulations.

B. Two or more state savings banks may consolidate or merge, subject to the approval of the Commission, when the Commission finds that the capital of the resulting institution will be sufficient to warrant successful operation, and that the merger or consolidation will be in the public interest and in accordance with applicable laws and regulations.

C. The order approving the merger shall specify which office is to be the main office and which office or offices may be operated as branch offices.

**Drafting note: Subsection B is the first sentence of existing § 6.1-194.130. Changes are technical.**

§ ~~6.1-194.40~~ 6.2-1146. State association or association holding company acquiring bank; association acquired by bank or bank holding company; merger or consolidation of association and bank.

A. Notwithstanding the provisions of § ~~6.1-58.1~~ 6.2-885, 6.2-886 or ~~§ 6.1-60.1~~ 6.2-874, and subject to the prior approval of the Commission~~, the following acquisitions, mergers, or consolidations may occur~~:

1. A state association or a federal savings institution may become a subsidiary of (i) a state bank or a national bank whose main office is located within ~~this~~ the Commonwealth or (ii) a bank holding company whose banking subsidiaries principally conduct their operations within ~~this~~ the Commonwealth;

2. A state bank may become a subsidiary of (i) a state association or a federal savings institution whose main office is located within ~~this~~ the Commonwealth or (ii) a savings and loan holding company whose principal place of business is located within ~~this~~ the Commonwealth; ~~and~~

3. A state association or a federal savings institution may merge into or consolidate with a state bank or a national bank whose main office is located within ~~this~~ the Commonwealth or a state bank or a national bank may merge into or consolidate with a state association or a federal savings institution whose main office is located within ~~this~~ the Commonwealth;

4. A state savings bank may become a subsidiary of (i) a state association, state bank, federal savings institution or national bank the main office of which is located within the Commonwealth or (ii) a financial institution holding company whose subsidiaries principally conduct their operations within the Commonwealth;

5. A state bank or state association may become a subsidiary of a state savings bank;

6. A state savings bank may merge into or consolidate with a state association, state bank, federal savings institution or national bank whose main office is located within the Commonwealth; and

7. A state association, state bank or federal financial institution may merge into or consolidate with a state savings bank.

B. If the resulting entity is to do business as a bank, the Commission shall not approve the merger or consolidation unless the applicant meets the standards established by § ~~6.1-13~~ 6.2-816. If the resulting entity is to do business as ~~an association~~ a savings institution, the Commission shall not approve the merger or consolidation unless the applicant meets the standards established by § ~~6.1-194.12~~ 6.2-1118. In either case, the order granting a certificate of authority to do business shall designate the main office of the resulting entity.

C. The resulting entity shall be permitted to operate all branch offices of the merging or consolidating entities that could have been established de novo by the resulting entity or ~~which~~ that were in operation at least five years prior to the date of the order permitting merger or consolidation. Within one year of such merger or consolidation, the resulting entity shall conform its assets and operations to the provisions of law regulating the operation of savings institutions if the resulting entity is operated as a savings institution or to the provisions of law regulating the operation of banks if the resulting entity is operated as a bank. The Commission may grant the resulting entity additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations as provided herein.

~~B. As used in this section, the term "state bank" shall mean a bank incorporated under the laws of the Commonwealth which has its main office in the Commonwealth.~~

**Drafting note: Section incorporates existing § 6.1-194.131. The definition of "state bank" in subsection B is relocated to § 6.2-1100, to provide a chapter-wide definition for the term. Other changes are technical.**

§ 6.2-1147. Acquisition of control of state stock institution requires Commission approval.

No person, whether acting alone or in concert with others, shall acquire ownership or control of 25 percent or more of the voting shares of a state stock savings institution, or otherwise control the election of a majority of the directors of such institution, without the approval of the Commission. The Commission shall not approve the proposed acquisition unless the Commission determines that the proposed acquisition is in the public interest.

**Drafting note: Section is subsection C of § 6.1-194.87. Section 6.1-194.152 is incorporated.**

Article 5.

Foreign Savings Institutions; Acquisitions by Out-of-State Savings Institutions or Out-of-State Savings Institution Holding Companies.

**Drafting note: Existing Article 11 is combined with existing Article 5 because they deal with a related topic and share the same definitions.**

§ 6.2-1148. Definitions.

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

"Acquire" means:

1. The merger or consolidation of one stock savings institution with another stock savings institution or of a savings institution holding company with another savings institution holding company;

2. The acquisition by a savings institution holding company or savings institution of direct or indirect ownership or control of voting shares of another savings institution holding company or a savings institution, if, after such acquisition, the savings institution holding company or savings institution making the acquisition will directly or indirectly own or control more than 25 percent of any class of voting shares of the other savings institution holding company or savings institution;

3. The direct or indirect acquisition by a savings institution holding company or by a savings institution of all or substantially all of the assets of another savings institution holding company or of another savings institution; or

4. Any other action that would result in direct or indirect control by a savings institution holding company or by a savings institution of another savings institution holding company or another savings institution.

"Out-of-state savings institution" means a savings institution that:

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

2. Has its principal place of business in a state other than Virginia.

"Out-of-state savings institution holding company" means a savings institution holding company that has its principal place of business in a state other than Virginia.

"Principal place of business of a savings institution" shall be the state in which the largest portion of the deposits of the savings institution is located at the end of the last calendar year.

"Principal place of business of a savings institution holding company" shall be the state in which the largest portion of the deposits of the holding company's subsidiaries is located as of the end of the last calendar year.

"Subsidiary" with respect to a savings institution holding company means:

1. Any company 25 percent or more of the voting shares of which, 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 savings institution holding company, or is held by it with power to vote;

2. Any company the election of a majority of the directors of which is controlled in any manner by such savings institution holding company; or

3. Any company with respect to the management or policies of which such savings institution 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 savings institution" means a savings institution, including a state savings bank, that:

1. Is organized under the laws of the Commonwealth or of the United States; and

2. Has deposit-taking offices located only in the Commonwealth.

"Virginia savings institution holding company" means a savings institution holding company, including the holding company of a state savings bank, that:

1. Has its principal place of business in the Commonwealth;

2. The financial institution subsidiaries of which are located outside the Commonwealth hold not greater than 20 percent of the total deposits held by all of its financial institution subsidiaries; and

3. Is not controlled by a savings institution holding company other than a Virginia savings institution holding company.

**Drafting note: Section is existing § 6.1-194.96, with the following changes: Defined terms are alphabetized. "Savings institution" and "savings institution holding company" are defined in proposed § 6.2-1100. Per § 1-245, "state" includes the District of Columbia. The parentheticals in the definitions of "principal place of business of a savings institution" and "principal place of business of a savings institution holding company" are deleted because the referenced section (§ 6.1-194.100) was repealed in 1994. The amendments to the definitions of "Virginia savings institution" and "Virginia savings institution holding company" incorporate the substantive provisions of the last sentence of existing § 6.1-194.132. Other changes are technical.**

§ ~~6.1-194.41~~ 6.2-1149. Foreign savings institutions; certificate of authority.

A. A foreign savings institution shall not transact a savings institution business in the Commonwealth unless it first receives from the Commission a certificate of authority to do so.

B. A foreign savings institution may apply to the Commission for a certificate of authority by paying the filing fee prescribed by the Commission and filing an application ~~which~~ that shall include:

1. A copy of its articles of incorporation and bylaws, certified as a true copy by the public officer having custody of the original articles and bylaws;

2. Evidence satisfactory to the Commission that its accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency satisfactory to the Commissioner; and

3. Such other information as the Commission may require.

C. The Commission shall issue a certificate of authority to the foreign savings institution when:

1. The Commissioner has examined the application of the institution and investigated and determined that the institution meets the requirements of § ~~6.1-194.12~~ 6.2-1118;

2. The Commissioner has verified the financial status of the institution by conducting such examination of its assets and its records as the Commission shall deem appropriate for the purpose of ascertaining whether they meet the requirements of this chapter with regard to state associations;

3. The Commissioner is satisfied that the institution is in sound financial condition, and that it is conducting its business, and will conduct its business in the Commonwealth, in a manner consistent with the laws of the Commonwealth; and

4. The Commissioner is satisfied that the laws, regulations or administrative actions of the state or territory where the principal office of the applicant is located do not prohibit or unfairly impede a state association or state savings bank ~~(as defined in § 6.1-194.110)~~ from transacting business in such state or territory.

D. In meeting the requirements set out in subdivisions C 1, C 2, and C 3 ~~of subsection C of this section~~, the Commissioner may rely on examinations, audits and other information provided by the federal and state supervisory authorities charged with the responsibility of regulating and supervising savings institutions in the state where the applicant's principal place of business is located. Prior to issuing a certificate of authority to the foreign savings institution, the Commission shall enter into cooperative agreements with the appropriate regulatory authorities for the periodic examination of the foreign savings institution. The Commission may accept reports of examination and other records from such authorities in lieu of conducting its own examinations.

**Drafting note: Technical changes.**

§ ~~6.1-194.42~~ 6.2-1150. When operation of foreign savings institution in the Commonwealth is prohibited.

When the laws, regulations or administrative actions of another state ~~or territory of the United States~~ prohibit or unfairly impede a state ~~association or state~~ savings ~~bank (as defined in §~~

~~6.1-194.110)~~ institution from transacting business in ~~such~~ that state ~~or territory~~, then the savings institutions of ~~such other~~ that state ~~or territory~~ are prohibited from transacting business in the Commonwealth.

**Drafting note: Per § 1-245, "state" includes any state or territory. Other changes are technical.**

§ ~~6.1-194.43~~ 6.2-1151. Applicability of Virginia Stock and Nonstock Corporation Acts.

Except as otherwise provided in this chapter, a foreign savings institution conducting a savings institution business in the Commonwealth shall comply with the provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) and the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) governing the admission and transaction of business by foreign corporations in the Commonwealth.

**Drafting note: No change.**

§ ~~6.1-194.44~~ 6.2-1152. Law applicable to contracts of foreign savings institutions.

Any contract made by a foreign savings institution with a resident of the Commonwealth or a foreign corporation authorized to do business in the Commonwealth~~, shall be considered a Virginia contract, and~~ shall be construed according to the laws of the Commonwealth.

**Drafting note: The statement that a contract "shall be considered a Virginia contract" is deleted because it does not adds anything to the subsequent statement that it "shall be construed according to the laws of the Commonwealth."**

§ ~~6.1-194.45~~ 6.2-1153. Examination and supervision of foreign savings institutions.

A. Each foreign savings institution authorized to transact business in the Commonwealth shall furnish to the Commissioner a copy of all periodic reports of examinations of the institution conducted by all supervisory agencies ~~which~~ that examine the institution to determine its financial soundness. Such reports shall include~~, but are not limited to,~~ the examination reports of the Federal Deposit Insurance Corporation or other federal examining agency. Such report copies shall be furnished to the Commissioner within ~~ten~~ 10 days after the institution receives the report and shall be in certified form or such other form as is acceptable to the Commissioner. In determining whether such institution is in sound financial condition, the Commissioner shall be entitled to rely solely on such examination reports.

B. The Commission shall enter into cooperative agreements with other supervisory authorities for purposes of determining the financial soundness of the foreign savings institutions doing business in the Commonwealth. The Commission may enter into joint actions with other supervisory authorities having concurrent jurisdiction over foreign savings institutions doing business in the Commonwealth or may take such actions independently to carry out its responsibilities under this chapter and assure compliance with the provisions of this chapter and other applicable financial institution laws of the Commonwealth.

**Drafting note: Per § 1-218, "include" includes "but not limited to."**

§ ~~6.1-194.46~~ 6.2-1154. Revocation of certificate of authority of foreign savings institution.

A. The Commission may revoke a certificate of authority of a foreign savings institution if:

1. The institution fails to conduct its business in the Commonwealth in a manner consistent with the laws of the Commonwealth;

2. The affairs of the institution are in an unsafe condition;

3. The institution refuses to comply with the orders of the Commission or refuses to comply with a request by the Commissioner to review the books and records of the institution; or

4. The institution fails to pay any fees or taxes imposed by the laws of the Commonwealth.

B. The Commission may also revoke the certificate of authority of a foreign savings institution at any time that the Commission determines that the state ~~or territory~~ where the principal place of business of the foreign savings institution is located has enacted or amended its laws or regulations, or taken administrative action, so as to prohibit or unfairly impede a state association or state savings bank ~~(as defined in § 6.1-194.110)~~ from transacting business in ~~such~~ that state ~~or territory~~.

**Drafting note: Per § 1-245, "state" includes any state or territory. Other changes are technical.**

§ ~~6.1-194.47~~ 6.2-1155. Unapproved foreign savings institutions.

The Commissioner is authorized to obtain an injunction or to take any other action necessary to prevent any foreign savings institution from doing any business of a savings institution in the Commonwealth without appropriate approval.

**Drafting note: No change.**

§ ~~6.1-194.48~~ 6.2-1156. Activities ~~which~~ that are not considered "doing business.". ~~.~~

For the purposes of this chapter and any other law of the Commonwealth prohibiting, limiting, regulating, charging or taxing the doing of business in the Commonwealth by foreign savings institutions or foreign corporations of any type, any federal savings institution the principal place of business of which is located outside the Commonwealth, and any foreign savings institution ~~which~~ that is subject to state or federal supervision, or both, ~~which~~ that by law is subject to periodic examination by such supervisory authority and to a requirement of periodic audit, shall not be considered to be doing business or to have a tax situs or nexus in or with the Commonwealth by reason of engaging in any of the following activities:

1. The purchase, acquisition, inspection, appraisement, holding, sale, assignment, transfer, collecting, and enforcement of obligations or any interest therein secured by real estate mortgages, deeds of trust, or other similar instruments, covering real property located in the Commonwealth, or the foreclosure of such instruments, or the acquisition of title to such property by foreclosure, or otherwise, as a result of default under such instruments, or the holding, protection, rental, maintenance and operation of said property so acquired, or the disposition thereof ~~.~~ ; or

2. The advertising or solicitation of deposit accounts, or the making of any representations with respect thereto in ~~this~~ the Commonwealth through the media of the mail,

radio, television, magazines, newspapers, or any other media ~~which~~ that are published or circulated within the Commonwealth, ~~provided that~~ if (i) such advertising, solicitation or the making of such representations ~~shall be~~ is accurately descriptive of fact~~,~~ and ~~provided further, that~~ (ii) no such advertising, solicitation, or the making of such representations ~~shall contain~~ contains any reference to insurance or guarantee of accounts, unless the accounts of such institution are insured by the Federal Deposit Insurance Corporation or other insurer approved by the Commissioner.

**Drafting note: Technical changes.**

§ 6.2-1157. Acquisitions by out-of-state savings institution holding company.

A. Any savings institution holding company that does not have a Virginia savings institution subsidiary, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, may acquire a Virginia savings institution holding company or a Virginia savings institution with the approval of the Commission. Such savings institution holding company shall submit to the Commission an application for approval of such acquisition, which application may be approved if the Commission:

1. Determines that the laws of the state in which the savings institution holding company making the acquisition has its principal place of business do not prohibit or unfairly impede a Virginia savings institution holding company meeting the criteria in this article from acquiring savings institutions or savings institution holding companies in that state;

2. Determines that the laws of the state in which the savings institution holding company making the acquisition has its principal place of business permit such savings institution holding company to be acquired by the Virginia savings institution holding company or Virginia savings institution sought to be acquired. For purposes of this subsection, a Virginia savings institution shall be treated as if it were a Virginia savings institution holding company;

3. Determines either that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years or that all of the savings institution subsidiaries of the Virginia savings institution 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 such savings institution holding company of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; and

4. Makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution holding company of a savings institution or savings institution holding company in the state where such savings institution holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or savings institution holding company in such state by a savings institution holding company all the savings institution subsidiaries of which are located in that state.

B. An out-of-state savings institution holding company that has a Virginia savings institution subsidiary, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, may acquire any Virginia savings institution or Virginia savings institution holding company with the approval of the Commission. Such savings institution holding company shall submit to the Commission an application for approval of such acquisition, which application may be approved if the Commission:

1. Determines either that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years or that all of the savings institution subsidiaries of the Virginia savings institution 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 such savings institution holding company of all or substantially all of the shares of the savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; and

2. Makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution holding company of a savings institution or a savings institution holding company in the state where such savings institution holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or a savings institution holding company in such state by a savings institution holding company all the savings institution subsidiaries of which are located in that state.

**Drafting note: Section is existing § 6.1-194.97, with technical changes.**

§ 6.2-1158. Acquisitions by out-of-state savings institution.

A. Any out-of-state savings institution that is insured by the Federal Deposit Insurance Corporation or other federal insurance agency, may acquire a Virginia savings institution holding company or a Virginia savings institution with the approval of the Commission. Such savings institution shall submit to the Commission an application for approval of such acquisition, which application may be approved if the Commission:

1. Determines that the laws of the state in which the savings institution making the acquisition has its principal place of business do not prohibit or unfairly impede a Virginia savings institution meeting the criteria in this article from acquiring savings institutions or savings institution holding companies in that state;

2. Determines that the laws of the state in which the savings institution making the acquisition has its principal place of business permit such savings institution to be acquired by the Virginia savings institution holding company or Virginia savings institution sought to be acquired;

3. Determines that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years or that all of the Virginia savings institution subsidiaries of the Virginia savings institution 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 savings institution of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; and

4. Makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution of a savings institution or savings institution holding company in the state where the savings institution making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or savings institution holding company in such state by a savings institution located in that state.

B. An out-of-state savings institution that is insured by the Federal Deposit Insurance Corporation or other federal insurance agency and that has previously acquired a Virginia savings institution or Virginia savings institution holding company may acquire any additional Virginia savings institution or Virginia savings institution holding company with the approval of the Commission. Such savings institution shall submit to the Commission an application for approval of such acquisition, which application may be approved if the Commission:

1. Determines that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years. The Commission may approve the acquisition by a savings institution of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; and

2. Makes the acquisition subject to any conditions, restrictions, requirements or other limitations that would apply to the acquisition by a Virginia savings institution of a savings institution or a savings institution holding company in the state where the savings institution making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or a savings institution holding company in such state by a savings institution located in that state.

**Drafting note: Section is existing § 6.1-194.98, with technical changes.**

§ 6.2-1159. Investigation of application; prescribed investigation period; shortening, lengthening or waiving of period; hearing; appeals.

A. For 90 days following receipt of a complete application under § 6.2-1157 or 6.2-1158, the Commission may conduct an investigation for the purpose of determining whether:

1. The proposed acquisition would be detrimental to the safety and soundness of the applicant or the Virginia savings institution or Virginia savings institution holding company that the applicant seeks to acquire or control;

2. The applicant, its directors and officers, if applicable, and any proposed new directors and officers, of the Virginia savings institution or Virginia savings institution holding company that the applicant seeks to acquire, are qualified by character, experience and financial

responsibility to control and operate a Virginia savings institution or Virginia savings institution holding company;

3. The proposed acquisition would be prejudicial to the interests of the depositors, creditors, beneficiaries of fiduciary accounts or shareholders of the Virginia savings institution holding company or any Virginia savings institution that the applicant seeks to acquire or control; and

4. The acquisition is in the public interest.

B. The 90-day investigation period may be shortened or waived by the Commission, as it deems appropriate, if the Commission finds that it must act immediately in order to prevent the probable failure of a Virginia savings institution involved. The 90-day investigation period may be extended if the Commission determines that the applicant has not furnished all the information necessary to make the determination under § 6.2-1157 or 6.2-1158 or that the information submitted is substantially inaccurate or misleading.

C. Within the prescribed investigation period, or any extension thereof, and upon request of the applicant or the Virginia savings institution or Virginia savings institution holding company that the applicant seeks to acquire or control, or upon its own motion, the Commission may order a hearing concerning the proposed acquisition.

D. Within the prescribed investigation period, or any extension thereof, the Commission, by giving written notice of its decision and the reasons therefor to the applicant and to the Virginia savings institution or Virginia savings institution holding company that the applicant seeks to acquire or control, may: (i) approve the application, (ii) disapprove the application, or (iii) impose such conditions on the acquisition as the Commission may deem advisable to effect the purpose of this article.

**Drafting note: Section is subsections A through D of existing § 6.1-194.99. Subsection E of existing § 6.1-194.99 is deleted as unnecessary because § 12.1-39 provides that any person aggrieved by any final decision of the Commission shall have, of right, an appeal to the Supreme court irrespective of the amount involved.**

§ 6.2-1160. Notice of intent to acquire out-of-state savings institution.

A Virginia savings institution, a Virginia savings institution holding company, or an out-of-state savings institution holding company owning subsidiaries that conduct a savings institution business in the Commonwealth shall file with the Commission notice of its intention to acquire a financial institution outside Virginia, together with such information as the Commission may request. The Commission shall within 30 days or an extended period not exceeding 15 days, disapprove such acquisition if it determines that the acquisition could affect detrimentally the safety or soundness of a Virginia savings institution. The Commission may approve such acquisition prior to the expiration of the thirty 30-day period if it determines that the acquisition will not affect detrimentally the safety or soundness of such Virginia savings institution.

**Drafting note: Section is relocated from § 6.1-194.105, with technical changes, in order to follow other provisions of this article regarding the Commission's power to review and approve proposed acquisitions of institutions.**

§ 6.2-1161. Applicable laws and regulations; enforcement by Commission.

A. Any Virginia savings institution that is controlled by a savings institution holding company that is not a Virginia savings institution holding company shall be subject to all laws of the Commonwealth and all regulations under such laws that are applicable to Virginia savings institutions controlled by Virginia savings institution holding companies.

B. The Commission shall adopt such regulations, including the imposition of reasonable application and administration fees, as it finds necessary to implement the provisions of this article.

C. The Commission shall have the same powers to enforce the provisions of this article as those granted under Article 9 (§ 6.2-1191 et seq.) of this chapter.

**Drafting note: Subsections A and B are existing § 6.1-194.102. References to "rules" in conjunction with "regulations" have been deleted throughout. Regulations are adopted, rather than promulgated. The phrase "and effect" is deleted as it adds nothing to "implement." Subsection C is existing § 6.1-194.104.**

§ 6.2-1162. Periodic reports; interstate agreements.

A. The Commission may examine any out-of-state savings institution holding company owning a Virginia savings institution and each of its Virginia or non-Virginia savings institution or nonsavings institution subsidiaries and shall require reports of each savings institution 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.

B. Prior to approving an acquisition under the provisions of this article, the Commission shall enter into cooperative agreements with the appropriate regulatory authorities for the periodic examination of any savings institution holding company that has a Virginia savings institution 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 savings institution holding company that has a Virginia savings institution subsidiary or may take such actions independently to carry out its responsibilities under this chapter, assure the safety and soundness of any Virginia savings institution, and assure compliance with the provisions of this chapter and the applicable savings institution laws of the Commonwealth.

**Drafting note: Section is existing § 6.1-194.103, with technical changes.**

§ 6.2-1163. Application of article to bank or bank holding company.

For purposes of this chapter, any bank or bank holding company seeking to acquire a savings institution or savings institution holding company, shall be deemed to be a savings institution or savings institution holding company, as the case may be, for purposes of

determining whether such bank or bank holding company is permitted to acquire the savings institution or savings institution holding company in question.

**Drafting note: Section is existing § 6.1-194.107. The catchline is revised to more accurately reflect the section's scope.**

§ 6.2-1164. Acquisitions of state savings bank or holding companies by out-of-state financial institutions.

A state savings bank, or holding company thereof, may not be acquired by a financial institution, or financial institution holding company, whose principal place of business is outside the Commonwealth, except in accordance with the provisions of this article.

**Drafting note: Section is the first sentence of existing § 6.1-194.132, with technical changes.**

§ 6.2-1165. Nonseverability.

Notwithstanding the provisions of § 1-243, if any portion of this article pertaining to the terms and conditions for and limitations upon acquisition of Virginia savings institution holding companies and Virginia savings institutions by savings institutions and savings institution holding companies that do not have their principal place of business in this Commonwealth is determined to be invalid for any reason by a final nonappealable order of any appropriate Virginia or federal court, then §§ 6.2-1157 through 6.2-1164 shall be void and of no further effect from the effective date of such order. Any transaction that has been lawfully consummated pursuant to this article prior to a determination of invalidity shall be unaffected by such determination.

**Drafting note: Section is existing § 6.1-194.106, with the following revisions: The first sentence is deleted as a policy statement. In the second sentence, the reference to existing § 6.1-194.89 (Construction of chapter) is replaced with § 1-243 (Severability) because the third sentence of § 6.1-194.89, which addresses severability, is being deleted as duplicative of § 1-243. The statement that the entire article is void upon a finding that any portion is found to be invalid is revised to refer only to the former sections of existing Article 11, excluding this section and the definitions section.**

Article 6.

Accounts.

§ ~~6.1-194.49~~ 6.2-1166. Accounts of state ~~associations~~ savings institutions.

Notwithstanding any restriction in its articles of incorporation limiting the number, kinds and classes of accounts that it may offer, a state ~~association~~ savings institution may offer such accounts, including checking accounts, time deposit accounts, and savings accounts, as its board of directors may authorize from time to time. A state ~~association~~ savings institution may pay interest on such accounts at such rates and under such terms and conditions as its board of directors may direct from time to time, subject to any restrictions and limitations imposed by state or federal law on the payment of interest.

**Drafting note: Section incorporates provisions of existing § 6.1-194.133.**

§ ~~6.1-194.50~~ 6.2-1167. Rules governing withdrawal.

A. The holder of a savings account in ~~an association~~ a savings institution shall have the right to withdraw all or any part of his account ~~provided that an association~~. A savings institution shall have the right to establish the rules governing the withdrawals and may from time to time fix the period of notice required to be given for withdrawal. In no event shall ~~an association~~ a savings institution delay or postpone the whole or partial payment of the value of any savings account pursuant to a written withdrawal application by a savings account holder for a period exceeding ~~thirty~~ 30 days following the receipt of such application without first securing written permission from the Commissioner.

B. The holder of a federal tax and loan account or note account as defined in ~~federal~~ regulations of the U.S. Treasury Department or other federal agency shall have the right of immediate withdrawal of all or any part of such account. In no event shall ~~an association~~ a savings institution delay or postpone the whole or partial payment of such an account pursuant to a written application by the account holder.

**Drafting note: Section incorporates provisions of § 6.1-194.134.**

§ ~~6.1-194.51~~ 6.2-1168. Redemption.

At any time that funds are on hand for the purpose, a mutual ~~association~~ savings institution shall have the right to redeem by lot or otherwise, as the board of directors may determine, all or any part of any of its savings accounts on an earnings date by giving ~~thirty~~ 30 days' notice by certified mail addressed to each affected account holder at his last address as recorded on the books of the ~~association~~ institution. No ~~association~~ mutual savings institution shall redeem any of its savings accounts when its liabilities exceed its assets or when it has applications for withdrawal ~~which~~ that have been on file more than ~~thirty~~ 30 days and have not been reached for payment. The redemption price of savings accounts redeemed shall be the full value of the account redeemed, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal value. If the ~~aforesaid~~ notice of redemption has been duly given, and if on or before the redemption date the funds necessary for such redemption have been set aside ~~so as~~ to be, and continue to be, available therefor, interest upon the accounts called for redemption shall cease to accrue from and after the date specified as the redemption date~~, and all~~. All rights with respect to such accounts shall ~~forthwith, after such~~ terminate upon the redemption date, ~~terminate, excepting only~~ other than any right of the account holder of record to receive the redemption price without interest. Accounts called for redemption, if unclaimed, shall be subject to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.).

**Drafting note: There is no parallel provision in existing Article 12; the section has been revised to be made applicable to mutual savings banks by changing references to mutual associations to mutual savings associations.**

§ ~~6.1-194.52~~ 6.2-1169. Accounts of savings institutions as legal investments and as security.

Administrators, executors, custodians, conservators, guardians, trustees, and other fiduciaries ~~of every kind and nature~~, insurance companies, business and manufacturing

companies, banks, trust companies, credit unions and other types of similar financial organizations, charitable, educational, and eleemosynary funds and organizations, and all agencies, ~~cities, counties, towns~~ localities, and other political subdivisions and governmental units of the Commonwealth ~~hereby~~ are specifically authorized ~~and empowered~~ to invest funds held by them, without any order of any court, in accounts of savings institutions authorized to do business in the Commonwealth. Such investments shall be deemed and held to be legal investments for such funds. The provisions of this section are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons~~, fiduciaries, corporations and organizations~~ referred to in this section.

**Drafting note: Phrase "of every kind and nature" is deleted as unnecessary after saying "and other fiduciaries." "Person" includes corporations and organizations, whether or not acting as fiduciaries. Phrase "and empowered" is deleted as unnecessary after saying that the entities are "authorized" to act.**

§ ~~6.1-194.53~~ 6.2-1170. Deposits of federal taxes and ~~United States~~ U.S. Treasury tax and loan accounts.

~~Associations~~ Savings institutions may ~~serve~~:

1. Serve as depositories for federal taxes and for ~~United States~~ U.S. Treasury tax and loan deposits ~~and may satisfy the~~;

2. Satisfy any requirements in connection therewith ~~such as~~, including maintaining tax and loan accounts and note accounts, as defined by ~~federal~~ regulations~~, pledge~~ of the U.S. Treasury Department or other federal agency;

3. Pledge collateral; and ~~satisfy~~

4. Satisfy the requirements of the ~~United States~~ U.S. Treasury Department in connection with such deposits.

**Drafting note: Section incorporates § 6.1-194.135 and is restructured to improve readability; changes are technical.**

§ ~~6.1-194.54~~ 6.2-1171. Accounts under ~~Federal~~ federal Self-Employed Individuals Tax Retirement Act and ~~Federal~~ federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829).

A. To the extent allowed by federal law, an insured savings institution may act as trustee or custodian ~~within the contemplation of~~ under the ~~Federal~~ federal Self-Employed Individuals Tax Retirement Act of 1962, as amended. Funds held as such trustee or custodian may be invested in accounts of the association to the extent that the trust, custodial or other plan does not prohibit such investment.

B. To the extent allowed by federal law, an insured savings institution may act as trustee or custodian of individual retirement accounts under the ~~Federal~~ federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829), as amended. Contributions may be accepted and interest thereon retained by such institution pursuant to forms provided by it and may be invested in accounts of the institution in accordance with the terms upon which such contributions were accepted.

**Drafting note: Technical changes.**

§ ~~6.1-194.55~~ 6.2-1172. Accounts issued in name of minor.

A savings institution may issue accounts to a minor as sole and absolute owner of ~~such~~ the account~~, and~~. With respect to any such account, a savings institution may (i) receive deposits by or for ~~such~~ the minor owner, ~~and~~ (ii) pay withdrawals, (iii) accept pledges to the association, and (iv) act in any other manner with respect to such accounts on the order of ~~such~~ the minor owner. Any payment or delivery of funds from such account to ~~the~~ its owner ~~thereof~~, or payment of a check or other written order for withdrawal signed by ~~such~~ its minor owner, shall be a valid and sufficient release and discharge of ~~such~~ the institution for any payment or delivery so made. The parent or guardian of ~~such~~ the minor owner shall not in his capacity as parent or guardian have the power to withdraw or transfer funds in any such account unless the minor has given written notice to the association to accept the signature of such parent or guardian.

**Drafting note: Technical changes.**

§ ~~6.1-194.56~~ 6.2-1173. Powers of attorney on accounts.

Any savings institution may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals, either in whole or in part, from any account until it receives written notice or is on actual notice of the revocation of his authority. For the purposes of this section, written notice of death of the owner of the account shall constitute written notice of revocation of the authority of his attorney. Written notice of the adjudication of incapacity of an account owner shall constitute written notice of revocation of the authority of his attorney unless under the laws of the Commonwealth the authority of the attorney-in-fact survives such adjudication. Payment of the account in accordance with the provisions of this section shall constitute a full discharge and acquittance of the association as to such account.

**Drafting note: No change.**

§ ~~6.1-194.57~~ 6.2-1174. Accounts of deceased or incompetent persons.

A. A savings institution may pay funds held in the account of a deceased person or a person under disability to the personal representative, committee, conservator, guardian, or curator of such person upon proper proof of the appointment and qualification of such fiduciary. Any savings institution making such payment shall ~~no longer~~ not thereafter be liable for the amount thereof to any person ~~whomsoever~~. The presentation of a duly certified letter or certificate of qualification as personal representative or other fiduciary shall be conclusive proof of the jurisdiction of the court issuing the same.

B. A savings institution ~~which~~ that has not received ~~no~~ written notice and is not on actual notice that an account owner is deceased or has been adjudicated incompetent~~,~~ may pay or deliver funds held in such person's account in accordance with the provisions of the account contract without liability to any person ~~whomsoever~~ for the amounts so paid or delivered.

**Drafting note: "Whomsoever" is deleted as archaic and redundant. Other changes are equally technical.**

§ ~~6.1-194.58~~ 6.2-1175. Payment of small balances to distributees or other persons.

A. When the account of a deceased person upon whose estate there has been no qualification does not exceed $15,000, it shall be lawful for a savings institution, after ~~sixty~~ 60 days from the death of such person, to pay such balance to ~~his or her~~ the decedent's spouse, ~~and~~ or if none, to the distributees of the decedent or other persons entitled thereto under the laws of the Commonwealth~~, whose~~. The receipt of the payee therefor shall be a full discharge and acquittance of the institution as to all persons on account of such account.

B. ~~Such~~ The balance of an account described in subsection A, or any part thereof not to exceed the amount given a priority under the provisions of § 64.1-157, after ~~thirty~~ 30 days from the death of such person, at the written request of the decedent's spouse, or if ~~there is~~ none, ~~then~~ of the distributees of the decedent or other persons entitled thereto under the laws of the Commonwealth, may be paid to the undertaker or mortuary handling the funeral of ~~such~~ the decedent ~~and a~~. A receipt of the payee shall be a full and final release of the institution.

**Drafting note: Technical changes.**

§ ~~6.1-194.59~~ 6.2-1176. Accounts of fiduciaries.

A savings institution may issue accounts in the name of any administrator, executor, custodian, conservator, guardian, trustee, or other fiduciary for a named beneficiary or beneficiaries. The payment of funds from any such account pursuant to a check or other written order of withdrawal signed by the fiduciary, ~~or~~ the delivery of funds in such account to such fiduciary, or a receipt signed by any such fiduciary with regard to the payment of funds from such account, shall be a valid and sufficient release and discharge of the institution for the payment or delivery so made.

**Drafting note: Technical change.**

§ ~~6.1-194.60~~ 6.2-1177. Savings institution need not inquire as to fiduciary funds deposited in fiduciary's personal account.

If any fiduciary or agent makes a deposit in a savings institution to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks drawn by him upon an account in the name of his principal, if he is empowered to draw checks thereto, or of checks payable to his principal and endorsed by him as fiduciary, the institution receiving ~~such~~ the deposit ~~shall~~:

1. Shall not be ~~bound~~ required to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and ~~the institution is~~

2. Is authorized to pay the amount of the deposit or any part thereof upon the withdrawal by the fiduciary without being liable to the principal, unless the institution receives the deposit or pays the withdrawal with (i) actual knowledge that the fiduciary, in making such deposit or in making such withdrawal, is committing a breach of his obligation as fiduciary~~,~~ or ~~with~~ (ii) knowledge of such facts that its action in receiving the deposit or paying the withdrawal amounts to bad faith.

**Drafting note: Technical changes.**

§ ~~6.1-194.61~~ 6.2-1178. Accounts held by various trustees for same beneficiary.

Whenever trust interests or accounts are created for the same beneficiary, ~~but~~ and each ~~such~~ interest or account is in the name of a separate and distinct trustee~~,~~ or combination of trustees, each ~~such~~ trust interest or account shall constitute a separate, distinct, and valid trust entity for all purposes.

**Drafting note: Technical changes.**

Article 7.

Real Estate Loans.

§ ~~6.1-194.62~~ 6.2-1179. Real estate loans; required investment.

A. A state ~~association~~ savings institution may originate, invest in, sell, purchase, service, participate, or otherwise deal in loans secured by a lien on real estate, subject to the requirements of this chapter. ~~However, such~~ Such loans ~~which~~ that are insured, guaranteed or made under a firm commitment to be sold, assigned or otherwise transferred to an agency or instrumentality of the federal government or to a corporation organized under the laws of the United States, including~~, but not limited to,~~ the Department of Housing and Urban Development, the Veterans Administration, the Federal National Mortgage Association, the Government National Mortgage Association or the Federal Home Loan Mortgage Corporation, may be made in accordance with the requirements of such federal agencies, instrumentalities or corporations.

B. At least ~~sixty~~ 60 percent of assets of a state ~~association~~ savings institution shall be invested in real estate loans. For purposes of meeting this ~~sixty percent~~ 60-percent requirement, ~~an association~~ a savings institution may include (i) loans secured by a lien on a manufactured building or buildings; (ii) the value of securities held by it ~~which~~ that represent a beneficial interest, participation interest or other similar interest in loans secured by a lien on real estate including~~, but not limited to,~~ participation certificates issued by the Federal National Mortgage Association, Government National Mortgage Association or the Federal Home Loan Mortgage Corporation; and (iii) the value of liquid assets equal to the minimum liquid asset requirement for membership in a Federal Home Loan Bank.

C. A state ~~association~~ savings institution may not purchase, participate in or acquire an interest in any real estate loan ~~which~~ that it could not legally make, without the prior approval of the Commissioner.

**Drafting note: Section is amended to provide that it applies to state savings banks, per existing subdivision 16 of § 6.1-194.136. Technical changes.**

§ ~~6.1-194.63~~ 6.2-1180. Appraisals; loan-to-value ratios.

A. ~~An association~~ A savings institution may make a real estate loan only after a qualified person designated by the ~~association~~ savings institution has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the ~~association~~ savings institution by the insuring or guaranteeing agency.

B. At the time of origination, a real estate loan may not exceed 100 percent of the appraised fair market value of the security property. During the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from

an adjustment authorized by § ~~6.1-194.65~~ 6.2-1182. In the case of a home loan secured by borrower-occupied property, the loan balance may not exceed 125 percent of the original appraised value of the property during the term of the loan, unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the ~~tenth~~ 10th year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance for the remaining term of the loan. The 125 percent limitation shall not apply to that portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property.

**Drafting note: Section incorporates provisions of subsections A and B of existing § 6.1-194.151.**

§ ~~6.1-194.64~~ 6.2-1181. Initial repayments on real estate loans.

Repayments on real estate loans shall begin not later than ~~sixty~~ 60 days after the loan proceeds are disbursed. ~~However, if~~ If such loan is for construction, substantial alteration, repair, or improvement of the real estate securing the loan, repayments may begin not later than ~~sixty~~ 60 months after the date of the first loan disbursement, and interest shall be payable at least semiannually until regular periodic payments begin. In the case of a home loan where the loan proceeds are to be used for construction, substantial alteration, repair, or improvement of the security property, repayments must begin not later than ~~thirty-six~~ 36 months after the date of the first disbursement, with interest payable at least semiannually until regular periodic payments begin.

**Drafting note: Section incorporates provisions of subsection C of existing § 6.1-194.151.**

§ ~~6.1-194.65~~ 6.2-1182. Adjustable real estate loans.

A state ~~association~~ savings institution may adjust the interest rate, payment, balance, or term to maturity on any real estate loan as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value.

**Drafting note: Section incorporates provisions of subsection D of existing § 6.1-194.151.**

§ ~~6.1-194.66~~ 6.2-1183. Special provisions for home loans.

The loan term of a home loan shall not exceed ~~forty~~ 40 years, with interest payable at least semiannually, except as expressly authorized elsewhere in this chapter. Payments on the loan balance, for other than nonamortized and line-of-credit loans, shall be made in at least semiannual installments, except that loans made on the security of farm residences and combinations of farm residences and commercial farm real estate may be repayable in annual installments. The loan may be fully amortized, partially amortized, nonamortized, or a line-of-credit loan. The loan contract may provide for the deferral of principal and capitalization of a portion of interest, or of all interest on loans to natural persons secured by borrower-occupied property and on which periodic advances are being made.

**Drafting note: Section incorporates provisions of subsection E of existing § 6.1-194.151.**

§ ~~6.1-194.67~~ 6.2-1184. Dealing with successors in interest.

In the case of any investment made by a savings institution in a real estate loan, ~~in the event~~ if (i) the ownership of the real estate security or any part thereof becomes vested in a person other than the party ~~or parties~~ originally executing the security instruments~~,~~ and ~~provided~~ (ii) there is not an agreement in writing to the contrary, a savings institution may, without notice to such party ~~or parties~~, deal with such successor ~~or successors~~ in interest with reference to that mortgage and the debt thereby secured in the same manner as with such party ~~or parties~~. The savings institution may forbear to sue or may extend time for payment ~~of~~, or otherwise modify the terms, of the debt secured thereby~~,~~ without discharging or in any way affecting the original liability of such party or parties thereunder or upon the debt thereby secured.

**Drafting note: The phrase "or parties" is deleted because § 1-227 provides that any word in the singular includes the plural and vice versa. Other changes are technical.**

§ ~~6.1-194.68~~ 6.2-1185. Trustees on loans secured by deed of trust.

Any savings institution in connection with making loans secured by deed of trust is empowered to elect a trustee, which may be a service corporation ~~as defined in § 6.1-194.2 or trustees~~, at such times and for such terms as may be prescribed by its charter or bylaws. All the rights, titles, duties and obligations of such a trustee relating to loans secured by deed of trust shall pass by operation of law to his successor ~~or successors~~ in office. Every right of the savings institution required to be exercised by or through such trustee ~~or trustees~~, whether it is the sale of property or some other act ~~or acts~~, shall be done, enforced and carried out by the trustee ~~or trustees~~ in office at the time when such rights are exercised by or for the savings institution. All sales or conveyances heretofore or hereafter made by a trustee ~~or trustees~~ appointed in the manner designated ~~above~~ in this section shall be as valid and binding as though the sale ~~or sales~~, conveyance ~~or conveyances~~ had been made by the trustee ~~or trustees~~ named in the deed ~~or deeds~~ of trust. A majority of the trustees in office are empowered to conduct sales and make conveyances in pursuance thereof with the same force and effect as though all the trustees had acted; and when there are two trustees either one may act.

**Drafting note: The phrases "or acts," "or trustees," "or successors" and other plurals are deleted because § 1-227 provides that any word in the singular includes the plural and vice versa. "Service corporation" is defined in proposed § 6.2-1100; the reference to the definitions section for the chapter is unnecessary.**

Article 8.

Other Loans and Investments.

§ ~~6.1-194.69~~ 6.2-1186. General investment authority of state savings institutions.

A. Subject to the powers and limitations regarding real estate loans set forth in § ~~6.1-194.62~~ 6.2-1179, and except as provided in § 6.2-1187 with respect to state savings banks, the assets of a state ~~association~~ savings institution may be invested only ~~in the following ways~~:

1. In real and personal property necessary for the conduct of its business and in real estate to be held for its future accommodation. ~~Such association~~ A savings institution may invest in an office building or buildings and appurtenances for the transaction of ~~such association's~~ its business, or for the transaction of such business and for rental. ~~No~~ Except as provided in § 6.2-

1187 with respect to savings banks, no such investment described in the preceding sentence may be made without the prior approval of the Commissioner if the total amount of the investment exceeds 50 percent of capital stock paid-in and unimpaired and 50 percent of unimpaired combined surplus and undivided profits, or, in the case of a mutual association, 50 percent of general reserve and surplus.;

2. In stock and other securities or obligations of a service corporation or corporations. Unless specifically authorized by the Commissioner, a state savings institution shall not invest more than 10 percent, in the aggregate, of its assets in the investments specified in this subdivision. Such A service corporation or corporations may charge and collect such finance charges, fees and interest rates as are state savings institutions are authorized to state associations charge and collect. Such A service corporation or corporations, directly or indirectly, may engage in providing real estate brokerage services for property owned by an association a state savings institution owning capital stock in the service corporation, by the service corporation, or a joint venture in which the service corporation is a participant, but no service corporation or corporations, state association savings institution or holding company which that has control, as defined in § 6.1-381 6.2-701, over a state association savings institution may engage directly or indirectly in providing real estate brokerage services for property owned by third parties; provided that any such holding company may consummate the acquisition of, and thereafter own, a corporation that engages in providing real estate brokerage services for property owned by third parties if, on or before January 23, 1989, it filed an application with the State Corporation Commission with respect to such acquisition and if the Commission subsequently approves such acquisition. The Commission shall approve or disapprove such an acquisition on its merits before or after July 1, 1989, without regard to the prohibition contained in this section and, for purposes of the preceding sentence, any application submitted to the Commission on or before January 23, 1989, shall be deemed filed as of the date of submission, without regard to any subsequent amendment, rescission or withdrawal of any regulation of the Commission. Nothing herein in this subdivision shall prohibit (i) a state savings bank or its affiliates or (ii) a holding company that has control over a state association savings institution from engaging in third party real estate brokerage in any state, other than the Commonwealth of Virginia, that permits such activities by its state chartered savings institutions, or their affiliates or holding companies.;

3. In If the savings institution is a state association, in the purchase of real estate for the purpose of producing income or for inventory and sale or for improvement including the erection of buildings thereon, for sale or rental purposes, and such an association may hold, sell, lease, operate or otherwise exercise the rights of an owner of any such property. Unless specifically authorized by the Commissioner, a state association shall not invest more than 10 percent, in the aggregate, of its assets in the investments specified in this subdivision;

4. Unless specifically authorized by the Commissioner, a state association shall not invest more than 10 percent, in the aggregate, of its assets in the investments specified in subdivisions 2 and 3 of this section.

~~5.~~ In obligations ~~which~~ that are fully guaranteed as to principal and interest by the United States or the Commonwealth; ~~in~~

5. In stock or obligations of any Federal Home Loan Bank ~~or Banks; in stock~~ or ~~obligations of~~ Federal Reserve ~~Banks~~ Bank; ~~in~~

6. In obligations of, or issued by, any other state~~, territory or possession of the United States~~ or political subdivision thereof, so long as such obligations continue to hold one of the four highest national investment grade ratings; ~~in~~

7. In obligations of, or issued by, any ~~city, town, county~~ locality, district, or other ~~municipal corporation or~~ political subdivision of the Commonwealth, or any public instrumentality or public authority created by act of the General Assembly, so long as such obligations continue to hold one of the four highest national investment grade ratings; ~~in~~

8. If the savings institution is a state association, in deposits in banks for savings and loan associations; ~~in~~

9. In stock, obligations or other instruments of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or any successor ~~or successors~~ thereto; ~~in~~

10. In obligations of, or guaranteed as to principal and interest by, Canada or any province thereof, provided that the principal and interest of any such obligations are payable in United States funds; ~~in~~

11. In demand, time, or savings deposits, shares or accounts, or other obligations of any financial institution the accounts of which are insured by a federal agency or other insurer approved by the Commissioner or other insurer approved by the Commissioner; ~~in~~

12. In bankers' acceptances ~~which~~ that are eligible for purchase by Federal Reserve Banks~~.~~;

~~6~~ 13. In loans to individuals for personal, family or household purposes and loans reasonably incident thereto, ~~to include~~ including loans to dealers in consumer goods for purposes of financing inventory and floor planning. Such loans may be evidenced by installment consumer paper ~~which~~ that is transferred to ~~an association~~ a savings institution by an endorser or guarantor, provided that such paper shall carry a full or limited endorsement or guarantee of the person~~, partnership, association or corporation~~ transferring the same and the ~~association~~ savings institution shall have a certificate of a responsible officer designated by its board for that purpose stating that the responsibility of the maker of such obligation has been evaluated and the ~~association~~ savings institution is relying primarily upon such maker for the payment of such obligation~~.~~;

~~7~~ 14. ~~In loans~~ Loans secured by savings accounts of the association~~.~~;

~~8. An association may issue credit cards, extend credit in connection therewith and otherwise engage in or participate in credit card operations.~~

~~9~~ 15. In unsecured single payment personal loans to individuals with a term of not more than 12 months~~.~~;

~~10~~ 16. In personal property, which term as used herein shall include fixtures, acquired upon the specific request of and for lease to a customer, subject to the following limitations:

a. The rentals receivable by the association under the initial lease of any item of personal property shall at least equal the cost to the ~~association~~ savings institution of such item of personal property;

b. The ~~association~~ savings institution shall have a certificate of a responsible officer designated by its board for that purpose stating that the responsibility of the lessee has been evaluated and approved by such officer; and

c. Upon the expiration of any lease, whether by virtue of the lease agreement or by virtue of the retaking of possession by the association, such personal property shall be relet, sold or otherwise disposed of, or charged off within one year from the time of expiration of such lease~~.~~;

~~11~~ 17. In secured or unsecured credit to cover payment of checks, drafts or other fund transfer orders in excess of the available balance of an account on which they are drawn~~,~~ ~~provided that such~~. Such extensions of credit must be paid off within 30 days after the extension of credit is made. The 30-day limitation on repayment shall apply only to inadvertent overdrafts by the account owner, and shall not apply to extensions of credit, agreed upon in writing, whereby the borrower is permitted to access the line of credit by check, draft or other fund transfer order~~.~~;

~~12~~ 18. In loans for commercial, corporate, business or agricultural purposes. Unless specifically authorized by the Commissioner, (i) a state association shall not invest more than 10 percent of its assets, and (ii) a state savings bank shall not invest more than 20 percent of its assets, in loans for commercial, corporate, business or agricultural purposes. The percentage-of-assets ~~limitation~~ limitations in ~~this subdivision~~ the preceding sentence shall not apply to overdraft loans, commercial real estate loans, loans to a service corporation the stock of which is owned by the ~~association~~ savings institution, or loans to dealers in consumer goods for inventory or floor planning financing~~.~~;

~~13. A state association may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code (§ 8.1A-101 et seq.) or the Uniform Customs and Practice for Documentary Credits and may pledge collateral to secure its obligations thereunder, subject to the following requirements:~~

~~a. Each letter of credit shall conspicuously state that it is a letter of credit;~~

~~b. The issuer's undertaking shall contain a specified expiration date or be for a definite term, and shall be limited in amount;~~

~~c. The issuer's obligation to pay shall be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and~~

~~d. The account party shall have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.~~

~~14~~ 19. In commercial paper rated in the highest or second highest categories as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services; ~~in~~

20. In corporate debt securities, including corporate debt securities convertible into stock, that may be sold with reasonable promptness at a price that corresponds reasonably to their fair market value, and that are rated in at least the third highest category by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security; ~~and in~~

21. In shares in open-end management investment companies.~~;~~ and

~~15. A state association may invest in any~~ 22. Any other obligations, instruments or investments ~~which~~ that are specifically approved by the Commissioner.

~~16. The Commission may promulgate such rules and regulations as may be required to prevent excessive aggregate amounts of lending by an association to any one individual or entity.~~

B. In addition to the items authorized by subsection A, a state savings institution may:

1. Issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations; and

2. Issue commercial and standby letters of credit in conformance with the Uniform Commercial Code (§ 8.1A-101 et seq.) or the Uniform Customs and Practice for Documentary Credits published as International Chamber of Commerce publication No 600, and may pledge collateral to secure its obligations thereunder, subject to the following requirements:

a. Each letter of credit shall conspicuously state that it is a letter of credit;

b. The issuer's undertaking shall contain a specified expiration date or be for a definite term, and shall be limited in amount;

c. The issuer's obligation to pay shall be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and

d. The account party shall have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

C. The Commission may adopt such regulations as may be required to prevent excessive aggregate amounts of lending by an association to any one individual or entity.

**Drafting note: Portions of existing § 6.1-194.136 are incorporated; see the drafting note following proposed § 6.2-1187. In existing subdivision 2, the provision applicable to holding companies that filed applications before January 23, 1989, is deleted as obsolete. Existing subdivision 4 is deleted and the limitations it established are incorporated into subdivisions 2 and 3. Note that a clause in proposed subdivision 11 ("or other insurer approved by the Commissioner") is not set out in existing subdivision 3 of § 6.1-194.136 for savings banks. The phrases "or corporations" and "or successors" are deleted because § 1-227 provides that any word in the singular includes the plural and vice versa. In proposed subdivision 13, "person" encompasses the types of entities listed per § 1-230. Existing subdivision 8 is**

**set out as proposed subdivision B 1. Existing subdivision 13 is set out as proposed subdivision B 2. Existing subdivision 16 is set out as proposed subsection C.**

§ 6.2-1187. Investment authority of state savings banks.

Notwithstanding any provision of § 6.2-1186 to the contrary:

1. A state savings bank shall not invest in an office building or buildings and appurtenances for the transaction of its business, or for the transaction of such business and for rental, without the prior approval of the Commissioner if the total amount of the investment exceeds the aggregate amount of the savings bank's unimpaired capital fund;

2. A service corporation described in subdivision A 2 of § 6.2-1186 in the stock or other securities or obligations of which a savings bank invests shall be subject to state and local taxation in the same manner as are savings banks;

3. The assets of a state savings bank may be invested in stock or obligations of the Federal Deposit Insurance Corporation;

4. The assets of a state savings bank may be invested in commercial paper eligible for purchase by Federal Reserve Banks;

5. A state savings bank shall not invest more than 20 percent of its assets in loans the primary security for which is nonresidential real estate; and

6. A state savings bank shall conform to the loans-to-one-borrower limitations contained in § 6.2-875.

**Drafting note: New section that sets out provisions in existing § 6.1-194.136 that establish requirements regarding investments by savings banks that differ from those applicable to savings associations. Proposed subdivision 1 is the last sentence of existing subdivision 1. Proposed subdivision 2 is part of the second sentence of existing subdivision 2. Proposed subdivision 3 is part of the third clause of existing subdivision 3. Proposed subdivision 4 is part off the last clause of subdivision 3. Proposed subdivision 5 is the last sentence of existing subdivision 11. Proposed subdivision 6 is existing subdivision 15.**

§ ~~6.1-194.70~~ 6.2-1188. Effect of repeal or amendment of statute or regulation on existing loan or investment.

Any investment or loan ~~which~~ that was in compliance with the provisions of this chapter or a regulation of the Commission in existence when such investment or loan was made shall remain a legal investment or loan even though the power to make such investment or loan in the future is amended or revoked by regulation or by action of the General Assembly ~~of Virginia~~.

**Drafting note: Technical change. Section incorporates existing § 6.01-194.137, which is identical to existing § 6.1-194.70.**

§ ~~6.1-194.71~~ 6.2-1189. Limitation on liability of savings institutions making loans for certain purposes.

A savings institution ~~which~~ that makes a loan, the proceeds of which are used or may be used by the borrower to finance the purchase, design, manufacture, construction, repair, modification, or improvement of real or personal property for personal use, or for sale or lease to others, or for the acquisition or operation of a business, shall not be held liable to such borrower

or to any third persons (i) for any loss or damage occasioned by any defect in the real or personal property so purchased, designed, manufactured, constructed, repaired, modified or improved, (ii) for any loss or damage resulting from the failure of the borrower to use due care in the design, manufacture, construction, repair, modification or improvement of any such real or personal property, or (iii) for the acts or omissions of the borrower in acquisition or operation of a business, unless such loss or damage is a result of an action of the savings institution outside the scope of its business as a savings institution, or unless the institution has knowingly been a party to misrepresentations with respect to such real or personal property.

**Drafting note: Technical change.**

§ ~~6.1-194.72~~ 6.2-1190. Perfection of certain security interests.

When securities are sold by a savings institution subject to an obligation of repurchase, any security interest or interest of ownership therein may be perfected (i) as specified by Title 8.8 (§ 8.8-101 et seq.) or Title 8.9A (§ 8.9A-101 et seq.); ~~or~~ (ii) by designation to the person holding physical custody thereof ~~(~~, which shall include a person keeping the master records, in case of securities identified by book entry only~~)~~, that certain securities identified by serial number or dollar amount are held for the benefit of third parties other than the savings institution, who may, but need not be, identified by name; or (iii) by physical separation on the premises of the savings institution in a separate drawer, compartment, or other facility. The savings institution may, from time to time, instruct any third party holding such securities that the previously identified securities or an amount of such securities previously identified as pledged or belonging to third parties, have been released from such pledge by payment of all or part of the amount due, or have been repurchased. There shall be an identification on the records of the savings institution of the persons who are pledgees or owners of such securities.

**Drafting note: Technical changes.**

Article 9.

Supervision.

§ ~~6.1-194.73~~ 6.2-1191. General supervisory powers of ~~Commissioner~~ Commission.

The ~~Commissioner~~ Commission shall have general ~~supervision over~~ supervisory powers with respect to all state associations ~~and~~, state savings banks and their holding companies, foreign savings institutions transacting business in the Commonwealth, savings institution holding companies whose principal place of business is located in the Commonwealth, service corporations that are owned or controlled by one or more state savings banks, service corporations the principal offices of which are located in the Commonwealth or ~~which~~ that are owned or controlled by one or more state associations, and any other ~~persons which are~~ person who is subject to the provisions of this chapter.

**Drafting note: Section incorporates existing § 6.1-194.139, with technical changes. Replacing "Commissioner" with "Commission" acknowledges the practice that the State Corporation, rather than the Commissioner of Financial Institutions, has general supervision over these institutions. The phrase in the first sentence "shall have general supervision over" is amended to conform to the catchline.**

§ ~~6.1-194.74~~ 6.2-1192. Regulations ~~of Commission~~.

A. The Commission may adopt such regulations as it deems appropriate to effect the purposes of this chapter. Before ~~promulgating~~ adopting any regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to present evidence and be heard, in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~.

B. The Commission may adopt such regulations as may be necessary to permit state savings institutions to have powers comparable with those of federal savings institutions, regardless of any then existing statute, regulation or court decision limiting or denying such powers to state savings institutions. The requirement of a public hearing shall not automatically apply to regulations adopted under this subsection, but the Commission may have such hearing as it deems appropriate.

C. The Commission may adopt regulations governing savings institution holding companies doing business in the Commonwealth, including the activities of such companies and their subsidiaries.

D. The Commissioner shall publish and mail to each state savings institution and foreign savings institution doing business in the Commonwealth a copy of all regulations of the Commission in effect pertaining to such savings institutions at such times as he may deem proper.

E. Regulations adopted by the Commission shall continue in effect until amended or revoked by the Commission or ~~superceded~~ superseded by action of the General Assembly ~~of Virginia~~.

**Drafting note: Section incorporates existing §§ 6.1-194.140, 6.1-194.141, and 6.1-194.142. Proposed subsection B is existing § 6.1-194.75, subsection C is the first sentence of existing subsection B of § 6.1-194.87, and subsection D is existing § 6.1-194.76.**

~~§ 6.1-194.75. Regulations to permit state associations to have powers comparable to federal savings institutions.~~

~~The Commission is authorized to adopt such regulations as may be necessary to permit state associations to have powers comparable with those of federal savings institutions, regardless of any then existing statute, regulation or court decision limiting or denying such powers to state associations. The requirement of a public hearing shall not automatically apply to regulations promulgated under this section, but the Commission may have such hearing as it deems appropriate.~~

**Drafting note: Relocated to subsection B of proposed § 6.2-1192.**

~~§ 6.1-194.76. Publication of regulations.~~

~~The Commissioner shall publish and mail to each state association and foreign savings institution doing business in the Commonwealth a copy of all regulations of the Commission in effect pertaining to such savings institutions at such times as he may deem proper.~~

**Drafting note: Relocated to subsection D of proposed § 6.2-1192.**

§ ~~6.1-194.77~~ 6.2-1193. Statements to be furnished by Commission to directors of savings institutions.

The Commission shall prepare and make available to each member of the board of directors of every state ~~association~~ savings institution a statement describing generally their duties and responsibilities. The statement shall include a brief outline of the examining procedure employed by the Commission, an explanation of the distinction between an examination and an audit, and any information ~~which~~ that the Commission deems necessary to apprise the directors of the necessity for an adequate system of internal controls.

**Drafting note: Section incorporates existing § 6.1-194.143, with technical change.**

§ ~~6.1-194.78~~ 6.2-1194. State ~~associations~~ savings institutions to furnish financial statements and reports.

A. Every state ~~association~~ savings institutions shall furnish the Commission within ~~thirty~~ 30 days after the close of its fiscal year a statement of its financial condition on forms supplied by the Commission. ~~Such~~ The statements shall be made in accordance with forms prescribed by the Commission, certified under oath by the president or treasurer of the ~~association~~ savings institution, and attested by at least three of its directors. Insofar as practicable, the reports required by this section shall conform to those required of ~~associations~~ savings institutions insured by any instrumentality of the federal government that insures or regulates savings institutions. The Commission shall allow state ~~associations~~ savings institutions to submit ~~such~~ the statements electronically. Any state association that submits such statements electronically shall maintain a copy of the statement with the required certified signatures affixed.

B. Every state ~~association~~ savings institution shall make such other reports as the Commission may from time to time require.

**Drafting note: Section incorporates § 6.1-194.144. Technical changes.**

§ ~~6.1-194.79~~ 6.2-1195. Examination of state ~~associations~~ savings institutions and affiliates by Commissioner; report of examination.

A. As used in this section, the term "affiliate of any state savings institution" means any entity (i) of which the state savings institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons, exercising similar functions, (ii) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of such state savings institution who own or control either a majority of the shares of the state savings institution or more than 50 percent of the number of shares voted for the election of directors of the state savings institution at the preceding election, or by trustees for the benefit of the shareholders of the state savings institution, or (iii) of which a majority of the directors, trustees, or other persons exercising similar functions are directors of the state savings institution.

B. The Commissioner shall, not less than once during any period of three consecutive calendar years, or at such additional times as he deems necessary, with or without previous

notice, examine each state ~~association~~ savings institution. A copy of the report of all examinations shall be furnished to the ~~association, and such~~ savings institution. The report shall be presented by the president or other chief executive officer to the directors at their next meeting.

C. No other copies of a report of examination shall be made except as necessary for review by officers and directors of the state ~~association~~ savings institution. Copies of the report made for officers and directors of the ~~association~~ savings institution shall not be removed from the premises of such association and shall be destroyed after the review has been completed. The original examination report shall be kept among the records of the Bureau ~~of Financial Institutions~~. Upon resolution of the board of directors of ~~an association~~ a savings institution , examination reports may be inspected in the ~~association~~ savings institution by such other persons as the board may specify.

~~B~~ D. In connection with the examination of any state ~~association~~ savings institution, the Commission may make or cause to be made an examination of the affiliates of the state ~~association~~ savings institution as shall be necessary to ascertain the financial condition of the ~~association~~ savings institution and disclose fully the relations between the ~~association~~ savings institution and its affiliates and the effect of such relations upon the affairs of the ~~association~~ savings institution.

~~For the purpose of this section, the term "affiliate of any state association" means any corporation, business trust, association, or other similar organization (i) of which the state association, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons, exercising similar functions, (ii) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of such state association who own or control either a majority of the shares of the state association or more than fifty percent of the number of shares voted for the election of directors of the state association at the preceding election, or by trustees for the benefit of the shareholders of the state association, or (iii) of which a majority of the directors, trustees, or other persons exercising similar functions are directors of the state association.~~

E. Upon written application made to the Commission by the board of directors or by the stockholders representing two-fifths of the total outstanding capital stock of any ~~association~~ savings institution incorporated under the laws of and doing business in ~~this~~ the Commonwealth, or when, in the judgment of the Commission, it may be necessary for the protection of the public or of persons depositing or dealing with such state ~~association~~ savings institution, the Commission shall cause to be made a special examination of such state ~~association~~ savings institution. All expenses incident to such special examination may be charged to the state ~~association~~ savings institution so examined and shall be paid by the ~~association~~ savings institution so charged.

**Drafting note: Section incorporates § 6.1-194.145. The second paragraph of existing subsection B is relocated to proposed subsection A, to place the definition at the beginning of the section. Other changes are technical.**

§ ~~6.1-194.80~~ 6.2-1196. ~~Savings institution to give examiners access~~ Access to books~~, etc.~~ and evidence of debt; examination of directors, officers and employees under oath.

A. The officers, directors and employees of every savings institution doing business in the Commonwealth shall, upon the demand of the person designated by law to make any examination of the institution:

1. Give to such examiner full access to all money, books, papers, notes, bills and other evidence of debt of the savings institution;

2. Disclose fully and truly all of its indebtedness and liability; and

3. Furnish the examiner with all information ~~which~~ that the examiner deems necessary to a full investigation into the affairs of the savings institution.

B. The Commission ~~is empowered to~~ may examine under oath any and all of the directors, officers, clerks, and employees of a savings institution touching any matter or thing connected with the operation of the savings institution. Any duly authorized examiner shall have the authority to administer oaths to the persons examined.

**Drafting note: Section incorporates § 6.1-194.146, with technical changes.**

§ ~~6.1-194.81~~ 6.2-1197. False statements ~~by officers or agents~~; penalty.

Any officer, director, or agent of a savings institution who knowingly makes a false statement of the condition of the institution to the Commission ~~shall be~~ is guilty of a Class 6 felony.

**Drafting note: Section incorporates § 6.1-194.1~~94~~7 with technical changes. Existing § 6.1-194.197 applies the measure to officers, directors, and agents of state savings banks, through existing § 6.1-194.81 applies the measure to officers and agents of savings associations. The amendment makes the measure applicable to officers, directors, and agents of both types of savings institutions.**

§ ~~6.1-194.82~~ 6.2-1198. Audits.

The Commission may require a savings institution doing business in the Commonwealth to have an audit made of its books, records and methods of operation, whenever it appears to the Commission that the system of internal controls is not adequate or that the savings institution is engaging in dangerously unsound practices or that the financial condition of the institution makes it necessary.

**Drafting note: Section incorporates § 6.1-194.148. No change.**

§ ~~6.1-194.83~~ 6.2-1199. Powers of Commission in case of nonobservance of law, noncompliance with orders, insufficient reserves or insolvency~~, etc.~~; appointment of Federal Deposit Insurance Corporation as receiver.

A. If the Commission finds that: (i) ~~that~~ the laws of ~~this~~ the Commonwealth are not being fully observed by a savings institution doing business in the Commonwealth; ~~or~~ (ii) ~~that~~ a savings institution is being operated in an unsafe or unsound manner; ~~or~~ (iii) ~~that~~ the institution

has failed to comply with the lawful orders of the Commission; ~~or~~ (iv) ~~that~~ the reserve of the institution is insufficient for the protection of account holders; or (v) ~~that~~ a savings institution is, or is about to become, insolvent, it shall give immediate notice thereof to the officers and directors of the institution. If necessary to conserve the assets of the institution or to protect the interests of its account holders or the public interest, the Commission may, after reasonable notice to the institution and opportunity for it to be heard:

1. Close the institution for a period not exceeding ~~sixty~~ 60 days, which period may be further extended for a like period or periods as the Commission deems necessary;

2. Require the officers and directors of the institution to liquidate, insofar as is required, its outstanding loans;

3. Require that all lawful orders of the Commission be complied with;

4. Require the institution to make reports daily or at such other times as it may require as to the results achieved in carrying out its orders;

5. Temporarily suspend the right of such institution to receive any further deposits;

6. Without examination, close, for such period or periods as the Commission may deem necessary, any savings institution facing an emergency due to withdrawal of deposits or otherwise, or, without closing such savings institution, grant to it the right to suspend or limit the withdrawal of deposits, for such period as the Commission may determine; or

7. Require that the savings institution desist from those activities ~~which~~ that have resulted in the unsafe or unsound operation of the institution.

B. If the Commission determines that a receiver should be appointed for a savings institution, the Commission may close the doors of the institution, take charge of the books, assets and affairs of the institution, and apply to any court in the Commonwealth having jurisdiction to appoint receivers for the appointment of a receiver to take charge of the institution's business and assets. Proceedings for the appointment of a receiver of a savings institution shall not be entertained by any court except on the application of the Commission.

C. In any case where the Commission finds that an insured savings institution is insolvent or about to become insolvent, the Commission may seek the appointment of the Federal Deposit Insurance Corporation as receiver for the savings institution~~, and the~~. The court may appoint the Federal Deposit Insurance Corporation as ~~such,~~ receiver for the savings institution if it finds that to do so would be in the public interest. Upon its being appointed, the Federal Deposit Insurance Corporation shall not be required to post bond, and it shall have as receiver all those powers afforded under federal law.

D. ~~1.~~ The Commissioner may issue and serve upon an association an order to cease and desist from an unsafe or unsound practice or a violation if, in the opinion of the Commissioner, an association (i) is engaging or has engaged, or there is reasonable cause to believe is about to engage, in an unsafe or unsound practice in conducting the business of the association; or (ii) is violating or has violated, or there is reasonable cause to believe is about to violate, this chapter or any other applicable law, ~~rule,~~ regulation, or order. An order to cease and desist shall contain a statement of the facts constituting the alleged violation or unsafe or unsound practice, and it may

require, in terms that may be mandatory or otherwise, an association, its directors, officers, employees, or agents to cease and desist from such violation or practice. The order shall specify the effective date thereof and shall contain a notice to the association of its right to request a hearing on the order in accordance with ~~Rules 3:4 and 5:6 of~~ the "Commission's Rules ~~of Practice and Procedure of the State Corporation Commission~~."

~~2~~ E. When the unsafe or unsound practice or the violation specified in ~~the~~ an order to cease and desist, or any continuation thereof, is likely to prejudice the interests of the account holders or the stockholders of an association, the Commissioner may issue his order effective immediately. An order to cease and desist shall remain in effect until it is withdrawn by the Commissioner or is terminated by the Commission after a hearing on the matter. A request for hearing under this section shall be given expeditious treatment on the docket of the Commission, and the Commission need not allow for ~~ten~~ 10 days' notice to the parties.

**Drafting note: Technical changes. The Commission's Rules are defined in proposed § 6.2-100. Rules 3:4 and 5:6 of the Rules no longer exist.**

§ ~~6.1-194.84~~ 6.2-1200. Removal of director or officer; appeal; penalty for acting after removal.

A. ~~1.~~ Whenever any director or officer of a savings institution doing business in the Commonwealth has knowingly continued to violate any law relating to such savings institution or has knowingly continued any unsafe or unsound practice in conducting the business of such institution, after the director or officer, and the board of directors of the institution of which he is a director or officer, have been warned in writing by the Commissioner to discontinue such violation of law or such unsafe or unsound practice, the Commissioner shall certify the facts to the Commission~~, which~~. The Commission shall thereupon enter an order requiring such director or officer to appear before the Commission, within not less than ~~ten~~ 10 days, to show cause why he should not be removed from office and thereafter restrained from participating in any manner in the management of such savings institution. Such order shall contain a brief statement of the facts certified to the Commission by the Commissioner. A copy of ~~such~~ the order shall be served upon ~~such~~ the director or officer, and a copy thereof shall be sent by certified or registered mail to each director of the savings institution affected.

~~2~~ B. If, after granting the accused director or officer a reasonable opportunity to be heard, the Commission finds that he has knowingly continued to violate any law relating to ~~such~~ the savings institution, or has knowingly continued any unsafe or unsound practice in conducting the business of ~~such~~ the institution, after he and the board of directors of the institution of which he is a director or officer have been warned in writing by the Commissioner to discontinue such violation of law or unsafe or unsound practice, the Commission shall enter an order removing ~~such~~ the director or officer from office and restraining ~~such~~ the director or officer from thereafter participating in any manner in the management of such savings institution. A copy of such order shall be served upon ~~such~~ the director or officer and upon the savings institution of which he is a director or officer, whereupon ~~such~~ the director or officer shall cease to be a director or officer of

~~such~~ the institution and shall thereafter cease to participate in any manner in the management of ~~such~~ the institution.

~~B. Any director or officer aggrieved by any order of the Commission entered under this section removing and restraining such officer or director, and any person aggrieved by any order of the Commission refusing to remove a director or officer from office, shall have, of right, an appeal to the Supreme Court of Virginia.~~

C. Any director or officer removed and restrained under the provisions of this section who thereafter participates in any manner in the management of such savings institution, except as a stockholder therein, ~~shall be~~ is guilty of a Class 6 felony.

**Drafting note: Existing subsection B is deleted as unnecessary because § 12.1-39 provides that any person aggrieved by any final action of the Commission shall have, of right, an appeal to the Supreme court irrespective of the amount involved. Other changes are technical.**

§ ~~6.1-194.84:1~~ 6.2-1201. Special examinations.

~~Upon~~ When (i) written application is made to the Commission by the board of directors or by the stockholders representing two-fifths of the total outstanding capital stock of any savings institution incorporated under the laws of and doing business in ~~this~~ the Commonwealth, or ~~when,~~ (ii) in the judgment of the Commission~~,~~ it may be necessary for the protection of the public or of persons depositing or dealing with such savings institution, the Commission shall cause to be made a special examination of such savings institution. All expenses incident to such special examination may be charged to the savings institution so examined and shall be paid by the savings institution so charged.

**Drafting note: Technical changes.**

§ ~~6.1-194.85~~ 6.2-1202. Fees for supervision and regulation; investigations.

A. For the purpose of defraying the expenses of supervision and regulation of state ~~associations~~ savings institutions and foreign savings institutions doing business in the Commonwealth, the Commission shall, on or before July 1 of each year, assess against every such savings institution fees in accordance with a schedule to be set by the Commission. Such schedule shall bear a reasonable relationship to the total assets of various individual savings institutions and to the costs of their respective supervision, regulation, and examination.

B. All fees so assessed shall be paid into the state treasury on or before July 31 following. The Commission shall mail the assessments to each association on or before July 1 of each year.

C. ~~Before~~ The Commission shall charge a fee:

1. Of $1,800 for investigating an application for authority to establish a branch, ~~the Commission shall charge a fee of $1,800~~ if the branch is to be located within the Commonwealth ~~and a fee as~~;

2. As prescribed by the Commission for investigating an application for authority to establish a branch if the branch is to be located outside the Commonwealth~~. A fee of~~;

3. Of $1,000 ~~shall be charged before~~ for investigating an application for authority to change the location of an existing main office or branch office~~. Before~~;

4. Of $10,000 for investigating an application for a certificate of authority ~~the Commission shall charge a fee of $10,000~~ in the case of a state association ~~and a fee as~~;

5. As prescribed by the Commission for investigating an application for a certificate of authority in the case of a foreign savings institution~~. For~~;

6. Of $7,500 for investigating an application for merger ~~of~~ or consolidation~~, the Commission shall charge a fee of $7,500 and~~;

7. Of $2,000 for investigating an application for authority to exercise trust powers if such powers are to be exercised through a trust department;

8. Of $10,000 for investigating an application for authority to exercise trust powers if such powers are to be exercised through a trust affiliate or subsidiary;

9. Of $5,000 for investigating an application to convert from a state association to a state savings bank pursuant to subsection B of § 6.2-1143 or from a state bank to a state savings bank pursuant to § 6.2-829; and

10. of $10,000 for investigating an application for a conversion other than a conversion from a state association or state bank to a state savings bank as provided in subdivision 9.

D. The Commission shall not be entitled to any ~~further~~ fees other than as provided in subdivision C 6 for investigating any application to retain existing branches of the applying savings institution as branches of the merged or consolidated institutions. ~~Such fees~~ The fee prescribed in subdivision C 6 may be waived by the Commission in the case of supervisory mergers or consolidations made pursuant to § ~~6.1-194.88~~ 6.2-1205.

~~D. For investigating an application for authority to exercise trust powers, the Commission shall charge a fee of $2,000 if such power is to be exercised through a trust department and $10,000 if such power is to be exercised through a trust affiliate or subsidiary~~.

E. Notwithstanding the designation of the several fees set forth in ~~subsections~~ subsection C ~~and D~~, the Commission may reduce by regulation or order any such fee or fees, if the Commission concludes that there is a reasonable basis for doing so and that the reduction of the fee will not be detrimental to the effectiveness of the Bureau ~~of Financial Institutions~~.

**Drafting note: Section incorporates existing § 6.1-194.149. Subsection D is recast as subdivisions C 7 and 8, to place all fee provisions in the same subsection. In proposed subdivision C 6, the changing "of" to "or" corrects an existing error. Other changes are technical.**

§ ~~6.1-194.86~~ 6.2-1203. Examination of ~~books, etc., of~~ persons believed to be doing business without authority; doing business without authority ~~a felony~~; penalty.

A. The Commissioner ~~is authorized and directed to~~ shall examine the accounts, books, and papers of any person or entity ~~which~~ that he has reason to believe is doing the business of a savings institution in the Commonwealth without legal authority to do so. Any person having possession, custody, or control of such accounts, books, and papers refusing to produce such documents for examination by the Commissioner ~~shall be~~ is guilty of a Class 1 misdemeanor.

B. Every person who does the business of a savings institution in the Commonwealth without authority, and every officer and agent of a corporation doing such business without authority who knowingly participates therein, ~~shall be~~ is guilty of a Class 6 felony.

**Drafting note: Technical changes.**

§ ~~6.1-194.87~~ 6.2-1204. ~~Regulation of~~ Compliance by savings institution holding companies with federal regulations constitutes compliance with Commission regulations.

~~A. Any person which, directly or indirectly, or acting in concert with one or more other companies or with one or more subsidiaries or affiliates, acquires, owns, controls or holds with power to vote twenty-five percent or more of the voting shares of a stock savings institution, or which controls in any manner the election of a majority of the directors of such institution, shall for purposes of this chapter be deemed to be a savings institution holding company.~~

~~B. The Commission may promulgate regulations governing savings institution holding companies doing business in the Commonwealth, including the activities of such companies and their subsidiaries.~~ Any savings institution holding company ~~which~~ that does not have any subsidiaries ~~which~~ that are state savings institutions and ~~which~~ that is subject to regulations adopted by the appropriate federal authority shall be deemed to be in substantial compliance with the regulations ~~promulgated~~ adopted by the Commission if it is in compliance with the regulations ~~promulgated~~ adopted by the appropriate federal authority.

~~C. Notwithstanding the provisions of subsection B of this section, no person, whether acting alone or in concert with others, shall acquire ownership or control of twenty-five percent or more of the voting shares of a state stock savings institution, or otherwise control the election of a majority of the directors of such institution, without the approval of the Commission. The Commission shall not approve the proposed acquisition unless the Commission determines that the proposed acquisition is in the public interest.~~

**Drafting note: Existing subsection A is deleted because the term "savings institution holding company" is defined in proposed § 6.2-1100. The first sentence of subsection B is moved to proposed § 6.2-1192 (Regulations). Existing subsection C is moved to proposed § 6.2-1147. The changes to the catchline reflect the revised scope of the section.**

§ ~~6.1-194.88~~ 6.2-1205. Merger, consolidation or transfer of assets of insolvent or financially unstable ~~association~~ savings institution; notice and hearing; final order; priorities; examinations of resulting institutions.

A. As used in this section:

"Bank" or "savings institution" means institutions incorporated or established under the laws of (i) the Commonwealth, (ii) the United States, (iii) any other state, which institutions' deposits are insured as required by this title for the issuance of a certificate of authority to do business.

"Insolvent" means that the current book value of liabilities is in excess of the current book value of assets.

B. If the Commission finds that (i) ~~that any~~ a state ~~association~~ savings institution is insolvent, or ~~that~~, in its opinion, the financial stability of a state ~~association~~ savings institution is

threatened, (ii) ~~that~~ the merger or consolidation of such state ~~association~~ savings institution into another savings institution or into a bank is desirable for the protection of the stockholders, members or depositors of such association, and that such merger or consolidation is in the public interest, and (iii) ~~that~~ an emergency exists, and if the board of directors of such state ~~association~~ savings institution approves a plan of merger or consolidation of such ~~association~~ savings institution into another savings institution or bank, compliance with the requirements of § 13.1-718 or 13.1-895 shall be dispensed with as to such state ~~association and~~ savings institution. In such event, the approval by the Commission of such plan of merger or consolidation shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such state ~~association~~ savings institution for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1 or the approval of two-thirds of the members for all purposes of Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title 13.1.

~~B~~ C. If the Commission finds that (i) ~~that~~ a state ~~association~~ savings institution is insolvent, or ~~that,~~ in its opinion, the financial stability of a state ~~association~~ savings institution is threatened, (ii) ~~that~~ the acquisition of the assets and liabilities of such ~~association~~ savings institution by another savings institution or by a bank is in the best interests of the stockholders, members or depositors of such state ~~association~~ savings institution, and that such acquisition of the assets and liabilities is in the public interest, and (iii) ~~that~~ an emergency exists, it may, with the consent of the board of directors of both institutions as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets and liabilities of such state ~~association~~ savings institution to such other savings institution or bank ~~and no~~. In such event, compliance with the provisions of § 13.1-723, 13.1-724, 13.1-899, or 13.1-900 shall not be required, ~~nor shall~~ and § 13.1-730 shall not be applicable to such transfer.

~~C~~ D. In the case either of such a merger, consolidation or a transfer of assets and liabilities, the Commission shall provide that prompt notice of its findings, and plan of merger, consolidation or transfer of assets and liabilities, be sent to the stockholders or members of record of such insolvent ~~association~~ savings institution or ~~association~~ savings institution threatened with financial instability for the purpose of providing such shareholders or members an opportunity to challenge the findings of the Commission and the plan of merger, consolidation or transfer of assets and liabilities. The relevant books and records of such state ~~association~~ savings institution shall remain intact and be made available to such shareholders or members for a period of 30 days after such notice is sent. The Commission's findings and plan of merger, consolidation or transfer of assets and liabilities shall become final if a hearing before the Commission is not requested by any such shareholder or member in a written request delivered to the Commission within 15 days after the notice specified by this section is sent. Any such request for a hearing shall contain a statement of the specific grounds for such shareholder's or member's challenge to the Commissioner's findings and plan of merger, or consolidation or transfer of assets and liabilities.

~~D~~ E. If, after ~~such~~ a hearing as provided in subsection ~~C~~ D, the Commission finds that good cause has been shown for the reversal or modification of its initial findings, or for rescission or modification of its initial plan for merger, consolidation or transfer of assets and liabilities, the Commission shall enter its final order accordingly. ~~But if~~ If, after such hearing, the Commission affirms its original findings and plan for merger, or consolidation or transfer of assets and liabilities, its order shall be final.

~~E~~ F. Notwithstanding any other provision of law, any institution resulting from a merger, consolidation or a transfer of assets and liabilities under the provisions of this section shall have the right to retain and operate all offices of the association so merged, consolidated or acquired ~~which~~ that were in operation at the time of such merger, or consolidation or acquisition. This section shall not be construed to allow the establishment of additional branches by any institution resulting from such merger, consolidation or transfer than would otherwise be allowed by the laws of the Commonwealth.

~~F. For the purposes of this section, "insolvent" shall mean that the current book value of liabilities is in excess of the current book value of assets.~~

~~G. For the purposes of this section, the terms "association," "bank," or "savings institution" shall mean institutions incorporated or established under the laws of (i) the Commonwealth of Virginia, (ii) the United States, (iii) any other state of the United States, (iv) a territory of the United States, or (v) the District of Columbia, which institutions' deposits are insured as required by this title for the issuance of a certificate of authority to do business.~~

~~H~~ G. The Commission shall authorize transactions under this section ~~according to~~ in the following ~~priorities~~ order of priority:

1. ~~First, between~~ Between financial institutions of the same type located within the Commonwealth ~~of Virginia~~;

2. ~~Second, between~~ Between financial institutions of different types located within the Commonwealth ~~of Virginia~~;

3. ~~Third, between~~ Between financial institutions of the same type including depository institutions located outside the Commonwealth ~~of Virginia~~; and

4. ~~Fourth, between~~ Between financial institutions of different types including depository institutions located outside the Commonwealth ~~of Virginia~~.

~~I~~ H. In considering transactions involving financial institutions located outside the Commonwealth ~~of Virginia~~, the Commission shall give priority to plans of merger, consolidation or asset acquisition involving financial institutions located in states adjoining the Commonwealth ~~of Virginia~~ or located in the District of Columbia.

~~J~~ I. Any institution resulting from a transaction authorized by this section whose main office is located outside of the Commonwealth ~~of Virginia~~ shall, as a condition of being able to do business in the Commonwealth, allow the Commission to examine such institution from time to time as the Commission deems necessary. In conducting such examinations, the Commission shall have all of the powers provided by this title relating to the examination of financial institutions.

~~K~~ J. The provisions of Article 5 (§ ~~6.1-194.41~~ 6.2-1148 et seq.) ~~and Article 11 (§ 6.1-194.96 et seq.)~~ of this chapter shall not apply to mergers, consolidations, and acquisitions authorized by the provisions of this section.

**Drafting note: Incorporates existing § 6.1-194.150. Existing subsections F and G are cast as proposed subsection A in order to place definitions at the start of the section. In proposed subsection H, the reference to the District of Columbia is retained because, though it is a "state" per § 1-245, it does not "adjoin" Virginia because they are not connected by land.**

~~Article 10.~~

~~Miscellaneous.~~

~~§ 6.1-194.89. Construction of chapter.~~

~~This chapter, being a general act intended as a comprehensive coverage of its subject matter, shall not be deemed to be impliedly repealed in whole or in part by subsequent legislation not specifically repealing it if such construction can be avoided. It is the intention of the General Assembly that this chapter shall be liberally construed to effect the purposes set out herein. If any provision, clause, or phrase of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are declared to be separable.~~

**Drafting note: The first sentence regarding implicit repeal by subsequent legislation is deleted, as it is unclear whether it would or could impede the purpose of subsequent legislation. The second sentence is moved to proposed subsection A of § 6.2-1101. The third sentence is deleted, because § 1-243 provides that acts are severable unless the act specifically provides otherwise.**

~~§ 6.1-194.90. Application to federal and foreign savings institutions.~~

~~The provisions of this chapter shall apply to federal savings institutions and foreign savings institutions doing business in the Commonwealth insofar as the Commonwealth has the power to enact legislation with regard to them.~~

**Drafting note: Section moved to proposed subsection B of § 6.2-1101.**

~~§ 6.1-194.91. Effect of chapter as to preexisting savings institutions.~~

~~A. The powers, privileges, duties and restrictions conferred and imposed upon any savings and loan association existing under the laws of this Commonwealth on July 1, 1985, are hereby abridged, enlarged or modified, as each particular case requires, to conform to the provisions of this chapter, but nothing in this chapter shall affect the legality of any investment heretofore made or transaction heretofore had under authority of any provision of law in force when such investment was made or transaction had.~~

~~B. Notwithstanding any other provision of law with respect to the rates of interest which may be charged, an association which on September 1, 1959, was operating on a share accumulation loan plan whereby its earnings were equitably distributed to both its borrowers and~~

~~its shareholders may continue to operate upon the same plan, but no additional loans shall be made or shares issued under such plan after July 1, 1974.~~

~~C. Any savings institution, doing business in the Commonwealth on July 1, 1986, or thereafter, which does not have its accounts insured by the Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the insurance provided thereby, shall not accept any deposits.~~

**Drafting note: Subsection A is deleted because it is not appropriate to continue carrying in the Code the provision regarding the effect of legislation enacted in 1985. Subsection B is moved to proposed § 6.2-1102. Subsection C (without the reference to July 1, 1986) is moved to subsection B of proposed § 6.2-1108.**

~~§ 6.1-194.92. Statement by savings institution that its accounts are insured or guaranteed; misleading advertising.~~

~~No savings institution shall, without the written approval of the Commission, make any representation, oral or written, that any of its accounts are insured or guaranteed unless such accounts are insured or guaranteed by an instrumentality of the United States or other insurer approved by the Commission. No savings institution shall publish any misleading advertisement.~~

**Drafting note: Moved to proposed § 6.2-1109.**

~~§ 6.1-194.93. False statements and similar actions prohibited.~~

~~Whoever knowingly makes or causes to be made, directly or indirectly, or through any agency whatsoever, any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of any savings institution upon any application, advance, discount, purchase or repurchase agreement, commitment, or loan or any change or extension of the same, by renewal, deferment of action or otherwise, or the acceptance, release or substitution of security therefor, shall be guilty of a Class 1 misdemeanor.~~

**Drafting note: Moved to proposed § 6.2-1104.**

~~§ 6.1-194.93:1. Use of savings institution name, logo, or symbol for marketing purposes; penalty.~~

~~A. Except as provided in subsection B, no person shall use the name, logo, or symbol, or any combination thereof, of a savings institution, or any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or symbol of a savings institution, in marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the savings institution or that the savings institution is responsible for the marketing material or solicitation.~~

~~B. This section shall not apply to (i) an affiliate or agent of the savings institution or (ii) a person who uses the name, logo, or symbol of a savings institution with the consent of the savings institution.~~

~~C. Any person violating the provisions of this section, either individually or as an interested party, shall be guilty of a Class 1 misdemeanor. This section shall not affect the availability of any remedies otherwise available to a savings institution.~~

**Drafting note: Moved to proposed § 6.2-1105.**

~~§ 6.1-194.94. Defamation of savings institutions and certain federal agencies prohibited.~~

~~Whoever willfully and knowingly makes, issues, circulates, transmits or causes or knowingly permits to be made, issued, circulated, or transmitted, any statement or rumor, written, printed, reproduced in any manner, or by word of mouth, which is untrue in fact and is (i) malicious, in that it is calculated to injure reputation or business, and (ii) derogatory to the financial condition or standing of any savings institution or Federal Home Loan Bank shall be guilty of a Class 2 misdemeanor.~~

**Drafting note: Moved to proposed § 6.2-1107.**

~~§ 6.1-194.95. Prohibitions on conduct of savings institution business; use of certain terms prohibited; exceptions; penalty.~~

~~A. No person shall engage in the savings institution business in the Commonwealth except entities which are state associations, federal savings institutions authorized to transact business in the Commonwealth or foreign savings institutions which have been authorized to transact a savings institution business in the Commonwealth pursuant to the provisions of Article 5 (§ 6.1-194.41 et seq.) or Article 11 (§ 6.1-194.96 et seq.) of this chapter. However, nothing in this chapter shall prevent any person who is not authorized to engage in the savings institution business from lending money on real estate or personal security or collateral, or from guaranteeing the payment of bonds, notes, bills or other obligations, or from purchasing or selling stocks and bonds, so long as such person does not hold himself out as being engaged in the savings institution business.~~

~~B. No person not engaged in the business of a savings institution in the Commonwealth under the provisions of this chapter shall use any sign having thereon any assumed or corporate name containing the words "savings and loan," "building and loan," "savings bank," or other words indicating that its office is the office of a savings institution; nor shall any such person use or circulate any written or printed material having thereon any assumed or corporate name or word or words indicating that the business of such person is that of a savings institution. However, the use of any of these terms in the name of any other corporation or in connection with any other business is not prohibited when additional words show clearly and definitely that the corporation is not, and that the business is not that of, a savings institution.~~

~~C. Any person violating the provisions of this section shall be guilty of a Class 6 felony.~~

~~D. The provisions of this section as to the use of a corporate name shall not apply to any industrial loan association which was authorized to do business in this Commonwealth on January 1, 1960, and which on that date had the words "savings and loan" or "building and loan" as part of its corporate name.~~

**Drafting note: Existing subsection A is moved to proposed subsections A and B of § 6.2-1103. Existing subsection B is moved to proposed subsection A of § 6.2-1106. Subsection C is moved to both §§ 6.2-1103 and 6.2-1106. Subsection D is deleted because there exists no industrial loan association with the words "savings and loan" or "building and loan" in its name.**

~~Article 11.~~

~~Acquisitions by Out-of-State Savings Institutions or Out-of-State Savings Institution Holding Companies.~~

**Drafting note: Existing Article 11 is merged with existing Article 5 to create proposed Article 5. The two existing articles share the same definitions and are paired in several instances (see, e.g., existing § 6.1-194.88).**

~~§ 6.1-194.96. Definitions.~~

~~As used in this article and in Article 5 (§ 6.1-194.41 et seq.) of 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 stock savings institution with another stock savings institution or of a savings institution holding company with another savings institution holding company;~~

~~2. The acquisition by a savings institution holding company or savings institution of direct or indirect ownership or control of voting shares of another savings institution holding company or a savings institution, if, after such acquisition, the savings institution holding company or savings institution making the acquisition will directly or indirectly own or control more than twenty-five percent of any class of voting shares of the other savings institution holding company or savings institution;~~

~~3. The direct or indirect acquisition by a savings institution holding company or by a savings institution of all or substantially all of the assets of another savings institution holding company or of another savings institution; or~~

~~4. Any other action that would result in direct or indirect control by a savings institution holding company or by a savings institution of another savings institution holding company or another savings institution.~~

~~"Savings institution" shall have the same meaning as set forth in § 6.1-194.2.~~

~~"Savings institution holding company" shall have the same meaning as set forth in subsection A of § 6.1-194.87.~~

~~"Principal place of business of a savings institution" shall be the state in which the largest amount of the deposits of the savings institution (excluding deposits acquired as a result of the kinds of transactions described in § 6.1-194.100) is located at the end of the last calendar year.~~

~~"Principal place of business of a savings institution holding company" shall be the state in which the largest amount of the deposits of the holding company's subsidiaries (excluding deposits acquired as a result of the kinds of transactions described in § 6.1-194.100) is located as of the end of the last calendar year.~~

~~"Out-of-state savings institution" means a savings institution:~~

~~1. That is organized under the laws of the United States or of one of the states other than Virginia; and~~

~~2. Whose principal place of business is located in a state other than Virginia.~~

~~"Out-of-state savings institution holding company" means a savings institution holding company that has its principal place of business in a state other than Virginia.~~

~~"State" includes the District of Columbia.~~

~~"Subsidiary" with respect to a savings institution holding company 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 savings institution 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 savings institution holding company; or~~

~~3. Any company with respect to the management or policies of which such savings institution 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 savings institution" means a savings institution that:~~

~~1. Is organized under the laws of this Commonwealth or of the United States; and~~

~~2. Has deposit-taking offices located only in this Commonwealth.~~

~~"Virginia savings institution holding company" means a savings institution holding company:~~

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

~~2. Whose financial institution subsidiaries located outside Virginia hold not greater than twenty percent of the total deposits held by all of its financial institution subsidiaries; and~~

~~3. That is not controlled by a savings institution holding company other than a Virginia savings institution holding company.~~

**Drafting note: Moved to proposed § 6.2-1148.**

~~§ 6.1-194.97. Acquisitions by out-of-state savings institution holding company.~~

~~A. Any savings institution holding company that does not have a Virginia savings institution subsidiary, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, may acquire a Virginia savings institution holding company or a Virginia savings institution with the approval of the Commission. Such savings institution 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 savings institution holding company making the acquisition has its principal place of business do not prohibit or unfairly impede a Virginia savings institution holding company meeting the criteria in this article from acquiring savings institutions or savings institution holding companies in that state;~~

~~2. The Commission determines that the laws of the state in which the savings institution holding company making the acquisition has its principal place of business permit such savings institution holding company to be acquired by the Virginia savings institution holding company or Virginia savings institution sought to be acquired. For purposes of this subsection, a Virginia savings institution shall be treated as if it were a Virginia savings institution holding company;~~

3. The Commission determines either that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years or that all of the savings institution subsidiaries of the Virginia savings institution 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 such savings institution holding company of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution 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 savings institution holding company of a savings institution or savings institution holding company in the state where such savings institution holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or savings institution holding company in such state by a savings institution holding company all the savings institution subsidiaries of which are located in that state.

B. An out-of-state savings institution holding company that has a Virginia savings institution subsidiary, except as acquired in the regular course of securing or collecting a debt previously contracted in good faith, may acquire any Virginia savings institution or Virginia savings institution holding company with the approval of the Commission. Such savings institution 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 savings institution sought to be acquired has been in existence and continuously operating for more than two years or that all of the savings institution subsidiaries of the Virginia savings institution 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 such savings institution holding company of all or substantially all of the shares of the savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; 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 savings institution holding company of a savings institution or a savings institution holding company in the state where such savings institution holding company making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or a savings institution holding company in such state by a savings institution holding company all the savings institution subsidiaries of which are located in that state.

**Drafting note: Moved to proposed § 6.2-1157.**

§ 6.1-194.98. Acquisitions by out-of-state savings institution.

A. Any out-of-state savings institution, insured by the Federal Deposit Insurance Corporation or other federal insurance agency, may acquire a Virginia savings institution holding

company or a Virginia savings institution with the approval of the Commission. Such savings institution 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 savings institution making the acquisition has its principal place of business do not prohibit or unfairly impede a Virginia savings institution meeting the criteria in this article from acquiring savings institutions or savings institution holding companies in that state;

2. The Commission determines that the laws of the state in which the savings institution making the acquisition has its principal place of business permit such savings institution to be acquired by the Virginia savings institution holding company or Virginia savings institution sought to be acquired;

3. The Commission determines that the Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years or that all of the Virginia savings institution subsidiaries of the Virginia savings institution 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 savings institution of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution 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 savings institution of a savings institution or savings institution holding company in the state where the savings institution making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or savings institution holding company in such state by a savings institution located in that state.

B. An out-of-state savings institution, insured by the Federal Deposit Insurance Corporation or other federal insurance agency, that has previously acquired a Virginia savings institution or Virginia savings institution holding company may acquire any additional Virginia savings institution or Virginia savings institution holding company with the approval of the Commission. Such savings institution 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 Virginia savings institution sought to be acquired has been in existence and continuously operating for more than two years. The Commission may approve the acquisition by a savings institution of all or substantially all of the shares of a savings institution organized solely for the purpose of facilitating the acquisition of a savings institution that has been in existence and continuously operating as a savings institution for more than two years; 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 savings institution of a savings institution or a savings institution holding company in the state where the

~~savings institution making the acquisition has its principal place of business but that would not apply to the acquisition of a savings institution or a savings institution holding company in such state by a savings institution located in that state.~~

**Drafting note: Moved to proposed § 6.2-1158.**

~~§ 6.1-194.99. Same; investigation of application; prescribed investigation period; shortening, lengthening or waiving of period; hearing; appeals.~~

~~A. For ninety days following receipt of a complete application under § 6.1-194.97 or § 6.1-194.98, the Commission shall be empowered to conduct an investigation for the purpose of determining whether:~~

~~1. The proposed acquisition would be detrimental to the safety and soundness of the applicant or the Virginia savings institution or Virginia savings institution holding company which the applicant seeks to acquire or control;~~

~~2. The applicant, its directors and officers, if applicable, and any proposed new directors and officers, of the Virginia savings institution or Virginia savings institution holding company which the applicant seeks to acquire, are qualified by character, experience and financial responsibility to control and operate a Virginia savings institution or Virginia savings institution holding company;~~

~~3. The proposed acquisition would be prejudicial to the interests of the depositors, creditors, beneficiaries of fiduciary accounts or shareholders of the Virginia savings institution holding company or any Virginia savings institution which the applicant seeks to acquire or control; and~~

~~4. The acquisition is in the public interest.~~

~~B. 1. The ninety-day investigation period may be shortened or waived by the Commission, as it deems appropriate, if the Commission finds that it must act immediately in order to prevent the probable failure of a Virginia savings institution involved.~~

~~2. The ninety-day investigation period may be extended if the Commission determines that the applicant has not furnished all the information necessary to make the determination under § 6.1-194.97 or § 6.1-194.98 or that the information submitted is substantially inaccurate or misleading.~~

~~C. Within the prescribed investigation period, or any extension thereof, and upon request of the applicant or the Virginia savings institution or Virginia savings institution holding company which the applicant seeks to acquire or control, or upon its own motion, the Commission may order a hearing concerning the proposed acquisition.~~

~~D. Within the prescribed investigation period, or any extension thereof, the Commission, by giving written notice of its decision and the reasons therefor to the applicant and to the Virginia savings institution or Virginia savings institution holding company which the applicant seeks to acquire or control, may: (i) approve the application, (ii) disapprove the application, or (iii) impose such conditions on the acquisition as the Commission may deem advisable to effect the purpose of this article.~~

~~E. Any party in interest aggrieved by any decision of the Commission may, as a matter of right, appeal to the Supreme Court of Virginia in the manner provided by law.~~

**Drafting note: Subsections A through D are moved to proposed § 6.2-1159. Subsection E is deleted because under § 12.1-39 a party in interest has a right of appeal to the Supreme Court.**

~~§§ 6.1-194.100. , 6.1-194.101.~~

**Drafting note: Repealed by Acts 1994, c. 353.**

~~§ 6.1-194.102. Applicable laws, rules and regulations.~~

~~A. Any Virginia savings institution that is controlled by a savings institution holding company that is not a Virginia savings institution holding company shall be subject to all laws of this Commonwealth and all rules and regulations under such laws that are applicable to Virginia savings institutions controlled by Virginia savings institution holding companies.~~

~~B. The Commission shall promulgate such rules and regulations, including the imposition of reasonable application and administration fees, as it finds necessary to implement and effect the provisions of this article.~~

**Drafting note: Moved to proposed § 6.2-1161.**

~~§ 6.1-194.103. Periodic reports; interstate agreements.~~

~~The Commission shall have the authority to examine any out-of-state savings institution holding company owning a Virginia savings institution and each of its Virginia or non-Virginia savings institution or nonsavings institution subsidiaries and shall require reports of each savings institution 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 an acquisition under the provisions of this article, the Commission shall enter into cooperative agreements with the appropriate regulatory authorities for the periodic examination of any savings institution holding company that has a Virginia savings institution 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 savings institution holding company that has a Virginia savings institution subsidiary or may take such actions independently to carry out its responsibilities under this chapter, assure the safety and soundness of any Virginia savings institution, and assure compliance with the provisions of this chapter and the applicable savings institution laws of this Commonwealth.~~

**Drafting note: Moved to proposed § 6.2-1162.**

~~§ 6.1-194.104. Enforcement.~~

~~The Commission shall have the same powers to enforce the provisions of this article as those granted under Article 9 (§ 6.1-194.73 et seq.) of this chapter.~~

**Drafting note: Relocated to proposed subsection C of § 6.2-1161.**

~~§ 6.1-194.105. Notice of intent to acquire out-of-state savings institution.~~

~~A Virginia savings institution, a Virginia savings institution holding company or an out-of-state savings institution holding company owning subsidiaries which conduct a savings institution business in the Commonwealth shall file with the Commission notice of its intention to acquire a financial institution outside Virginia, together with such information as the Commission may request. The Commission 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 savings institution. The Commission may approve such acquisition prior to the expiration of the thirty-day period if it determines that the acquisition will not affect detrimentally the safety or soundness of such Virginia savings institution.~~

**Drafting note: Moved to proposed § 6.2-1160.**

~~§ 6.1-194.106. Nonseverability.~~

~~It is the purpose of this article to authorize acquisitions of Virginia savings institution holding companies or Virginia savings institutions by savings institutions or savings institution holding companies that do not have their principal place of business in this Commonwealth only as expressly provided in this article. Therefore, notwithstanding the provisions of § 6.1-194.89, if any portion of this article pertaining to the terms and conditions for and limitations upon acquisition of Virginia savings institution holding companies and Virginia savings institutions by savings institutions and savings institution holding companies that do not have their principal place of business in this Commonwealth is determined to be invalid for any reason by a final nonappealable order of any Virginia or federal court of competent jurisdiction, then this article shall be void and of no further effect from the effective date of such order. However, any transaction that has been lawfully consummated pursuant to this article prior to a determination of invalidity shall be unaffected by such determination.~~

**Drafting note: Moved to proposed § 6.2-1165.**

~~§ 6.1-194.107. A bank or bank holding company seeking to acquire a savings institution or savings institution holding company.~~

~~For purposes of this chapter, any bank or bank holding company seeking to acquire a savings institution or savings institution holding company, shall be deemed to be a savings institution or savings institution holding company, as the case may be, for purposes of determining whether such bank or bank holding company is permitted to acquire the savings institution or savings institution holding company in question.~~

**Drafting note: Moved to proposed § 6.2-1163.**

~~§ 6.1-194.108.~~

**Drafting note: Repealed by Acts 1994, c. 353.**

~~Article 12.~~

~~Virginia Savings Bank Act.~~

**Drafting note: Existing Article 12 is incorporated in to other provisions of this chapter, as provided in drafting notes. Unless a provision is required to be set out in its entirety because of substantive differences with parallel provisions applicable to associations, the**

**provisions are incorporated in to sections now applicable only to associations by replacing that term with "savings institution."**

~~§ 6.1-194.109. Short title.~~

~~The short title of the law embraced in this article is the "Virginia Savings Bank Act of 1991."~~

**Drafting note: Section is deleted.**

~~§ 6.1-194.110. Definitions.~~

~~As used in this article, the following definitions shall apply unless a different meaning is required by the context:~~

~~"Savings bank" means a savings institution specifically chartered under the laws of the Commonwealth, another state or a territory of the United States, the District of Columbia, or the United States as a savings bank. The term savings bank does not include a savings and loan association or building and loan association.~~

~~"State savings bank" means a savings bank organized and incorporated under the provisions of this article. A state savings bank is a savings institution as defined in § 6.1-194.2 and shall be subject to the provisions of Articles 1 through 11 (§§ 6.1-194.1 through 6.1-194.107) of this chapter applicable to savings institutions except to the extent such provisions are in conflict with the provisions of this article. Except as otherwise provided in this article, a state savings bank shall not be subject to those provisions of this chapter applicable only to state associations.~~

~~"Federal financial institution" means a financial institution incorporated or organized in accordance with the laws of the United States.~~

~~"Financial institution holding company" has the same meaning as set forth in the first paragraph of § 6.1-381.~~

**Drafting note: The definitions of "savings bank," "state savings bank," "federal financial institution," and "financial institution holding company" are moved to proposed § 6.2-1100.**

~~§ 6.1-194.111. Formation of state savings bank.~~

~~A stock savings bank may be formed by being incorporated as provided in the Virginia Stock Corporation Act, Chapter 9 (§ 13.1-601 et seq.) of Title 13.1. A mutual savings bank may be formed by being incorporated as provided in the Virginia Nonstock Corporation Act, Chapter 10 (§ 13.1-801 et seq.) of Title 13.1.~~

**Drafting note: Section is incorporated in § 6.2-1115.**

~~§ 6.1-194.112. Corporation name.~~

~~Every savings bank incorporated under the laws of this Commonwealth shall have as a part of its corporate name the words "savings bank." No state savings bank need comply with the provisions of subsection A of § 13.1-630. On or after July 1, 1991, no state association, as defined in § 6.1-194.2, shall use the words "savings bank" as part of its corporate name, unless such state association was using the words "savings bank" as a part of its corporate name on~~

~~January 1, 1991, or on or prior to January 1, 1991, had filed with the Commission amended articles of incorporation changing its corporate name to include the words "savings bank."~~

**Drafting note: Section is moved to proposed § 6.2-1116. The portion of the existing third sentence (limiting a state association's use of "savings bank" in its corporate name) establishing an exception for state associations having "savings bank" as part of its name is deleted because the only existing state association does not do so. The reference to July 1, 1991, in the third sentence of this section is deleted as unnecessary.**

~~§ 6.1-194.113. Par value of shares; payment of shares; reacquisition of shares or acceptance thereof as security; how subscriptions to stock to be paid; disposition of money received before institution opens; stock option plans.~~

~~A. Shares of stock issued by a state savings bank shall be paid for in full in cash at not less than their par value upon issuance or, in the case of a state savings bank then actively conducting operations, in property or services valued, with the approval of the Commission, at an amount not less than the aggregate par value of the shares issued in exchange therefor. A state savings bank may not purchase, redeem or otherwise reacquire shares of stock that it has issued and may not accept its shares of stock as security; however, such savings bank shall have the power to redeem or otherwise reacquire shares of its common or preferred stock to the same extent as commercial banks incorporated under the laws of the Commonwealth are permitted to do under this title.~~

~~B. 1. Subscriptions to the capital stock of a state savings bank shall be paid in money at not less than par. No state savings bank shall begin business until the amount specified in its certificate of authority to commence business has been received by it.~~

~~2. All money received for subscriptions to or for purchases of stock of a state savings bank before it opens for business shall be deposited in an escrow account in an insured financial institution or invested in United States government obligations, under the joint control of two organizing directors of the savings bank, both of whom shall be bonded for an amount not less than the total amount of money under their control. Such funds, together with any income thereon, less such organizational expenses as have been approved by the savings bank's board of directors, shall be remitted to the savings bank on the day it opens for business. In the event the savings bank is denied a certificate of authority or is refused insurance of accounts, or if it is otherwise determined that the savings bank will not open for business, such funds, after payment of any amount owing for expenses in connection with such attempted organization, including reasonable consulting fees, attorney's fees, salaries, filing fees and other expenses, shall be refunded to subscribers or shareholders. The directors of the savings bank, individually, jointly and severally, shall be liable for any failure of the savings bank to refund such funds to the subscribers or shareholders. This liability may be enforced by a suit in equity instituted by one or more of the subscribers or stockholders on behalf of all against the savings bank and one or more of its directors.~~

~~C. The requirement that capital stock be paid in money shall not be construed to prohibit the establishment, as otherwise authorized by law, of stock option plans and stock purchase~~

~~plans, and the issuance of stock pursuant to such plans. Such plans shall be established only after the savings bank has opened for business, and such plan shall be approved by a majority vote of the institution's shareholders. In no event shall any stock option be granted at a price which is less than 100 percent of the book value per share of the stock as shown by the stock institution's last published statement prior to the granting of the option.~~

**Drafting note: Section is incorporated into proposed § 6.2-1117.**

~~§ 6.1-194.114. Certificate of authority to do business.~~

~~A. Before any state savings bank may begin business in the Commonwealth, it shall obtain from the Commission a certificate of authority to do so and prior to the issuance of such certificate the Commission shall ascertain that:~~

~~1. All applicable provisions of law have been complied with;~~

~~2. That financially responsible persons have subscribed for capital stock in an amount deemed by the Commission to be sufficient to warrant successful operation, provided that the capital stock shall have a paid-in value of not less than one million dollars. The minimum capital stock requirement under this subdivision shall apply in cases in which a state savings bank is being organized to begin business; it shall not be applicable when this section is referred to or used in connection with the conversion of an operating savings institution or bank to a state savings bank, or when this section is used in connection with the reorganization of an operating state savings bank under a holding company;~~

~~3. Regulations governing directors of the savings bank have been complied with;~~

~~4. The public interest will be served by the addition of the proposed savings bank facilities in the community where the savings bank is to be located; and~~

~~5. The officers and directors of the proposed savings bank are of (i) moral fitness, (ii) financial responsibility, and (iii) business ability.~~

~~As used in this section, "public interest" shall have the meaning set forth in subdivision A 4 of § 6.1-13.~~

~~B. No certificate of authority shall be issued unless the applicant for such certificate: (i) submits evidence of being fully insured by the Federal Deposit Insurance Corporation or (ii) submits sufficient evidence of commitment by the Federal Deposit Insurance Corporation that the applicant will be issued insurance of accounts immediately subsequent to the issuance of the certificate of authority. The Commission may issue such certificate conditioned upon the fact that the savings bank will not commence to do business until it is issued insurance of accounts by the Federal Deposit Insurance Corporation.~~

~~C. Any interested person may appeal to the Supreme Court of Virginia from any order of the Commission granting or denying such certificate of authority.~~

~~The provisions of subdivision A 2 of this section shall likewise apply to a mutual savings bank formed under this article, except that, in lieu of stock, such mutual savings bank shall have deposits in such amount as the Commission deems necessary for safe and sound operation, but in no event less than one million dollars, which deposits are pledged or deposited and not subject to withdrawal for at least one year.~~

**Drafting note: Section is incorporated into proposed § 6.2-1118.**

~~§ 6.1-194.115. Commissions, fees, etc., for sale of stock not permitted.~~

~~The State Corporation Commission shall not issue a certificate of authority to any state savings bank to commence business if commissions, fees, brokerage, or other compensation, by whatever name it may be called, has been paid or contracted to be paid by the savings bank, or by anyone in its behalf, either directly or indirectly, to any person, partnership, association or corporation for the sale of stock in such savings bank. Nothing in this section shall be construed to prohibit a savings bank which has been issued a certificate of authority and has commenced operations from paying or contracting to pay such commissions or fees in connection with the issue or reissue of shares of stock of the savings bank.~~

**Drafting note: Section is incorporated into proposed § 6.2-1119.**

~~§ 6.1-194.116. Minimum capital requirement.~~

~~A state savings bank shall comply with the minimum capital requirements of the Federal Deposit Insurance Corporation applicable to such institutions. Notwithstanding the foregoing, the Commission may impose such minimum capital requirements as it deems necessary in order to insure safe and sound operation.~~

**Drafting note: Section is moved to proposed § 6.2-1120.**

~~§ 6.1-194.117. Board of directors generally.~~

~~A. The affairs of every state savings bank shall be managed by a board of directors of not less than five nor more than twenty-five persons. Every director of a state savings bank shall be the owner in his own name and have in his personal possession or control, shares of stock in the savings bank of which he is a director which have a market value at the time such director is first elected to the board of not less than $500, and such shares of stock shall be unpledged (except as may be required to be pledged to a Federal Home Loan Bank, Federal Reserve Bank or other federal agency) and unencumbered at the time of his becoming a director and during the whole of his term as such. When a state savings bank is controlled by a holding company, a director may comply with the provisions of this section for each state savings bank of which he is a director by ownership, in similar manner, of shares of capital stock of the holding company which have a market value at the time such director is first elected to the board of not less than $500.~~

~~B. A mutual state savings bank shall be subject to the requirements of subsection A of this section, except that, in lieu of owning qualifying shares of stock in the savings bank, each director shall maintain, while a director, a savings account in the savings bank of not less than $500. Such account shall be unpledged, except as required to be pledged to a Federal Home Loan Bank, and unencumbered at the time of his becoming a director and during the whole term as such. The office of any director violating the provisions of this section shall immediately become vacant.~~

~~C. Every director of a state savings bank, within thirty days after his election or reelection, shall take and subscribe to an oath that he (i) will diligently and honestly perform his duties as director and (ii) is the owner and has in his personal possession or control the shares of~~

~~stock or savings account in the savings bank required by this section and, in the case of reelection or reappointment, that, during the whole of his immediate previous term as a director, such stock or account was not at any time pledged or encumbered in any other manner to secure a loan. The oath, subscribed to by the director, certified by the officer before whom it is taken, shall be transmitted to the Commission. Any director who fails for a period of thirty days after his election, reelection, appointment or reappointment to take the oath required by this section shall forfeit his office.~~

~~D. Within sixty days following the election or reelection of any person as a director of a savings bank, the savings bank shall furnish such information to the Commission relative to the personal character, integrity, financial condition, and personal and business background as the Commission shall from time to time prescribe. The report, under oath, shall be signed by the director as well as by a designated officer of the savings bank. Any person knowingly making a false statement in such a report shall be guilty of perjury and be punished accordingly.~~

**Drafting note: Section is incorporated into proposed § 6.2-1121.**

~~§ 6.1-194.118. Meetings of board of directors.~~

~~The board of directors of every state savings bank shall hold meetings at least once in every calendar month, at which meeting a majority of the whole board shall be necessary for the lawful transaction of business, except that the stockholders, by bylaw, may fix any number not less than five as a quorum. The Commission may allow less frequent meetings, but not less than quarterly.~~

**Drafting note: Section is incorporated into proposed § 6.2-1122.**

~~§ 6.1-194.119. Offices and other facilities of state savings banks; approval of branch offices required.~~

~~A. A state savings bank may establish and operate such offices and other facilities as are authorized by its board of directors. However, a state savings bank shall not establish a branch office, or other office or facility where deposits are accepted, without obtaining the prior approval of the Commission as provided in subsection B of this section. Prior to establishing, relocating or permanently closing any office or other facility of the savings bank or any of its affiliates, the savings bank shall give at least thirty days' written notice to the Commissioner, in such form as may be prescribed by the Commissioner. The savings bank shall also give written notice to the Commissioner, in such form as may be prescribed by the Commissioner, within ten days after it has established, relocated or permanently closed any such office or other facility.~~

~~B. Applications for authorization to establish a branch office, or other office or facility where deposits are accepted, shall be made in writing, in such form as may be prescribed by the Commission. Upon review of a state savings bank's application and any other information which the Commission may reasonably require, the Commission shall approve the establishment of such office or facility if it is satisfied that the public interest will be served thereby and that the applicant has sufficient capital to warrant additional expansion. Such offices or facilities may be closed without the prior approval of the Commission. However, written notice of the closing of such an office shall be given to the Commissioner as provided in subsection A of this section.~~

**Drafting note: Section is incorporated into proposed § 6.2-1133.**

~~§ 6.1-194.120. Facilities associated with home or branch office.~~

~~A state savings bank may establish without prior approval of the Commission a drive-in or pedestrian office opened in conjunction with an approved branch office of the savings bank, if such drive-in or pedestrian office is to be located within 500 feet of a public entrance of the approved office and closer to that entrance than to a public entrance of any other financial institution. The functions of such drive-in or pedestrian office shall be limited to the ordinary functions performed at a teller window.~~

**Drafting note: Section is incorporated into proposed § 6.2-1134.**

~~§ 6.1-194.121. Change of branch office location.~~

~~A. A state savings bank shall not change the permanent location of a branch office without the prior approval of the Commission. An application to change the location of a branch office shall be made in writing in such form as may be prescribed by the Commission. Such application shall be approved by the Commission if the Commission finds that the change in location is in the public interest.~~

~~B. 1. Notwithstanding the provisions of subsection A of this section, a state savings bank may change the permanent location of a branch office, without applying for the approval of the Commission, if the new location will be within a one-mile radius of the old location of such branch office.~~

~~2. A state savings bank shall notify the Commissioner in writing, in such form as may be prescribed by the Commissioner, at least sixty days before such office relocation and may proceed with the relocation unless, within thirty days of receipt of the notice, the Commissioner notifies the savings bank that the relocation does not satisfy the criteria set forth in the last sentence of subsection A of this section, in which case the savings bank must file an application and obtain the approval of the Commission in accordance with subsection A of this section. The savings bank shall also notify the Commissioner in writing that the office relocation has been completed within ten days after the opening of the office at its new location.~~

~~C. The provisions of this section shall also apply to the relocation of the main office of a state savings bank if the savings bank intends to accept deposits at the new location of the main office.~~

**Drafting note: Section is incorporated into proposed § 6.2-1135.**

~~§ 6.1-194.122. Remote service units.~~

~~A. As used in this section, the following terms shall have the meanings indicated:~~

~~"Personal security identifier" or "PSI" or "PIN" means any word, number, or other security identifier essential for an account holder to gain access to an account through a remote service unit.~~

~~"Remote service unit" or "RSU" means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a state savings bank that, for activation and~~

~~account access, requires use of a machine-readable instrument and personal security identifier in the possession and control of an account holder, is an RSU. The term includes, without limitation, point-of-sale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the premises of a state savings bank, unless shared with other financial institutions. An RSU shall not be considered to be a branch office of a state savings bank.~~

~~B. Subject to the requirements of the Electronic Funds Transfer Act (15 U.S.C. § 1693 et seq.) and Regulation E of the Federal Reserve Board, a state savings bank may establish or use remote service units and participate with others in remote service unit operations on an unrestricted geographic basis. A state savings bank may establish a remote service unit without prior approval of the Commission, provided that notice is given to the Commissioner in accordance with the provisions of subsection A of § 6.1-194.119. No remote service unit may be used to open a savings account or a demand account or to establish a loan account.~~

~~C. Before permitting an account holder to use a remote service unit, the state savings bank shall provide a personal security identifier to the account holder and require its use when accessing a remote service unit. A state savings bank may not employ RSU access techniques that require the account holder to disclose a PSI to another person.~~

~~D. A state savings bank shall not share an RSU with any financial institution or other entity the accounts of which are not insured by an agency of the federal government.~~

**Drafting note: Section is incorporated into proposed § 6.2-1136.**

~~§ 6.1-194.123. Off-premises financial services.~~

~~A state savings bank may utilize any electronic technology to provide its customers with off-premises financial services. Any such services provided under this section are subject to the Electronic Funds Transfer Act (15 U.S.C. § 1693 et seq.) and Regulation E of the Federal Reserve Board. As used in this section, the term "off-premises financial services" means the transfer of funds or financial information, or the performance of other transactions initiated by the customer by means of an electronic terminal located in such customer's residence or place of business, such as a telephone, a computer terminal or a television set that is linked to a state savings bank's computer by telephone or cable television lines or other electronic means.~~

**Drafting note: Section is incorporated into proposed § 6.2-1137.**

~~§ 6.1-194.123:1. Conversion from mutual savings institution to stock state savings bank.~~

~~With the approval of the Commissioner, and in accordance with provisions of this section and regulations promulgated hereunder, a state savings bank which is a mutual savings institution may convert to a stock institution. Such conversion shall be conducted in a manner equitable to all parties thereto in the following manner: the board of directors of such savings bank shall first adopt by two-thirds vote a conversion plan the provisions of which shall comply with requirements set forth in regulations promulgated by the Commission. Such plan shall provide that holders of savings accounts in the savings bank will be afforded the opportunity to preserve their interest in the savings bank's net worth by subscribing to stock. The Commissioner shall approve any such plan of conversion if the Commissioner ascertains that such conversion~~

will not have an adverse effect on the stability of the savings bank and that all other rules and regulations of the Commission relating to the conversion of a mutual savings institution to a stock institution have been complied with. The Commission shall adopt regulations governing the procedures to be followed in completing the conversion once a satisfactory plan has been adopted. Such regulations shall ensure that any savings bank in so converting shall continue to have its accounts insured by the Federal Deposit Insurance Corporation or other federal insurance agency.

**Drafting note: Section is incorporated into proposed § 6.2-1139.**

§ 6.1-194.124. How state savings bank may convert into federal financial institution.

A state savings bank may convert into a federal financial institution as follows:

1. At any meeting of the members or stockholders called and held in accordance with the Virginia Stock Corporation Act (§ 13.1-601 et seq.) or Nonstock Corporation Act (§ 13.1-801 et seq.), whichever is applicable, to consider such action, the members or stockholders, by an affirmative vote of those holding and voting two-thirds of the votes present, in person or by proxy, may resolve to convert the state savings bank into a federal financial institution;

2. A copy of the minutes of the meeting duly certified by the president or vice-president and the secretary or assistant secretary of the state savings bank shall be transmitted to the Commission;

3. Thereafter, the state savings bank shall take such action as is necessary under federal law to make it a federal financial institution; and

4. It shall file with the Commission a certified copy of the charter issued to it by the appropriate federal agency, or a certificate of the board showing the organization of the state savings bank as a federal financial institution; and the savings bank shall thereupon cease to be a state savings bank.

No state savings bank shall convert into a federal financial institution until it has been in operation as a state savings bank for a period of at least five years.

**Drafting note: Section is incorporated into proposed 6.2-1141.**

§ 6.1-194.125. Effect of conversion of state savings bank into federal financial institution.

When a conversion as authorized under § 6.1-194.124 becomes effective, the state savings bank shall cease to be a Virginia corporation and all its property shall by operation of law and without any further act or deed continue to be vested in it under its new name as a federal financial institution and under its federal charter. The federal financial institution shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state savings bank. Such federal financial institution, at the time of the taking effect of the conversion, shall become and continue to be responsible for all of the obligations of the state savings bank including taxes and other liabilities created by law or incurred by it before becoming a federal financial institution to the same extent as though the conversion had not taken place.

**Drafting note: Section is incorporated into proposed § 6.2-1141.**

§ 6.1-194.126. How federal financial institution may convert into state savings bank.

~~A federal financial institution doing business in the Commonwealth may become a state savings bank as follows:~~

~~1. It shall take such action as will effect its dissolution as a federal financial institution on a specified date;~~

~~2. Its directors, before its dissolution becomes effective, shall organize a corporation under this article and, in the case of a stock savings bank, the Virginia Stock Corporation Act (§ 13.1-601 et seq.) or, in the case of a mutual savings bank, the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.); and~~

~~3. The new corporation shall apply for a certificate of authority to do business under § 6.1-194.114.~~

**Drafting note: Section is incorporated into proposed subsection A of § 6.2-1142.**

~~§ 6.1-194.127. When former federal financial institution may do business as state savings bank.~~

~~When a former federal financial institution has converted to a state savings bank under § 6.1-194.126, it shall transact no business as a state savings bank other than that relating to its organization until its certificate of authority to do business has been granted and its dissolution as a federal financial institution has become effective.~~

**Drafting note: Section is incorporated into proposed subsection B of § 6.2-1142.**

~~§ 6.1-194.128. Effect of conversion of federal financial institution into state savings bank on property rights, obligations, etc.~~

~~As soon as the certificate of authority to do business has been granted and its dissolution as a federal financial institution has become effective, all the property of the federal financial institution shall by operation of law and without any further act or deed, be vested in and become the property of the state savings bank, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held or enjoyed by the federal financial institution. The state savings bank shall become and continue to be responsible for all the obligations, duties and agreements of the federal financial institution including taxes and other liabilities created by law or incurred by it before becoming a state savings bank to the same extent as though the conversion had not taken place. Upon such conversion, the state savings bank shall have the right to continue to operate all branch offices then in existence without having to obtain the approval of the Commission pursuant to § 6.1-194.119.~~

**Drafting note: Section is incorporated into proposed subsection C of § 6.2-1142.**

~~§ 6.1-194.129. Conversion from state savings bank to state association or commercial bank; conversion from state association or commercial bank to state savings bank.~~

~~A. A state savings bank may be converted into a state association or a state bank by the amendment of its articles of incorporation in compliance with the procedure established by Title 13.1, provided that such conversion is approved in advance by the Commission. Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a savings and loan association or banking business, as the case may be, and approval shall not be granted unless the~~

~~applicant meets the standards established by § 6.1-194.12 or § 6.1-13, as applicable. The order granting a certificate of authority to do a savings and loan or banking business shall designate the main office of the state savings bank as the main office of the resulting financial institution. The resulting financial institution shall be permitted to operate all branch offices of the state savings bank that could have been established de novo by such financial institution having its main office at such location or which were in operation for at least five years prior to the date of the order permitting conversion. Within one year of the date of a conversion, the resulting financial institution shall conform its assets and operations to the provisions of law regulating the operation of state associations or banks, as the case may be. The Commission may grant such resulting financial institution additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations as required by this section.~~

~~B. A state association or state bank may be converted into a state savings bank by the amendment of its articles of incorporation in compliance with the procedure established by Title 13.1, provided that such conversion is approved in advance by the Commission. Prior to approving or disapproving a conversion, the Commission shall investigate the application to convert as if it were an application for a certificate of authority to begin a savings bank, and approval shall not be granted unless the applicant meets the standards established by § 6.1-194.114. Within one year of the date of the conversion, the resulting state savings bank shall conform its assets and operations to the provisions of law regulating the operation of state savings banks. The Commission may grant such resulting state savings bank additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations to the provisions of law regulating the operation of state savings banks.~~

**Drafting note: Section is incorporated into proposed §§ 6.2-1143 and 6.2-1144.**

~~§ 6.1-194.130. Consolidation or merger.~~

~~Two or more state savings banks may consolidate or merge, subject to the approval of the Commission, when the Commission finds that the capital of the resulting institution will be sufficient to warrant successful operation, and that the merger or consolidation will be in the public interest and in accordance with applicable laws and regulations. The order approving the consolidation or merger shall specify which office is to be the main office and which office or offices may be operated as branch offices.~~

**Drafting note: Section is incorporated into proposed § 6.2-1145.**

~~§ 6.1-194.131. State savings bank or holding company acquiring state association or commercial bank; savings bank acquired by state association, bank or holding company; merger or consolidation of state savings bank and state association or commercial bank.~~

~~A. Notwithstanding the provisions of § 6.1-58.1 or § 6.1-60.1, and subject to the prior approval of the Commission, the following acquisitions, mergers, or consolidations may occur:~~

~~1. A state savings bank may become a subsidiary of (i) a state association, state bank, federal savings institution or national bank whose main office is located within this Commonwealth or (ii) a financial institution holding company whose subsidiaries principally conduct their operations within this Commonwealth;~~

~~2. A state bank or state association may become a subsidiary of a state savings bank; and~~

~~3. A state savings bank may merge into or consolidate with a state association, state bank, federal savings institution or national bank whose main office is located within this Commonwealth. A state association, state bank or federal financial institution may merge into or consolidate with a state savings bank. If the resulting entity is to do business as a state bank, the Commission shall not approve the merger or consolidation unless the applicant meets the standards established by § 6.1-13. If the resulting entity is to do business as a state association, the Commission shall not approve the merger or consolidation unless the applicant meets the standards established by § 6.1-194.12. If the resulting entity is to do business as a state savings bank, the Commission shall not approve the merger or consolidation unless the applicant meets the standards established by § 6.1-194.114. In either case, the order granting a certificate of authority to do business shall designate the main office of the resulting entity. The resulting entity shall be permitted to operate all branch offices of the merging or consolidating entities that could have been established de novo by the resulting entity or which were in operation at least five years prior to the date of the order permitting merger or consolidation. Within one year of such merger or consolidation, the resulting entity shall conform its assets and operations to the provisions of law regulating the operation of state savings banks if the resulting entity is operated as a state savings bank, to the provisions of law regulating the operation of banks if the resulting entity is operated as a state bank or to the provisions of law regulating the operation of state associations, if the resulting entity is to be operated as a state association. The Commission may grant the resulting entity additional one-year periods, not to exceed a total of four additional years, in which to conform its assets and operations as provided herein.~~

~~B. As used in this section, the term "state bank" means a bank incorporated under the laws of the Commonwealth which has its main office in the Commonwealth.~~

**Drafting note: Section is incorporated into proposed § 6.2-1146.**

~~§ 6.1-194.132. Acquisitions of state savings bank or holding companies by out-of-state financial institutions.~~

~~A state savings bank, or holding company thereof, may not be acquired by a financial institution, or financial institution holding company, whose principal place of business is outside the Commonwealth, except in accordance with the provisions of Article 11 (§ 6.1-194.96 et seq.) of this chapter. As used in Article 11, the term "Virginia savings institution" includes a state savings bank, and the term "Virginia savings institution holding company" includes the holding company of a state savings bank.~~

**Drafting note: The first sentence of this section is moved to proposed § 6.2-1164. The second sentence is incorporated into the definitions of Virginia savings institution and Virginia savings institution holding company in proposed § 6.2-1148.**

~~§ 6.1-194.133. Accounts of state savings banks.~~

~~A state savings bank may offer such accounts, including checking accounts, time deposit accounts and savings accounts, as its board of directors may authorize from time to time. A state savings bank may pay interest on such accounts at such rates and under such terms and~~

~~conditions as its board of directors may direct from time to time, subject to any restrictions and limitations imposed by state or federal law on the payment of interest.~~

**Drafting note: Section is incorporated into proposed § 6.2-1166.**

~~§ 6.1-194.134. Rules governing withdrawal.~~

~~A. The holder of an account in a state savings bank shall have the right to withdraw all or any part of his account provided that the state savings bank shall have the right to establish the rules governing the withdrawals and may, from time to time, fix the period of notice required to be given for withdrawal. In no event shall a state savings bank delay or postpone the whole or partial payment of the value of any savings account pursuant to a written withdrawal application by the account holder for a period exceeding thirty days following the receipt of such application without first securing written permission from the Commissioner.~~

~~B. The holder of a federal tax and loan account or note account as defined in the regulations of the United States Treasury Department shall have the right of immediate withdrawal of all or any part of such account. In no event shall a state savings bank delay or postpone the whole or partial payment of such an account pursuant to a written application by the account holder.~~

**Drafting note: Section is incorporated into proposed § 6.2-1167.**

~~§ 6.1-194.135. Deposits of federal taxes and United States Treasury tax and loan accounts.~~

~~State savings banks may serve as depositories for federal taxes and for United States Treasury tax and loan deposits and may satisfy the requirements in connection therewith such as maintaining tax and loan accounts and note accounts, as defined by regulation of the United States Treasury Department, pledge collateral and satisfy the requirements of the United States Treasury Department in connection with such deposits.~~

**Drafting note: Section is incorporated into proposed § 6.2-1170.**

~~§ 6.1-194.136. General investment authority.~~

~~The assets of a state savings bank may be invested only in the following ways:~~

~~1. In real and personal property necessary for the conduct of its business and in real estate to be held for its future accommodation. Such savings bank may invest in an office building or buildings and appurtenances for the transaction of such savings bank's business, or for the transaction of such business and for rental. No such investment may be made without the prior approval of the Commissioner if the total amount of the investment exceeds the aggregate amount of the savings bank's unimpaired capital funds.~~

~~2. In stock and other securities or obligations of a service corporation or corporations. Such service corporation or corporations may charge and collect such finance charges, fees and interest rates as are authorized to state savings banks, and shall be subject to state and local taxation in the same manner as are state savings banks. Unless specifically authorized by the Commissioner, a state savings bank shall not invest more than 10 percent, in the aggregate, of its assets in a service corporation or corporations. Such service corporation or corporations, directly or indirectly, may engage in providing real estate brokerage services for property owned by a~~

~~savings bank owning capital stock in the service corporation, by the service corporation, or by a joint venture in which the service corporation is a participant, but no such service corporation or corporations, state savings bank or holding company which has control, as control is defined in § 6.1-381, over a state savings bank may engage directly or indirectly in providing real estate brokerage services for property owned by third parties. Nothing in this subdivision shall prohibit a state savings bank or its affiliates or a holding company that has control over a state savings bank from engaging in third party real estate brokerage in any state, territory or district, other than the Commonwealth, that permits such activities by its state chartered savings institutions, or their affiliates or holding companies.~~

~~3. In obligations which are fully guaranteed as to principal and interest by the United States or the Commonwealth; in stock or obligations of any Federal Home Loan Bank or Banks; in stock or obligations of the Federal Deposit Insurance Corporation; in stock or obligations of Federal Reserve Banks; in obligations of, or issued by, any other state, territory or possession of the United States or political subdivision thereof, so long as such obligations continue to hold one of the four highest national investment grade ratings; in obligations of, or issued by, any city, town, county, district or other municipal corporation or political subdivision of the Commonwealth, or any public instrumentality or public authority created by act of the General Assembly, so long as such obligations continue to hold one of the four highest national investment grade ratings; in stock, obligations or other instruments of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or any successor or successors thereto; in obligations of, or guaranteed as to principal and interest by, the Dominion of Canada or any province thereof, provided that the principal and interest of any such obligations are payable in United States funds; in demand, time, or savings deposits, shares or accounts, or other obligations of any financial institution the accounts of which are insured by a federal agency; or in bankers' acceptances and commercial paper which are eligible for purchase by Federal Reserve Banks.~~

~~4. In loans to individuals for personal, family or household purposes and loans reasonably incident thereto, to include loans to dealers in consumer goods for purposes of financing inventory and floor planning. Such loans may be evidenced by installment consumer paper which is transferred to the savings bank by an endorser or guarantor, provided that such paper shall carry a full or limited endorsement or guarantee of the person, partnership, association or corporation transferring the same and the savings bank shall have a certificate of a responsible officer designated by its board for that purpose stating that the responsibility of the maker of such obligation has been evaluated and the savings bank is relying primarily upon such maker for the payment of such obligation.~~

~~5. In loans secured by savings accounts of the savings bank.~~

~~6. In loans secured by real estate.~~

~~7. A savings bank may issue credit cards, extend credit in connection therewith and otherwise engage in or participate in credit card operations.~~

8. In unsecured single payment loans to individuals with a maturity of not more than 12 months.

9. In personal property, which term as used herein shall include fixtures acquired upon the specific request of and for lease to a customer, subject to the following limitations:

a. The rentals receivable by the savings bank under the initial lease of any item of personal property shall at least equal the cost to the savings bank of such item of personal property;

b. The savings bank shall have a certificate of a responsible officer designated by its board for that purpose stating that the responsibility of the lessee has been evaluated and approved by such officer; and

c. Upon the expiration of any lease, whether by virtue of the lease agreement or by virtue of the retaking of possession by the savings bank, such personal property shall be relet, sold or otherwise disposed of, or charged off within one year from the time of expiration of such lease.

10. In secured or unsecured credit to cover payment of checks, drafts or other fund transfer orders in excess of the available balance of an account on which they are drawn, provided that such extensions of credit must be paid off within 30 days after the extension of credit is made. The 30-day limitation on repayment shall apply only to inadvertent overdrafts by the account owner and shall not apply to extensions of credit, agreed upon in writing, whereby the borrower is permitted to access the line of credit by check, draft or other fund transfer order.

11. In secured or unsecured loans for commercial, corporate, business or agricultural purposes. Unless specifically authorized by the Commission, a state savings bank shall not invest more than 20 percent of its assets in loans for commercial, corporate, business or agricultural purposes. The percentage of assets limitations provided by the preceding sentence shall not apply to overdraft loans, commercial real estate loans, loans to a service corporation the stock of which is owned by the savings bank, or loans to dealers in consumer goods for inventory or floor planning financing. A state savings bank shall not invest more than 20 percent of its assets in loans the primary security for which is nonresidential real estate.

12. A state savings bank may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code (§ 8.1A-101 et seq.) or the Uniform Customs and Practice for Documentary Credits and may pledge collateral to secure its obligations thereunder, subject to the following requirements:

a. Each letter of credit shall conspicuously state that it is a letter of credit;

b. The issuer's undertaking shall contain a specified expiration date or be for a definite term, and shall be limited in amount;

c. The issuer's obligation to pay shall be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and

d. The account party shall have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

~~13. In commercial paper rated in the highest or second highest categories as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services; in corporate debt securities, including corporate debt securities convertible into stock, that may be sold with reasonable promptness at a price that corresponds reasonably to their fair market value, and that are rated in at least the third highest category by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security; and in shares in open-end management investment companies.~~

~~14. A state savings bank may invest in any other obligations, instruments or investments which are specifically approved by the Commissioner.~~

~~15. A state savings bank shall conform to the loans-to-one-borrower limitations contained in § 6.1-61.~~

~~16. A state savings bank shall have the same powers, and shall be subject to the same limitations, as provided for state associations by §§ 6.1-194.5 and 6.1-194.62.~~

**Drafting note: Section is incorporated into proposed § 6.2-1186, with several provisions that establish separate requirements for savings banks moved to proposed § 6.2-1187. Existing subdivision 16 is deleted because its provisions have been incorporated into proposed §§ 6.2-1111 and 6.2-1179.**

~~§ 6.1-194.137. Effect of repeal or amendment of statute or regulation on existing loan or investment.~~

~~Any investment or loan which was in compliance with the provisions of this article or a regulation of the Commission in existence when such investment or loan was made shall remain a legal investment or loan even though the power to make such investment or loan in the future is amended or revoked by regulation or by action of the General Assembly.~~

**Drafting note: Section is incorporated into proposed § 6.2-1188.**

~~§ 6.1-194.138. Trust powers.~~

~~State savings banks, and their subsidiaries and affiliates, may exercise fiduciary powers in the same manner as state associations pursuant to the provisions of Chapter 3.2 (§ 6.1-195.77 et seq.) of this title.~~

**Drafting note: Section is moved to proposed § 6.2-1099.**

~~§ 6.1-194.139. General supervisory powers of commission.~~

~~The Commission shall have general supervision over all state savings banks and their holding companies, service corporations which are owned or controlled by one or more state savings banks, and any other persons who are subject to the provisions of this article.~~

**Drafting note: Section is incorporated into proposed § 6.2-1191.**

~~§ 6.1-194.140. Regulations of Commission.~~

~~The Commission may adopt such regulations as it deems appropriate to effectuate the purposes of this article. Before promulgating any regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to present evidence and be heard, in accordance with the Rules of Practice and Procedure of the Commission, as amended from time to time.~~

~~Regulations adopted by the Commission shall continue in effect until amended or revoked by the Commission or by action of the General Assembly.~~

**Drafting note: Section is incorporated into proposed § 6.2-1192.**

~~§ 6.1-194.141. Regulations to permit state savings banks to have powers comparable to federal financial institutions.~~

~~The Commission is authorized to adopt such regulations as may be necessary to permit state savings banks to have powers comparable with those of federal financial institutions, regardless of any then existing statute, regulation or court decision limiting or denying such powers to state savings banks. The requirement of a public hearing shall not automatically apply to regulations promulgated under this section, but the Commission may have such hearing as it deems appropriate.~~

**Drafting note: Section is incorporated into proposed subsection B of § 6.2-1192.**

~~§ 6.1-194.142. Publication of regulations.~~

~~The Commissioner shall publish and mail to each state savings bank a copy of all regulations of the Commission in effect pertaining to such state savings bank at such times as he may deem proper.~~

**Drafting note: Section is incorporated into proposed subsection D of § 6.2-1192.**

~~§ 6.1-194.143. Statements to be furnished by Commission to directors of state savings banks.~~

~~The Commission shall prepare and make available to each member of the board of directors of every state savings bank a statement describing generally their duties and responsibilities. The statement shall include a brief outline of the examining procedure employed by the Commission, an explanation of the distinction between an examination and an audit, and any information which the Commission deems necessary to apprise the directors of the necessity for an adequate system of internal controls.~~

**Drafting note: Section is incorporated into proposed § 6.2-1193.**

~~§ 6.1-194.144. State savings banks to furnish financial statements and reports.~~

~~A. Every state savings bank shall furnish the Commission within thirty days after the close of its fiscal year a statement of its financial condition on forms supplied by the Commission. Such statements shall be made in accordance with forms prescribed by the Commission, certified under oath by the president or treasurer of the savings bank and attested by at least three of its directors. Insofar as practicable, the reports required by this section shall conform to those required by any instrumentality of the federal government that insures or regulates the state savings bank. The Commission shall allow state savings banks to submit such statements electronically. Any state savings bank that submits such statements electronically shall maintain a copy of the statement with the acquired certified signatures affixed.~~

~~B. Every state savings bank shall make such other reports as the Commission may from time to time require.~~

**Drafting note: Section is incorporated into proposed § 6.2-1194.**

~~§ 6.1-194.145. Examination of state savings banks by Commissioner; report of examination.~~

~~A. The Commissioner shall, not less than once during any period of three consecutive calendar years or at such additional times as he deems necessary, with or without previous notice, examine each state savings bank. A copy of the report of all examinations shall be furnished to the savings bank, and such report shall be presented by the president or other chief executive officer to the directors at their next meeting. Upon written application made to the Commission by the board of directors or by the stockholders representing two-fifths of the total outstanding capital stock of any savings bank incorporated under the laws of and doing business in this Commonwealth, or when, in the judgment of the Commission, it may be necessary for the protection of the public or of persons depositing or dealing with such savings bank, the Commission shall cause to be made a special examination of such savings bank. All expenses incident to such special examination may be charged to the savings bank so examined and shall be paid by the savings bank so charged.~~

~~No other copies of a report of examination shall be made except as necessary for review by officers and directors of the savings bank. Copies of the report made for officers and directors of the savings bank shall not be removed from the premises of such savings bank, and shall be destroyed after the review has been completed. The original examination report shall be kept among the records of the Bureau of Financial Institutions. Upon resolution of the board of directors of a savings bank, examination reports may be inspected in the savings bank by such other persons as the board may specify.~~

~~B. In connection with the examination of any savings bank, the Commission may make or cause to be made an examination of the affiliates of the savings bank as shall be necessary to ascertain the financial condition of the savings bank and disclose fully the relations between the savings bank and its affiliates and the effect of such relations upon the affairs of the savings bank.~~

~~For the purpose of this section, the term "affiliate of any savings bank" means any corporation, business trust, association, or other similar organization (i) of which a savings bank, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons, exercising similar functions, (ii) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of such savings bank who own or control either a majority of the shares of the savings bank or more than fifty percent of the number of shares voted for the election of directors of the savings bank at the preceding election, or by trustees for the benefit of the shareholders of the savings bank, or (iii) of which a majority of the directors, trustees, or other persons exercising similar functions are directors of the savings bank.~~

**Drafting note: Section is incorporated into proposed § 6.2-1195.**

~~§ 6.1-194.146. State savings bank to give examiners access to books, etc.; examination of directors, officers and employees under oath.~~

~~A. The officers, directors and employees of every state savings bank shall, upon the demand of the person designated by law to make any examination of the institution, (i) give to such examiner full access to all money, books, papers, notes, bills and other evidence of debt of the savings bank, (ii) disclose fully and truly all of its indebtedness and liability, and (iii) furnish the examiner with all information which the examiner deems necessary to a full investigation into the affairs of the savings bank.~~

~~B. The Commission is empowered to examine under oath any and all of the directors, officers, clerks, and employees of a savings bank touching any matter or thing connected with the operation of the savings bank. Any duly authorized examiner shall have the authority to administer oaths to the persons examined.~~

**Drafting note: Section is incorporated into proposed § 6.2-1196.**

~~§ 6.1-194.147. False statements by officers, directors or agents.~~

~~Any officer, director or agent of a state savings bank who knowingly makes a false statement of the condition of the institution to the Commission shall be guilty of a Class 6 felony.~~

**Drafting note: Section is incorporated into proposed § 6.2-1197.**

~~§ 6.1-194.148. Audits.~~

~~The Commission may require a state savings bank to have an audit made of its books, records and methods of operation whenever it appears to the Commission that the system of internal controls is not adequate, the savings bank is engaging in unsound practices, or the financial condition of the institution makes it necessary.~~

**Drafting note: Section is incorporated into proposed § 6.2-1198.**

~~§ 6.1-194.149. Fees for supervision and regulation; investigations.~~

~~A. For the purpose of defraying the expenses of supervision and regulation of state savings banks, the Commission shall, on or before July 1 of each year, assess against every such savings bank fees in accordance with a schedule to be set by the Commission. Such schedule shall bear a reasonable relationship to total assets and number of branches of various individual savings banks and to the costs of their respective supervision, regulation, and examination.~~

~~B. All fees so assessed shall be paid into the state treasury on or before July 31 following. The Commission shall mail the assessments to each savings bank on or before July 1 of each year.~~

~~C. Before investigating an application for authority to establish a branch, the Commission shall charge a fee of $1,800 if the branch is to be located within the Commonwealth and a fee as prescribed by the Commission if the branch is to be located outside the Commonwealth. A fee of $1,000 shall be charged before investigating an application for authority to change the location of an existing main office or branch office. Before investigating an application for a certificate of authority or conversion, the Commission shall charge a fee of $10,000, except that the fee for investigating an application to convert from a state association or state bank to a state savings bank pursuant to subsection B of § 6.1-194.129 shall be $5,000. For investigating an application~~

~~for merger or consolidation, the Commission shall charge a fee of $7,500 and shall not be entitled to any further fees for investigating any application to retain existing branches of the applying savings bank as branches of the merged or consolidated institutions. Such fees may be waived by the Commission in the case of supervisory mergers or consolidations.~~

~~D. For investigating an application for authority to exercise trust powers, the Commission shall charge a fee of $2,000 if such powers are to be exercised through a trust department and $10,000 if such powers are to be exercised through a trust affiliate or subsidiary.~~

~~E. Notwithstanding the designation of the several fees set forth in subsections C and D, the Commission may reduce by regulation or order any such fee or fees, if the Commission concludes that there is a reasonable basis for doing so and that the reduction of the fee will not be detrimental to the effectiveness of the Bureau of Financial Institutions.~~

**Drafting note: Section is incorporated into proposed § 6.2-1202.**

~~§ 6.1-194.150. Merger, consolidation or transfer of assets of insolvent or financially unstable state savings bank; notice and hearing; final order; priorities; examinations of resulting institutions.~~

~~A. If the Commission finds (i) that any state savings bank is insolvent or that, in its opinion, the financial stability of a state savings bank is threatened, (ii) that the merger or consolidation of such state savings bank into another savings institution or into a bank is desirable for the protection of the stockholders or depositors of such savings bank and that such merger or consolidation is in the public interest, and (iii) that an emergency exists, and if the board of directors of such state savings bank shall approve a plan of merger or consolidation of such savings bank into another savings institution or bank, compliance with the requirements of § 13.1-718 or 13.1-895 shall be dispensed with as to such savings bank and the approval by the Commission of such plan of merger or consolidation shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such savings bank for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1 or the approval of two-thirds of the members for all purposes of Article 11 (§ 13.1-894 et seq.) of Chapter 10 of Title 13.1.~~

~~B. If the Commission finds (i) that a state savings bank is insolvent or that, in its opinion, the financial stability of a state savings bank is threatened, (ii) that the acquisition of the assets and liabilities of such savings bank by another savings institution or by a bank is in the best interests of the stockholders or depositors of such savings bank and that such acquisition of the assets and liabilities is in the public interest, and (iii) that an emergency exists, it may, with the consent of the board of directors of both institutions as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets and liabilities of such savings bank to such other savings institution or bank, and no compliance with the provisions of § 13.1-723, 13.1-724, 13.1-899, or 13.1-900 shall be required, nor shall § 13.1-730 be applicable to such transfer.~~

~~C. In the case of either such a merger or consolidation or of such a transfer of assets and liabilities, the Commission shall provide that prompt notice of its findings and plan of merger, consolidation or transfer of assets and liabilities, be sent to the stockholders of record of such~~

~~insolvent savings bank or savings bank threatened with financial instability for the purpose of providing such shareholders an opportunity to challenge the findings of the Commission and the plan of merger, consolidation or transfer of assets and liabilities. The relevant books and records of such savings bank shall remain intact and be made available to such shareholders or members for a period of 30 days after such notice is sent. The Commission's findings and plan of merger, consolidation or transfer of assets and liabilities shall become final if a hearing before the Commission is not requested by any such shareholder in a written request delivered to the Commission within 15 days after the notice specified by this section is sent. Any such request for a hearing shall contain a statement of the specific grounds for such shareholder's challenge to the Commissioner's findings and plan of merger, consolidation or transfer of assets and liabilities.~~

~~D. If, after such hearing provided in subsection C, the Commission finds that good cause has been shown for the reversal or modification of its initial findings, or for rescission or modification of its initial plan for merger, consolidation or transfer of assets and liabilities, the Commission shall enter its final order accordingly. But if, after such hearing, the Commission affirms its original findings and plan for merger, consolidation or transfer of assets and liabilities, its order shall be final.~~

~~E. Notwithstanding any other provision of law, any institution resulting from a merger, a consolidation or a transfer of assets and liabilities under the provisions of this section shall have the right to retain and operate all offices of the savings bank so merged, consolidated or acquired which were in operation at the time of such merger, consolidation or acquisition. This section shall not be construed to allow the establishment of additional branches by any institution resulting from such merger, consolidation or transfer than would otherwise be allowed by the laws of the Commonwealth.~~

~~F. For the purposes of this section, "insolvent" means that the current book value of liabilities is in excess of the current book value of assets.~~

~~G. For the purposes of this section, the term "savings bank," "bank," or "savings institution" shall mean institutions incorporated or established under the laws of (i) the Commonwealth, (ii) the United States, (iii) any other state of the United States, (iv) a territory of the United States, or (v) the District of Columbia, which institutions' deposits are insured as required by this title for the issuance of a certificate of authority to do business.~~

~~H. The Commission shall authorize transactions under this section according to the following priorities:~~

~~1. First, between financial institutions of the same type located within the Commonwealth;~~

~~2. Second, between financial institutions of different types located within the Commonwealth;~~

~~3. Third, between financial institutions of the same type including depository institutions located outside the Commonwealth; and~~

~~4. Fourth, between financial institutions of different types including depository institutions located outside the Commonwealth.~~

~~I. [Repealed.]~~

~~J. Any institution resulting from a transaction authorized by this section whose main office is located outside of the Commonwealth shall, as a condition of being able to do business in the Commonwealth, allow the Commission to examine such institution from time to time as the Commission deems necessary. In conducting such examinations, the Commission shall have all of the powers provided by this title relating to the examination of financial institutions.~~

~~K. The provisions of Article 5 (§ 6.1-194.41 et seq.) and Article 11 (§ 6.1-194.96 et seq.) of this chapter shall not apply to merger, consolidations, and acquisitions authorized by the provisions of this section.~~

**Drafting note: Section is incorporated into proposed § 6.2-1205.**

~~§ 6.1-194.151. Provisions applicable to real estate loans.~~

~~A. A state savings bank may make a real estate loan only after a qualified person designated by the bank has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the bank by the insuring or guaranteeing agency.~~

~~B. At the time of origination, a real estate loan may not exceed 100 percent of the appraised fair market value of the security property. During the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from an adjustment authorized by subsection D of this section. In the case of a home loan secured by borrower-occupied property, the loan balance may not exceed 125 percent of the original appraised value of the property during the term of the loan, unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance for the remaining term of the loan. The 125 percent limitation shall not apply to that portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property.~~

~~C. Repayments on real estate loans shall begin not later than sixty days after the loan proceeds are disbursed. However, if such loan is for construction, substantial alteration, repair, or improvement of the real estate securing the loan, repayments may begin not later than sixty months after the date of the first loan disbursement, and interest shall be payable at least semiannually until regular periodic payments begin. In the case of a home loan where the loan proceeds are to be used for construction, substantial alteration, repair, or improvement of the security property, repayments shall begin not later than thirty-six months after the date of the first disbursement, with interest payable at least semiannually until regular periodic payments begin.~~

~~D. A state savings bank may adjust the interest rate, payment, balance, or term to maturity on any real estate loan as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value.~~

~~E. The loan term of a home loan shall not exceed forty years, with interest payable at least semiannually, except as expressly authorized elsewhere in this chapter. Payments on the loan balance, for other than nonamortized and line-of-credit loans, shall be made in at least semiannual installments, except that loan made on the security of farm residence and combinations of farm residences and commercial farm real estate may be repayable in annual installments. The loan may be fully amortized, partially amortized, nonamortized, or a line-of-credit loan. The loan contract may provide for the deferral of principal and capitalization of a portion of interest, or of all interest on loans to natural persons secured by borrower-occupied property and on which periodic advances are being made.~~

**Drafting note: Subsections A and B are incorporated into proposed § 6.2-1180; subsection C is incorporated into proposed § 6.2-1181; subsection D is incorporated into proposed § 6.2-1182; and subsection E is incorporated into proposed § 6.2-1183.**

~~§ 6.1-194.152. Acquisition of control of state savings bank.~~

~~No person, whether acting alone or in concert with others, shall acquire ownership or control of twenty-five percent or more of the voting shares of a stock state savings bank, or otherwise control the election of a majority of the directors of such bank, without the approval of the Commission. The Commission shall not approve the proposed acquisition unless it finds that the savings bank will continue to operate in a safe and sound manner and the acquisition is otherwise in the public interest.~~

**Drafting note: Section is incorporated into proposed § 6.2-1147.**

~~§ 6.1-194.153. Construction of article.~~

~~This article, being a general act intended as a comprehensive coverage of its subject matter, shall not be deemed to be impliedly repealed in whole or in part by subsequent legislation not specifically repealing it if such construction can be avoided. It is the intention of the General Assembly that this article shall be liberally construed to effect the purposes set out herein. If any provision, clause, or phrase of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and to this end the provisions of this article are declared to be separable.~~

**Drafting note: The first sentence of this section is deleted because it is not clear what effect it may have on future legislative action. The second sentence is incorporated into subsection A of § 6.2-1101. The third sentence of this section is deleted because severability provisions are covered by § 1-243.**

~~§ 6.1-194.154. Application to federal and foreign savings banks.~~

~~The provisions of this article shall apply to federal savings banks and foreign savings banks doing business in the Commonwealth insofar as the Commonwealth has the power to enact legislation with regard to them.~~

**Drafting note: Section is incorporated in subsection B of proposed § 6.2-1101.**

~~§ 6.1-195.~~

**Drafting note: Deleted; section number is carried as "reserved."**

CHAPTER 12.

RESERVED.

**CHAPTER DRAFTING NOTE: Chapter 12 is reserved because the numbering in Chapter 11 extends beyond § 6.2-1200.**

CHAPTER ~~4.01~~ 13.

~~VIRGINIA~~ CREDIT ~~UNION ACT~~ UNIONS.

**Chapter drafting note: Existing Chapter 4.01 was the subject of a revision by the Code Commission in 1990 (see House Document 50 of 1990). All or portions of existing Articles 1 (General Provisions), 4 (Powers), and 14 (Miscellaneous) are combined into proposed Article 1 (General Provisions). Existing Article 6 (Share Insurance) of Chapter 4.01, which contains one section (§ 6.1-225.26), is expanded to include the provisions of existing Chapter 4.1 (Virginia Credit Union Share Insurance Act). Existing Articles 10 (Loans) and 11 (Investments) are combined into proposed Article 9 (Loans and Investments) because existing Article 11 has one section (§ 6.1-225.57). The revised caption reflects the disinclination to use the terms "Act" and "Virginia" in chapter headings.**

Article 1.

General Provisions.

~~§ 6.1-225.1. Short title.~~

~~This chapter shall be known and may be cited as the "Virginia Credit Union Act."~~

**Drafting note: This section is unnecessary because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

§ ~~6.1-225.2~~ 6.2-1300. Definitions.

~~When~~ As used in this chapter, unless the context requires a different meaning~~, the following terms shall have the following meanings~~:

"Capital" means the sum of share accounts, reserves, and undivided earnings of a credit union.

~~"Commission" means the State Corporation Commission.~~

~~"Commissioner" means the Commissioner of the Bureau of Financial Institutions of the State Corporation Commission of Virginia.~~

"Corporate credit union" means a credit union whose field of membership consists primarily of other credit unions.

"Credit union" means a cooperative, nonprofit corporation~~,~~ organized under the laws of ~~this~~ the Commonwealth and authorized to do business under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at fair and reasonable rates of interest, providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition, and conducting any other business, engaging in any other activity, and providing any other service that may be of

benefit to its members, consistent with the provisions of this chapter and any regulations adopted by the Commission under this chapter.

"Credit union service organization" means any organization, corporation, or association, if (i) the membership or ownership, as the case may be, of such organization, corporation, or association is primarily confined or restricted to credit unions or organizations of credit unions and (ii) the purpose for which such organization, corporation, or association is organized is to strengthen or advance the development of credit unions or credit union organizations.

"Household" means those ~~persons~~ individuals who are related by blood, marriage, or other recognized family relationship and who live in the same house or other place of residence.

"Immediate family" means the ~~persons~~ individuals in a household who are ~~so~~ related ~~and~~ by blood, marriage, or other recognized family relationship. "Immediate family" also includes, regardless of their place of residence, the children, grandchildren, grandparents, parents, siblings, and spouse of ~~a person~~ an individual.

"Insuring organization" means an organization that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share accounts in the credit unions shall be protected or guaranteed against loss up to a specified limit for each account, such as the National Credit Union Administration Share Insurance Fund, a corporation organized under ~~the Virginia Credit Union Share Insurance Act~~ Article 5 (§ 6.2-1331 et seq.) of this chapter, or any other share insurance provider approved by the Commission.

"Member," with respect to a credit union, or "credit union member," means any person~~, corporation, association, partnership, society, firm, trust, or other legal entity~~ holding a share account in accordance with standards specified by the credit union. ~~The word "member"~~ "Member" may also be used to refer to an individual or other entity that is included within a group or a community, or to an individual who is part of a household or family.

"Reserves" means the total of allowances for loan losses, regular, special, and any other type of funds held in reserve.

"Share account" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union, including balances designated as shares, share certificates, share draft accounts, or other names. ~~Ownership of a share account confers membership and voting rights as set forth in the credit union bylaws and represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution.~~

"Shares" means the interest of a member having an account in ~~the~~ a credit union~~, and shall be subordinate to all other obligations of the credit union~~.

**Drafting note: The definitions of "Commission" and "Commissioner" are deleted because they are defined on a title-wide basis in proposed § 6.2-100. The portion of the definition of "share account" that sets out the effect of ownership of a share account is set out as proposed subsection A of § 6.2-1301. The portion of the definition of "shares" that addresses the priority of shares is set out as proposed subsection B of § 6.2-1301. In the definition of "household" and "immediate family," the term "person" is replaced with**

**"individual," which is consistent with the portion of the definition of "member" that refers to "an individual who is part of a household or family." The definition of "credit union service organization" is moved from subdivision 10 of existing § 6.1-225.57. Other changes are technical.**

§ 6.2-1301. Effect of ownership of a share account; priority of shares.

A. Ownership of a share account confers membership and voting rights as set forth in the credit union bylaws and represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution.

B. Shares shall be subordinate to all other obligations of the credit union.

**Drafting note: The text of subsection A is moved from the existing definition of "share account" in § 6.1-225.2, and the text of subsection B is moved from the existing definition of "shares" in § 6.1-225.2, to avoid placing substantive provisions in definitions.**

§ 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 Commission;

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; and

15. 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.

**Drafting note: This new section (except for subdivision 14) is existing § 6.1-225.21. In subdivision 8, the phrase "but not limited to" after "Including" is deleted, per § 1-218. In subdivision 9, "this chapter or other applicable law" replaces "this or other acts." In subdivision 12, "is not to be held" is replaced with "shall not be held." Subdivision 14 is the first sentence of existing § 6.1-330.64. Other changes are technical.**

§ 6.2-1303. Regulations.

A. The Commission may adopt regulations to implement the provisions of this chapter.

~~The~~ B. In addition to the powers specifically granted to state chartered credit unions by the provisions of this chapter, the Commission ~~is authorized to~~ may adopt such regulations as may be necessary to permit state chartered credit unions to have powers at least comparable with those of federally chartered credit unions or to effect the purposes of this chapter, regardless of any then existing statute, regulation or court decision limiting or denying such powers to state chartered credit unions. The requirement of a public hearing shall not automatically apply to regulations ~~promulgated~~ adopted under this ~~section~~ subsection, but the Commission may ~~have~~ hold such hearings as it deems appropriate.

C. Before adopting any regulation under this chapter, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to present evidence and be heard, in accordance with the Commission's Rules.

**Drafting note: Proposed subsection A is the second sentence of the first paragraph of existing § 6.1-225.3. Subsection B combines § 6.1-225.3:1 (Regulations to permit state chartered credit unions to have powers comparable to federal credit unions) and the first sentence of existing § 6.1-225.22 (Amendment of powers by Commission), as both provisions address the same topic. The second sentence of existing § 6.1-225.22, which states "Such regulations shall be effective upon their adoption, and shall continue in effect until amended or revoked by the Commission or superseded by action of the General Assembly of Virginia," is deleted as unnecessary, as the Commission's Rules address the regulatory process. The third sentence of existing § 6.1-225.22 and the second sentence of existing § 6.1-225.3:1 are set out as the second sentence of proposed subsection B, with a technical change. Proposed subsection C is the second paragraph of existing § 6.1-225.3.**

§ ~~6.2-225.63~~ 6.2-1304. ~~Taxation~~ Franchise tax exemption.

All credit unions organized under the laws of ~~this~~ the Commonwealth and doing business purely as credit unions shall be exempt from the payment of any franchise tax.

**Drafting note: This new section is existing § 6.2-225.63; it is set out as existing language to assist in identifying changes.**

§ ~~6.1-225.64~~ 6.2-1305. Making or circulating derogatory statements affecting credit unions; penalty.

Any person who willfully and maliciously makes, circulates, or transmits to another ~~or others~~ any statement or rumor~~, written, printed or by word of mouth, which~~ that is untrue in facts and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any credit union doing business in ~~this~~ the Commonwealth, or who knowingly counsels, aids, procures, or induces another to start, transmit, or circulate any such statement or rumor, ~~shall be~~ is guilty of a Class 3 misdemeanor.

**Drafting note: Section is existing § 6.1-225.64; it is set out as existing language to assist in identifying changes. "Or others" is deleted because, per § 1-227, the singular includes the plural and vice versa. The phrase "written, printed or by word of mouth" is deleted because it is not necessary to specify the means of making or transmitting the statement or rumor.**

§ ~~6.1-225.19~~ 6.2-1306. Unlawful use of words "credit union".

A. It shall be unlawful for any person~~, partnership, association, corporation or organization~~, other than (i) a credit union organized under the provisions of this chapter ~~or~~, (ii) any entity authorized by any federal law, ~~and other than~~ or (iii) any association or corporation the owners, members or constituents of which consist exclusively of authorized state and federal credit unions or members of authorized state and federal credit unions, to use any name or title which contains the words "credit union." ~~A violation of~~

B. Any person violating the provisions of this section ~~shall be~~ is guilty of a Class 1 misdemeanor and may be enjoined by any court having equity jurisdiction over the unauthorized user.

**Drafting note: This section is existing § 6.1-225.19; it is relocated here in order to place the sections regulating the use of a credit union's name and logo in the same article.**

§ ~~6.1-225.65~~ 6.2-1307. Use of credit union name, logo, or symbol for marketing purposes; penalty.

A. Except as provided in subsection B, no person shall use the name, logo, or symbol, or any combination thereof, of a credit union, or any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or symbol of a credit union, in marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the credit union or that the credit union is responsible for the marketing material or solicitation.

B. This section shall not apply to (i) an affiliate or agent of the credit union or (ii) a person who uses the name, logo, or symbol of a credit union with the consent of the credit union.

C. Any person violating the provisions of this section, either individually or as an interested party, ~~shall be~~ is guilty of a Class 1 misdemeanor.

D. This section shall not affect the availability of any remedies otherwise available to a credit union.

**Drafting note: This new section is existing § 6.1-225.65; it is set out as existing language to assist in noting changes.**

Article 2.

Supervision and Regulation.

§ ~~6.1-225.3~~ 6.2-1308. Supervision and regulation by Commission.

Credit unions organized under the provisions of this chapter shall be subject to the supervision and regulation of the Commission. ~~The Commission may adopt regulations to implement the provisions of this chapter.~~

~~Before promulgating any regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to present evidence and be heard, in accordance with the Rules of Practice and Procedure of the Commission.~~

**Drafting note: The second sentence of the first paragraph, and the second paragraph, are relocated to subsections A and C of proposed § 6.2-1303 (Regulations).**

~~§ 6.1-225.3:1. Regulations to permit state chartered credit unions to have powers comparable to federal credit unions.~~

~~The Commission is authorized to adopt such regulations as may be necessary to permit state chartered credit unions to have powers comparable with those of federally chartered credit unions regardless of any then existing statute, regulation or court decision limiting or denying such powers to state chartered credit unions. The requirement of a public hearing shall not automatically apply to regulations promulgated under this section, but the Commission may have such hearings as it deems appropriate.~~

**Drafting note: Section is relocated to subsection B of proposed § 6.2-1303 (Regulations).**

§ ~~6.1-225.4~~ 6.2-1309. Examinations.

A. Each credit union shall be examined as often as the Commission deems ~~such~~ that an examination ~~to be~~ is in the interest of its members~~. An~~, provided that an examination shall be conducted at least twice in every three-year period. The examiners shall be given free access to all books, papers, securities, and other sources of information in respect to ~~such~~ the credit union. For the purpose of making ~~such~~ an examination, the Commission may subpoena and examine personally witnesses under oath, whether such witnesses are members of the credit union or not, and may require the production of any documents, whether such documents are documents of the credit union or not.

B. All expenses incident to any special examination which may be necessary shall be paid by the credit union so examined.

**Drafting note: Technical changes.**

§ ~~6.1-225.5~~ 6.2-1310. Fees for examination, supervision, and regulation.

In order to defray the costs of ~~the~~ an examination ~~described in~~ pursuant to § ~~6.1-225.4~~ 6.2-1309 and of supervision and regulation by the Commission, every credit union shall pay an annual fee, to be calculated in accordance with a schedule set by the Commission. ~~Such~~ The schedule shall bear a reasonable relationship to the total assets of various individual credit unions, to the actual cost of their respective examinations, and to other factors relating to their supervision and regulation. Fees shall be assessed pursuant to this section on or before March 1 each year. All fees so assessed shall be paid by the credit union to the state treasury on or before March 31 following the assessment.

**Drafting note: Technical changes.**

§ ~~6.1-225.6~~ 6.2-1311. Reports to Commission; penalty for failure to make reports.

A. No later than March 31 of each year, ~~every~~ each credit union shall report to the Commission regarding its condition as of the close of business on the preceding December 31. These reports shall be signed by the president or the chairman and the treasurer or secretary, or by the majority of the members of the supervisory committee~~, and every~~. A credit union shall make such other reports as the Commissioner shall at any time demand.

B. The Commission may allow a credit union ~~or credit unions~~ to make the reports required by this section electronically, in accordance with procedures established by the Commission. A credit union that submits a report electronically shall maintain a copy of the report with the required certified signatures affixed.

C. If any credit union (i) neglects or refuses to make its reports as provided in this chapter for more than ~~fifteen~~ 15 days~~,~~ or ~~if any credit union~~ (ii) fails to pay such charges as are required under this chapter, including any charges for delay in filing reports, ~~it shall be subject to a fine of up to~~ the Commission may impose a civil penalty not exceeding $100 per day upon the credit union, to a maximum of $5,000, or the Commission may give notice to such credit union of its intention to revoke the certificate of authority of ~~such~~ the credit union for such neglect or failure. If such neglect or failure continues for ~~fifteen~~ 15 days after such notice, then the Commission may revoke or suspend the certificate of authority of the credit union. In such event, the Commission may, in its discretion, (~~i~~ a) close such credit union and take possession of its property and business until such time as it may see fit to allow the credit union to resume business or (~~ii~~ b) proceed to finally liquidate such business.

**Drafting note: In subsection B, "or credit unions" is deleted because per § 1-227, any word in the singular includes the plural and vice versa. Changes in subsection C reflect the title-wide recasting of fines as civil penalties; the disposition of civil penalties is addressed in proposed § 6.2-106. Other changes are technical.**

§ ~~6.1-225.7~~ 6.2-1312. Cease and desist ~~order~~ orders; right to hearing.

A. The ~~Commissioner~~ Commission may issue and serve upon a credit union an order to cease and desist from one or more unsafe or unsound practices or violations if, in the opinion of the ~~Commissioner~~ Commission, a credit union (i) is engaging or has engaged, or there is reasonable cause to believe is about to engage, in an unsafe or unsound practice; or (ii) is violating or has violated, or there is reasonable cause to believe is about to violate, this chapter or

any other applicable law, regulation, or order. An order to cease and desist shall contain a statement of the facts constituting the alleged violations or unsafe or unsound practices, and the order may require, in terms that may be mandatory or otherwise, a credit union, its officers, directors, employees, or agents to cease and desist from such practices or violations. The order shall specify the effective date thereof and shall contain a notice to the credit union of its right to a hearing on such order in accordance with ~~Rules 3:4 and 5:6 of~~ the Commission's Rules ~~of Practice and Procedure of the State Corporation Commission~~.

B. If an unsafe or unsound practice or violation specified in the order to cease and desist, or any continuation thereof, is likely to prejudice the interest of the members of the credit union, the ~~Commissioner~~ Commission may issue an order effective immediately. An order to cease and desist shall remain in effect until it is withdrawn ~~by the Commissioner~~ or ~~is~~ terminated by the Commission after a hearing on the matter. A request for hearing under this section shall be given expeditious treatment on the docket of the Commission, and the Commission need not allow for ~~ten~~ 10 days' notice to the parties.

**Drafting note: References to the Commissioner of Financial Institutions are changed to the State Corporation Commission because cease and desist orders would be entered by the State Corporation Commission. In subsection A, references to the specific rules of the Commission are deleted because their formatting has been revised to comport with the Virginia Administrative Code (see 5VAC5-20-10 et seq.). Other changes are technical.**

§ ~~6.1-225.8~~ 6.2-1313. Powers of Commission in case of nonobservance of law, noncompliance with orders, insufficient reserves, or insolvency~~, etc~~; appointment of receiver.

A. If the Commission finds that (i) a credit union is in violation of ~~some~~ a law or regulation applicable to it, (ii) a credit union is being operated in an unsafe or unsound manner, (iii) a credit union has failed to comply with a lawful order of the Commissioner, (iv) the reserve of the credit union fails to meet the requirements set forth in § ~~6.1-225.58~~ 6.2-1377, or (v) a credit union is, or is about to become, insolvent, it shall give immediate notice of its finding to the officers and directors of the credit union. If necessary to conserve the assets of the credit union or protect the interests of the members of the credit union, the Commission may, after reasonable notice to the credit union and an opportunity for it to be heard, do any one or more of the following:

1. Close the credit union for a period not exceeding ~~sixty~~ 60 days, which period may be extended for additional like periods as the Commission may deem necessary;

2. Require the officers and directors of the credit union to liquidate outstanding loans;

3. Require that all lawful orders of the Commission be complied with;

4. Require the credit union to make reports daily or otherwise as to the results achieved in carrying out its orders;

5. Temporarily suspend the right of such credit union to receive any further investment in its share accounts;

6. Grant the right to suspend or limit withdrawals against share accounts for such period as the Commission may deem necessary; and

7. Appoint a conservator to take charge of the credit union and operate it pending further action by the Commission.

B. If the Commission determines that a credit union is insolvent and that a receiver should be appointed, the Commission may close the doors of the credit union, take charge of the books, assets and affairs of the credit union, and apply to any court in the Commonwealth having jurisdiction to appoint receivers for the appointment of a receiver to take charge of the credit union's business and assets. A credit union shall be deemed insolvent when the current value of its assets is less than the current value of the sum of its share accounts and liabilities.

**Drafting note: Technical changes.**

§ ~~6.1-225.9~~ 6.2-1314. Penalties for violation of orders of Commission~~; removal of official~~.

The Commission may impose~~, enter judgment for, and enforce by its process,~~ a ~~fine of not more than~~ civil penalty not exceeding $10,000 ~~against~~ upon any credit union or against any of its directors, officers, or employees for knowingly or willfully violating any lawful order of the Commission. ~~The Commission may remove from office, in accordance with the procedure set forth in § 6.1-194.84, any director or officer who violates any such order or who knowingly continues to violate any law relating to credit unions or knowingly continues an unsafe or unsound practice in conducting the business of a credit union.~~

**Drafting note: Existing § 6.1-225.9 is split into separate sections; this section is the first sentence. Changes reflect the title-wide recasting of fines as civil penalties; the disposition of civil penalties is addressed in proposed § 6.2-106. The balance of the section is set out in subsection A of proposed § 6.2-1315.**

§ 6.2-1315. Removal of director or officer; penalty for acting after removal.

~~The Commission may remove from office, in accordance with the procedure set forth in § 6.1-194.84,~~ A. Whenever any director or officer ~~who~~ of a credit union doing business in the Commonwealth violates any ~~such~~ lawful order of the Commission or ~~who~~ knowingly continues to violate any law relating to credit unions or knowingly continues an unsafe or unsound practice in conducting the business of a credit union, after the director or officer, and the board of directors of the institution of which he is a director or officer, have been warned in writing by the Commissioner to discontinue such violation of law or such unsafe or unsound practice, the Commissioner shall certify the facts to the Commission. The Commission shall thereupon enter an order requiring such director or officer to appear before the Commission, within not less than 10 days, to show cause why he should not be removed from office and thereafter restrained from participating in any manner in the management of the credit union. The order shall contain a brief statement of the facts certified to the Commission by the Commissioner. A copy of the order shall be served upon the director or officer, and a copy thereof shall be sent by certified or registered mail to each director of the credit union affected.

B. If, after granting the accused director or officer a reasonable opportunity to be heard, the Commission finds that he has knowingly continued to violate any law relating to the credit union, or has knowingly continued any unsafe or unsound practice in conducting the business of

the credit union, after he and the board of directors of the credit union of which he is a director or officer have been warned in writing by the Commissioner to discontinue such violation of law or unsafe or unsound practice, the Commission shall enter an order removing the director or officer from office and restraining the director or officer from thereafter participating in any manner in the management of the credit union. A copy of such order shall be served upon the director or officer and upon the credit union of which he is a director or officer, whereupon the director or officer shall cease to be a director or officer of the credit union and shall thereafter cease to participate in any manner in the management of the credit union.

C. Any director or officer removed and restrained under the provisions of this section who thereafter participates in any manner in the management of the credit union, except as a member thereof, is guilty of a Class 6 felony.

**Drafting note: Section is derived from the second sentence of existing § 6.1-225.9, which incorporated by reference provisions of existing § 6.1-194.84 of the Virginia Savings Institutions Act. This section duplicates the applicable provisions of § 6.1-194.84 with amendments to make the section applicable to credit unions. Existing subsection B of § 6.1-194.84 is not included because § 12.1-39 provides that any person aggrieved by any final action of the Commission shall have, of right, an appeal to the Supreme Court irrespective of the amount involved.**

§ ~~6.1-225.62~~ 6.2-1316. Offenses; penalty.

Any officer, director, employee, receiver, or agent of a credit union who willfully does any of the following ~~shall be~~ is guilty of a Class 6 felony:

1. With the intent to deceive, falsifies any book of account, report, statement, record, or other document of a credit union, whether by alteration, false entry, omission, or otherwise;

2. Signs, issues, publishes, or transmits to a government agency any book of account, report, statement, record, or other document ~~which~~ that he knows to be false;

3. By means of deceit, obtains a signature to a writing ~~which~~ that is a subject of forgery;

4. With intent to deceive, destroys any credit union book of account, report, statement, record, or other document; or

5. With the intent to defraud, shares or receives directly or indirectly any money, property, or benefits through any transaction of the credit union.

**Drafting note: This new section is relocated from existing Article 14 (Miscellaneous) to this article to group in one place the provisions addressing noncompliance with the requirements of the chapter.**

§ ~~6.1-225.10~~ 6.2-1317. Supervisory merger or transfer of assets of insolvent credit union.

A. If the Commission finds that a state credit union ~~incorporated pursuant to this chapter~~ is insolvent, that an emergency exists, and that its merger into another credit union is desirable for the protection of its members, and if the board of directors of both credit unions approves a plan of merging ~~such~~ the insolvent state credit union into another state credit union or a federal credit union, compliance with § 13.1-895 shall be dispensed with as to both credit unions and the approval of the Commission of such plan of merger shall be the equivalent of approval by more

than two-thirds of the members of both credit unions for all purposes of Article 11 (§ 13.1-894 et seq.) and Article 12 (§ 13.1-899 et seq.) of Chapter 10 of Title 13.1.

B. If the Commission finds that a state credit union is insolvent, that the acquisition of its assets by another state credit union or a federal credit union is in the best interests of its members, and that an emergency exists, it may, with the consent of the board of directors of both credit unions as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent state credit union to such other state or federal credit union and no compliance with the provisions of §§ 13.1-899 and 13.1-900 shall be required.

C. In the case either of such a merger or of such a sale of assets, the Commission shall provide that prompt notice of its findings of insolvency and of the merger or sale of assets be sent to the members of record of the insolvent state credit union for the purpose of providing such members an opportunity to challenge the finding that the state credit union is insolvent. The relevant books and records of such insolvent credit union shall be preserved and be made available to such members for a period of ~~thirty~~ 30 days after such notice is sent. The Commission's finding of insolvency shall become final if a hearing before the Commission is not requested by any such member within such ~~thirty~~ 30-day period.

D. If, after such hearing provided in subsection C ~~of this section~~, the Commission finds that ~~such~~ the state credit union was solvent, it shall rescind its order entered pursuant to subsection A or subsection B ~~of this section~~ and the merger or transfer of assets shall be rescinded. After such hearing, however, if the Commission finds that ~~such~~ the state credit union was insolvent, its order shall be final.

E. Notwithstanding the provisions of subsection B of § ~~6.1-225.23~~ 6.2-1327, or any other provisions of this chapter, the Commission may order a merger pursuant to subsection A ~~of this section~~ or a sale of assets pursuant to subsection B ~~of this section~~. The continuing credit union, upon approval of the Commission, shall amend its bylaws to incorporate the specified common bond of interest of the insolvent credit union.

F. The Commission may authorize a financial institution whose deposits are insured by a federal agency to purchase any of the assets of or assume any of the liabilities of a credit union ~~which~~ that is insolvent or in danger of insolvency, provided that prior to exercising this authority the Commission shall use every reasonable effort to effect a merger or consolidation with or purchase and assumption by another credit union and shall have been advised by the insuring organization that it cannot effect a merger, consolidation, or other disposition of the insolvent credit union acceptable to the Commission.

**Drafting note: The catchline change is intended to better describe the scope of the section. The phrase "state credit union" replaces "credit union incorporated pursuant to this chapter" because the definition of "credit union" in proposed § 6.2-1300 (and existing § 6.1-225.2) defines "credit union" as one organized under the laws of the Commonwealth. The phrase "of this section" following references to subsections is deleted as unnecessary. Other changes are technical.**

§ ~~6.1-225.11~~ 6.2-1318. Consolidation or merger.

Notwithstanding the provisions of subsection B of § ~~6.1-225.23~~ 6.2-1327, two credit unions may consolidate or merge, subject to the approval of the Commission, when the Commission finds that an emergency exists and that the merger or consolidation will promote the best interests of the members.

**Drafting note: Technical change.**

§ ~~6.1-225.12~~ 6.2-1319. Involuntary dissolution.

~~In the event~~ If the Commission determines that a credit union is violating any provisions of this chapter, it may, after a hearing or an opportunity for a hearing has been given to ~~such~~ the credit union, direct that it discontinue the illegal methods or practices described in the order. If any credit union is insolvent, or has failed or refused to comply with the provisions of this chapter, the Commission may take possession of the business and property of ~~such~~ the credit union and retain such possession until such time as it may permit such credit union to resume business, or until its affairs are finally liquidated under order of the Commission~~; or~~. Alternatively, the Commission may apply to any court in ~~this~~ the Commonwealth having jurisdiction to appoint receivers for the appointment of a receiver to take charge of the business and assets and to wind up the affairs and business of any such credit union. ~~Such~~ The receiver when appointed shall become and be assignee of the assets of such credit union.

**Drafting note: Technical changes.**

Article 3.

Formation of Credit Union.

§ ~~6.1-225.13~~ 6.2-1320. Incorporation.

A. Five or more residents of the Commonwealth who are of legal age and share a common bond referred to in subsection B of § ~~6.1-225.23~~ 6.2-1327 may establish, pursuant to the provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), a corporation for the purpose of conducting business as a credit union as provided in this chapter. Every corporation organized under this chapter shall include in the corporate name the words "credit union" as well as some other distinguishing word or words.

B. Credit unions incorporated pursuant to this chapter shall be subject to the provisions of the Virginia Nonstock Corporation Act, except as may otherwise be provided in this chapter.

**Drafting note: Technical change.**

§ ~~6.1-225.14~~ 6.2-1321. Certificate of authority.

A. Before it begins to do any business, an organizing credit union shall apply for and obtain from the Commission a certificate of authority. An application, accompanied by a fee of $300, shall be made on a form prescribed by the Commission. The Commission shall issue such a certificate if it finds that:

1. The credit union has been formed for no purpose other than the conduct of a legitimate credit union business;

2. The moral fitness, financial responsibility, and other qualifications of the proposed officers and directors are such as to command the confidence of the members;

3. The field of membership of the proposed credit union complies with § ~~6.1-225.23~~ 6.2-1327, and all other applicable provisions of law have been complied with;

4. Share accounts in the credit union will be insured by an approved insuring organization; and

5. Establishment of the proposed credit union is economically advisable. In reaching a decision on whether the establishment of a credit union is economically advisable, the Commission shall give consideration to 12 C.F.R. § 701.1, which incorporates the National Credit Union Administration's Interpretive Ruling and Policy Statement 99-1 as it pertains to economic advisability.

B. The Commission may issue a certificate on condition that the credit union shall not begin to do business until it is actually issued insurance of accounts by ~~such~~ an approved insuring organization.

C. A credit union that is not ~~so insured~~ actually issued insurance of accounts by an approved insuring organization shall not receive funds or sell any shares.

**Drafting note: Technical changes.**

§ ~~6.1-225.15~~ 6.2-1322. Contents of bylaws; amendments to bylaws generally.

The bylaws of a credit union shall specify:

1. The name of the credit union;

2. The purpose for which it was formed;

3. The time of the annual meeting of the members of the credit union, or a provision that the board of directors may set the time for the meeting. Such a meeting shall be held each calendar year. Notice of all meetings shall be given in a manner prescribed in the bylaws, subject to compliance with § 13.1-842;

4. The number, authority, and the duties of the directors and the authority, duties, and maximum compensation of all officers;

5. The conditions and qualifications for membership;

6. The number of members of the credit committee, if any, and of the supervisory committee, with their respective authorities and duties;

7. The conditions upon which shares may be issued, transferred, or withdrawn;

8. The conditions upon which loans may be made and repaid;

9. The manner of effecting the forfeiture of a member's shares when a member's share account balance is below the amount established by the bylaws and remains below such amount for a period of two years;

10. The manner in which dividends shall be determined and paid out;

11. The manner in which remaining assets are to be distributed in the event of dissolution after all distributions required by subdivision A 1 of § 13.1-907 have been made; and

12. The manner in which bylaws may be amended.

**Drafting note: No changes.**

§ ~~6.1-225.16~~ 6.2-1323. Amendments to articles of incorporation and bylaws.

The articles of incorporation or the bylaws of a credit union may be amended as provided in the articles and bylaws, as the case may be, subject to §§ 13.1-886, 13.1-892, and 13.1-893. Amendments to the articles of incorporation shall be accomplished as provided in §§ 13.1-888 and 13.1-889. Proposed amendments to bylaws shall be submitted to the Commissioner, who shall approve or disapprove proposed amendments within ~~thirty~~ 30 days. A bylaw amendment shall be effective upon its approval by the Commissioner. ~~However, no~~ No amendment to the articles of incorporation or bylaws that would expand the field of membership of a credit union shall be effective until such amendment has been approved by the Commissioner. When any such change in bylaws or articles of incorporation is proposed, the Commissioner may extend the period for approval as he may deem necessary for as much as an additional ~~thirty~~ 30 days.

**Drafting note: Technical changes.**

§ ~~6.1-225.17~~ 6.2-1324. Bylaws amended by Commission.

Any bylaw may be amended by the Commission by order entered on its order book and certified to the credit union. Before entering any such order the Commission shall notify the credit union of the proposed amendment and afford it an opportunity to be heard.

**Drafting note: No change.**

§ ~~6.1-225.18~~ 6.2-1325. Fiscal year.

The fiscal year of every credit union shall end at the close of business on December 31.

**Drafting note: No change.**

~~§ 6.1-225.19. Unlawful use of words "credit union".~~

~~It shall be unlawful for any person, partnership, association, corporation or organization, other than a credit union organized under the provisions of this chapter or any entity authorized by any federal law, and other than any association or corporation the owners, members or constituents of which consist exclusively of authorized state and federal credit unions or members of authorized state and federal credit unions, to use any name or title which contains the words "credit union." A violation of the provisions of this section shall be a Class 1 misdemeanor and may be enjoined by any court having equity jurisdiction over the unauthorized user.~~

**Drafting note: Section is relocated to Article 1 as proposed § 6.2-1306.**

§ ~~6.1-225.20~~ 6.2-1326. Establishing, moving, and closing offices.

A. As used in this section, "service facility" means a physical facility at a location other than its main office that is wholly owned by the credit union establishing it.

B. A credit union may maintain service facilities at locations other than its main office if the maintenance of such offices is reasonably necessary to serve its members, subject to the approval of the Commission. An application to establish such a service facility, accompanied by a fee of $200, shall be made on a form prescribed by the Commission. The Commission shall approve the establishment of the proposed service facility if it appears that the interest of the members of the applicant will be served thereby and that such establishment will not impair the

financial condition of the applicant or any other credit union. ~~For the purpose of this section, a service facility means a physical facility that is wholly owned by the applicant.~~

~~B~~ C. A credit union may (i) contract with one or more other credit unions subject to this chapter or organized under the laws of the United States or any other state to provide for the operation of one or more shared service facilities or (ii) provide for its members to have the use of one or more shared service facilities by contracting with a credit union service organization approved by the Commissioner for such purpose. A participating credit union may also invest in the credit union service organization. ~~For purposes of this subsection, "credit union service organization" shall have the meaning contained in subdivision 10 of § 6.1-225.57.~~ A credit union shall give prior written notice to the Commissioner of its participation in each shared service facility or credit union service organization. Notice to the Commissioner of a credit union's participation in a credit union service organization shall satisfy the requirement of subsection ~~C~~ E that the Commissioner be notified of the establishment of an office, if the credit union service organization has notified the Commissioner of the establishment of the shared service facility.

D. The authority of the Commission and the Commissioner to supervise and regulate credit unions, as set forth in Article 2 (§~~§ 6.1-225.3 through 6.1-225.12~~ 6.2-1308 et seq.) of this chapter, shall extend to any shared service facility and any credit union service organization that is involved in the operation of a shared service facility ~~which~~ that provides service to credit unions organized under this chapter, except that such authority shall not extend to the assets, records, books, and accounts of any federal credit union or credit union organized under the laws of another state.

~~C~~ E. A credit union may change the location of its main office, a service facility, or office, and may close any such office, provided it gives at least ~~thirty~~ 30 days' prior written notice thereof to the Commissioner in such form as he may prescribe. A credit union shall notify the Commissioner in writing within ~~ten~~ 10 days after it establishes, relocates, or closes any office. A credit union shall notify the Commissioner of its withdrawal from participation in any shared service facility within ~~ten~~ 10 days of such withdrawal.

**Drafting note: The definition of service facility is moved to the beginning of the section. The definition of credit union service organization is set out in proposed § 6.2-1300. Other changes are technical.**

~~Article 4.~~

~~Powers.~~

~~§ 6.1-225.21. General powers.~~

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

~~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 such property or assets obtained as a result of defaults under obligations owing to it.~~

~~6. Borrow from any source provided that a credit union shall notify and obtain prior approval of the Commissioner if the total borrowings will exceed fifty percent of the credit union's outstanding shares. In no event shall the borrowings exceed ninety 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 Commission.~~

~~8. Offer related financial services, including, but not limited to, 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 or other acts, 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 is not to be held or operated by the credit union for a period longer than 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. 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.~~

**Drafting note: Section is relocated to proposed § 6.2-1302.**

~~§ 6.1-225.22. Amendment of powers by Commission.~~

~~In addition to the powers specifically granted to credit unions by the provisions of this chapter, the Commission may by appropriate regulation amend the powers of state credit unions so as to allow them to have powers at least comparable to those granted to federal credit unions engaged in business in this Commonwealth or to effect the purposes of this chapter. Such regulations shall be effective upon their adoption, and shall continue in effect until amended or revoked by the Commission or superseded by action of the General Assembly of Virginia. The requirement of a public hearing shall not automatically apply to regulations promulgated under this section, but the Commission may hold such a hearing as it deems appropriate.~~

**Drafting note: The first and third sentences of this section are relocated to subsection B of proposed § 6.2-1303. The second sentence is deleted as unnecessary, as the Commission's Rules address the regulatory process.**

Article ~~5~~ 4.

Membership.

§ ~~6.1-225.23~~ 6.2-1327. Membership defined; field of membership.

A. The membership of a credit union shall consist of the incorporators, employees of such credit union, and other persons within the field of membership set forth in the bylaws as have: (i) been fully admitted into membership, (ii) paid any required entrance fee or annual membership fee, or both, (iii) subscribed for one or more shares, (iv) paid the initial installment thereon, and (v) complied with such other requirements as the articles of incorporation or bylaws specify.

B. Credit union membership shall be limited to persons within a specified field of membership, individuals within the immediate family or household of such persons, associations of such persons, other credit unions, and employees of the credit union. The field of membership specified shall be composed of one of the following:

1. A single group having a common bond of occupation or association ~~.~~;

2. More than one group, each of which has a common bond of occupation or association, and each of which does not exceed 3,000 members at the time it is proposed to be included in a multiple common-bond credit union. ~~However, the~~ The 3,000-member limitation shall not apply if the Commission determines that an exception on the grounds provided in subsection (d) (2) or (d) (3) of § 101 of the Credit Union Membership Access Act (12 U.S.C. § 1759) is appropriate. In making any determination under this provision, the Commission shall give consideration to the National Credit Union Administration guidelines ~~.~~; or

3. Those persons or organizations within a well-defined local community, neighborhood or rural district.

The Commission shall in its discretion determine whether ~~such~~ a proposed field of membership constitutes a "well-defined local community, neighborhood or rural district." ~~However,~~ In making such determination, the Commission shall give consideration to the definition of the term that has been adopted by the National Credit Union Administration and has become legally effective.

C. Except as the board of directors may provide to the contrary in the bylaws with respect to termination of membership, once a person or entity becomes a member of a credit union in accordance with this chapter, that person or entity may remain a member of that credit union until the person or entity chooses to withdraw from the credit union.

D. The board of directors may expel from the credit union any member who: (i) has not carried out his obligations to the credit union; (ii) has been convicted of a criminal offense; (iii) neglects or refuses to comply with the provisions of this chapter or of the bylaws; (iv) neglects to pay his debts, or otherwise causes financial loss to the credit union; or (v) has deceived the credit

union with regard to the use of borrowed money. ~~However, no~~ No member shall be so expelled until he has been informed in writing of the charges against him, and an opportunity has been given to him, after reasonable notice, to be heard.

E. Members of the credit union shall not be personally liable for payment of the debts of the credit union.

F. The surviving spouse of a deceased credit union member shall be eligible to become a member of the credit union to which the deceased member belonged~~; otherwise, no~~. In no other instance shall an individual ~~shall~~ be eligible for membership in a credit union on the basis of ~~their~~ the individual's relationship to another person who is eligible for membership in the credit union, unless the individual is a member of the immediate family or household of such person. ~~However, the~~ The board of directors of a credit union may provide in the bylaws for a less inclusive policy governing membership by virtue of relationship to another person, and such policy shall be effective.

G. Societies, associations, organizations, partnerships, and corporations composed of persons who are eligible for membership may be admitted to membership in the same manner and under the same conditions as such persons.

H. Any ~~person~~ individual or entity that was a member of a credit union as of July 1, 1999, may remain a member of the credit union after that date, and any group that was included in the field of membership of a credit union on that date may remain within the field of membership of that credit union after that date. The successor of an entity that was a member or was eligible for membership in a credit union or for inclusion in a field of membership on July 1, 1999, retains the status of its predecessor.

**Drafting note: Technical changes.**

§ ~~6.1-225.23:1~~ 6.2-1328. Expansion of field of membership.

When practicable and consistent with reasonable safety-and-soundness standards, the Commission shall encourage the formation of a separately chartered credit union instead of adding a new group to the field of membership of an existing credit union. ~~However, if~~ If the Commission finds that the formation of a separate credit union by a group desiring such services is not practicable, or is not consistent with reasonable safety-and-soundness standards, it may authorize the group to be included in the field of membership of a state credit union that is located within reasonable proximity, if the Commission finds, based on the information it compiles, that the credit union proposed to be expanded:

1. Is adequately capitalized and will continue to have insurance on its members' shares and other accounts;

2. Has not engaged in any materially unsafe or unsound practice in the year preceding its application to expand; and

3. Has the management, administrative and financial resources to serve the additional group effectively. ~~However, the~~ The Commission shall not authorize the proposed inclusion of a new group unless it finds that any potential harm to another insured credit union or its members which would likely result from the proposed expansion is clearly outweighed in the public

interest by the probable beneficial effects of the proposed expansion in meeting the convenience and needs of the members of the group proposed to be included.

**Drafting note: Technical changes.**

§ ~~6.1-225.24~~ 6.2-1329. Membership meetings; voting.

A. The annual meeting and any special meeting of the credit union shall be held in accordance with the bylaws.

B. At all meetings a member shall have but one vote. Except as hereinafter provided, no member may vote by proxy, but a member may vote by absentee ballot, mail, or other method if the bylaws so provide. ~~A society, association, partnership or corporation,~~ An entity having membership in the credit union may be represented by one person authorized by ~~such society, association, partnership or corporation~~ the entity to so represent it. At any meeting called for the purpose of amending the articles of incorporation or dissolving the credit union any member may vote by proxy.

C. The board of directors may establish a minimum age, not greater than ~~eighteen~~ 18 years of age, as a qualification of eligibility to vote at meetings of the members, to hold office, or both.

**Drafting note: "Entity," which is defined in proposed § 6.2-100, is substituted for "society, association, partnership or corporation" in order to encompass various business entities. Other changes are technical.**

§ ~~6.1-225.25~~ 6.2-1330. Special meetings.

A. The supervisory committee by a majority vote may call a meeting of the members to consider any violation of this chapter, the credit union's articles of incorporation or bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized.

B. The bylaws may also prescribe the manner in which a special meeting of the members may be called by the members or by the board of directors.

**Drafting note: Technical change.**

Article ~~6~~ 5.

Share Insurance.

**Article drafting note: Existing Chapter 4.1 (Virginia Credit Union Share Insurance Act) is incorporated into this article.**

§ ~~6.1-226.2~~ 6.2-1331. Definitions.

As used in this ~~chapter~~ article, unless ~~a different meaning is required by~~ the context requires a different meaning:

~~(1) "Commission" means the State Corporation Commission.~~

~~(2)~~ "Corporation" means a corporation organized in accordance with this ~~chapter~~ article.

~~(3) "Credit union" means a credit union incorporated in Virginia under Chapter 4.01 (§ 6.1-225.1 et seq.) of this title.~~

~~(4)~~ "Member credit union" means a credit union which is a member of the corporation.

~~(5)~~ "Shares" means the interest of a member having a savings account in a member credit union.

**Drafting note: "Commission" is defined in § 6.2-100. "Credit union" is defined in § 6.2-1300. Other changes reflect the conversion of the existing Chapter 4.1 into an article within proposed Chapter 13. The definition of "shares" is identical with that ascribed to the term in § 6.2-1300, except that in this section it is limited to a member credit union.**

§ ~~6.1-225.26~~ 6.2-1332. Insurance of shares.

Every credit union authorized to do business in ~~this~~ the Commonwealth shall insure its members' shares with an approved insuring organization. A credit union ~~which~~ that has been denied a commitment for insurance or fails to maintain insurance upon its shares shall either dissolve or merge with another credit union ~~which~~ that is insured by such an insuring organization.

**Drafting note: This section is the only section in existing Article 6 of Chapter 4.01. The changes are technical.**

§ ~~6.1-226.3~~ 6.2-1333. Establishment of corporation; purposes.

A. Nine or more ~~natural persons~~ individuals, all of whom are duly authorized representatives, respectively, of nine or more credit unions may, pursuant to the provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), establish a corporation for the purpose of ~~aiding~~:

1. Aiding and assisting any member credit union ~~which~~ that is in liquidation or is experiencing financial difficulties, such as insolvency or nonliquidity, in order that the shares of a member of a member credit union shall be protected; ~~to provide~~

2. Providing insurance for the shares of members of a member credit union in amounts, not less than $20,000, ~~which~~ that shall be established from time to time by the corporation with the approval of the Commission; and ~~for the further purpose of cooperating~~

3. Cooperating with the Commission and member credit unions in maintaining and advancing the financial integrity of member credit unions.

B. Except as otherwise herein provided, a corporation organized in accordance with this ~~chapter~~ article shall (i) have the powers contained in the Virginia Nonstock Corporation Act~~, and shall~~; (ii) be subject to the provisions thereof; and ~~shall~~ (iii) include in its corporate name the words "Credit Union Share Insurance."

**Drafting note: "Individuals" replaces the archaic "natural persons." Other changes are technical.**

§ ~~6.1-226.4~~ 6.2-1334. Contents of corporation bylaws; amendments thereto.

A. The bylaws of ~~the~~ a corporation shall specify:

~~(~~1~~).~~ The requirements for membership including contributions to loss reserve, and for the revocation of membership~~.~~;

~~(~~2~~).~~ The date of the annual meeting~~.~~;

~~(~~3~~).~~ The number of directors, which shall not be less than five~~.~~;

~~(~~4~~).~~ The conditions upon which loans to member credit unions may be made~~.~~;

~~(~~5~~).~~ The manner in which remaining assets are to be distributed in the event of dissolution after all distributions required by subdivisions A 1 through A 3 of ~~subsection A of~~ § 13.1-907 of the Virginia Nonstock Corporation Act have been made~~.~~;

~~(~~6~~).~~ The manner and terms upon which reinsurance of shares may be obtained~~.~~; and

~~(~~7~~).~~ The conditions upon which contributions to loss reserve may be refunded when membership is terminated.

B. Bylaws ~~so~~ filed with and approved by the Commission shall be the bylaws of the corporation, and no amendments thereto by the corporation shall be operative unless ~~the same shall~~ they conform to the provisions of this ~~chapter~~ article and ~~be~~ are approved by the Commission.

C. Bylaws may be amended by the Commission by an order entered on its order book and certified to the corporation~~; but before~~. Before any such order is entered, the Commission shall notify the corporation of the proposed amendment and afford it an opportunity to be heard thereon.

**Drafting note: Technical changes.**

§ ~~6.1-226.5~~ 6.2-1335. Application for membership; share insurance required.

~~(1)~~ A. Every credit union organized ~~prior~~:

1. Prior to January 1, 1975, ~~whose~~ the shares of which are not insured by the National Credit Union Share Insurance Fund on ~~such~~ that date, shall apply for membership in ~~the~~ a corporation before January 1, 1976; and ~~every credit union organized on~~

2. On or after January 1, 1975, shall apply for membership in ~~the~~ a corporation within ~~thirty~~ 30 days after its organization or by January 1, 1976, whichever is later.

B. Failure to ~~so~~ apply for membership in a corporation as required by subsection A shall constitute grounds for the revocation by the Commission of the credit union's certificate of authority to do business.

~~(2)~~ C. Every credit union (i) that is required by subsection ~~(1) of this section~~ A to apply for membership in ~~the~~ a corporation and (ii) whose shares are not insured by ~~the~~ a corporation at least in the amount of $20,000 for each member, by July 1, 1976, shall not thereafter receive the savings of its members or issue thereto any other debt obligation until its shares are so insured~~; provided, if~~. If the Commission determines that share insurance issued by ~~the~~ a corporation is not available to a credit union and that its shares are insured by the National Credit Union Share Insurance Fund or under a plan of share insurance ~~which~~ that has been approved by the Commission, the credit union shall be permitted to continue its normal operations.

**Drafting note: Technical changes.**

§ ~~6.1-226.6~~ 6.2-1336. Loss reserve contributions.

~~(1)~~ A. ~~The~~ A corporation shall collect from each credit union accepted for membership~~,~~ an initial contribution to loss reserve the greater of ~~five dollars~~ (i) $5 or (ii) an amount equal to the percentage~~,~~ fixed in the bylaws of the corporation, which percentage shall not exceed one percent, of the amount of its shares outstanding on the last day of the month preceding the month in which application is filed~~, whichever is greater~~. ~~The percentage so fixed shall not exceed one~~

~~percent~~. Whenever the initial contribution to loss reserve and any additions thereto paid by a credit union amount to less than the prescribed percentage of its outstanding shares of December 31, of any year, the corporation shall collect the amount of the deficiency so that the total contributions to loss reserve paid by each credit union is never less than the prescribed percentage of the amount of its outstanding shares on December 31 of any year in which it is a member, except to the extent that refunds have been paid under subsection ~~(2) of this section~~ B. The amount of contribution by a credit union shall be carried on the books of each credit union as an investment.

~~(2)~~ B. Subject to the approval of the Commission, contributions to loss reserve may be refunded to existing members whenever in the judgment of the directors the financial condition of the corporation warrants such action. Refunds so made shall be on the basis of a uniform percentage of the total contributions to loss reserve paid by each credit union and shall be credited to its reserve fund to the extent that such contribution was charged thereto.

**Drafting note: Changes are technical.**

§ ~~6.1-226.7~~ 6.2-1337. Annual and special assessments.

~~(1)~~ A. A regular annual assessment, not to exceed one-twelfth of one percent of the member credit union's outstanding shares, shall be levied by the directors. The directors may raise, lower or waive such assessment for any year~~,~~ when ~~they~~ the directors and the Commission agree that the net worth of the corporation justifies or requires such change. The member credit union's outstanding shares as of December 31~~,~~ shall be the basis for calculating the assessment due in the ensuing year, and the directors shall determine the date the annual assessment is due and payable.

~~(2)~~ B. In the event of potential impairment of the corporation's funds, special assessments may be levied by the directors with the approval of the Commission.

~~(3) Repealed.]~~

~~(4)~~ C. Upon a finding by the ~~State Corporation~~ Commission that it is necessary in order to maintain the financial soundness of the insurance fund, it may direct that the corporation make special assessments of its members.

**Drafting note: Technical changes.**

§ ~~6.1-226.8~~ 6.2-1338. Duties and additional powers of corporation.

~~The~~ A corporation shall have the following powers in addition to those otherwise provided:

~~(~~1~~).~~ To advance funds to aid member credit unions to operate and meet liquidity requirements~~.~~;

~~(~~2~~).~~ To assist in the merger, consolidation, and liquidation of credit unions~~.~~;

~~(~~3~~).~~ To receive by assignment or purchase from member credit unions property of any nature owned by them~~.~~;

~~(~~4~~).~~ Upon written direction of the Commission, to assume control of the property and business of any member credit union and to operate ~~such~~ the credit union in accordance with the directions of the Commission~~.~~; and

~~(~~5~~).~~ To invest its funds in (i) bonds, notes, or securities of ~~this~~ the Commonwealth and of the federal government, and their agencies; ~~in~~ (ii) deposits in banks doing business in ~~Virginia~~ the Commonwealth; ~~in~~ (iii) deposits in any savings institution doing business in ~~this~~ the Commonwealth ~~whose~~ the accounts of which are insured by the Federal Deposit Insurance Corporation or other federal insurance agency; and ~~in~~ (iv) such other investments as are deemed prudent by the directors and are approved by the Commission.

**Drafting note: Technical changes.**

§ ~~6.1-226.9~~ 6.2-1339. Duties and powers of ~~State Corporation~~ Commission; judicial review.

~~(1)~~ A. The Commission shall promptly forward to the corporation copies of all examination reports of member credit unions~~; the~~. The cost of furnishing ~~such~~ the copies shall be paid by the corporation.

~~(2)~~ B. If the Commission determines, pursuant to the provisions of § ~~6.1-225.6~~ 6.2-1311 or ~~§ 6.1-225.8~~ 6.2-1313, that it should take possession of the business and property of a member credit union, the Commission may direct the corporation to assume control of such business and property and, subject to the Commission's orders operate the credit union until such time as the Commission ~~may see fit to permit~~ permits the credit union to resume business or until its assets are finally liquidated. If the Commission orders the liquidation of an insolvent member credit union then in the control of the corporation through the purchase of the assets and the assumption of the liabilities of such credit union by another insured credit union, the corporation shall be empowered to convey all right, title, and interest in all or part of the assets and liabilities of the insolvent credit union to the other insured credit union~~, and upon~~. Upon such transfer, good title to the assets and liabilities conveyed shall vest in the other insured credit union. Any cost or expense incurred by the corporation in such operation of the credit union may be reimbursed from the assets of the credit union by an order of the Commission.

~~(3)~~ C. The Commission may suspend or revoke, after notice of hearing, the certificate of authority to do business of any member credit union ~~which~~ that fails to pay, when due, any assessment made by the corporation pursuant to this ~~chapter~~ article.

~~(4)~~ D. Any final action or order of the Commission under this ~~chapter~~ article shall be subject to judicial review in accordance with the provisions of § 12.1-39.

**Drafting note: Changes are technical.**

§ ~~6.1-226.10~~ 6.2-1340. Supervision, reports and examinations by ~~State Corporation~~ Commission.

~~(1)~~ A. The corporation shall be subject to supervision and annual examination by the Commission. The cost of each examination shall be paid by the corporation. The corporation shall file annually by such time and in such form as the Commission prescribes a statement showing its financial condition on December 31~~,~~ of the previous year.

~~(2)~~ B. In addition to the annual statement, the Commission from time to time may require the corporation to file such further reports, exhibits or statements as it deems necessary to furnish full information concerning the condition, solvency, transactions and affairs of the corporation.

The Commission shall prescribe the time within which such additional reports, exhibits or statements shall be filed and may require verification by such officers of the corporation as it may designate.

~~(3)~~ C. Whenever the Commission deems it expedient to do so, it may make or direct to be made additional examinations of the affairs of the corporation, the cost of which shall be paid by the corporation. Upon completion of an examination, a copy of the report thereof shall be furnished to the corporation.

**Drafting note: Technical changes.**

§ ~~6.1-226.11~~ 6.2-1341. Audit by corporation and corrective measures; appeal.

~~(1)~~ A. ~~The~~ A corporation may require independent audits and investigations of any member credit union to ascertain its financial condition as it relates to share insurance.

~~(2)~~ B. If the directors of ~~the~~ a corporation ascertain evidence of carelessness, unsound practices, or mismanagement of any member credit union ~~which~~ that appears to adversely affect the solvency or liquidity of the credit union or threaten loss to the corporation, the directors shall notify the Commission and may order that corrective action be taken or, after due notice and hearing, as provided in the bylaws, revoke the credit union's membership in the corporation.

~~(3)~~ C. If a member credit union is aggrieved by any decision, action, or order of the corporation, it may appeal the ~~same~~ decision, action, or order to the Commission ~~which~~. The Commission may modify, reverse, or affirm such decision, action, or order.

**Drafting note: Technical changes.**

§ ~~6.1-226.12~~ 6.2-1342. Tax exemptions.

~~The~~ Any corporation shall be exempt from all state and local taxes except real and personal property taxes.

**Drafting note: Changes from "the corporation" to "a" or "any" corporation throughout the article reflect the fact that the article does not provide that there shall be only one corporation organized in accordance with the article.**

§ ~~6.1-226.13~~ 6.2-1343. Inconsistent laws inapplicable.

All other general or special laws, or parts thereof, inconsistent ~~herewith are hereby declared to be~~ with the provisions of this article shall be inapplicable to the provisions of this ~~chapter~~ article.

**Drafting note: Technical changes to avoid stating "are hereby declared to be" inapplicable.**

Article ~~7~~ 6.

Change in Corporate Status~~: Mergers, Dissolutions, and Coversions~~.

§ ~~6.1-225.27~~ 6.2-1344. Voluntary merger.

A. A credit union organized under this chapter may merge, with the approval of the Commission, with one or more other credit unions, state or federal. In any case in which the surviving credit union will be a Virginia state-chartered credit union, a merger application,

accompanied by an application fee of $300, shall be filed with the Commission. The Commission shall approve the application if the Commission finds that:

1. The field of membership of the credit union which is proposed to result from the merger satisfies the requirements of subsection B of § ~~6.1-225.23 B~~ 6.2-1327;

2. The plan of merger will promote the best interests of the members of the credit unions; and

3. The members of the merging credit unions have approved the plan of merger in accordance with applicable laws and regulations. Notwithstanding subsection D of § 13.1-895, the members of a Virginia state-chartered credit union may authorize a plan of merger by vote of at least a majority of all votes cast thereon at an annual or special meeting at which a quorum is present. Notwithstanding the terms of § 13.1-895, in a merger where a Virginia ~~state-chartered~~ credit union will be the resulting credit union, the adoption of the plan of merger by the board of directors of that credit union shall be sufficient approval of the plan, and approval of the plan of merger by the members of that credit union shall not be required. Notice of the meeting may be given in a manner prescribed in the articles of incorporation or bylaws, notwithstanding the terms of § 13.1-842 relating to the manner of notice. A federal credit union merging with a state credit union may give notice to its members as prescribed by federal regulation.

B. ~~1.~~ If the Commission finds that the requirements of subsection A have been met and all required fees have been paid, it shall approve the merger and issue a certificate of merger, which shall be admitted to record in its office and in the office for the recording of deeds in the city or county in which the registered office of each credit union is located. ~~However, no~~ No such further recordation shall be required in the City of Richmond~~, County~~ or the Counties of Chesterfield or ~~the County of~~ Henrico.

~~2~~ C. Upon the issuance of the certificate of merger the provisions of § 13.1-897, mutatis mutandis, shall become effective.

~~C~~ D. For the purposes of this section, a member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy. A member may appoint a proxy to vote or otherwise act for him by signing an appointment form. An appointment of a proxy becomes effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for ~~eleven~~ 11 months unless a different period is expressly provided in the appointment form or the appointment is revoked by the member.

**Drafting note: Technical changes.**

§ ~~6.1-225.28~~ 6.2-1345. Voluntary dissolution.

A. A credit union may dissolve in accordance with the provisions of Article 13 (§ 13.1-902 et seq.) of Chapter 10 of Title 13.1. Within ~~ten~~ 10 days after the board of directors votes to recommend dissolution to the members, the board shall notify the Commissioner and the insuring organization of that fact in writing, setting forth the reasons for the proposed dissolution.

B. The dissolving credit union shall also (i) notify the Commissioner of the result when the members have voted on the proposal to dissolve~~,~~ and ~~shall~~ (ii) file with the Commissioner a copy of the certificate of dissolution and the certificate of termination of corporate existence of the credit union within ~~ten~~ 10 days of the issuance of each.

**Drafting note: Technical changes.**

§ ~~6.1-225.29~~ 6.2-1346. Conversion of federal credit union to state credit union.

A credit union~~,~~ organized under the laws of the United States and authorized to do business in this Commonwealth~~,~~ may convert to a credit union organized under the laws of ~~this~~ the Commonwealth by the following procedure:

1. The directors of the federal credit union shall organize a corporation under this chapter and the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) for the purpose set forth in § ~~6.1-225.13.~~ 6.2-1320;

2. The new corporation shall apply for a certificate of authority to do business as a credit union as provided in § ~~6.1-225.14.~~ 6.2-1321;

3. The federal credit union shall follow the procedures set forth in § 125 (a) ~~(12 U.S.C. § 1771),~~ of the Federal Credit Union Act (12 U.S.C. § 1771), as it now exists or may hereafter be amended, for conversion~~.~~;

4. Upon completion of the requirements of the Federal Credit Union Act, the authorized officers of the federal credit union shall execute a certificate setting forth the procedures followed, the number of members eligible to vote and the number voting in favor of the plan of conversion and file said certificate with the Commission~~.~~; and

5. When the Commission has ~~been satisfied~~ determined that all of the requirements of this section have been complied with, and that the criteria of § ~~6.1-225.14~~ 6.2-1321 have been met, the Commission shall authorize the state-chartered credit union to commence business as of the date it ceases to be a federal credit union. The successor state-chartered credit union shall be vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

**Drafting note: Technical changes.**

§ ~~6.1-225.30~~ 6.2-1347. Conversion of state credit union to federal credit union.

A state credit union may convert to a federal credit union by the following procedure:

1. At any meeting of the members called and held in accordance with the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) to consider such action, the members, by an affirmative vote of those holding and voting two-thirds of the votes present in person or by proxy, may resolve to convert the credit union into a federal credit union~~.~~;

2. A copy of the minutes of the meeting duly certified by the authorized officer of the credit union shall be transmitted to the Commission~~.~~;

3. The state credit union shall take such action as is necessary under § 125 (b) ~~(12 U.S.C. § 1771),~~ of the Federal Credit Union Act (12 U.S.C. § 1771), as it now exists or may hereafter be amended, to make it a federal credit union~~.~~;

4. It shall file with the Commission a certified copy of the organization certificate approved by the National Credit Union Administration Board.; and

5. Upon receipt of the organization certificate the state credit union shall become a federal credit union which shall be vested with all of the assets and shall continue to be responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

**Drafting note: Technical changes.**

Article 8 7.

Direction of Affairs.

§ 6.1-225.31 6.2-1348. Board of directors; number; election; term; appointment of supervisory and credit committee.

A. The board of directors shall have the authority and responsibility for directing the business affairs, funds, and records of the credit union.

B. The board shall consist of an odd number of directors, at least five in number, to be elected by and from the members. After the election of the initial board at the organizational meeting, the election of the board shall be held at the annual meeting or at such other time as the bylaws provide.

C. A director shall be elected for a term of not less than one year nor more than four years, as provided in the bylaws, provided that if. If the term is more than one year, the bylaws shall establish terms of office so that an approximately equal number of directors shall be elected each year. A director, unless removed from office, shall hold office until a successor is elected and qualified. Directors may serve more than one term. Any vacancy on the board of directors shall be filled until the next annual election by appointment by the remainder of the directors.

D. The board of directors at its first meeting following the annual election shall appoint (i) a supervisory committee from the membership which. The supervisory committee shall consist of an odd number of members, not less than three, and (ii) a. No member of the board of directors or the credit committee shall serve on the supervisory committee. The terms for the members of the supervisory committee shall be as provided in the bylaws.

E. Unless the members have authorized and directed the board of directors to serve as the credit committee, the board of directors at its first meeting following the annual election shall either appoint:

1. A credit committee, which shall be appointed from the membership which. The credit committee shall consist of an odd number of members, not less than three,. No member of the board of directors or the supervisory committee shall serve on the credit committee unless authorized by the provisions of this section. The terms for the members of the credit committee shall be as provided in the bylaws; or in lieu thereof, appoint one

2. One or more loan officers and, in such instances, to carry out the duties and responsibilities of the credit committee shall be carried out by a loan officer or officers. The members may authorize and direct the board of directors to serve as the credit committee. No member of the board of directors or the credit committee shall serve on the supervisory

~~committee and no member of the board of directors or the supervisory committee shall serve on the credit committee unless authorized by the provisions of this section. The terms for the members of both committees shall be as provided in the bylaws.~~

**Drafting note: Existing subsection D is split into separate subsections addressing supervisory committees and credit committees, and proposed subsection E is restructured to clarify the options regarding the membership of credit committees.**

§ ~~6.1-225.32~~ 6.2-1349. Board of directors; election of officers.

A. At its first meeting after the annual election, the board of directors shall elect from its own number (i) an executive officer, who may be designated as chairman of the board or president; (ii) a vice-chairman of the board or one or more vice-presidents; (iii) a secretary; and (iv) a treasurer. The same member may simultaneously hold more than one office in the credit union, if the bylaws so provide. ~~They~~ The board of directors shall also elect any other officers that are specified in the bylaws.

B. ~~The terms of the officers shall be one year or until their successors are elected and qualified.~~

~~C. The duties of the officers shall be as prescribed in the bylaws.~~

~~D.~~ The board of directors shall appoint (i) a chief operating officer of the credit union to be in active charge of its operations and (ii) a financial officer. The chief operating officer may also serve as the financial officer.

C. The terms of the officers shall be one year or until their successors are elected and qualified.

D. The duties of the officers shall be as prescribed in the bylaws.

E. A credit union may use any other title it chooses for officers, so long as such titles are not misleading.

**Drafting note: Existing subsection D is redesignated as subsection B to group the subsections addressing the appointment of officers. Other changes are technical.**

§ ~~6.1-225.33~~ 6.2-1350. Executive committee.

The board of directors may appoint from its own number an executive committee, consisting of not less than three directors~~, which~~. The executive committee may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board and subsection D of § 13.1-869 ~~D~~.

**Drafting note: Technical changes, including breaking up the sentence to improve readability.**

§ ~~6.1-225.34~~ 6.2-1351. Meetings of directors.

The board of directors and the executive committee shall meet as often as the bylaws prescribe.

**Drafting note: No change.**

§ ~~6.1-225.35~~ 6.2-1352. Compensation of officials.

No member of the board of directors shall receive any compensation for his services as a member of ~~such~~ the board. The members of the credit or supervisory committee may receive for

their services, as ~~such~~ members, such compensation as the board of directors may determine. Health, accident, and term life insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to performing the business of the credit union. Official business of the credit union shall include attendance at regular or special meetings of the board of directors or committees thereof.

**Drafting note: Technical changes.**

§ ~~6.1-225.36~~ 6.2-1353. Powers and duties of directors.

In addition to any other duties set forth in this chapter, the board of directors shall have the following powers and duties:

1. To act upon applications for membership and upon the expulsion of a member. The board of directors may appoint one or more membership officers to act upon applications for membership. A record of the membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board;

2. To purchase and maintain fidelity bond coverage, in accordance with ~~rules and~~ regulations of the Commission;

3. To determine from time to time the rates of interest ~~which~~ that shall be charged on loans and to prescribe the conditions under which interest refunds will be made;

4. To fix the amount, if any, that may be charged for initial and annual membership fees;

5. To determine the maximum amount of shares ~~which~~ that may be held by, and the maximum amount which may be loaned to, any one member;

6. To declare dividends on share accounts;

7. To determine the manner in which dividends shall be paid on shares issued or withdrawn during a dividend period;

8. To fill vacancies in the supervisory committee or in the credit committee until the election or appointment, as the case may be, and qualification of successors;

9. To remove any member of the board of directors failing to attend regular meetings of the board without good cause shown for three consecutive months or otherwise failing to perform any of the duties devolving upon him as a director;

10. To remove any member of the credit committee failing to attend three consecutive regular meetings of the credit committee without good cause shown or otherwise failing to perform any of the duties devolving upon him as a credit committee member;

11. To suspend any member of the supervisory committee failing to attend regular meetings of the supervisory committee without cause or otherwise failing to perform any of the duties devolving upon him as a supervisory committee member, provided that the members shall decide at a meeting held not less than ~~ten~~ 10 nor more than ~~twenty-five~~ 25 days after such suspension if such suspended committee member shall be removed from or restored to the supervisory committee;

12. To have charge of the investment of the funds of the credit union, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments pursuant to written policies established by the board of directors;

13. To establish policy on loans to members, which policy shall provide that the rates, terms, and conditions on any loan or line of credit either made to, or endorsed or guaranteed by (i) an official, (ii) an immediate family member of an official, or (iii) any individual having a common ownership, investment, or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official shall not be more favorable than the rates, terms, and conditions for comparable loans or lines of credit to other credit union members;

14. To designate a depository or depositories for the funds of the credit union;

15. To authorize the acquisition or conveyance of real property;

16. To authorize the employment and compensation of the president or person named by the board to manage the affairs of the credit union;

17. To make adequate provisions for reserves; and

18. To perform such other duties as the members may from time to time authorize.

**Drafting note: Technical changes.**

§ ~~6.1-225.37~~ 6.2-1354. Credit committee or loan officers; appeal.

A. The credit committee of a credit union shall approve every loan or advance made by the credit union to members, unless ~~it~~ the committee is replaced by a loan officer~~,~~ as provided in ~~subsection D~~ subdivision E 2 of § ~~6.1-225.31~~ 6.2-1348.

B. If the credit committee has not been replaced by action of the board of directors, it may appoint and delegate to loan officers the authority to approve or disapprove loan applications, subject to the written policies prescribed by the board of directors. The approval of an application by the credit committee shall be by a majority of members of the committee who are present at the meeting at which it is considered, provided a majority of the full committee is present.

C. All applications disapproved by a loan officer may, upon request of the applicant, be reviewed by the credit committee. The approval of a majority of members of the credit committee who are present at the meeting when such review is undertaken shall be required to reverse the loan officer's decision. A majority of members of the full credit committee shall be present at such review. ~~No individual shall have the authority to disburse funds of the credit union for any loan for which the application has been approved by him in his capacity as a loan officer.~~ A member whose application was disapproved by a loan officer or the credit committee may appeal such action to the board of directors.

D. No individual shall have the authority to disburse funds of the credit union for any loan for which the application has been approved by him in his capacity as a loan officer.

E. The credit committee shall meet as often as the business of the credit union may require to consider applications for loans or to review the work of the loan officers, as the case

may be. Reasonable notice of each such meeting shall be given to each member of the committee.

**Drafting note: The fourth sentence of existing subsection C is set out as proposed subsection D. Other changes are technical.**

§ ~~6.1-225.38~~ 6.2-1355. Supervisory committee; suspension and removal of officials.

The supervisory committee:

1. Shall make or cause to be made an annual audit of the credit union, and shall submit a report of that audit to the board of directors and a summary of the report to the members at the next annual meeting of the credit union;

2. Shall make or cause to be made such supplementary audits and verification of members' accounts as it deems necessary or as may be ordered by the board of directors, and shall submit such report to the board of directors; and

3. May by unanimous vote suspend any officer of the credit union or any member of the credit committee or of the board of directors, until the next meeting of members, which shall be held not less than ~~ten~~ 10 nor more than ~~twenty-five~~ 25 days after any such suspension, at which meeting such suspension shall be acted upon by the members.

**Drafting note: Technical changes.**

§ ~~6.1-225.39~~ 6.2-1356. Special audit.

The Commissioner may require a credit union to have an independent audit made of its books, records, and methods of operation by a certified public accountant or other qualified person or firm approved by the Commissioner, whenever it appears to the Commissioner that (i) the system of internal controls pertaining to ~~such~~ the credit union is not adequate, ~~or that such~~ (ii) the credit union is engaging in unsafe or unsound practices, or ~~that~~ (iii) the financial condition of ~~such~~ the credit union makes such an audit necessary.

**Drafting note: Technical changes.**

§ ~~6.1-225.40~~ 6.2-1357. Qualifications of ~~officers, etc~~ officials.

Every officer, director, and committee member shall be a member of the credit union.

**Drafting note: The amendment to the catchline adopts the provision of existing § 6.1-225.38, which refers to officers and directors as "officials," which allows removal of the "etc." Technical change.**

Article ~~9~~ 8.

Accounts.

§ ~~6.1-225.41~~ 6.2-1358. Share accounts.

A. Every credit union may issue shares to and maintain share accounts for any member qualified pursuant to the credit union's bylaws.

B. Shares and share accounts may be withdrawn for payment to the account holder or to third parties in such manner and in accordance with such procedures as may be established by the board of directors.

C. Shares and share accounts shall be subject to any withdrawal notice requirement ~~which~~ that may be imposed ~~in~~ pursuant to the credit union bylaws.

**Drafting note: Technical changes.**

§ ~~6.1-225.42~~ 6.2-1359. Payment for shares; transfers; lien on shares.

Shares shall be paid for in money. Shares may be subscribed to, paid for, and transferred in such manner as the bylaws prescribe. The credit union shall have a lien on the shares, including share accounts of a member in his individual, joint, or trust accounts and upon any dividends payable thereon as security for all debts and obligations owed by, and for any loan endorsed by, such member to the credit union.

**Drafting note: No change.**

§ ~~6.1-225.43~~ 6.2-1360. Dividends.

A. At such intervals and for such periods as the bylaws provide and after provision for the required reserves, the board of directors may declare dividends on share accounts from the undivided earnings or other funds set aside for dividends.

B. Dividends may be paid at different rates on different types of share accounts and at different rates and maturity dates in the case of share certificates.

C. Dividend credit may be accrued on shares as authorized by the board of directors.

D. The rates of dividends and terms of payment may be declared in advance by the board of directors.

E. In no event shall a dividend be paid, if, after the payment thereof, the liabilities of the credit union would exceed its assets.

**Drafting note: No change.**

§ ~~6.1-225.44~~ 6.2-1361. Ascertaining value of assets.

In ascertaining the value of the assets of a credit union~~, a~~:

1. A loan delinquent for more than two but less than six months shall be valued at ~~ninety~~ 90 percent of the unpaid balance; ~~a~~

2. A loan delinquent for six months but less than ~~twelve~~ 12 months shall be valued at ~~seventy-five~~ 75 percent of the unpaid balance; and ~~a~~

3. A loan delinquent for ~~twelve~~ 12 months or more shall be treated as of no value.

**Drafting note: Technical changes.**

§ ~~6.1-225.45~~ 6.2-1362. Minors' accounts.

A credit union may issue shares in the name of a minor as the sole and absolute owner of such shares and may accept the purchase of such shares by and for such owner, pay withdrawals from such share accounts, and act in any other manner with respect to such share accounts on the order of such minor. Any withdrawal of shares or delivery of funds from such account to the owner thereof, or payment of a share draft or other written order for withdrawal signed by such minor owner, shall be a valid and sufficient release and discharge of the credit union for any payment, withdrawal, or delivery so made. The parent or guardian of such minor shall not in his capacity as parent or guardian have the power to withdraw or transfer shares in any such account unless the minor has given written notice to the credit union to accept the signature of such parent or guardian.

**Drafting note: No change.**

§ ~~6.1-225.46~~ 6.2-1363. Individual retirement accounts~~, etc~~ and retirement or pension plans.

A. A credit union may act as trustee or custodian of (i) individual retirement accounts established with the credit union for the benefit of its members under the ~~Federal~~ federal Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829) (ERISA), as amended from time to time; (ii) pension funds of self-employed individuals or of a company or organization sponsoring the credit union; or (iii) other similar retirement or pension plans.

B. Contributions ~~thereto~~ to and earnings ~~thereon~~ on an account described in clause (i) of subsection A may be accepted and retained in accordance with ~~that act~~ ERISA but shall be invested in shares of the credit union. If the credit union bylaws so provide such accounts may be established for the benefit of members in the names of other trustees or custodians who are qualified to serve as such under the laws of this Commonwealth and ~~that act~~ ERISA.

**Drafting note: The catchline is amended to avoid use of "etc." The second and third sentences are set out as a separate subsection.**

§ ~~6.1-225.47~~ 6.2-1364. Acceptance of money under Virginia Uniform Transfers to Minors Act.

~~If the custodian or the minor is a member of the credit union, the~~ A credit union may accept money paid to it pursuant to the Virginia Uniform Transfers to Minors Act (§ 31-37 et seq.) for credit to an account in the name of the custodian ~~or custodians~~ as provided in such ~~act~~ Act if the custodian or the minor for whose benefit the transfer is made is a member of the credit union.

**Drafting note: The initial phrase is moved to the end of the section. The description of the minor is intended to clarify the section's intent. "Or custodians" is deleted because per § 1-227 the singular includes the plural and vice versa.**

§ ~~6.1-225.48~~ 6.2-1365. Accounts of deceased or incapacitated person.

A. A credit union may pay any share balance due a deceased person or any person under a disability to the personal representative, guardian, conservator, curator, or committee of such person upon proper proof of the appointment and qualification of such fiduciary. Such qualification shall be sufficient authority for making such payment. A credit union making such payment shall no longer be liable for the amount so paid to any person. The presentation of a duly certified letter or certificate of qualification as personal representative, or other fiduciary, guardian, conservator, curator, or committee shall be conclusive proof of the jurisdiction of the court issuing the same.

B. A credit union ~~which~~ that has received no written notice and does not have actual notice that a member is deceased or has been adjudicated incapacitated, may pay or deliver shares in such member's account in accordance with the provisions of the account contract without liability to any person for the amounts so paid.

**Drafting note: Technical changes.**

§ ~~6.1-225.49~~ 6.2-1366. Payment of small balances to distributees or other persons.

A. When the share balance of a deceased person upon whose estate there has been no qualification does not exceed $15,000, it shall be lawful for the credit union, after ~~sixty~~ 60 days from the death of such person, to pay such balance to ~~his or her~~ the decedent's spouse, and if none, to the distributees of the decedent or other persons entitled thereto under the laws of ~~this~~ the Commonwealth. The receipt therefor shall be a full discharge of the credit union for the amount so paid. Such balance or any part thereof shall not exceed the amount given a priority by § 64.1-157 after ~~thirty~~ 30 days from the death of such person.

B. Upon the written request of the spouse, or if there is none, the distributees of the decedent or other persons entitled thereto under the laws of the Commonwealth, the balance may be paid to the funeral director or mortuary handling the funeral of ~~such~~ the decedent. A receipt of the payee shall be a full and final release of the credit union for the amount so paid.

**Drafting note: Technical changes.**

§ ~~6.1-225.50~~ 6.2-1367. Application of ~~§§ 6.1-225.48 and 6.1-225.49~~ provisions to federal credit unions.

The provisions of §§ ~~6.1-225.48~~ 6.2-1365 and ~~6.1-225.49~~ 6.2-1366 shall apply to federal credit unions operating in this Commonwealth to the extent that the same are not inconsistent with any federal law applicable to such credit unions.

**Drafting note: Technical changes.**

§ ~~6.1-225.50:1~~ 6.2-1368. Accounts of fiduciaries.

A credit union may issue shares and maintain share accounts in the name of any person or entity eligible for membership in such credit union pursuant to § ~~6.1-225.23~~ 6.2-1327 as administrator, executor, custodian, conservator, guardian, trustee, or other fiduciary for a named beneficiary ~~or beneficiaries~~. The payment of funds from any such account pursuant to a share draft or other written order of withdrawal signed by the fiduciary, ~~or~~ the delivery of funds in such account to such fiduciary, or a receipt signed by any such fiduciary with regard to the payment of funds from such account, shall be valid and sufficient release and discharge of the credit union for the payment or delivery so made.

**Drafting note: Technical changes. "Or beneficiaries" is deleted per § 1-277.**

§ ~~6.1-225.50:2~~ 6.2-1369. Credit union need not inquire as to fiduciary funds used to purchase shares in fiduciary's personal account.

A. If any fiduciary or agent purchases shares in a credit union in his own name (i) with share drafts or other instruments drawn by him upon an account in his own name as fiduciary, (ii) with share drafts or other instruments drawn by him upon an account in the name of his principal, if he is empowered to draw share drafts or other instruments thereto, or (iii) with share drafts or other instruments payable to his principal and endorsed by him as fiduciary, the credit union issuing such shares shall not be bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary.

B. The credit union is authorized to pay the amount of the shares issued or any part thereof upon the withdrawal by the fiduciary without being liable to the principal, unless the credit union receives payment for the shares or pays the withdrawal (i) with the actual

knowledge that the fiduciary, in purchasing such shares or in making such withdrawal, is committing a breach of his obligation as a fiduciary, or (ii) with knowledge of such facts that its action in issuing the shares or paying the withdrawal amounts to bad faith.

**Drafting note: Technical changes.**

Article ~~10~~ 9.

Loans and Investments.

**Article drafting note: Existing Article 11 (Investments) is combined with existing Article 10 to create this proposed Article 9 because existing Article 11 consists of one section.**

§ ~~6.1-225.51~~ 6.2-1370. Purpose and condition of loans.

A credit union may lend to its members for such purposes and upon such conditions as the bylaws may prescribe. The board of directors shall establish written policies with respect to granting loans and extending lines of credit, including the terms, conditions, and acceptable forms of security.

**Drafting note: No change**

§ ~~6.1-225.52~~ 6.2-1371. Other charges.

A. In addition to interest charged on loans, a credit union may charge members all reasonable expenses in connection with making, closing, disbursing, extending, collecting, or renewing loans.

B. In accordance with the bylaws, a credit union may assess charges to members for failure to meet in a timely manner their obligations to the credit union.

**Drafting note: No change.**

§ ~~6.1-225.53~~ 6.2-1372. Loan ~~limit~~ limits.

A. No loan may be made by a credit union to a member if, upon making the loan, the member would be indebted to the credit union on loans to such member in an aggregate amount which would exceed ~~ten~~ the lesser of (i) 10 percent of ~~its~~ the credit union's share accounts and reserve fund~~,~~ or (ii) the maximum amount as authorized by its bylaws~~, whichever is less~~.

B. The aggregate amount of a credit union's "member business loans," as defined in 12 C.F.R. § 701.21 (h), shall not exceed the limit prescribed for insured credit unions by subsection (a) of § 107A of the Federal Credit Union Act (12 U.S.C. § 1757 a), taking into account also the provisions of subsections (b) through (d) of that section.

**Drafting note: Technical changes.**

§ ~~6.1-225.54~~ 6.2-1373. Loans to members of credit committee; nonmember loans.

A. If the borrower or endorser on a loan by a credit union is a member of the credit committee, or a member of the board of directors if the board is serving as the credit committee, the loan shall be approved by the supervisory committee or a loan officer instead of by the credit committee~~; however, where such~~. If the loan is fully secured by shares, such loan may be approved by the credit committee.

B. No loan shall be made to an individual or entity that is not a member of the credit union. If the credit committee or loan officer should knowingly approve such a loan, the

members of the credit committee shall be jointly and severally liable, or in the case of a loan officer, he shall be individually liable, to the credit union for the immediate repayment thereof.

**Drafting note: Technical changes.**

§ ~~6.1-225.55~~ 6.2-1374. Lines of credit.

Notwithstanding the requirements of § ~~6.1-225.37~~ 6.2-1354, the credit committee or a loan officer may approve an application for a line of credit. When a line of credit has been approved, advances may be made as requested without further loan application or approval if the aggregate outstanding balance on all advances does not exceed the limit specified.

**Drafting note: Technical change.**

§ ~~6.1-225.56~~ 6.2-1375. Cooperative loans.

A credit union may originate loans to credit union members jointly with other credit unions, credit union organizations, or other financial institutions pursuant to written policies established by the board of directors ~~which~~. The policies shall include the limitation set forth in § ~~6.1-225.53~~ 6.2-1372. A credit union ~~which~~ that originates such a loan shall retain at least a ~~ten~~ 10 percent interest in such loan.

**Drafting note: Technical changes.**

~~Article 11.~~

~~Investments.~~

§ ~~6.1-225.57~~ 6.2-1376. Authorized investments.

The funds of a credit union~~,~~ that are not used in loans to members~~,~~ may be invested ~~in the following ways~~ only:

1. ~~Loans~~ In loans to other insured credit unions to the extent permitted in the bylaws;

2. In shares, share accounts, or deposits of other insured credit unions to the extent authorized in its bylaws, but not to exceed ~~twenty-five~~ 25 percent of the investing credit union's outstanding shares and reserve fund~~, in shares of other insured credit unions~~;

3. Notwithstanding any other provision of this section, in shares or deposits of any corporate credit union provided such investments are specifically authorized by the board of directors making the investment;

4. In federally insured banks and savings institutions;

5. In the capital stock of the National Credit Union Central Liquidity Facility or any central liquidity facility established under the laws of the Commonwealth;

6. In obligations of the United States and securities fully guaranteed as to principal and interest thereby;

7. In obligations of the Commonwealth ~~of Virginia~~ and any political subdivision thereof, including, but not limited to, revenue bonds;

8. In such stock, securities, obligations, or other investments as may be approved from time to time by the Commission;

9. In real estate, office buildings, equipment, and furnishings of the credit union provided that the aggregate investment in all such fixed assets shall not exceed five percent of the total of the members' share accounts without the prior written authorization of the Commissioner;

10. In shares, stock, deposits in, loans, or other obligations of any credit union service organization, corporation, or association, if (i) the membership or ownership, as the case may be, of such organization, corporation, or association is primarily confined or restricted to credit unions or organizations of credit unions and (ii) the purpose for which such organization, corporation, or association is organized is to strengthen or advance the development of credit unions or credit union organizations~~; provided such~~. Such investment by any credit union shall not exceed five percent of the credit union's outstanding shares and reserves without the prior approval of the Commissioner;

11. In deposits in, loans to, or shares of any Federal Reserve Bank; and

12. In cooperative loans with other credit unions or credit union organizations~~; provided such~~. Such investment shall not exceed ~~ten~~ 10 percent of outstanding shares and reserves of the investing credit union.

**Drafting note: The amendment to subdivision 2 that adds "the investing credit union's" is clarifying. The amendment to subdivision 2 that deletes the second reference to shares of other insured credit unions, corrects an apparent error; when the subdivision was amended in 1990 to add the phrase "shares, share accounts, or deposits of other insured credit unions" preceding "to the extent authorized by its bylaws, but not to exceed . . .," the existing phrase "in shares of other insured credit unions" should have been deleted. In subdivision 10, the text has been relocated to the definition of "credit union service organization" in proposed § 6.2-1300, which is consistent with the definition ascribed to that term in existing § 6.1-225.20. Other changes are technical.**

Article ~~12~~ 10.

Reserves.

§ ~~6.1-225.58~~ 6.2-1377. Maintenance of regular reserves; special reserves.

A. A credit union shall establish and maintain a regular reserve account in accordance with the applicable provisions of Part 702 of the National Credit Union Administration Rules and Regulations, 12 C.F.R. §§ 702.1 through 702.403.

B. The Commission may increase or decrease the reserve requirement when in its opinion such an increase or decrease is necessary or desirable.

C. In addition to such regular reserve, special reserves shall be established when found by the board of directors of the credit union or by the Commission to be necessary to protect the interest of members.

D. Unless otherwise prohibited by the Commission, the board of directors of a credit union may establish the regular reserve in an amount in excess of that required by this section when in its opinion the increased amount is necessary or desirable.

**Drafting note: No change.**

§ ~~6.1-225.59~~ 6.2-1378. Use of reserves.

Losses may be charged to the reserve fund. Any sums recovered on items previously charged to it shall be credited to the reserve fund. No dividends shall be paid out of the reserve

fund unless the fund, after such payment, exceeds the total amount required to be set aside in the regular reserve and special reserves of the credit union.

**Drafting note: No change.**

~~§ 6.1-225.60.~~

**Drafting note: Repealed by Acts 2002, c. 261.**

Article ~~13~~ 11.

Out-of-State Credit Unions.

§ ~~6.1-225.61~~ 6.2-1379. Out-of-state credit unions.

A. A credit union organized and doing business in another state may conduct business as a credit union in ~~Virginia~~ the Commonwealth with the approval of the Commission. The Commission shall grant such approval if it shall find that the out-of-state credit union:

1. Is a credit union duly organized under the laws of another state ~~which~~ that would allow credit unions organized in ~~this~~ the Commonwealth to conduct business in that state;

2. Has share insurance for its members;

3. Reasonably needs to establish a place of business in ~~this~~ the Commonwealth to adequately serve its members in ~~this~~ the Commonwealth;

4. Is examined and supervised by the supervisory authority of the state in which the out-of-state credit union is organized; and

5. Has filed an application with the Commission to conduct such business.

B. The out-of-state credit union shall:

1. Grant loans at rates of interest not in excess of the rates permitted for credit unions organized under the laws of ~~this~~ the Commonwealth;

2. Comply with the same consumer protection provisions that credit unions organized under the laws of ~~this~~ the Commonwealth are required to obey;

3. Designate and maintain a registered agent in ~~this~~ the Commonwealth;

4. Submit all examination reports from its supervisory agency to the Commission;

5. Have any insurer of shares designate an agent for service of process and agree that in the absence of such designation service may be upon the clerk of the Commission;

6. Inform the members of the credit union who use any facility authorized pursuant to this section of the state where the organization, supervision, and share insurance of the credit union are, and of the fact that it is not regulated, supervised, or insured by any agency of ~~this~~ the Commonwealth; and

7. Comply with § ~~6.1-225.20 of this chapter~~ 6.2-1326.

C. Credit unions organized in ~~this~~ the Commonwealth may establish offices outside the Commonwealth upon approval of the Commission.

D. The Commission may suspend or revoke the authority of an out-of-state credit union to do business in ~~Virginia~~ the Commonwealth if the Commission finds that such credit union is not in compliance with the requirements of this section.

**Drafting note: The revision in the second sentence of subsection A clarifies that it is not intended to direct the Commission to make certain findings.**

§ ~~6.1-225.61:1~~ 6.2-1380. Examinations; periodic reports; cooperative agreements; assessment of fees.

A. The Commission may make such examinations of an out-of-state credit union conducting business in ~~Virginia~~ the Commonwealth pursuant to § ~~6.1-225.61~~ 6.2-1379 as the Commission may deem necessary to determine whether the credit union is operating in compliance with the laws of ~~this~~ the Commonwealth or to ensure that any office or facility of the out-of-state credit union is being operated in a safe and sound manner. The provisions of § ~~6.1-225.4~~ 6.2-1309 shall apply to such examinations.

B. The Commission shall require periodic reports from any out-of-state credit union that so conducts business in ~~Virginia~~ the Commonwealth. 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.

C. The Commission may enter into cooperative agreements with appropriate state credit union supervisors and federal credit union agencies for the examination of any office or facility in ~~Virginia~~ the Commonwealth of an out-of-state credit union, or any office or facility of a Virginia ~~state~~ credit union in any host state, and may accept such supervisors' and 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 credit union supervisors and federal agencies having concurrent jurisdiction over any such out-of-state credit union or any branch of a Virginia ~~state~~ credit union, or may take such actions independently to carry out its responsibilities under this article and to assure compliance with the laws of ~~this~~ the Commonwealth.

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

**Drafting note: Technical changes.**

~~Article 14.~~

~~Miscellaneous.~~

~~§ 6.1-225.62. Offenses.~~

~~Any officer, director, employee, receiver, or agent of a credit union who willfully does any of the following shall be guilty of a Class 6 felony:~~

~~1. With the intent to deceive, falsifies any book of account, report, statement, record, or other document of a credit union whether by alteration, false entry, omission, or otherwise;~~

~~2. Signs, issues, publishes, or transmits to a government agency any book of account, report, statement, record, or other document which he knows to be false;~~

~~3. By means of deceit, obtains a signature to a writing which is a subject of forgery;~~

~~4. With intent to deceive, destroys any credit union book of account, report, statement, record, or other document; or~~

5. With the intent to defraud, shares or receives directly or indirectly any money, property, or benefits through any transaction of the credit union.

**Drafting note: Section is relocated to proposed § 6.2-1316.**

§ 6.1-225.63. Taxation.

All credit unions organized under the laws of this Commonwealth and doing business purely as credit unions shall be exempt from the payment of any franchise tax.

**Drafting note: Section is relocated to proposed § 6.2-1304.**

§ 6.1-225.64. Making or circulating derogatory statements affecting credit unions.

Any person who willfully and maliciously makes, circulates, or transmits to another or others any statement or rumor, written, printed or by word of mouth, which is untrue in facts and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any credit union doing business in this Commonwealth, or who knowingly counsels, aids, procures, or induces another to start, transmit, or circulate any such statement or rumor, shall be guilty of a Class 3 misdemeanor.

**Drafting note: Section is relocated to proposed § 6.2-1305.**

§ 6.1-225.65. Use of credit union name, logo, or symbol for marketing purposes; penalty.

A. Except as provided in subsection B, no person shall use the name, logo, or symbol, or any combination thereof, of a credit union, or any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or symbol of a credit union, in marketing material provided to or solicitation of another person in a manner such that a reasonable person may believe that the marketing material or solicitation originated from or is endorsed by the credit union or that the credit union is responsible for the marketing material or solicitation.

B. This section shall not apply to (i) an affiliate or agent of the credit union or (ii) a person who uses the name, logo, or symbol of a credit union with the consent of the credit union.

C. Any person violating the provisions of this section, either individually or as an interested party, shall be guilty of a Class 1 misdemeanor. This section shall not affect the availability of any remedies otherwise available to a credit union.

**Drafting note: Section is relocated to proposed § 6.2-1307.**

§ 6.1-226.

**Drafting note: Repealed by Acts 1982, c. 633.**

CHAPTER 4.1.

VIRGINIA CREDIT UNION SHARE INSURANCE ACT.

**Drafting note: Chapter is incorporated in to proposed Article 5 (Share Insurance) of this chapter. See drafting note for proposed Article 5.**

§ 6.1-226.1. Title of chapter.

This chapter shall be known and may be cited as the "Virginia Credit Union Share Insurance Act."

**Drafting note: This section is unnecessary because of the title-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

§ 6.1-226.2. Definitions.

~~As used in this chapter, unless a different meaning is required by the context:~~

~~(1) "Commission" means the State Corporation Commission.~~

~~(2) "Corporation" means a corporation organized in accordance with this chapter.~~

~~(3) "Credit union" means a credit union incorporated in Virginia under Chapter 4.01 (§ 6.1-225.1 et seq.) of this title.~~

~~(4) "Member credit union" means a credit union which is a member of the corporation.~~

~~(5) "Shares" means the interest of a member having a savings account in a member credit union.~~

**Drafting note: Section is relocated to proposed § 6.2-1331.**

~~§ 6.1-226.3. Establishment of corporation; purposes.~~

~~Nine or more natural persons, all of whom are duly authorized representatives, respectively, of nine or more credit unions may, pursuant to the provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), establish a corporation for the purpose of aiding and assisting any member credit union which is in liquidation or is experiencing financial difficulties such as insolvency or nonliquidity, in order that the shares of a member of a member credit union shall be protected; to provide insurance for the shares of members of a member credit union in amounts, not less than $20,000, which shall be established from time to time by the corporation with the approval of the Commission; and for the further purpose of cooperating with the Commission and member credit unions in maintaining and advancing the financial integrity of member credit unions. Except as otherwise herein provided, a corporation organized in accordance with this chapter shall have the powers contained in the Virginia Nonstock Corporation Act, and shall be subject to the provisions thereof; and shall include in its corporate name the words "Credit Union Share Insurance."~~

**Drafting note: Section is relocated to proposed § 6.2-1333.**

~~§ 6.1-226.4. Contents of corporation bylaws; amendments thereto.~~

~~The bylaws of the corporation shall specify:~~

~~(1) The requirements for membership including contributions to loss reserve, and for the revocation of membership.~~

~~(2) The date of the annual meeting.~~

~~(3) The number of directors, which shall not be less than five.~~

~~(4) The conditions upon which loans to member credit unions may be made.~~

~~(5) The manner in which remaining assets are to be distributed in the event of dissolution after all distributions required by subdivisions 1 through 3 of subsection A of § 13.1-907 of the Virginia Nonstock Corporation Act have been made.~~

~~(6) The manner and terms upon which reinsurance of shares may be obtained.~~

~~(7) The conditions upon which contributions to loss reserve may be refunded when membership is terminated.~~

~~Bylaws so filed and approved by the Commission shall be the bylaws of the corporation, and no amendments thereto by the corporation shall be operative unless the same shall conform to the provisions of this chapter and be approved by the Commission.~~

~~Bylaws may be amended by the Commission by an order entered on its order book and certified to the corporation; but before any such order is entered, the Commission shall notify the corporation of the proposed amendment and afford it an opportunity to be heard thereon.~~

**Drafting note: Section is relocated to proposed § 6.2-1334.**

~~§ 6.1-226.5. Application for membership; share insurance required.~~

~~(1) Every credit union organized prior to January 1, 1975, whose shares are not insured by the National Credit Union Share Insurance Fund on such date shall apply for membership in the corporation before January 1, 1976; and every credit union organized on or after January 1, 1975, shall apply for membership in the corporation within thirty days after its organization or by January 1, 1976, whichever is later. Failure to so apply shall constitute grounds for the revocation by the Commission of the credit union's certificate of authority to do business.~~

~~(2) Every credit union required by subsection (1) of this section to apply for membership in the corporation whose shares are not insured by the corporation at least in the amount of $20,000 for each member, by July 1, 1976, shall not thereafter receive the savings of its members or issue thereto any other debt obligation until its shares are so insured; provided, if the Commission determines that share insurance issued by the corporation is not available to a credit union and that its shares are insured by the National Credit Union Share Insurance Fund or under a plan of share insurance which has been approved by the Commission, the credit union shall be permitted to continue its normal operations.~~

**Drafting note: Section is relocated to proposed § 6.2-1335.**

~~§ 6.1-226.6. Loss reserve contributions.~~

~~(1) The corporation shall collect from each credit union accepted for membership, an initial contribution to loss reserve of five dollars or an amount equal to the percentage, fixed in the bylaws of the corporation, of the amount of its shares outstanding on the last day of the month preceding the month in which application is filed, whichever is greater. The percentage so fixed shall not exceed one percent. Whenever the initial contribution to loss reserve and any additions thereto paid by a credit union amount to less than the prescribed percentage of its outstanding shares of December 31, of any year, the corporation shall collect the amount of the deficiency so that the total contributions to loss reserve paid by each credit union is never less than the prescribed percentage of the amount of its outstanding shares on December 31 of any year in which it is a member, except to the extent that refunds have been paid under subsection (2) of this section. The amount of contribution by a credit union shall be carried on the books of each credit union as an investment.~~

~~(2) Subject to the approval of the Commission contributions to loss reserve may be refunded to existing members whenever in the judgment of the directors the financial condition of the corporation warrants such action. Refunds so made shall be on the basis of a uniform percentage of the total contributions to loss reserve paid by each credit union and shall be credited to its reserve fund to the extent that such contribution was charged thereto.~~

**Drafting note: Section is relocated to proposed § 6.2-1336.**

~~§ 6.1-226.7. Annual and special assessments.~~

~~(1) A regular annual assessment, not to exceed one-twelfth of one percent of the member credit union's outstanding shares shall be levied by the directors. The directors may raise, lower or waive such assessment for any year, when they and the Commission agree that the net worth of the corporation justifies or requires such change. The member credit union's outstanding shares as of December 31, shall be the basis for calculating the assessment due in the ensuing year, and the directors shall determine the date the annual assessment is due and payable.~~

~~(2) In the event of potential impairment of the corporation's funds, special assessments may be levied by the directors with the approval of the Commission.~~

~~(3) Repealed.]~~

~~(4) Upon a finding by the State Corporation Commission that it is necessary in order to maintain the financial soundness of the insurance fund, it may direct that the corporation make special assessments of its members.~~

**Drafting note: Section is relocated to proposed § 6.2-1337.**

~~§ 6.1-226.8. Duties and additional powers of corporation.~~

~~The corporation shall have the following powers in addition to those otherwise provided:~~

~~(1) To advance funds to aid member credit unions to operate and meet liquidity requirements.~~

~~(2) To assist in the merger, consolidation and liquidation of credit unions.~~

~~(3) To receive by assignment or purchase from member credit unions property of any nature owned by them.~~

~~(4) Upon written direction of the Commission to assume control of the property and business of any member credit union and to operate such credit union in accordance with the directions of the Commission.~~

~~(5) To invest its funds in bonds, notes, or securities of this Commonwealth and of the federal government, and their agencies; in deposits in banks doing business in Virginia; in deposits in any savings institution doing business in this Commonwealth whose accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency; and in such other investments as are deemed prudent by the directors and are approved by the Commission.~~

**Drafting note: Section is relocated to proposed § 6.2-1338.**

~~§ 6.1-226.9. Duties and powers of State Corporation Commission; judicial review.~~

~~(1) The Commission shall promptly forward to the corporation copies of all examination reports of member credit unions; the cost of furnishing such copies shall be paid by the corporation.~~

~~(2) If the Commission determines, pursuant to the provisions of § 6.1-225.6 or § 6.1-225.8, that it should take possession of the business and property of a member credit union, the Commission may direct the corporation to assume control of such business and property and, subject to the Commission's orders operate the credit union until such time as the Commission may see fit to permit the credit union to resume business or until its assets are finally liquidated. If the Commission orders the liquidation of an insolvent member credit union then in the control~~

~~of the corporation through the purchase of the assets and the assumption of the liabilities of such credit union by another insured credit union, the corporation shall be empowered to convey all right, title, and interest in all or part of the assets and liabilities of the insolvent credit union to the other insured credit union, and upon such transfer, good title to the assets and liabilities conveyed shall vest in the other credit union. Any cost or expense incurred by the corporation in such operation of the credit union may be reimbursed from the assets of the credit union by an order of the Commission.~~

~~(3) The Commission may suspend or revoke, after notice of hearing, the certificate of authority to do business of any member credit union which fails to pay, when due, any assessment made by the corporation pursuant to this chapter.~~

~~(4) Any final action or order of the Commission under this chapter shall be subject to judicial review in accordance with the provisions of § 12.1-39.~~

**Drafting note: Section is relocated to proposed § 6.2-1339.**

~~§ 6.1-226.10. Supervision, reports and examinations by State Corporation Commission.~~

~~(1) The corporation shall be subject to supervision and annual examination by the Commission. The cost of each examination shall be paid by the corporation. The corporation shall file annually by such time and in such form as the Commission prescribes a statement showing its financial condition on December 31, of the previous year.~~

~~(2) In addition to the annual statement, the Commission from time to time may require the corporation to file such further reports, exhibits or statements as it deems necessary to furnish full information concerning the condition, solvency, transactions and affairs of the corporation. The Commission shall prescribe the time within which such additional reports, exhibits or statements shall be filed and may require verification by such officers of the corporation as it may designate.~~

~~(3) Whenever the Commission deems it expedient to do so, it may make or direct to be made additional examinations of the affairs of the corporation, the cost of which shall be paid by the corporation. Upon completion of an examination a copy of the report thereof shall be furnished to the corporation.~~

**Drafting note: Section is relocated to proposed § 6.2-1340.**

~~§ 6.1-226.11. Audit by corporation and corrective measures; appeal.~~

~~(1) The corporation may require independent audits and investigations of any member credit union to ascertain its financial condition as it relates to share insurance.~~

~~(2) If the directors of the corporation ascertain evidence of carelessness, unsound practices or mismanagement of any member credit union which appears to adversely affect the solvency or liquidity of the credit union or threaten loss to the corporation, the directors shall notify the Commission and may order that corrective action be taken or, after due notice and hearing, as provided in the bylaws, revoke the credit union's membership in the corporation.~~

~~(3) If a member credit union is aggrieved by any decision, action or order of the corporation it may appeal the same to the Commission which may modify, reverse or affirm such decision, action or order.~~

**Drafting note: Section is relocated to proposed § 6.2-1341.**

~~§ 6.1-226.12. Tax exemptions.~~

~~The corporation shall be exempt from all state and local taxes except real and personal property taxes.~~

**Drafting note: Section is relocated to proposed § 6.2-1342.**

~~§ 6.1-226.13. Inconsistent laws inapplicable.~~

~~All other general or special laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this chapter.~~

**Drafting note: Section is relocated to proposed § 6.2-1343.**

~~§ 6.1-226.14. Severability.~~

~~If any provision or clause of this chapter is held to be invalid, such invalidity shall not affect the validity of any other provision or clause of this chapter which can be given effect without the invalid provision or clause; and to this end, the provisions of this chapter are declared to be severable.~~

**Drafting note: The section is not currently set out. This severability clause is deleted as unnecessary as a result of the Code-wide applicability of § 1-243.**

SUBTITLE III.

OTHER REGULATED PROVIDERS OF FINANCIAL SERVICES.

**Subtitle drafting note: This subtitle encompasses entities providing financial services, primarily other than depository or trust services, that are licensed by or required to be registered with the State Corporation Commission. These include industrial loan associations, consumer finance companies, mortgage lenders and brokers, payday lenders, providers of money orders and money transmission services, providers of debt pooling and distribution services, and check cashers.**

CHAPTER ~~5~~ 14.

INDUSTRIAL LOAN ASSOCIATIONS.

§ 6.2-1400. Definitions.

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

"Affiliated person of an association" means any person which is a subsidiary, stockholder, partner, trustee, director, officer, or employee of an association, and any corporation 10 percent or more of the capital stock of which is owned by an association or by any person which is a subsidiary, stockholder, partner, trustee, director, officer, or employee of an association.

"Association" means a corporation organized as an industrial loan association under the provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.), the business of which is substantially confined to the business of making loans and issuing certificates of investment.

"Mortgage loan" means a loan made to an individual, the proceeds of which are to be used primarily for personal, family or household purposes, which loan is secured by a mortgage

or deed of trust upon any interest in one- to four-family residential property located in the Commonwealth, regardless of where made, including the renewal or refinancing of any such loan, but excluding (i) loans or extensions of credit to buyers of real property for any part of the purchase price of such property by persons selling such property owned by them, (ii) loans to persons related to the lender by blood or marriage, and (iii) loans to persons who are bona fide employees of the lender. "Mortgage loan" shall not include any loan secured by a mortgage or deed of trust upon any interest in a more than four-family residential property or property used for a commercial or agricultural purpose.

**Drafting note: New section. The definitions of "affiliated person of an association" is moved from existing subdivision B 5 of § 6.1-237.6 (Prohibited practices). The definition of "mortgage loan" is identical to the definition provided in existing § 6.1-409 (proposed § 6.2-1600), which is referenced in existing subdivision A 2 of § 6.1-237.6.**

§ ~~6.1-227~~ 6.2-1401. ~~Incorporation and powers generally; use of certain names prohibited~~ Powers of associations.

~~Industrial loan associations may be incorporated under the provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) and~~ Associations shall have all the general powers and be subject to all the restrictions contained in ~~that act~~ the Virginia Stock Corporation Act (§ 13.1-601 et seq.), except as herein otherwise provided. ~~But no such corporation~~ An association need not comply with the provisions of subsection A of § 13.1-630.

**Drafting note: Existing § 6.1-227 is split into separate proposed §§ 6.2-1401 and 6.2-1402. The provision in the first sentence providing that they may be incorporated under the Stock Corporation Act is deleted, as the requirement that associations be formed as stock corporations is set out in the definition of "association" in proposed § 6.2-1400. Other changes are technical.**

§ 6.2-1402. Use of certain words in name prohibited.

~~No such corporation incorporated prior to July 1, 1960,~~ An association shall neither use in its corporate name ~~or title,~~ nor ~~shall it~~ do business under ~~the~~ a name ~~of~~ containing the word "bank," "savings bank," "banker," "trust company," "trust" or other ~~words~~ word of similar import.

**Drafting note: New section, currently set out as part of existing § 6.1-227 (Incorporation and powers generally; use of certain names prohibited). The reference to July 1, 1960, is deleted as unnecessary because the five remaining Virginia industrial loan associations were incorporated prior to July 1, 1960, and Virginia law no longer enables new associations to be created. Other changes are technical.**

§ ~~6.1-235~~ 6.2-1403. Directors.

A. Every ~~such industrial loan~~ association shall have at least five directors, each of whom shall own in his own right and have in his personal possession or control shares of stock in the association ~~of which he is a director aggregating~~ that (i) have in the aggregate at least $100 in par value, and ~~which must~~ (ii) shall be unpledged and unencumbered at the time ~~of his becoming~~ he became a director and during ~~the whole of~~ his entire term as ~~such~~ director.

B. Each director shall take and subscribe an oath ~~to~~ that ~~effect, and that~~ he will (i) comply with the requirements of subsection A regarding his stock of the association and (ii) diligently and honestly administer the affairs of ~~such industrial loan~~ the association as ~~such~~ its director. ~~Such~~ The oath shall be transmitted to the Commission within ~~sixty~~ 60 days ~~from~~ following his election ~~to the Commission~~.

C. Any director violating the provisions of this section shall thereby vacate his office ~~and the~~. The remaining directors shall proceed forthwith to fill such vacancy.

~~Such~~ D. The directors shall require ~~of~~ all active officers of such ~~industrial loan~~ association to provide bonds in such sums as may be prescribed by the Commission in ~~some~~ a surety company authorized to do business in ~~this~~ the Commonwealth.

**Drafting note: Existing § 6.1-235 (Directors) is moved here to more closely track the organization of other chapters in this title. In subsection A, the phrase "of which he is a director" is deleted as surplusage. Other changes are technical.**

§ ~~6.1-227.1~~ 6.2-1404. Commission may regulate issuance of evidences of debt.

The Commission may by regulation prescribe the terms and conditions upon which an ~~industrial loan~~ association may issue bonds, debentures, or other evidences of debt, however described, that are offered to the ~~general~~ public by advertisement or solicitation.

**Drafting note: Technical changes only.**

§ ~~6.1-228~~ 6.2-1405. Extent to which associations regarded as banks; conversion of certain associations to banks; new associations not authorized.

~~Industrial loan associations~~ A. An association incorporated after July 1, 1960, shall have all the powers conferred on banks ~~by the Virginia Banking Act (§ 6.1-3 et seq.)~~, shall be subject to all restrictions applicable to banks, and shall for the purposes of state supervision and control be banks.

B. An association that had certificates of investment issued and outstanding on January 1, 1959, may become a bank upon complying with all the provisions of Chapter 8 (§ 6.2-800 et seq.).

C. Any person who has not obtained authorization from the Commission to do business as an association prior to October 1, 2010, shall not conduct business as an association.

**Drafting note: Existing provisions of existing § 6.1-228 are designated as subsection A. Existing § 6.1-230 (What associations may become banks) is moved to this section as subsection B, with technical changes. In 1966 the General Assembly repealed § 6-248, which set out the procedures and requirements for the issuance to an authority of a certificate of authority to do business; new subsection C affirmatively states that any person that did not obtain authority to do business as an association prior to the effective date of this recodification of Title 6.1 is not authorized to do business as an association.**

§ ~~6.1-229~~ 6.2-1406. ~~Restriction on sale~~ Sale of certificates of investment by certain associations prohibited.

A. An association that had no certificates of investment issued and outstanding on January 1, 1959, may not sell certificates of investment.

B. An association that had certificates of investment issued and outstanding on January 1, 1959, may sell certificates of investment upon either the fully paid or partial payment system. Any such association that did not obtain insurance of its liability for such certificates, through either a state or federal agency, up to the limits of insurance provided thereby prior to July 1, 1975, shall not sell such certificates after such date.

**Drafting note: No change to existing § 6.1-229. Existing § 6.1-231 is set out as subsection B, with technical changes. In addition, the third sentence of existing § 6.1-231, which provided that associations that had applied for insurance by July 1, 1975, may continue to do so until 1976, has been omitted as moot.**

~~§ 6.1-230. What associations may become banks.~~

~~An association that had certificates of investment issued and outstanding on January 1, 1959, may become a bank on complying with all the provisions of the Virginia Banking Act (§ 6.1-3 et seq.).~~

**Drafting note: This section is subsection B of proposed § 6.2-1405.**

~~§ 6.1-231. Sale of certificates on fully paid or partial payment plan.~~

~~An association that had certificates of investment issued and outstanding on January 1, 1959, may sell certificates of investment upon either the fully paid or partial payment system; provided, however, that any such association which has not obtained insurance of its liability for such certificates through either a state or federal agency up to the limits of insurance provided thereby prior to July 1, 1975, shall not thereafter sell such certificates. The Commission, upon finding that an association has applied for such insurance prior to July 1, 1975, and that the insurance has not been issued, may suspend the prohibition against its sale of such certificates to a date not later than July 1, 1976.~~

**Drafting note: Section is subsection B of § proposed 6.2-1406.**

§ ~~6.1-232~~ 6.2-1407. Prohibitions ~~as to~~ on associations ~~having~~ with certificates issued and outstanding; advertisements.

A. An association that has certificates of investment issued and outstanding shall not:

1. ~~Advertise that it is subject to regulation or supervision by the State Corporation Commission or the Bureau of Financial Institutions, or publish any advertisement suggesting that it is engaged in the business of banking or that it receives deposits;~~

~~2~~. Advertise that it carries insurance unless its certificates of investment are insured or guaranteed by a state or federal agency;

~~3~~ 2. Own any shares of stock issued by any other corporation except to the extent legal for banks;

~~4~~ 3. Invest more than ~~eighty~~ 80 percent of the amount of its outstanding certificates of investment in loans secured by liens on real estate;

~~5~~ 4. Make any loan secured by liens on real estate in excess of that percent of the appraised value permitted to banks;

~~6~~ 5. Issue certificates of investment for the purpose of borrowing money from financial institutions; or

~~7~~ 6. Issue a certificate of investment paying a higher rate of interest than four and one-half percent per annum, except that notwithstanding this limitation it may pay at any time an interest rate equal to the highest rate paid by any state savings institution or bank located in the same community in the Commonwealth ~~of Virginia~~.

B. An association that has certificates of investment issued and outstanding shall place in a prominent manner in every advertisement for, and upon any document evidencing ownership of, certificates of investment that are not insured by a state or federal agency the words: "The savings accounts in this association are not insured."

**Drafting note: In subsection A, the prohibition on advertising that an association is subject to regulation or supervision by the Bureau or Commission is repealed because associations are subject to regulation and supervision; see, e.g., § 6.1-237.3 (Investigations; examinations). Existing § 6.1-232.1 (Certificates to carry notice that accounts are not insured) is set out as subsection B of this section, with grammatical changes, because both sections impose requirements on associations with issued and outstanding certificates of investment.**

~~§ 6.1-232.1. Certificates to carry notice that accounts are not insured.~~

~~An association which has certificates of investment issued and outstanding, unless such certificates are insured by a state or federal agency, shall place in a prominent manner in every advertisement for and upon any document evidencing ownership of certificates of investment the words: "The savings accounts in this association are not insured."~~

**Drafting note: Section is set out as subsection B of proposed § 6.2-1407.**

~~§§ 6.1-232.2. , 6.1-232.3.~~

**Drafting note: Repealed by Acts 2007, c. 1, cl. 2, effective February 5, 2007.**

§ ~~6.1-233~~ 6.2-1408. ~~Only~~ Associations to have one office ~~permitted~~; how office moved.

An ~~industrial loan~~ association shall not have more than one office for the conduct of its business~~; and~~. An association shall not move its office without first satisfying the ~~State Corporation~~ Commission that moving its office will promote the convenience of its customers.

**Drafting note: Technical changes.**

§ ~~6.1-330.84~~ 6.2-1409. Prepayment by borrower from ~~industrial loan~~ association; rebates for unearned interest; prepayment penalty.

A. Any ~~natural person~~ individual borrowing from an ~~industrial loan~~ association shall have the right to anticipate payment of his debt at any time. ~~In cases where~~

B. If interest has been added to the face amount of the note, ~~such person~~ the borrower shall have the right, upon prepayment of the debt, to receive a rebate by way of credit for any unearned interest~~, which~~. The rebate shall be computed ~~in accordance with the Rule of 78 as illustrated in § 6.1-330.86 or by using any other method that is at least as favorable to such borrower on~~:

1. On loans (i) with an initial maturity and corresponding amortization period of ~~sixty-one~~ 61 months or less and (ii) payable in equal periodic installments, in accordance with the Rule

of 78 as illustrated in § 6.2-403 or by using any other method that is at least as favorable to such borrower; and ~~on~~

2. On other loans, under a method at least as favorable to the borrower as the actuarial method.

~~In addition, the industrial loan~~ C. An association may charge a prepayment penalty not to exceed two percent of the amount of the prepayment, provided such prepayment penalty, including the percent thereof, is set forth in the contract of indebtedness and is disclosed to the borrower pursuant to ~~the~~ applicable federal interest disclosure laws.

**Drafting note: This section is currently in Article 12 of Chapter 7.3; it is relocated to this chapter because it applies only to industrial loan associations. Changes are technical.**

§ ~~6.1-234~~ 6.2-1410. Amount of loan.

No loan made by an ~~industrial loan~~ association shall be made for a greater amount in the aggregate to any person~~, firm or corporation~~ than ~~twenty~~ 20 percent of the paid-in capital stock and capital surplus of the association.

**Drafting note: Technical changes only.**

~~§ 6.1-234.1.~~

**Drafting note: Repealed by Acts 1975, c. 448.**

~~§ 6.1-235. Directors.~~

~~Every such industrial loan association shall have at least five directors, each of whom shall own in his own right and have in his personal possession or control shares of stock in the association of which he is a director aggregating at least $100 in par value, and which must be unpledged and unencumbered at the time of his becoming a director and during the whole of his term as such. Each director shall take and subscribe an oath to that effect, and that he will diligently and honestly administer the affairs of such industrial loan association as such director. Such oath shall be transmitted within sixty days from his election to the Commission. Any director violating the provisions of this section shall thereby vacate his office and the remaining directors shall proceed forthwith to fill such vacancy. Such directors shall require of all active officers of such industrial loan association bonds in such sums as may be prescribed by the Commission in some surety company authorized to do business in this Commonwealth.~~

**Drafting note: Section is moved to proposed § 6.2-1403.**

~~§ 6.1-236.~~

**Drafting note: Repealed by Acts 1982, c. 633.**

~~§ 6.1-237.~~

**Drafting note: Repealed by Acts 1993, c. 419.**

~~§ 6.1-232. Prohibitions as to associations having certificates issued and outstanding.~~

~~An association that has certificates of investment issued and outstanding shall not:~~

~~1. Advertise that it is subject to regulation or supervision by the State Corporation Commission or the Bureau of Financial Institutions, or publish any advertisement suggesting that it is engaged in the business of banking or that it receives deposits;~~

~~2. Advertise that it carries insurance unless its certificates of investment are insured or guaranteed by a state or federal agency;~~

~~3. Own any shares of stock issued by any other corporation except to the extent legal for banks;~~

~~4. Invest more than eighty percent of the amount of its outstanding certificates of investment in loans secured by liens on real estate;~~

~~5. Make any loan secured by liens on real estate in excess of that percent of the appraised value permitted to banks;~~

~~6. Issue certificates of investment for the purpose of borrowing money from financial institutions;~~

~~7. Issue a certificate of investment paying a higher rate of interest than four and one-half percent per annum, except that notwithstanding this limitation it may pay at any time an interest rate equal to the highest rate paid by any state savings institution or bank located in the same community in the Commonwealth of Virginia.~~

**Drafting note: Section is relocated to proposed § 6.2-1407.**

§ ~~6.1-237.1~~ 6.2-1411. Retention of books, accounts, and records.

A. Every association shall maintain in its offices such books, accounts, and records as the Commission may reasonably require in order to determine whether such association is complying with the provisions of this chapter and ~~rules and~~ regulations adopted in furtherance thereof. Such books, accounts, and records as relate to the mortgage lending or mortgage brokering business of the association shall be maintained separate from any other business in which the association is involved.

B. When acting as a mortgage lender, the association shall retain for at least three years after final payment is made on any mortgage loan or the mortgage loan is sold, whichever first occurs, copies of the note, settlement statement, ~~truth-in-lending~~ Truth in Lending disclosure, and such other papers or records relating to the loan as may be required by ~~rule or~~ regulation.

C. When acting as a mortgage broker, the association shall retain for at least three years after the mortgage loan is made the original contract for its compensation, a copy of the settlement statement, an account of fees received in connection with the loan, and such other papers and records as may be required by ~~rule or~~ regulation.

**Drafting note: Technical changes.**

§ ~~6.1-237.2~~ 6.2-1412. Annual report.

Each association shall annually, on or before March 25, file a written report with the Commissioner containing such information as the Commissioner may require concerning its business and operations during the preceding calendar year. Reports shall be made under oath and be in the form prescribed by the Commissioner.

**Drafting note: No change.**

§ ~~6.1-237.3~~ 6.2-1413. Investigations; examinations.

The Commission ~~may, by its designated officers and employees~~, as often as it deems necessary, may investigate and examine the affairs, business, premises, and records of any

association. Examinations shall be conducted at least twice in each three-year period. In the course of such investigations and examinations, the owners, ~~members,~~ officers, directors, and employees of the association shall, upon demand of the person making such examination or investigation, afford full access to all premises, books, records, and information ~~which~~ that the person making such examination or investigation deems necessary. For the ~~foregoing~~ purposes of this section, the person making such examination or investigation shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

**Drafting note: "Members" is deleted from the third sentence because associations are corporations. The statement that the Commission may investigate and examine associations "by designated officers and employees" is deleted as superfluous. Other changes are technical.**

§ ~~6.1-237.4~~ 6.2-1414. Annual fees.

Each ~~industrial loan~~ association shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the total assets of the individual associations, the actual costs of ~~their~~ the associations' examination and other factors relating to their supervision and regulation. All such fees shall be assessed on or before July 1 for each calendar year and be paid by the associations to the State Treasurer on or before the July 31 following such assessment.

**Drafting note: Technical changes.**

§ ~~6.1-237.5~~ 6.2-1415. ~~Rules and regulations~~ Regulations.

The Commission shall ~~promulgate~~ adopt such ~~rules and~~ regulations as it deems appropriate to effect the purposes of this chapter. Before ~~promulgating~~ adopting any such ~~rule or~~ regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard.

**Drafting note: Technical changes.**

§ ~~6.1-237.6~~ 6.2-1416. Prohibited practices.

A. No ~~industrial loan~~ association shall:

1. Obtain any agreement or instrument in which blanks are left to be filled in after execution;

2. Take an interest in collateral other than the real estate or residential property, including fixtures and appliances thereon, securing a ~~"~~mortgage loan~~," as that term is defined in § 6.1-409~~; however, an interest in collateral other than real estate may be taken if the real estate taken as collateral does not have sufficient equity to secure the mortgage loan;

3. Obtain any exclusive dealing or exclusive agency agreement from any borrower;

4. Delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

5. Obtain any agreement or instrument executed by the borrower which contains an acceleration clause permitting the unpaid balance of a mortgage loan to be declared due for any

reason other than failure to make timely payments of interest and principal or to perform other obligations undertaken in the agreement or instrument; or

6. If acting as a mortgage lender, fail to require the person closing the mortgage loan to provide the borrower, prior to closing of the mortgage loan, with a (i) settlement statement and (ii) disclosure which conforms to that required by the provisions of 15 U.S.C. § 1601 et seq. and Federal Reserve Board Regulation Z~~,~~ (12 C.F.R. Part 226).

B. No association, when acting as a mortgage broker, shall:

1. Except for documented costs of a credit report and appraisals, receive compensation from a borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender;

2. Receive compensation from a mortgage lender of which it is a principal, partner, trustee, director, officer, or employee;

3. Receive compensation from a borrower in connection with any mortgage loan transaction in which it is the lender or a principal, partner, trustee, director, or officer of the lender;

4. Receive compensation from a borrower other than that specified in a written agreement signed by the borrower; or

5. Receive compensation for negotiating, placing or finding a mortgage loan where such association, or any person affiliated with such association, has otherwise acted as a real estate broker, agent, or salesman in connection with the real estate which secures the mortgage loan, and such association or affiliated person has received or will receive any other compensation or thing of value from the lender, borrower, seller, or any other person, unless the borrower is given the following notice in writing at the time the mortgage broker services are first offered to the borrower:

NOTICE

WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU A FEE NOT TO EXCEED .... % OF THE LOAN AMOUNT.

WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE.

IF YOU ARE A MEMBER OF A CREDIT UNION, YOU SHOULD COMPARE OUR INTEREST RATES AND TERMS WITH THE MORTGAGE LOANS AVAILABLE THROUGH YOUR CREDIT UNION.

.....

BORROWER'S SIGNATURE

.....

BORROWER'S SIGNATURE

The foregoing notice shall be in at least 10-point type, and the prospective borrower shall acknowledge receipt of the written notice.

~~As used in this subdivision, the term "affiliated person of an association" means any person which is a subsidiary, stockholder, partner, trustee, director, officer or employee of an association, and any corporation ten percent or more of the capital stock of which is owned by an association or by any person which is a subsidiary, stockholder, partner, trustee, director, officer or employee of an association.~~

**Drafting note: The definitions of the terms "mortgage loan" and "affiliated person of an association" are relocated to proposed § 6.2-1400. Other changes are technical.**

§ ~~6.1-237.7~~ 6.2-1417. Escrow accounts.

All moneys required by an association to be paid by borrowers in escrow~~,~~ to defray future taxes or insurance premiums shall be kept in accounts segregated from accounts of the association and shall not be commingled with other funds of the association. No association shall require any borrower to pay any amounts in escrow to defray future taxes and insurance premiums~~,~~ in connection with a loan secured by a subordinate mortgage ~~loan~~ or deed of trust as ~~referred to~~ defined in Chapter ~~7.3~~ 3 (§ ~~6.1-330.49~~ 6.2-300 et seq.) ~~of this title~~, except where escrows for such purposes are not being maintained in connection with a mortgage loan superior to such subordinate mortgage loan.

**Drafting note: Technical change.**

§ ~~6.1-237.8~~ 6.2-1418. Suspension or revocation of authority.

A. The Commission may suspend or revoke the authority of an association to do business upon any of the following grounds:

1. Any violation of the provisions of this chapter or regulations ~~promulgated~~ adopted by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of its business;

2. A course of conduct consisting of failure to perform written agreements with borrowers;

3. Failure to account for funds received or disbursed to the satisfaction of the person supplying or receiving such funds;

4. Failure to disburse funds in accordance with any agreement connected with, and promptly upon closing of, a mortgage loan, taking into account any applicable right of rescission;

5. Conviction of any felony or misdemeanor involving fraud, misrepresentation, or deceit;

6. Entry of judgment against such association involving fraud, misrepresentation, or deceit;

7. Entry of a federal or state administrative order against such association for violation of any law or regulation applicable to the conduct of its business;

8. Refusal to permit an investigation or examination by the Commission;

9. Failure to pay any fee or assessment imposed by this chapter; or

10. Failure to comply with any order of the Commission.

B. For the purposes of this section, acts of any officer, director, ~~member, partner~~ or principal stockholder shall be deemed acts of the association.

**Drafting note: "Member" and "partner" are deleted from subsection B because associations are corporations. Other changes are technical.**

§ ~~6.1-237.9~~ 6.2-1419. Cease and desist orders.

If the ~~Commissioner~~ Commission determines that any association has violated any provision of this chapter or any regulation adopted pursuant thereto, ~~he~~ the Commission may, upon ~~twenty-one~~ 21 days' notice in writing, order the association to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of the association and shall state the grounds for the contemplated action. Within ~~fourteen~~ 14 days of mailing the notice, the association may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is so requested, the ~~Commissioner~~ Commission shall not issue a cease and desist order~~, but the Commission may do so after~~ prior to such hearing. The Commission may enforce compliance with any such order by imposition and collection of such fines and penalties as may be prescribed by Commission regulations, or by revocation of the association's authority to do business in accordance with §§ ~~6.1-237.8~~ 6.2-1418 and ~~6.1-237.10~~ 6.2-1420.

**Drafting note: References to the Commissioner of Financial Institutions are changed to the State Corporation Commission because cease and desist orders would be entered the Commission. Other changes are technical.**

§ ~~6.1-237.10~~ 6.2-1420. Notice of proposed suspension or revocation.

The Commission may not revoke or suspend the authority of an association to do business upon any of the grounds set forth in § ~~6.1-237.8~~ 6.2-1418 until it has given the association ~~twenty-one~~ 21 days' notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of the association and shall state with particularity the grounds for the contemplated action. Within ~~fourteen~~ 14 days of mailing the notice, the association may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is so requested, the Commission shall not suspend or revoke the association's authority to do business except based upon findings made at such hearing.

**Drafting note: Technical changes.**

§ ~~6.1-237.11~~ 6.2-1421. ~~Fines and~~ Civil penalties.

In addition to the authority conferred upon the Commission by other provisions of this chapter, the Commission may impose a ~~fine or~~ civil penalty not exceeding $1,000 upon any association which it determines, in proceedings commenced in accordance with ~~its~~ the Commission's Rules ~~of Practice and Procedure~~, has violated any of the provisions of this chapter or regulations ~~promulgated~~ adopted pursuant thereto. For the purposes of this section, each separate violation shall constitute a separate offense.

**Drafting note: The references to fines or penalties are amended to characterize them as civil penalties, to be distributed as provided in § 6.2-106. The Commission's Rules are defined in § 6.2-100. Other changes are technical.**

~~§§ 6.1-238. through 6.1-242.~~

**Drafting note: Repealed by Acts 1993, c. 419.**

~~§ 6.1-243.~~

**Drafting note: Deleted; section number is carried as "reserved."**

CHAPTER ~~6~~ 15.

CONSUMER FINANCE ~~ACT~~ COMPANIES.

**Chapter drafting note: The chapter is renamed to follow the format of other chapters in this subtitle of (i) not referring to it as an "act" and (ii) focusing on the regulated provider of the financial service. The provisions of the chapter are re-ordered to more closely follow the structure of other chapters in this subtitle. In tracking the structure of newer chapters, the article designations are removed.**

~~Article 1.~~

~~In General.~~

~~§ 6.1-244. Short title; references in statutes to "Small Loan Act".~~

~~The short title of the law embraced in this chapter is the Consumer Finance Act. Wherever in the Virginia Acts of Assembly or in the Code of Virginia the phrase "Small Loan Act" shall appear, it shall be taken to mean the Consumer Finance Act.~~

**Drafting note: This section is deleted because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

§ ~~6.1-245~~ 6.2-1500. Definitions.

As used in this chapter, unless ~~a~~ the context requires a different meaning ~~or construction is clearly required by the context~~:

~~"Commissioner" means the Commissioner of the Bureau of Financial Institutions of the State Corporation Commission.~~

"Consumer finance company" means a person engaged in the business of making loans to individuals for personal, family, household, or other nonbusiness purposes.

"License" means a single license issued ~~hereunder~~ under this chapter with respect to a single place of business.

"Licensee" means a ~~person~~ consumer finance company to ~~whom~~ which one or more licenses have been issued.

~~"Person" means any individual, firm, corporation, limited liability company, partnership, association, trust, or legal or commercial entity, or group of individuals however organized.~~

"Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in ~~a~~ another person.

**Drafting note: Deleted definitions of "Commissioner" and "person" because these terms have been previously defined. A definition is added for "consumer finance company" in order to provide a reference for persons who are conducting the type of business regulated pursuant to this chapter.**

~~§ 6.1-246. Status of preexisting obligations.~~

~~Nothing in this chapter shall be so construed as to impair or affect the obligation of any contract of loan between any licensee and any borrower which was lawfully entered into prior to July 1, 1944.~~

**Drafting note: This section is deleted because prior to 2001 § 6.1-272.1 limited the maximum term of loans under this chapter to 61 months; it is not likely that any such loans made prior to 1944 are outstanding.**

~~§ 6.1-247. Effect of chapter on other laws.~~

~~All provisions of this chapter are cumulative to all consistent provisions and requirements of existing laws relevant to the subject matter of this chapter and the operation and effect of all such provisions and requirements are hereby reserved except as repealed expressly or by implication because of irreconcilable inconsistency.~~

**Drafting note: Section is deleted as unnecessary; there is nothing unique about this chapter that requires setting out rules of statutory construction.**

~~§ 6.1-248. Effect of amendment of chapter on preexisting contracts.~~

~~This chapter or any part of it may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee thereunder provided that the cancellation or alteration shall not impair or affect the obligation of any preexisting lawful contract between any licensee and any borrower~~.

**Drafting note: Section is deleted because, to the extent it states a restriction on the General Assembly's power to amend general laws prospectively, it is unnecessary. The second portion of the sentence ("provided that the cancellation . . . ") is deleted because its purpose appears to be encompassed by the Virginia Constitution's prohibition on impairment of contracts.**

~~Article 2.~~

~~Compliance With Chapter; License Required; Name.~~

§ ~~6.1-249~~ 6.2-1501. Compliance with chapter; license required; attempts to evade application of chapter.

A. No person shall engage in the business of ~~lending any principal amounts~~ making loans to individuals for personal, family, household, or other nonbusiness purposes, and charge, contract for, or receive, directly or indirectly, on or in connection with any loan, ~~any~~ interest, charges, compensation, consideration, or expense ~~which~~ that in the aggregate is greater than the interest permitted by § ~~6.1-330.55~~ 6.2-303, except as provided in and authorized by this chapter ~~or Chapter 18 (§ 6.1-444 et seq.) of this title~~ and without first having obtained a license from the Commission.

B. ~~However, subject~~ Subject to ~~§§ 6.1-251~~ subsection C and ~~6.1-281 of this chapter~~ subsection C 3 of § 6.2-1524, the prohibition in subsection A ~~of this section~~ shall not be construed to prevent any person, other than a licensee, from ~~making~~

1. Making a loan in accordance with Chapter 18 (§ 6.2-1800 et seq.) of this title;

2. Making a mortgage loan pursuant to §§ ~~6.1-330.69~~ 6.2-325 and ~~6.1-330.70~~ 6.2-326 or §§ ~~6.1-330.71~~ 6.2-327 and ~~6.1-330.72~~ 6.2-328 in any principal amount; or ~~from extending~~

3. Extending credit as described in § ~~6.1-330.78~~ 6.2-312 in any amount.

C. The provisions of subsection A shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever, including:

1. The loan, forbearance, use, or sale of (i) credit, as guarantor, surety, endorser, comaker, or otherwise; (ii) money; (iii) goods; or (iv) things in action;

2. The use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered, or provided; and

3. The real or pretended negotiation, arrangement, or procurement of a loan through any use or activity of a third person, whether real or fictitious.

**Drafting note: In subsection A, the carve-out provision for payday loans is moved to subsection B (with other exceptions) and made subdivision 1. Subsection C is current § 6.1-251 (Evasions to which § 6.1-249 applicable). Other changes are technical. In subdivision C 3, the phrase "real or fictitious" is retained to address the use of non-existent "straw man" entities. Subsection B, when read with proposed § 6.2-1503, is intended to be broad enough to protect lenders who rely on other sections of the Title in making loans when the rate of interest exceeds the contract rate of interest.**

§ ~~6.1-250~~ 6.2-1502. Certain persons ineligible as licensees; ~~exemptions~~ exception for subsidiaries.

A. No person doing business under the authority of any law of ~~this~~ the Commonwealth or of the United States relating to banks, savings institutions, trust companies, building and loan associations, industrial loan associations, or credit unions shall be eligible ~~to become a licensee~~ for licensure under this chapter ~~nor shall this chapter apply to any business transacted by any person under the authority of and as permitted by any such law, nor to any bona fide pawnbroking business transacted under pawnbroker's license, nor to anyone operating in accordance with the specific provisions of any other law heretofore or hereafter enacted~~.

B. Nothing contained in subsection A or any other section of this title shall be construed to prevent a subsidiary of a bank or savings institution from becoming a licensee under this chapter. A licensee that is a subsidiary or affiliate of a bank or savings institution shall be governed by the provisions of this chapter, and all regulations ~~promulgated~~ adopted hereunder, as fully as if such licensee were not such a subsidiary or affiliate.

**Drafting note: The portion of subsection A pertaining to the application of this chapter to pawnbrokers and to other persons transacting business as authorized by other provisions of this title is moved to proposed § 6.2-1503, which limits the scope of this section to the**

**chapter's application to other financial institutions and their subsidiaries. Other changes are technical.**

§ 6.2-1503. Scope of chapter.

This chapter shall not apply to:

1. Any business transacted by any person under the authority of and as permitted by any law of the Commonwealth or of the United States relating to banks, savings institutions, trust companies, building and loan associations, industrial loan associations, or credit unions;

2. Any bona fide pawnbroking business transacted under a pawnbroker's license; or

3. Any person operating in accordance with the specific provisions of any other provision of this title currently in effect or hereafter enacted.

**Drafting note: This provision is currently set out as part of subsection A of current § 6.1-250 (Certain persons ineligible as licensees; exemptions). Subdivision 3 replaces "any other law currently in effect or hereafter enacted" with "any other provision of this title" to avoid the potential for inappropriate interpretations.**

~~§ 6.1-251. Evasions to which § 6.1-249 applicable.~~

~~The provisions of § 6.1-249 shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever including, but not thereby limiting the generality of the foregoing: the loan, forbearance, use, or sale of credit (as guarantor, surety, endorser, comaker, or otherwise), money, goods, or things in action; the use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered, or provided; and the real or pretended negotiation, arrangement, or procurement of a loan through any use or activity of a third person, whether real or fictitious.~~

**Drafting note: Section is relocated to subsection C of proposed § 6.2-1501.**

§ 6.1-252.

**Drafting note: Repealed by Acts 1986, c. 502.**

§ ~~6.1-253~~ 6.2-1504. Restrictions on name.

No licensee shall use a firm, corporate, or assumed name ~~which~~ that contains any of the ~~following~~ words~~:~~ "savings," "trust," "trustee," "bank," "banker," "banking," "investment," "thrift," "building," or "industrial~~,~~." ~~unless such name shall have been authorized and in use by the licensee on or before January 1, 1944.~~

**Drafting note: Technical changes. The "savings" clause for entities using prohibited names prior to July 1, 1944, is deleted because there are no actively licensed consumer finance companies with any of the prohibited words in their names.**

~~Article 3.~~

~~Licenses Generally.~~

§ ~~6.1-254~~ 6.2-1505. Application for license; application fee.

A. Application for a license to make loans under this chapter shall be in writing, under oath, and in the form prescribed by the Commission~~, and~~.

B. The application shall contain:

~~(~~1~~).~~ ~~the~~ The name and address of the applicant; ~~and (i) if~~

2. If the applicant is a partnership~~, firm,~~ or association, the name and address of each partner or member of the partnership or association; ~~(ii) if~~

3. If the applicant is a corporation or limited liability company, the name and address of each senior officer, director, member, registered agent, and principal; ~~or (iii) if~~

4. If the applicant is a business trust, the name and address of each trustee and beneficiary; ~~(2) the county or municipality~~

5. The address, with street and number, if any, where the business is to be conducted; ~~(3) all~~ and

6. Such other information as may be required by the Commission.

C. The application shall be accompanied by payment of ~~the sum~~ an application fee of $500 ~~as a fee for investigating the application~~.

**Drafting note: In subdivision B2, "firm" is deleted as it is not clear what type of entity is encompassed by the term. The existing requirement in subdivision (2) that the application state the county or municipality in which the business is to be conducted is deleted; the information has been used by the Bureau in identifying the current licensees to whom notice was required to be mailed under existing § 6.1-255, and that requirement has been deleted on grounds that it was related to the provision that had required the Commission to determine that the issuance of a license furthered convenience and advantage. Other changes are technical.**

§ ~~6.1-255~~ 6.2-1506. Investigation of application.

A. Upon the filing of the application and the payment of the ~~investigation~~ application fee, the Commission shall make ~~an~~ such investigation ~~of the facts concerning~~ relative to the application and the requirements provided for in § ~~6.1-256.1~~ 6.2-1507 as it deems appropriate. ~~At least twenty days before granting such application, the Commission shall mail a notice of the receipt of the application to each licensee having a place of business in the community where the applicant proposes to do business. The Commission may make such investigations relative to the application and the requirements as it deems fit. It~~

B. The Commission shall grant or deny each application for a license within ~~sixty~~ 60 days from the date ~~it is filed~~ the application, together with all required information and the application fee, is filed unless the period ~~be~~ is extended by order of the Commission ~~reciting~~ that recites the reasons for the extension.

**Drafting note: The requirement in subsection A that the Commission mail a notice to each licensee in the community is deleted because it was related to the process for finding whether the issuance a license furthered convenience and advantage in the community, and the requirement for such finding has been repealed. The deletion of this requirement, while substantive, is intended to address the fact that the preserving the notice requirement is inconsistent with the prior amendments to this chapter. Other changes are technical.**

~~§ 6.1-256.~~

**Drafting note: Repealed by Acts 1982, c. 79.**

§ ~~6.1-256.1~~ 6.2-1507. Issuance of ~~consumer finance~~ license.

A. The Commission shall issue and deliver to the applicant a license to make loans in accordance with the provisions of this chapter at the location in ~~this~~ the Commonwealth specified in the application if it finds:

1. That the financial responsibility, experience, character and general fitness of the applicant and its members, senior officers, directors, and principals are such as ~~calculated~~ to command the confidence of the public and to warrant belief that this business will be operated lawfully, honestly, fairly and efficiently within the purpose of this chapter;

2. That the applicant has available, for the operation of the business at the specified location, liquid assets of at least $50,000 if the specified location is in a ~~city or county~~ locality with a population of more than 20,000, or of at least $25,000 if the location is not in a ~~city or county~~ locality with a population of more than 20,000; and

3. That the applicant has complied with all of the prerequisites to obtaining the license prescribed by § ~~6.1-254 have been complied with, the foregoing facts being conditions precedent to the issuance of a license under this chapter~~ 6.2-1505.

If the Commission fails to make the findings required by subdivisions 1, 2, and 3, it shall deny the application for a license.

B. Notwithstanding the provisions of subsection A ~~of this section~~, if the applicant has an existing license at another location in the Commonwealth, the Commission shall issue and deliver to the applicant a license to make loans in accordance with the provisions of this chapter at the location specified in the application if it finds:

1. That the general fitness of the licensee is such as ~~calculated~~ to command the confidence of the public and to warrant belief that this business will be operated lawfully, honestly, fairly and efficiently within the purpose of this chapter; and

2. That the applicant has complied with all of the prerequisites to obtaining the license prescribed by § ~~6.1-254 have been complied with, the foregoing facts being conditions precedent to the issuance of a license under this chapter~~ 6.2-1505.

If the Commission fails to make the findings required by subdivisions 1 and 2, it shall deny the application for a license.

~~C. After receiving approval under subsection B or providing notice of relocation under § 6.1-269.1, the licensee shall give written notice to the Commissioner within 10 days of the commencement of business at the additional location or relocated place of business.~~

~~D. Every licensee shall within 10 days notify the Commissioner, in writing, of (i) the closing of any business location, and (ii) the name, address and position of each new senior officer, member, partner, or director, and provide such other information with respect to any such change as the Commissioner may reasonably require.~~

C. If the Commission denies an application for a license, it shall notify the applicant of the denial. The Commission shall retain the application fee.

**Drafting note: The catchline is revised to reflect that the phrase "consumer finance" is not defined in the chapter. Existing subsections C and D of § 6.1-256.1 are moved to proposed**

**§ 6.2-1508 because they deal with obligations of persons after being issued a license, and the other provisions of the section deal with the license issuance process. Proposed subsection C is derived from existing § 6.1-257. Other changes are technical.**

~~§ 6.1-257. Denial of application.~~

~~If the Commission does not so find it shall thereupon deny the application and notify the applicant of the denial, returning the license fee but retaining the investigation fee.~~

**Drafting note: Existing section is set out as subsection C of proposed § 6.2-1507. The statement that the license fee shall be returned is deleted because there is no license fee that is paid by persons prior to issuance of a license. The reference to "investigation fee" is replaced with "application fee" to be consistent with other provisions (see proposed subsection C of § 6.2-1505).**

§ 6.2-1508. Notices to Commission.

A. After receiving approval to conduct business at an additional location pursuant to subsection B of § 6.2-1507 or providing notice of relocation pursuant to § 6.2-1519, a licensee shall give written notice to the Commissioner within 10 days of the commencement of business at the additional location or relocated place of business.

B. Every licensee shall notify the Commissioner, in writing, within 10 days of (i) the closing of any business location, and (ii) the name, address and position of each new senior officer, member, partner, or director. The licensee also shall provide such other information with respect to any such event as the Commissioner may reasonably require.

**Drafting note: These provisions are currently subsections C and D of § 6.1-256.1. In subsection A, "notice of relocation" replaces "change of place of business" to conform to the Bureau's practice. Other changes are technical.**

§ ~~6.1-258~~ 6.2-1509. Contents, posting ~~and~~, transfer, and duration of license.

~~The~~ A. Each license shall contain ~~the~~:

1. The address at which the business is to be conducted~~, the~~;

2. The full name of the licensee~~,~~ or, if the licensee is a ~~copartnership~~ partnership or association, the names of the partners or members~~,~~; and ~~if~~

3. If the licensee is a corporation, the date and place of incorporation.

~~It~~ B. The licensee shall ~~be kept~~ keep the license conspicuously posted in ~~the~~ its place of business ~~of the licensee, and it~~.

C. The license shall not be transferable or assignable.

D. Each license shall remain in full force and effect until surrendered, revoked, or suspended as provided by this chapter or by lawful order of the Commission.

**Drafting note: The archaic term "copartnership" is replaced with "partnership." Subsection D is currently § 6.1-259; the chapter flows more smoothly with that section preceding the provisions addressing change in control of a licensee. Other changes are technical.**

§ ~~6.1-258.1~~ 6.2-1510. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or more of the voting shares of a corporation, or 25 percent or more of the ownership of any other person, licensed to conduct business under this chapter unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals, and members, and of any proposed new directors, senior officers, principals, or members of the licensee; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers, and principals, and any proposed new directors, members, senior officers, and principals have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed by this chapter, (ii) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person affiliated through common ownership with the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, survivorship or operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its closing.

**Drafting note: No changes.**

~~§ 6.1-259. Duration of license; license fee~~.

~~Each license shall remain in full force and effect until surrendered, revoked, or suspended as provided by this chapter or by lawful order of the Commission.~~

**Drafting note: Section is moved to subsection D of § 6.2-1509.**

§ ~~6.1-260~~ 6.2-1511. Revocation of license.

The Commission, upon ~~ten~~ 10 days' written notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, may revoke any license issued hereunder if it finds that:

~~(~~1~~).~~ The licensee has failed to pay the annual ~~license~~ fee assessed pursuant to § 6.2-1532 or to comply with any order of the Commission lawfully made pursuant to and within the authority of this chapter; ~~or~~

~~(~~2~~).~~ The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation lawfully made by the Commission under § ~~6.1-302~~ 6.2-1535; or

~~(~~3~~).~~ Any fact or condition exists ~~which~~ that clearly would have warranted the Commission ~~in refusing~~ to refuse originally to issue the license~~, except that no license shall be revoked solely upon a finding by the Commission that the business of the licensee is not promoting the convenience and advantage of the community in which the licensed office is located~~.

**Drafting note: The provision in subdivision 3 that prevents the Commission from revoking a license solely upon a finding that "the business of the licensee is not promoting the convenience and advantage of the community" is deleted because the requirement that the Commission make such a finding has been repealed. Therefore, it is not appropriate to continue carrying this reference and its removal conforms the provisions of this section to prior action by the General Assembly. In subdivision 1, the reference to "license fee" is revised because the chapter does not provide for the assessment of such a license fee, per se. Other changes are technical.**

§ ~~6.1-261~~ 6.2-1512. Suspension of license.

If the Commission finds that probable cause for revocation of any license exists and that enforcement of the law requires immediate suspension of the license pending investigation, it may, upon three days' written notice and a hearing, by the Commission or by the Commissioner, enter an order suspending the license for a period not exceeding ~~thirty~~ 30 days.

**Drafting note: Technical change.**

§ ~~6.1-262~~ 6.2-1513. Record and notice of revocation or suspension.

Whenever the Commission revokes or suspends a license issued pursuant to this chapter, it shall ~~forthwith enter its findings and~~:

1. Enter an order to that effect ~~and shall compile~~, which order shall set forth its findings;

2. Compile a record containing (~~1~~ i) a summary of the evidence, (~~2~~ ii) the findings with respect thereto, (~~3~~ iii) the order, and (~~4~~ iv) the reasons supporting the revocation or suspension~~.~~ ~~And it shall serve~~; and

3. Serve a copy of the order upon the licensee.

**Drafting note: In proposed subdivision 3, "of the order" is inserted to clarify the existing language. The other changes are technical.**

§ ~~6.1-263~~ 6.2-1514. Surrender of license.

Any licensee may surrender any license by delivering it to the Commission with written notice of its surrender~~, but the~~. The surrender shall not affect ~~his~~ the licensee's civil or criminal liability for acts previously committed.

**Drafting note: Technical changes only.**

§ ~~6.1-264~~ 6.2-1515. Effect of license revocation~~, etc.~~, ~~on preexisting contracts~~ suspension, or surrender.

~~No~~ The revocation, suspension, or surrender of any license shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

**Drafting note: Technical changes.**

§ ~~6.1-265~~ 6.2-1516. Reinstatement of license.

The Commission may reinstate any suspended license, or issue a new license to a person any license of whom has been revoked, if no fact or condition then exists ~~which~~ that clearly would have warranted the Commission ~~in refusing~~ to refuse originally to issue a license under this ~~law~~ chapter.

**Drafting note: Technical changes only.**

~~Article 4.~~

~~Place of Business and Residence of Borrower.~~

§ ~~6.1-266~~ 6.2-1517. Place of business generally.

A. Not more than one place of business shall be maintained under the same license~~, but the~~.

B. The Commission may issue more than one license to the same licensee upon compliance, as to each additional license, with all applicable provisions of this ~~law~~ chapter governing issuance of a single license.

C. No licensee shall conduct the business of making loans provided for by this chapter under any other name or at any place of business within the Commonwealth other than as designated in the license.

**Drafting note: Subsection C is current § 6.1-268. Other changes are technical.**

§ ~~6.1-267~~ 6.2-1518. ~~Other~~ Notice of conduct of other business in same ~~office~~ place of business; fee.

A. ~~No~~ A licensee shall not conduct the business of making loans under this chapter within any office, suite, room, or other place of business in which any other business is solicited or engaged in, or in association or conjunction with any other business, unless ~~thirty~~ the licensee has first given 30 days' written notice ~~is first given~~ to the Commission. Every notice shall be accompanied by a fee of $300.

B. Upon receipt of such notice and fee, the Commission may require the licensee to provide information relating to the other business ~~and~~, including how and by whom it will be conducted. The Commission shall have the authority to investigate the conduct of such other businesses in the licensee's place of business.

~~Every notice shall be accompanied by a fee of $300.~~

~~B~~ C. The provisions of this section shall not affect (i) any regulations ~~promulgated~~ adopted by the Commission prior to July 1, 2000, governing the conduct of other businesses in ~~a licensee's office, nor shall they affect~~ the place of business designated in a license or (ii) the authority of the Commission to ~~promulgate~~ adopt such regulations as the Commission deems necessary. ~~The Commission shall have the authority to investigate the conduct of such other businesses in the licensee's office.~~

~~C~~ D. If the Commission finds that the other business (i) is of such a nature or is being conducted in such a manner as to conceal or facilitate a violation or evasion of the provisions of this chapter or regulations adopted pursuant to it; (ii) is contrary to the public interest; or (iii) is otherwise being conducted in an unlawful manner, the Commission may, after notice to the licensee and an opportunity for a hearing, prohibit or limit the conduct of such other business in the ~~licensee's office~~ place of business designated in the license.

E. Any authority granted under this section shall remain in full force and effect until surrendered, or until revoked or suspended by the Commission as provided in this chapter or by lawful order of the Commission.

**Drafting note: Subsection E is current § 6.1-267.1. Other provisions are reordered to group like matters. The term "licensee's office" is replaced with the more specific "place of business designated in the license." As an office may be a place of business, the word "other" is inserted in the phrase "office, suite, room, or place of business." Other changes are technical.**

~~§ 6.1-267.1. Duration of other business in same office.~~

~~Any authority granted under § 6.1-267 shall remain in full force and effect until surrendered, or until revoked or suspended by the Commission as provided in this chapter or by lawful order of the Commission.~~

**Drafting note: Section is moved to subsection E of proposed 6.2-1518.**

~~§ 6.1-268. Business confined to licensed office.~~

~~No licensee shall conduct the business of making loans provided for by this chapter under any other name or at any place of business within this Commonwealth other than those designated in the license.~~

**Drafting note: Section is moved to proposed subsection C of § 6.2-1517.**

~~§ 6.1-269.~~

**Drafting note: Repealed by Acts 1982, c. 78.**

§ ~~6.1-269.1~~ 6.2-1519. Changing place of business.

A. ~~Subject to the provisions of this section, a~~ A licensee ~~under the same license may be permitted to change his~~ may change its place of business to a different location in the Commonwealth if the new location is:

1. Within the original ~~county or city~~ locality; or

2. From the original ~~city~~ locality to a location in a contiguous ~~county or city; or~~

~~3. From the original county to a location in a contiguous county or city~~ locality.

B. ~~When a licensee wishes to~~ A licensee shall notify the Commission of a change ~~his~~ in the place of business ~~to a new street address or new location as provided in subsection A of this section, he shall notify the Commission~~ within ~~ten~~ 10 days of such relocation. Upon receipt of the notification, the Commission shall issue and deliver to the licensee an amended license covering the new location ~~or address~~ if it finds that the change in the place of business meets one of the criteria listed in subsection A. Each notice of change of location under this section shall be accompanied by a fee of $250.

**Drafting note: The references to change of address are removed, as the section deals with changes in physical location of the business. Other changes clarify that the notice is given after the relocation occurs, rather than when the licensee wishes to change the place of business. "Locality" (defined in § 1-221 as a county, city, or town) is substituted for "county or city" in existing subdivisions A 1, 2, and 3, and existing subdivisions A2 and A 3 are combined.**

~~§ 6.1-270. Residence of borrower.~~

~~Nothing in this chapter shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated.~~

**Drafting note: Section is deleted because there are provisions in effect that limit the authority of licensees to make loans to residents of the community where the place of business is located. Consequently, the existing language has no substantive meaning and its deletion is not a substantive change.**

~~Article 5.~~

~~Rates of Charge.~~

~~§§ 6.1-271. , 6.1-271.1.~~

**Drafting note: Repealed by Acts 1995, c. 2.**

~~§ 6.1-272.~~

**Drafting note: Repealed by Acts 1974, c. 371.**

§ ~~6.1-272.1~~ 6.2-1520. Rate of interest; late charges; processing fees.

A. ~~For loans up to $2,500, a lender licensed under this chapter~~ A licensee may charge and receive interest on loans of:

1. Not more than $2,500, at a single annual rate not to exceed 36 percent~~. For loans of more~~; and

2. More than $2,500, ~~such lender may charge and receive interest only~~ at such single annual rate as shall be stated in the ~~written~~ loan contract ~~signed by the borrower~~.

The annual rate of interest shall be charged only upon principal balances outstanding from time to time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted or received in advance. For the purpose of calculating interest ~~hereunder~~ under this section, a year may be any period of time consisting of 360 or 365 days.

B. ~~Any lender licensed under this chapter~~ A licensee may impose a late charge for failure to make timely payment of any installment due on a debt, ~~provided that such~~ which late charge ~~does~~ shall not exceed five percent of the amount of such installment payment ~~and that the~~. The late charge ~~is~~ shall be specified in the loan contract between ~~such~~ the lender and the borrower. For purposes of this section, "timely payment" means a payment made by the date fixed for payment or within a period of seven calendar days after such fixed date.

C. ~~Any lender licensed under this chapter~~ A licensee may charge and receive a processing fee, charged on the principal amount of the loan, for processing the loan contract. The processing fee shall be stated in the ~~written~~ loan contract ~~signed by the borrower~~. Such processing fee shall be deemed to constitute interest charged on the principal amount of the loan for purposes of

determining whether the interest charged on a loan ~~up to~~ of not more than $2,500 exceeds the ~~thirty-six~~ 36 percent annual interest rate limitation imposed by ~~subsection~~ subdivision A ~~of this section~~ 1.

**Drafting note: The phrase "lender licensed under this chapter" is replaced with "licensee." Loans "up to $2,500" are recast as loans "of not more than" such sum in order to clarify treatment of loans of $2,500. The requirement that the loan contract be in writing and signed by the borrower is in subsection K of § 6.2-1524. Other changes are technical.**

§ ~~6.1-273~~ 6.2-1521. ~~Limitation of interest and costs after judgment~~ Post-judgment charges.

If judgment ~~be~~ is obtained against any party on any loan made under the provisions of this chapter, neither the judgment nor the loan shall carry, from the date of the judgment, any charges against any party to the loan other than court costs, ~~attorney's~~ attorney fees, and interest on the amount of the judgment at the rate fixed by § ~~6.1-330.54~~ 6.2-302.

**Drafting note: Technical changes.**

~~§ 6.1-274~~ 6.2-1522. ~~Limitation of~~ Other limitations on interest ~~in bankruptcy~~.

A. Any loan made under the provisions of this chapter ~~which~~ that is properly scheduled in a bankruptcy proceeding shall bear interest against any party to the loan from ~~ninety~~ 90 days after the date of adjudication, whether there is an ultimate discharge or an extension, if any interest ~~be~~ is allowable at all, at six percent per year ~~only; but this~~. This limitation shall not apply ~~in the following instances:~~ (i) to a comaker not currently in bankruptcy when the bankrupt is not entitled to a discharge, or (ii) if the particular obligation is not dischargeable under the provisions of ~~the Bankruptcy Act~~ Title 11 of the United States Code.

~~§ 6.1-275. Limitation of interest upon death of borrower.~~

B. After ~~ninety~~ 90 days from the date of the death of the borrower, no other charges than interest at six ~~per centum~~ percent per ~~annum~~ year shall be computed or collected from any party to the loan upon the unpaid principal balance of the loan.

~~§ 6.1-276. Limitation of interest after maturity of loan.~~

C. For the period beginning six months after the date of maturity, as originally scheduled or as deferred in the event of deferment, of any loan contract under the provisions of this chapter, no further charges than interest at six ~~per centum~~ percent per ~~annum~~ year shall be computed or collected from any party to the loan upon the unpaid balance of the loan.

**Drafting note: Current §§ 6.1-274, 6.1-275, and 6.1-276 are subsections of a single section because they each pertain to limits on the rate of interest on loans under this chapter. In proposed subsection A, reference to the "Bankruptcy Act" is replaced with Title 11 of the United States Code in order to avoid potential confusion regarding which specific iteration of federal bankruptcy law is referenced. Changes are technical.**

~~§ 6.1-277.~~

**Drafting note: Repealed by Acts 1995, c. 2.**

§ ~~6.1-278~~ 6.2-1523. Additional charges prohibited; ~~exception~~ exceptions.

In addition to the interest, late charges, and processing fee permitted under § ~~6.1-272.1~~ 6.2-1520, no further or other amount whatsoever for any examination service, brokerage, commission, fine, notarial fee, or other thing or otherwise shall be directly or indirectly charged, contracted for, collected, or received, except: ~~(i) insurance~~

1. Insurance premiums actually paid out by the licensee to any insurance company or agent duly authorized to do business in ~~this~~ the Commonwealth for insurance for the protection and benefit of the borrower written in connection with any loan~~, and (ii) the~~;

2. The actual cost of recordation fees or, on loans over $100, the amount of the lawful premiums, no greater than such fees, actually paid for insurance against the risk of not recording any instrument securing the loan ~~and may charge a~~; and

3. A handling fee not to exceed $15 for each check returned to the licensee because the drawer had no account or insufficient funds in the payor bank.

**Drafting note: Technical changes.**

~~Article 6.~~

~~Conduct of Business Generally.~~

§ ~~6.1-279~~ 6.2-1524. ~~Minimum assets~~ Required and prohibited activities and conduct.

~~Every licensee~~ A. Each licensee shall maintain at all times the minimum assets prescribed by this chapter for each license, either (i) in liquid form available for the operation of the business at the location specified in each license or (ii) actually used ~~(~~, whether pledged or not~~)~~, in the conduct of the business at the location specified in each license.

~~§ 6.1-280. Advertising.~~

~~No~~ B. A licensee or other person subject to this chapter shall not advertise, display, distribute or broadcast, or cause or permit to be advertised, displayed, distributed or broadcast, in any manner~~,~~ whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans ~~in the amount or of the value of the then established size of loan ceiling~~ made under this chapter. The Commission may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as it deems necessary to prevent misunderstanding by prospective borrowers~~, and it~~. The Commission may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by it to prevent false, misleading, or deceptive impression as to the scope or degree of protection provided by this chapter.

~~§ 6.1-281. Liens on real estate.~~

~~No~~ C. A licensee shall not take a lien upon real estate as security for any loan made under the provisions of this chapter, except a lien arising upon rendition of a judgment~~; and any such~~. Any lien taken in violation of ~~the provisions of~~ this ~~section~~ subsection shall be void.

~~§ 6.1-282. Requirements for making and payment of loans.~~

~~Every licensee shall:~~

~~(1) At~~ D. A licensee shall, at the time any loan is made, deliver to the borrower, or if there are two or more borrowers to one of them, a statement ~~which shall disclose~~ disclosing (i) the names and addresses of the licensee and of the principal debtor on the loan contract, and (ii) a

statement in compliance with ~~the federal Truth-In-Lending~~ Federal Reserve Board ~~Regulation Z.~~ (12 C.F.R. Part 226)~~;~~.

~~(2) Give~~ E. A licensee shall give the borrower a ~~plain~~ receipt for all cash payments. The Commission may specify the form and content of such receipts in keeping with the intent and purpose of this chapter~~;~~.

~~(3) Permit~~ F. A licensee shall permit payment to be made in advance in whole, or in part equal to one or more full installments~~, but the~~. The licensee may apply the payment first to any amounts ~~which~~ that are due and unpaid at the time of such payment~~;~~.

~~(4) Upon~~ G. A licensee shall, upon repayment of the loan in full, (i) mark plainly every obligation and security other than a security agreement executed by the borrower with the word "Paid" or "Canceled," (ii) mark satisfied any judgment, (iii) restore any pledge, (iv) cancel and return any note and any assignment given by the borrower to the licensee, and (v) release any security agreement or other form of security instrument ~~which~~ that no longer secures an outstanding loan between the borrower and the licensee~~;~~.

~~(5)~~ H. In the event of collection by foreclosure sale or otherwise, a licensee shall pay and return to the borrower, or to ~~whomsoever is~~ another person entitled thereto, any surplus arising after the payment of the expenses of collection, sale or foreclosure and satisfaction of the debt.

~~§ 6.1-283. Confession of judgment, etc.~~

~~No~~ I. A licensee shall not take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding~~, and any~~. Any such confession of judgment or power of attorney to confess judgment shall be void.

~~§ 6.1-284.~~

**Drafting note: Repealed by Acts 1987, c. 683.**

~~§ 6.1-284.1. What note or other instrument shall show.~~

~~No~~ J. A licensee shall not take any note, promise to pay, or instrument of security in which blanks are left to be filled in after execution, or that does not give the amount of the loan, a clear description of the installment payments required, and the rate of interest charged. A licensee may also include the disclosures required by Federal Reserve Board Regulation Z~~,~~ (12 C.F.R. Part 226~~,~~) in the note, promise to pay, or instrument of security.

~~§ 6.1-285. Installment payments.~~

K. Every loan contract shall be in writing, be signed by the borrower, and provide for repayment of the amount loaned in substantially equal monthly installments of principal and interest. ~~But nothing~~ Nothing contained in this chapter shall prevent (i) a loan being considered a new loan because the proceeds of the loan are used to pay an existing loan contract~~,~~ or ~~prevent~~ (ii) a licensee from entering into a loan contract providing for an odd first payment period of up to ~~forty-five~~ 45 days and an odd first payment greater than other monthly payments because of such odd first payment period.

**Drafting note: Existing §§ 6.1-279 through 6.1-285 are combined into a new section pertaining to required and prohibited activities, which follows the structure of analogous**

**chapters (see, e.g., current § 6.1-459). In proposed subsection B, the phrase "the established size of the loan ceiling" is deleted because the limit on the amount of loans that could be made under the Consumer Finance Act (which was $6,000 at that time) was repealed in 2001. In proposed subsection D, (i) the reference to Regulation Z is conformed to the reference in subsection J and (ii) the requirement for a separate statement of the names and addresses of the licensee and principal debtor is retained, though it is generally (but not necessarily) stated in the note and Truth-in-Lending Act disclosure. In proposed subsection K, the requirement that the loan contract be in writing and signed by the borrower is inserted; these conditions are stated elsewhere as descriptions of the contract rather than as affirmative requirements. Other changes are technical.**

~~§ 6.1-286.~~

**Drafting note: Repealed by Acts 2001, c. 308.**

~~§ 6.1-287.~~

**Drafting note: Repealed by Acts 1995, c. 2.**

§ ~~6.1-288~~ 6.2-1525. Wage purchases.

The payment of any amount in money, credit, goods or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall for the purposes of this chapter be deemed a loan of money secured by the sale, assignment or order. The amount by which the compensation so sold, assigned or ordered paid exceeds the amount of consideration actually paid (i) shall be deemed for the purpose of this chapter to be ~~deemed~~ interest upon the loan from the date of the payment to the date the compensation is payable~~, which amount~~ and (ii) shall not, in any case, be more than is sufficient to yield, to the ~~licensee~~ person making the loan, interest on his investment at the annual rate of ~~ten~~ 10 percent. Such transaction shall in all other respects be governed by and subject to the provisions of this chapter.

**Drafting note: In the last sentence, "licensee" is changed to "person" in order to address the possibility that an entity conducting a wage purchase is not a licensee. Other changes are technical.**

§ ~~6.1-289~~ 6.2-1526. ~~Validity of wage~~ Wage assignments~~, chattel mortgages and other liens; exemptions unimpaired~~.

A. A valid assignment or order for the payment of future salary, wages, commissions, or other compensation for services may be given as security for a loan made by any licensee, notwithstanding the provisions of any other law to the contrary.

B. No assignment of, or order for payment of, any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee~~,~~ shall be valid unless ~~the~~:

1. The amount of the loan is paid to the borrower simultaneously with its execution; ~~nor shall any such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower be valid unless it~~ and

2. The assignment or order is in writing, signed in person by the borrower, and not by an attorney, or if the borrower is married unless it is signed in person by both husband and wife, and not by an attorney~~, provided but written~~. Written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the ~~making~~ giving of the assignment~~,~~ or order~~, mortgage, or lien; and the~~. The provisions of this section are in addition to, and not in derogation of, the general statutes pertaining to the subject.

C. Under the assignment or order, an amount equal to not more than 10 percent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of the salary, wages, commission, or other compensation for services, from the time that a copy of the assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon the loan and a printed copy of this section, is served upon the employer.

**Drafting note: Proposed subsection A is currently the first portion of existing § 6.1-290; proposed subsection B is the portions of existing § 6.1-289 pertaining to wage assignments (with the portion pertaining to liens moved to proposed § 6.2-1527 and the portion pertaining to the poor debtors exemption moved to proposed § 6.2-1528); and subsection C is the balance of existing § 6.1-290.**

§ 6.2-1527. Liens on household furniture.

No chattel mortgage or other lien on household furniture then in the possession and use of the borrower given to secure any loan made by a licensee shall be valid unless it is in writing, signed in person by the borrower, and not by an attorney, or if the borrower is married unless it is signed in person by both husband and wife, and not by an attorney. Written assent of a spouse shall not be required when a husband and wife have been living separate and apart for a period of at least five months prior to the giving of the mortgage or lien.

**Drafting note: This provision is currently a part of existing § 6.1-289; as noted in the drafting note to proposed § 6.2-1526, the provisions of §§ 6.1-289 and 6.1-290 pertaining to wage assignments are grouped in proposed § 6.2-1526 and those pertaining to liens are set out in this section, with technical changes. Under this section, household goods may secure a loan that is not a purchase-money transaction.**

§ 6.2-1528. Exemptions unimpaired.

A. Nothing in this chapter shall have the effect of impairing ~~in any manner~~ any rights on the part of anyone as to exemptions under the poor debtors law or under any other applicable exemption law ~~as~~ now in effect or hereafter enacted~~; but written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of the assignment, order, mortgage, or lien; and the~~.

B. The provisions of ~~this section~~ subdivision B 2 of § 6.2-1526 and § 6.2-1527 are in addition to, and not in derogation of, the general statutes pertaining to the subject.

**Drafting note: New section; provisions are currently included in § 6.1-289. It is set out as a separate section because it applies equally to both wage assignments and chattel mortgages. In proposed subsection A, the phrase "in any manner" is deleted as unnecessary.**

~~§ 6.1-290. Amount collectible from employer under wage assignment.~~

~~A valid assignment or order for the payment of future salary, wages, commissions, or other compensation for services, may be given as security for a loan made by any licensee, notwithstanding the provisions of any other law to the contrary, and under the assignment or order, not to exceed ten per centum of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of the salary, wages, commission, or other compensation for services, from the time that a copy of the assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon the loan and a printed copy of § 6.1-289 and this section, is served upon the employer.~~

**Drafting note: Section is set out as proposed subsections A and C of § 6.2-1526.**

§ ~~6.1-291~~ 6.2-1529. Collection of loans made outside Commonwealth.

No loan made outside ~~this~~ the Commonwealth for which ~~the~~ greater rates of interest, consideration or charges~~,~~ than are permitted by the law applicable to such loan in the state in which the loan was made, have been charged, contracted for, or received shall be collected in ~~this~~ the Commonwealth. Every person in ~~anywise~~ any way participating in an effort to enforce the collection of such loan in ~~this~~ the Commonwealth shall be subject to the provisions of this chapter.

**Drafting note: Technical changes.**

~~Article 7.~~

~~Administration and Supervision by Commission.~~

~~§ 6.1-292. Regulation and supervision by Commission; delegation of powers and duties.~~

~~All powers and duties of regulation and supervision conferred and imposed by this chapter are, except as otherwise specifically stated, vested in and imposed upon the Commission, but it may delegate to the Commissioner the exercise of such of these powers and the performance of such of these duties as it deems proper, subject to its supervision and control.~~

**Drafting note: Section is deleted because the authority of the Commission to delegate its powers to the Commissioner as head of the Bureau of Financial Institutions is established by § 12.1-18.**

~~§ 6.1-293. Collection and disposition of fees.~~

~~The Commission shall collect and turn in to the state treasury all license and other fees and all amounts so collected and the unexpended balances thereof may be used only for the payment of the expenses of the administration of this chapter and of the performance of other functions of the Bureau of Financial Institutions of the Commission. The Commission may employ such examiners or clerks to assist it and the Commissioner as it from time to time deems necessary and may fix their compensation. All salaries and expenses necessarily incurred in the administration of this chapter shall be paid out of the license and other fees collected and turned~~

~~in to the state treasury under the provisions of this chapter, upon the basis of duly verified itemized vouchers, approved by the Commission. The Comptroller shall issue his warrant on the State Treasurer for, and the State Treasurer shall pay, the salaries and expenses out of the proceeds in the state treasury from these fees, in accordance with appropriations as from time to time made.~~

**Drafting note: Section is deleted because its purpose is covered by current § 6.1-2 (proposed § 6.2-102).**

§ ~~6.1-294~~ 6.2-1530. Investigations ~~generally~~; immunities.

A. For the purpose of discovering violations of this chapter or securing information lawfully required under it, the Commission ~~or its duly authorized representative~~ may at any time investigate the loans, books and records of any person who ~~is~~:

1. Is engaged, or appears to the Commission to be ~~engaged, in the business of making small loans as defined and described in, and~~ required to be licensed and supervised under~~,~~ this chapter~~, particularly in § 6.1-249, or who advertises~~;

2. Advertises for, solicits, or holds ~~himself~~ itself out as willing to make~~,~~ loans ~~in amounts of the then established size of loan ceiling or less~~ subject to the provisions of this chapter~~, or who the~~; or

3. The Commission has reason to believe is violating any provision of this chapter, whether such person shall act or claim to act under or without the authority of this chapter, or as principal, agent, broker or otherwise.

B. In furtherance of the investigation the Commission ~~through its duly authorized representatives~~ shall ~~have~~:

1. Have and be given free access to the offices, places of business, books, papers, accounts, records, files, safes, and vaults of all such persons~~,~~; and ~~shall have~~

2. Have authority to require attendance of witnesses and to examine under oath any person whose testimony may be required relative to any such loans or business or to the subject matter of the investigation, examination or hearing.

**Drafting note: The references to duly authorized representatives are deleted. The reference to "small loans" is an archaic holdover from when a predecessor chapter was called the Small Loan Act. This section incorporates current § 6.1-295 as proposed subsection C, § 6.1-296 as proposed subsections D and E, and § 6.1-297 as proposed subsection F.**

~~§ 6.1-295. Prerequisites to investigations.~~

C. Before making an investigation as provided for in ~~the preceding~~ this section ~~(§ 6.1-294)~~ as to any person ~~not~~ who is neither licensed nor an applicant for a license under this ~~law a formal~~ chapter, an order shall be entered by the Commission. The order shall specifically ~~directing~~ direct the investigation to be made, ~~commanding~~ command submission by the person whose business is to be investigated, and ~~setting~~ set forth all other details the Commission finds necessary ~~to clearness and certainty, and no~~. The Commission shall not enter such an order ~~may be entered~~ except upon (i) at least one affidavit, which may be given by ~~any member of the~~

~~personnel~~ an employee of the Commission or by any other person, ~~or upon~~ (ii) documentary data, ~~or upon~~ (iii) admissions of the person to be investigated, or ~~upon~~ (iv) any combination of the foregoing, satisfactorily establishing, prima facie, facts sufficient to warrant the investigation provided for by ~~§ 6.1-294~~ subsection A. ~~But if~~ If the person involved consents to the investigation ~~being made,~~ the foregoing requirements may be dispensed with and the investigation may be made upon ~~formal or informal~~ direction of the Commission or ~~by, or upon the direction of,~~ the Commissioner.

**Drafting note: Current § 6.1-295 is set out as subsection C of proposed § 6.2-1530. Technical changes attempt to update archaic style.**

~~§ 6.1-296. Immunity from prosecution.~~

D. ~~In any case of compulsory investigation, as provided for in § 6.1-294, of the business of a person not a licensee nor an applicant for a license under this law, no prosecution of the person so investigated for any crime,~~ No criminal prosecution or action for the imposition of any penalty~~,~~ or forfeiture provided for by this chapter may be maintained against a person not a licensee or an applicant for a license under this chapter who is investigated following entry of an order as provided in subsection C. ~~But nothing in this section~~ This subsection shall not ~~prevent~~:

1. Prevent prosecution for the violation of any other criminal law or of any other law providing for penalty or forfeiture~~, nor shall the~~; and

2. Provide immunity from prosecution ~~provided for hereby extend to~~ for any officer, agent or employee of the person whose business is ~~so~~ investigated~~, except that insofar as the Commission requires, as it may do,~~.

E. If the Commission compels a person not a licensee or an applicant for a license under this chapter to give verbal testimony ~~to be given by anyone not a licensee or an applicant under this chapter there shall be no prosecution of, nor proceeding against~~, the person so compelled to testify ~~for any crime committed, or for imposition~~ shall not be subject to criminal prosecution or the imposition of any penalty or ~~any~~ forfeiture ~~incurred~~ in connection with~~,~~ the subject matter as to which such testimony is compelled ~~to be given~~.

**Drafting note: Current § 6.1-296 is set out as subsections D and E of proposed § 6.2-1530. Technical changes attempt to update archaic style.**

~~§ 6.1-297. Use in civil action of facts discovered or disclosures made during investigation.~~

F. ~~Notwithstanding any such compulsory investigation or verbal testimony,~~ The immunities provided pursuant to subsections D and E shall not impair (i) any civil ~~rights~~ right of action, not involving penalty or forfeiture, ~~on the part of anyone~~ of any person and (ii) the ~~right~~ authority of the Attorney General to institute and prosecute a proceeding for injunctive relief as provided for in § ~~6.1-303 may be enforced~~ 6.2-1537. ~~and the~~ Any facts discovered and disclosures made in the course of any ~~such~~ investigation following entry of an order as provided in subsection C or verbal testimony compelled as provided in subsection E shall be available ~~against the person so investigated or so compelled to testify~~ in any proceeding involving any

~~ordinary~~ civil right of action or for obtaining an injunction under this chapter against the person so investigated or so compelled to testify.

**Drafting note: Existing § 6.1-297 is set out as subsection F of proposed § 6.2-1530. Technical changes attempt to update archaic style. The references to "civil rights" and "ordinary civil right" are replaced with "civil right of action."**

§ ~~6.1-298~~ 6.2-1531. Examination.

The Commission shall, as often as it ~~may deem it~~ deems to be in the public interest, ~~make an examination of~~ examine the affairs, business, office, and records of each licensee ~~insofar as they~~ that pertain to any business licensed under this chapter. Such examination shall be conducted at least once in every three-year period. ~~It shall be the duty of the~~ The licensee ~~to~~ shall furnish promptly by mail or otherwise such facts and statements in connection with ~~his~~ its business transacted in ~~Virginia as~~ the Commonwealth that the Commission ~~deems proper to require at any~~ may request from time to time.

**Drafting note: Technical changes.**

~~§ 6.1-299.~~

**Drafting note: Repealed by Acts 1983, c. 479.**

§ ~~6.1-299.1~~ 6.2-1532. Fees for ~~license,~~ examination, supervision and regulation.

~~In order to license and~~ To defray the costs of examination, supervision and regulation of licensed consumer finance ~~offices~~ companies, every licensee shall pay an annual fee to be calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the total assets ~~(both~~, including loans under ~~the Consumer Finance Act (§ 6.1-244 et seq.)~~ this chapter and other loans~~)~~, of various ~~individual~~ licensees and their affiliates doing business in authorized consumer finance company offices, to the actual cost of their respective examinations, and to other factors relating to their supervision and regulation. Fees shall be assessed pursuant to this section ~~on or before May 1, 1983, for that calendar year, and~~ on or before May 1 ~~for~~ of every calendar year ~~thereafter~~. All such fees shall be paid by the licensees to the State Treasurer on or before June 1 following each assessment.

**Drafting note: As the Commission does not assess "license" fees under this chapter, references are deleted from the catchline and text of the section. As "consumer finance offices" are not actually licensed, the phrase "licensed consumer finance companies" replaces it. The reference to fees due for 1983 is deleted as moot. Other changes are technical.**

§ ~~6.1-300~~ 6.2-1533. Books, accounts, and records; ~~hypothecation~~ pledge or deposit of notes and securities.

A. ~~1. The~~ Each licensee shall ~~keep and use~~ maintain in ~~his licensed place of business~~ authorized consumer finance company office, or at such other place within or outside the Commonwealth as the Commission may approve, such books, accounts, and records as ~~in the opinion of~~ the Commission ~~will enable it~~ may reasonably require to determine whether the licensee is complying with the provisions of this chapter and with ~~rules and~~ regulations ~~lawfully made under the provisions of this chapter~~ adopted in furtherance thereof.

~~2.~~ Such books, accounts, and records ~~may~~ shall be maintained in paper form or, with the Commission's approval, in ~~the form of magnetic tape, magnetic disk, optical disk imaging, or other form of computer,~~ any electronic ~~or microfilm media~~ format available for examination on the basis of computer printed reproduction, video display, or other medium~~; provided, that such~~. Any books, accounts, and records not maintained in paper form shall be convertible into clearly legible paper documents within a reasonable time.

~~3.~~ Every licensee shall preserve the books, accounts, and records~~, including cards used in the card system, if any,~~ for at least three years after making the final entry on any loan recorded therein.

B. ~~In the event that~~ If any note or security taken under this chapter shall be ~~hypothecated~~ pledged as collateral or deposited within or outside ~~this~~ the Commonwealth, the licensee shall ~~give prompt written notification to~~ notify promptly the Commission in writing of the identity and location of the person holding such paper. Prior approval of the Commission shall not be required. ~~Such paper so hypothecated~~ Any pledged or deposited paper shall be subject to examination by ~~duly authorized representatives of~~ the Commission in accordance with subsection C as fully as if ~~kept~~ maintained in an approved location.

C. All books, accounts and, records shall be subject to examination by ~~the duly authorized representatives of~~ the Commission. If such books, accounts, and records are examined outside the Commonwealth, all reasonable costs associated with such examination shall be paid by the licensee.

**Drafting note: The three subdivisions in subsection A are collapsed. "Maintain" replaces "keep and use" to be consistent with similar sections in other chapters in this subtitle. "Electronic format" replaces the list of examples of media in the second sentence, to avoid referencing obsolete technologies. The references to duly authorized representatives are deleted. The phrase "pledged as collateral" replaces "hypothecated." Other changes are technical.**

§ ~~6.1-301~~ 6.2-1534. Annual reports.

Each licensee shall annually, on or before April 1, file a report with the Commission giving such relevant information as may reasonably be required concerning ~~his~~ its business and operations during the preceding calendar year as to each ~~licensed place of business conducted by him within the Commonwealth~~ authorized consumer finance company office. Reports shall be made under oath and shall be in the form prescribed by the Commission.

**Drafting note: The limitation regarding places of business conducted within the Commonwealth is deleted as moot, as the Commission does not license locations outside Virginia.**

§ ~~6.1-302~~ 6.2-1535. Regulations and orders.

~~A.~~ The Commission ~~is empowered to promulgate rules and~~ shall adopt such regulations ~~for~~ as it deems appropriate to effect the ~~enforcement~~ purposes of this chapter~~, in addition thereto and consistent therewith, in the manner required by law~~. ~~Every regulation, every administrative ruling, and every requirement of general application shall be in writing and be entered and~~

~~maintained as a public record in an indexed permanent book with the date of each suitably indicated.~~ Before adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Commission's Rules. A copy of each regulation and order ~~promulgating~~ adopting it shall be mailed to all licensees at least ~~ten~~ 10 days before the effective date thereof~~, and a copy of each other order affecting persons other than licensees shall be mailed to the person or persons immediately affected thereby but without a required period of notice except as and when other procedure is required by law~~.

**Drafting note: Subsections B and C of § 6.1-302 are set out as new § 6.2-1536. The changes to former subsection A, regarding the adoption by the Commission of regulations deemed appropriate to effect the purposes of the chapter, are intended to conform the provision with the style of similar sections in other chapters of this subtitle. The sentence addressing the procedural requirements for adoption of regulations is deleted because these matters are covered by the Commission's Rules of Practice and Procedure.**

§ 6.2-1536. Disclosures in connection with sale of securities.

~~B~~ A. The Commission ~~is also empowered to promulgate rules or~~ may adopt regulations prescribing required disclosures ~~which must be made~~ in connection with the offer or sale of any "security," as that term is defined in § 13.1-501 of the Virginia Securities Act (§ 13.1-501 et seq.), issued by any licensee organized under the laws of ~~this~~ the Commonwealth.

~~C~~ B. The disclosures ~~required~~ prescribed by subsection ~~B~~ A shall be printed in bold, 10-point type and shall contain substantially the following language: "This security or these securities are being offered in Virginia pursuant to an exemption from the registration requirements of the Virginia Securities Act. The State Corporation Commission does not pass upon the adequacy or accuracy of the security or this offering circular or upon the merits of this security or this offering. These securities are not insured or guaranteed by any state or federal agency." ~~The disclosures shall be printed in bold, ten-point type.~~

**Drafting note: Subsections B and C of § 6.1-302 are set out as a new section because they pertain specifically with disclosures under the Virginia Securities Act. The changes to former subsection A, regarding the adoption by the Commission of regulations, are intended to conform the provision with the style of other sections.**

§ ~~6.1-303~~ 6.2-1537. Authority of Attorney General; impoundment of property and receivership.

A. ~~1.~~ Whenever the Attorney General has reasonable cause to believe that (i) ~~that~~ any person, not licensed under this chapter, is violating, has violated, is threatening to violate or intends to violate any provision of this chapter or any order or regulation lawfully made pursuant to the authority of this chapter and (ii) ~~that~~ the facts justify it, the Attorney General shall institute and prosecute a lawsuit for monetary or injunctive relief or both in the Circuit Court of the City of Richmond, in the name of the Commonwealth. The court may grant monetary relief or may enjoin and restrain or both any such person from engaging in or continuing any such violation or from doing any act or acts in furtherance thereof. In any such suit a decree or order may be

entered awarding such monetary relief or preliminary or final injunctive relief as may be deemed proper.

B. In addition to all other means provided by law for the enforcement of an award of monetary relief, a temporary restraining order, temporary injunction, or final injunction, the court ~~shall have the power and jurisdiction to~~ may impound, and ~~to~~ appoint a receiver for, (i) the property and business of the defendant, including books, papers, documents, and records pertaining thereto, ~~or~~ (ii) so much thereof as the court deems reasonably necessary to prevent further violation of this chapter through or by means of the use of such property and business, or (iii) so much thereof as is necessary to identify borrowers who have been damaged and the amount of their damages, and to refund the amount of any such damages to the borrowers pursuant to ~~subdivision 2 of this~~ subsection C. The receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, payment of debts and liquidation of the property and business as from time to time are conferred upon him by the court.

~~2~~ C. The Attorney General may seek and the circuit court may order or decree such other relief allowed by law, including restitution to the extent available to borrowers under ~~subsection B of~~ § ~~6.1-308~~ 6.2-1541.

~~3~~ D. In any action brought by the Attorney General by virtue of the authority granted in this section, the Attorney General shall be entitled to seek ~~attorney's~~ attorney fees and costs.

~~B~~ E. Nothing in this ~~article~~ section shall be construed to preclude any ~~individual or entity~~ person who suffers a loss as a result of a violation of § ~~6.1-249~~ 6.2-1501 from maintaining an action to recover damages or restitution under ~~subsection B of~~ § ~~6.1-308~~ 6.2-1541.

F. No individual shall be entitled to refuse to testify in a suit brought under this section because the person's testimony would tend to incriminate such person or subject the individual to penalty or forfeiture. If called to testify by the Commonwealth or by the court trying the case, the individual may not thereafter be prosecuted for any crime or subjected to any penalty or forfeiture growing out of the transaction concerning which the individual testifies.

**Drafting note: Proposed subsection A retains the authority of the Attorney General, enacted in 1992, to institute actions without the requirement, contained in the existing Payday Loan Act and Credit Counseling Act, that the Commission refer a matter to the Attorney General. The provisions of proposed subsection E are not intended to permit a borrower to bring a private cause of action for any violation of the chapter, such as making an illegal charge, that is not covered by proposed § 6.2-1501. Proposed subsection F is existing § 6.1-304 with changes that clarify that its provisions are limited to individuals. Other changes are technical.**

~~§ 6.1-304. Incriminating testimony in injunction suit.~~

~~No person shall be entitled to refuse to testify in a suit brought under the preceding section (§ 6.1-303) because his testimony would tend to incriminate himself or subject him to penalty or forfeiture but if called to testify by the Commonwealth or by the court trying the case~~

~~he may not thereafter be prosecuted for any crime or subjected to any penalty or forfeiture growing out of the transaction concerning which he testifies.~~

**Drafting note: Section is set out as subsection F of proposed § 6.2-1537, because it pertains only to testimony in suits under existing § 6.1-303.**

§ ~~6.1-305~~ 6.2-1538. Copies of orders or ~~regulations~~ licenses.

On application of any person, and payment of the costs, the Commission shall furnish such person with a certified copy of any order ~~or regulation made~~ entered or ~~any~~ license issued by it ~~or by the Commissioner under its authority~~. Such copy shall be prima facie evidence in any court or proceeding of the fact of the ~~making~~ entry of the order or of the issuance of the license ~~or regulation~~.

**Drafting note: Provision regarding the Commissioner acting under the Commission's authority is deleted as unnecessary. References to obtaining copies of regulations are deleted because they are publicly available.**

§ ~~6.1-306~~ 6.2-1539. Review by Commission.

In addition to any other remedy he may have any licensee or any other person considering himself aggrieved by any action of the Commissioner ~~hereunder~~ under this chapter pursuant to authority conferred upon him or delegated to him by the Commission may, within ~~thirty~~ 30 days of the action complained of, file a petition as a matter of right with the Commission to review the action. The proceeding on review shall be de novo and the record and summary of the evidence before, and findings of, the Commissioner shall be admissible as evidence before the Commission.

**Drafting note: Technical changes.**

~~§ 6.1-307. Appeal.~~

~~From any action taken by the Commission hereunder, whether upon petition from action taken by the Commissioner, or otherwise, any licensee, or any other person in interest considering himself aggrieved, may, as a matter of right, appeal to the Supreme Court in the manner provided by law.~~

**Drafting note: Deleted because the right to appeal Commission decisions to the Supreme Court is set out in § 12.1-39.**

~~Article 8.~~

~~Penalties.~~

§ ~~6.1-308~~ 6.2-1540. ~~Violation of § 6.1-249~~ Criminal penalties.

~~A.~~ Any person ~~and~~, including the ~~several~~ members, officers, directors, agents, and employees ~~thereof~~ of an entity, who ~~violate~~ violates or ~~participate~~ participates in the violation of any provision of § ~~6.1-249 shall be~~ 6.2-1501 is guilty of a Class 2 misdemeanor.

**Drafting note: Subsection A is set out as a separate section; current subsection B is proposed § 6.2-1541. Changes are technical.**

§ 6.2-1541. Unlawful contracts void; recovery of amounts paid.

~~B~~ A. ~~Any~~ A loan contract ~~of loan in~~ shall be void if any act has been done in the making or collection ~~of which any act has been done which~~ thereof that violates § ~~6.1-249 shall be void and the lender~~ 6.2-1501.

B. The lender on any loan for which a person has taken any action in its making or collection in violation of § 6.2-1501 shall not collect, receive, or retain any principal, interest, or charges whatsoever~~, and~~ with respect to the loan, and any ~~amount paid on account of~~ principal or interest paid on ~~any such~~ the loan shall be recoverable by the person by or for whom payment was made.

**Drafting note: Existing subsection B of § 6.1-308 is set out in this new section. Changes are technical.**

§ ~~6.1-309~~ 6.2-1542. ~~Penalty for violation of chapter, regulation or order of Commission by licensee~~ Duty to refund unauthorized or excess charges; liability to borrower for penalty.

A. If any amount ~~other than~~ not authorized by this chapter or in excess of the charges permitted by this chapter is charged and received by a licensee, such unauthorized or excess charge actually received by a licensee shall be refunded to the borrower or credited to the borrower's account.

~~In addition, except~~ B. Except for excess charges charged and received as the result of a bona fide error of computation ~~which~~ that was not made pursuant to a regular course of dealing, the licensee shall be liable to the borrower for a penalty of twice the amount of ~~such~~ any unauthorized or excess charge actually received by the licensee and for any court costs and reasonable ~~attorney's~~ attorney fees incurred by the borrower.

**Drafting note: Subsection A of current § 6.1-309 is split into two new subsections. Changes are technical.**

§ 6.2-1543. Civil penalties.

~~B. Any~~ The Commission may impose a civil penalty not exceeding $10,000 upon any licensee ~~violating~~ who it determines, in proceedings conducted in accordance with the Commission's Rules, has violated any provision of this chapter or of any regulation or order of the Commission, either knowingly or without the exercise of due care to prevent the violation~~, shall be subject to a fine, to be imposed by the Commission, of not more than $10,000~~. In any proceeding under this ~~subsection~~ section, ~~no~~ a licensee shall not be penalized for any act or omission done in reasonable reliance on any regulation, order, letter, or other written directive or request of the Commission.

**Drafting note: This new section is existing subsection B of § 6.1-309. The sanction is recast as a civil penalty in order to be consistent with other provisions in proposed Title 6.2. The civil penalties are to be distributed as provided in proposed § 6.2-106. The first sentence is restructured to comport with the style of analogous provisions of other chapters in this subtitle. "Commission's Rules" is defined in proposed § 6.2-100 as the Commission's rules of practice and procedure adopted pursuant to § 12.1-25.**

~~§ 6.1-310.~~

**Drafting note: This section number was noted as reserved.**

CHAPTER 16.

MORTGAGE ~~LENDER~~ LENDERS AND ~~BROKER ACT~~ MORTGAGE BROKERS.

**Chapter drafting note: Existing Chapter 16 of Title 6.1 is renamed to follow the format of other chapters in this subtitle by naming the regulated provider of the financial service.**

~~§ 6.1-408. Short title.~~

~~This chapter may be cited as the Mortgage Lender and Broker Act.~~

**Drafting note: This section is deleted because of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter or article serves as a short title citation.**

§ ~~6.1-409~~ 6.2-1600. Definitions.

As used in this chapter, ~~the following words and terms shall have the following meanings~~ unless the context requires a different meaning:

~~"Commissioner" means the Commissioner of the Bureau of Financial Institutions.~~

"Licensee" means a mortgage lender or mortgage broker licensed by the Commission pursuant to this chapter.

"Mortgage broker" means any person who directly or indirectly negotiates, places or finds mortgage loans for others, or offers to negotiate, place or find mortgage loans for others. Any licensed mortgage lender that, pursuant to an executed originating agreement with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing Development Authority is or would be the payee on the note evidencing such mortgage loan and that the Virginia Housing Development Authority provides or would provide the funding of such mortgage loan prior to or at the settlement thereof.

"Mortgage lender" means any person who directly or indirectly originates or makes mortgage loans.

"Mortgage loan" means a loan made to an individual, the proceeds of which are to be used primarily for personal, family or household purposes, which loan is secured by a mortgage or deed of trust upon any interest in one- to four-family residential property located in the Commonwealth, regardless of where made, including the renewal or refinancing of any such loan, but excluding (i) loans or extensions of credit to buyers of real property for any part of the purchase price of such property by persons selling such property owned by them, (ii) loans to persons related to the lender by blood or marriage, and (iii) loans to persons who are bona fide employees of the lender. "Mortgage loan" shall not include any loan secured by a mortgage or deed of trust upon any interest in a more than four-family residential property or property used for a commercial or agricultural purpose.

~~"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals however organized.~~

"Principal" means any person who, directly or indirectly, owns or controls (i) ~~ten~~ 10 percent or more of the outstanding stock of a stock corporation or (ii) a ~~ten~~ 10 percent or greater interest in a nonstock corporation or a limited liability company.

"Residential property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes.

**Drafting note: The definition of "Commissioner" is deleted as unnecessary due to the title-wide definitions provided in proposed § 6.2-100. The definition of "person" is deleted because it is defined in § 6.2-100.**

§ ~~6.1-410~~ 6.2-1601. License requirement.

No person shall engage in business as a mortgage lender or a mortgage broker, or hold himself out to the general public to be a mortgage lender or a mortgage broker, unless such person has first obtained a license under this chapter. ~~However, subject~~ Subject to such conditions as the Commission may prescribe, an individual who is a bona fide employee or exclusive agent of a ~~person licensed under this chapter~~ licensee may negotiate, place or find mortgage loans without being licensed as a mortgage broker.

**Drafting note: Technical changes.**

§ ~~6.1-411~~ 6.2-1602. Persons exempt from chapter.

The following shall be exempt from the licensing and other provisions of this chapter:

1. Lenders making three or fewer mortgage loans in any period of 12 consecutive months;

2. Any person subject to the general supervision of or subject to examination by the Commissioner pursuant to Chapters 7 (§ 6.2-700 et seq.), ~~Chapter 2~~ 8 (§ ~~6.1-3~~ 6.2-800 et seq.), ~~Chapter 3.01~~ 11 (§ ~~6.1-194.1~~ 6.2-1100 et seq.), ~~Chapter 4.01~~ 13 (§ ~~6.1-225.1~~ 6.2-1300 et seq.), or ~~Chapter 5~~ 14 (§ ~~6.1-227~~ 1400 et seq.) ~~or Chapter 13 (§ 6.1-381 et seq.) of this title~~;

3. Any lender authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States~~,~~ or any state ~~or territory of the United States, or the District of Columbia~~, and subsidiaries and affiliates of such entities which lender, subsidiary or affiliate is subject to the general supervision or regulation of or subject to audit or examination by a regulatory body or agency of the United States~~,~~ or any state ~~or territory of the United States, or the District of Columbia~~;

4. Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;

5. Agencies of the federal government, or any state or municipal government, or any quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws of any state or the United States;

6. Persons acting as fiduciaries with respect to any employee pension benefit plan qualified under the Internal Revenue Code who make mortgage loans solely to plan participants from plan assets;

7. Any insurance company;

8. Persons licensed by the Commonwealth as attorneys, real estate brokers, or real estate salesmen, not actively and principally engaged in negotiating, placing or finding mortgage loans, when rendering services as an attorney, real estate broker or real estate salesman; however, a real estate broker or real estate salesman who receives any fee, commission, kickback, rebate or other payment for directly or indirectly negotiating, placing or finding a mortgage loan for others shall not be exempt from the provisions of this chapter;

9. Persons acting in a fiduciary capacity conferred by authority of any court;

10. Persons licensed as small business investment companies by the Small Business Administration; and

11. The Virginia Housing Development Authority and persons who (i) are approved by the Virginia Housing Development Authority pursuant to its rules and regulations to act as field originators with respect to mortgage loans made under its programs and (ii) are not engaged in any other activities for which a license is required to be obtained under this chapter.

**Drafting note: In subdivision 3, superfluous language is deleted because these jurisdictions are encompassed within the scope of "state" as defined in § 1-245.**

§ ~~6.1-412~~ 6.2-1603. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath and on a form provided by the Commissioner.

B. The application shall set forth:

1. The name and address of the applicant;

2. If the applicant is a firm or partnership, the name and address of each member of the firm or partnership;

3. If the applicant is a corporation or a limited liability company, the name and address of each officer, director, registered agent and each principal;

4. The ~~addresses~~ address of ~~the locations of~~ each location at which the business to be licensed is to be conducted;

5. Whether the applicant seeks a license to act as a mortgage lender, mortgage broker, or both; and

6. Such other information concerning the financial responsibility, background, experience and activities of the applicant and its members, officers, directors, and principals as the Commissioner may require.

C. The application shall be accompanied by payment of the following fees:

1. In the case of an application for a license to act as a mortgage lender~~,~~ or a mortgage broker, ~~but not both,~~ an application fee of $500; or

2. In the case of an application for a license to act as both mortgage lender and mortgage broker, an application fee of $1,000.

D. The application fee shall not be refundable in any event. The fee shall not be abated by surrender, suspension or revocation of the license.

**Drafting note: Amendments to subdivision B 4 conform the provision to subsection A of proposed § 6.2-1607. Other change is technical.**

§ ~~6.1-413~~ 6.2-1604. Bond required.

The application for a license shall also be accompanied by a bond filed with the Commissioner with corporate surety authorized to execute such bond in ~~this~~ the Commonwealth, in the sum of $25,000, or such greater sum as the Commissioner may require~~, the~~. The form of ~~which~~ the bond shall be approved by the Commission. ~~Such~~ The bond shall be continuously maintained thereafter in full force. ~~Such~~ The bond shall be conditioned upon the applicant or ~~such licensed lender or broker~~ licensee performing all written agreements with borrowers or prospective borrowers, correctly and accurately accounting for all funds received by him in his licensed business, and conducting his licensed business in conformity with this chapter and all applicable law. Any person who may be damaged by noncompliance of a ~~licensed broker or lender~~ licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

**Drafting note: Technical changes.**

§ ~~6.1-414~~ 6.2-1605. Investigation of applications.

A. The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations ~~promulgated thereunder~~.

B. For the purpose of investigating individuals who are members, senior officers, directors, and principals of an applicant, such persons shall consent to a national and state criminal history records check and submit to fingerprinting by a local or state law-enforcement agency. Each member, senior officer, director, and principal shall pay for the cost of such fingerprinting and criminal records check. Upon receipt of the records check fees along with such individuals' fingerprints and their personal descriptive information, the Commissioner ~~or his designee~~ shall forward these items to the Central Criminal Records Exchange. The Central Criminal Records Exchange shall conduct a search of its own criminal history records and forward such individuals' fingerprints and personal descriptive information to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such individuals. The Central Criminal Records Exchange shall forward the results of the state and national records search to the Commissioner ~~or his designee~~, who shall be an employee of the Commission.

C. If any member, senior officer, director, or principal of an applicant fails to submit his fingerprints, personal descriptive information, or records check fees to the Commissioner or his designee in accordance with subsection B, the application ~~to engage in business~~ for licensure as a mortgage lender or mortgage broker shall be denied.

**Drafting note: Technical changes.**

§ ~~6.1-415~~ 6.2-1606. Qualifications.

A. Upon the filing and investigation of an application for a license, and compliance by the applicant with the provisions of §§ ~~6.1-412~~ 6.2-1603 and ~~6.1-413~~ 6.2-1604, the Commission

shall issue and deliver to the applicant the license ~~or licenses~~ applied for to engage in business under this chapter at the office locations specified in the application if it finds:

1. That the financial responsibility, character, reputation, experience and general fitness of the applicant and its members, senior officers, directors and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest and in accordance with law; and

2. That, in the case of an application for a license to act as a mortgage lender, the applicant has funds available for the operation of the business of at least $200,000.

B. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant of the denial and the reasons for such denial.

**Drafting note: The phrase "or licenses" is deleted because § 1-227 provides that any word used in the singular includes the plural and vice versa. Other changes are technical.**

§ ~~6.1-416~~ 6.2-1607. Licenses; places of business; changes.

A. Each license shall state the address ~~or addresses~~ of each office at which the business is to be conducted and shall state fully the name of the ~~licensed broker or lender~~ licensee. Each license shall be prominently posted in each ~~place of business~~ office of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No ~~mortgage lender or mortgage broker~~ licensee shall use any name other than the name set forth on the license issued by the Commission.

B. No ~~licensed mortgage lender or mortgage broker~~ licensee shall open an additional office or relocate any office without prior approval of the Commission. Applications for such approval shall be made in writing on a form provided by the Commissioner and shall be accompanied by payment of a $150 nonrefundable application fee. The ~~applicants~~ application shall be approved unless the Commission finds that the applicant has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the Commission to the applicant within ~~thirty~~ 30 days of the date the application is received by the Commission. After approval, the applicant shall give written notice to the Commissioner within ~~ten~~ 10 days of the commencement of business at the additional or relocated office.

C. Every ~~licensed mortgage lender or mortgage broker~~ licensee shall within ~~ten~~ 10 days notify the Commissioner, in writing, of the closing of any approved office and of the name, address and position of each new senior officer, member, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.

D. Every license shall remain in force until it has been surrendered, revoked or suspended. The surrender, revocation or suspension of a license shall not affect any preexisting legal right or obligation of such lender or broker.

**Drafting note: In the third sentence of subsection B, "applicants" appears to be a typographical error. The term "office" replaces "location" or "place of business" to make usage consistent. Other changes are technical.**

§ ~~6.1-416.1~~ 6.2-1608. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire directly or indirectly ~~twenty-five~~ 25 percent or more of the voting shares of a corporation or ~~twenty-five~~ 25 percent or more of the ownership of any ~~other entity licensed to conduct business under this chapter~~ licensee unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals and members, and of any proposed new directors, senior officers, principals or members of the licensee; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers and principals, and any proposed new directors, members, senior officers and principals have the financial responsibility, character, reputation, experience and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within ~~sixty~~ 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with ~~a person licensed by this chapter~~ another licensee or a person exempt from this chapter under the provisions of subdivisions 2 through 11 of § ~~6.1-411~~ 6.2-1602, (ii) the acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, or survivorship or by operation of law. The person acquiring an interest in a licensee in a transaction which is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within ~~thirty~~ 30 days of its closing.

**Drafting note: Technical changes.**

§ ~~6.1-417~~ 6.2-1609. Retention of books, accounts and records.

A. Every mortgage lender or mortgage broker required to be licensed under this chapter shall maintain in its ~~licensed~~ offices such books, accounts, and records as the Commission may reasonably require in order to determine whether such ~~lender or broker~~ person is complying with the provisions of this chapter and ~~rules and~~ regulations adopted ~~in furtherance thereof~~ hereunder. Such books, accounts, and records shall be maintained apart and separate from any other business in which the mortgage lender or mortgage broker is involved.

B. Each mortgage lender required to be licensed under this chapter shall retain, for at least three years after final payment is made on any mortgage loan or the mortgage loan is sold, whichever first occurs, copies of the note, settlement statement, truth-in-lending disclosure, and such other papers or records relating to the loan as may be required by ~~rule or~~ regulation.

C. Each mortgage broker required to be licensed under this chapter shall retain for at least three years after a mortgage loan is made the original contract for his compensation, a copy of the settlement statement, and an account of fees received in connection with the loan, and such other papers or records as may be required by ~~rule or~~ regulation.

**Drafting note: In subsection A, "licensed" is deleted before office because the provision applies to entities required to be licensed, and thus imposes obligations on entities that may not have a valid license and thus no approved office. Other changes are technical.**

§ ~~6.1-418~~ 6.2-1610. Annual report.

Each mortgage lender or mortgage broker required to be licensed under this chapter shall annually, on or before March 1, file a written report with the Commissioner containing such information as the Commissioner may require concerning his business and operations during the preceding calendar year as to each ~~licensed place of business~~ office. Reports shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of the reports.

**Drafting note: "Licensed place of business" is replaced with "office" because places of business are approved, not licensed, and applies to offices of licensed and unlicensed entities.**

§ ~~6.1-419~~ 6.2-1611. Investigations; examinations.

The Commission may~~, by its designated officers and employees~~, as often as it deems necessary, investigate and examine the affairs, business, premises, and records of any mortgage lender or mortgage broker required to be licensed under this chapter insofar as they pertain to any business for which a license is required by this chapter. Examinations of such mortgage lenders shall be conducted at least once in each three-year period. In the course of such investigations and examinations, the owners, members, officers, directors, partners, and employees of such mortgage lender or mortgage broker being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records and information which the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

**Drafting note: The reference to designated officers and employees is deleted as unnecessary; § 12.1-16 authorizes the delegation of duties to employees and agents.**

§ ~~6.1-420~~ 6.2-1612. Annual fees.

A. ~~In order to~~ To defray the costs of ~~their~~ examination, supervision and regulation, every ~~mortgage~~:

1. Mortgage lender required to be licensed under this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the business volume of ~~such~~ an individual mortgage ~~lenders~~ lender, the actual ~~costs~~ cost of ~~their examinations~~ the examination, and to other factors relating to ~~their~~ the supervision and regulation~~. Every mortgage~~; and

2. Mortgage broker required to be licensed under this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the volume of business transacted by such mortgage broker, to the actual cost of examination and to other factors relating to ~~their~~ the supervision and regulation.

~~All such fees~~ B. The annual fee prescribed in subsection A shall be assessed on or before April 25 for every calendar year. All such fees shall be paid by the ~~licensed mortgage lenders and mortgage brokers~~ licensees to the State Treasurer on or before May 25 following each assessment.

~~B~~ C. In addition to the annual fee prescribed in subsection A ~~of this section~~, when it becomes necessary to examine or investigate the books and records of a mortgage lender or mortgage broker required to be licensed under this chapter at a location outside the Commonwealth, the mortgage lender or mortgage broker shall be liable for and shall pay to the Commission within ~~thirty~~ 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of its examination, supervision and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

**Drafting note: Technical changes.**

§ ~~6.1-421~~ 6.2-1613. ~~Rules and regulations~~ Regulations.

The Commission shall ~~promulgate~~ adopt such ~~rules and~~ regulations as it deems appropriate to effect the purposes of this chapter. Before ~~promulgating~~ adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to present evidence and be heard, in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~.

**Drafting note: Throughout the title, the term "rule" when used in conjunction with "regulation" is deleted as a redundancy. "Commission's Rules" is defined in proposed § 6.2-100.**

§ ~~6.1-422~~ 6.2-1614. ~~Prohibited predatory practices~~ Prohibitions applicable to mortgage lenders and mortgage brokers.

~~A.~~ No mortgage lender or mortgage broker required to be licensed under this chapter shall:

1. Obtain any agreement or instrument in which blanks are left to be filled in after execution;

2. Take an interest in collateral other than the real estate or residential property securing a mortgage loan, including any fixtures and appliances thereon and any mobile or manufactured home placed on such real estate even if such mobile or manufactured home is not permanently affixed thereto;

3. Obtain any exclusive dealing or exclusive agency agreement from any borrower;

4. Delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

5. Obtain any agreement or instrument executed by a borrower which contains an acceleration clause permitting the unpaid balance of a mortgage loan to be declared due for any reason other than ~~failure~~ failing to make timely payments of interest and principal, submitting false information in connection with an application for the mortgage loan, breaching any representation or covenant made in the agreement or instrument, or failing to perform any other obligations undertaken in the agreement or instrument;

~~6. If acting as a mortgage lender, fail to require the person closing the mortgage loan to provide to the borrower prior to closing of the mortgage loan, a (i) settlement statement and (ii) disclosure which conforms to that required by the provisions of 15 U.S.C. (§ 1601 et seq.) and Regulation Z, 12 CFR Part 226; or~~

~~7~~ 6. Recommend or encourage a person to default on an existing loan or other debt, if such default adversely affects such person's creditworthiness, in connection with the solicitation or making of a mortgage loan that refinances all or any portion of such existing loan or debt;

7. Knowingly or intentionally engage in the act or practice of refinancing a mortgage loan within 12 months following the date the refinanced mortgage loan was originated, unless the refinancing is in the borrower's best interest, which act or practice is commonly referred to as "flipping." This prohibition shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed any limitation established pursuant to Chapter 3 (§ 6.2-300 et seq.) or Article 2 (§ 6.2-406 et seq.) of Chapter 4. Factors to be considered in determining if the refinancing is in the borrower's best interest include but are not limited to whether:

a. The borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;

b. There is a change in the amortization period of the new loan;

c. The borrower receives cash in excess of the costs and fees of refinancing;

d. The rate of interest on the borrower's note is reduced;

e. There is a change from an adjustable to a fixed rate loan, taking into account costs and fees; and

f. The refinancing is necessary to respond to a bona fide personal need or an order of an appropriate court; or

8. Use or cause to be published any advertisement that:

a. Contains any false, misleading, or deceptive statement or representation; or

b. Identifies the mortgage lender or mortgage broker by any name other than the name set forth on the license issued by the Commission.

~~B. No mortgage broker required to be licensed under this chapter shall:~~

1. Except for documented costs of credit report and appraisals, receive compensation from a borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender;

2. Receive compensation from a mortgage lender of which he is a principal, partner, trustee, director, officer or employee;

3. Receive compensation from a borrower in connection with any mortgage loan transaction in which he is the lender or a principal, partner, trustee, director or officer of the lender;

4. Receive compensation from the borrower other than that specified in a written agreement signed by the borrower; or

5. Receive compensation for negotiating, placing or finding a mortgage loan where such mortgage broker, or any person affiliated with such mortgage broker, has otherwise acted as a real estate broker, agent or salesman in connection with the sale of the real estate which secures the mortgage loan and such mortgage broker or affiliated person has received or will receive any other compensation or thing of value from the lender, borrower, seller or any other person, unless the borrower is given the following notice in writing at the time the mortgage broker services are first offered to the borrower:

NOTICE

WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU A FEE OF ..... % OF THE LOAN AMOUNT.

WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE.

IF YOU ARE A MEMBER OF A CREDIT UNION YOU SHOULD COMPARE OUR INTEREST RATES AND TERMS WITH THE MORTGAGE LOANS AVAILABLE THROUGH YOUR CREDIT UNION.

.....

BORROWER'S SIGNATURE

.....

BORROWER'S SIGNATURE

The foregoing notice shall be in at least 10-point type and the prospective borrower shall acknowledge receipt of the written notice.

As used in this subdivision, the term "affiliated person of a mortgage broker" means any person which is a subsidiary, stockholder, partner, trustee, director, officer or employee of a

~~mortgage broker, and any corporation ten percent or more of the capital stock of which is owned by a mortgage broker or by any person which is a subsidiary, stockholder, partner, trustee, director, officer or employee of a mortgage broker; or~~

~~6. Fail to use reasonable skill, care, and diligence in exercising the broker's duty, which duty is hereby created, to make reasonable efforts to secure a mortgage loan that is in the best interests of the applicant, considering the applicant's circumstances and loan characteristics, including but not limited to the product type, rates, charges, and repayment terms of the loan.~~

~~C. Notwithstanding the provisions of subdivision 5 of subsection B, no person shall act as a mortgage broker in connection with any real estate sales transaction in which such person, or any person affiliated with such person (as defined in subdivision 5 of subsection B), has acted as a real estate broker, agent or salesman and has received or will receive compensation in connection with such transaction, unless such person was regularly engaged in acting as a mortgage broker in the Commonwealth as of February 25, 1989. However, the provisions of this chapter shall not be construed to prohibit a real estate broker, as defined in § 54.1-2100, who is either an owner of an interest in a real estate firm or acts as a real estate broker in a sole proprietorship from having an ownership interest in a mortgage broker or mortgage lender, as defined in this chapter, or from receiving returns on investment arising from such ownership interest or payment of compensation for services actually performed for such mortgage broker or lender.~~

**Drafting note: Existing § 6.1-422 is moved to four proposed sections: § 6.2-1614, which lists prohibited acts applicable to both lenders and brokers (including the "flipping" prohibition in existing § 6.1-422.1, which is proposed subdivision 7); § 6.2-1615, which is the prohibition applicable to mortgage lenders in subdivision 6; § 6.2-1616, which lists prohibited acts applicable to brokers that are currently in subsection B and part of subsection C of § 6.1-422; and § 6.2-1617, which contains a provisions applicable to certain real estate brokers in part of existing subsection C of § 6.1-422. Existing § 6.1-424 is relocated to this section as subdivision 8.**

§ 6.2-1615. Other prohibitions applicable to mortgage lenders.

No mortgage lender required to be licensed under this chapter shall fail to require the person closing the mortgage loan to provide to the borrower prior to closing of the mortgage loan, a (i) settlement statement and (ii) disclosure which conforms to that required by the provisions of 15 U.S.C. § 1601 et seq. and Federal Reserve Board Regulation Z (12 C.F.R. Part 226).

**Drafting note: Subdivision A 6 of existing § 6.1-422 is moved to this section.**

§ 6.2-1616. Other prohibitions applicable to mortgage brokers.

A. As used in this section, "person affiliated," when used with reference to another person, means (i) any person who is a subsidiary, stockholder, partner, trustee, director, officer or employee of the other person or (ii) any corporation 10 percent or more of the capital stock of which is owned by the other person or by any person who is a subsidiary, stockholder, partner, trustee, director, officer, or employee of the other person.

B. No mortgage broker required to be licensed under this chapter shall:

1. Except for documented costs of credit reports and appraisals, receive compensation from a borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender;

2. Receive compensation from a mortgage lender of which he is a principal, partner, trustee, director, officer or employee;

3. Receive compensation from a borrower in connection with any mortgage loan transaction in which he is the lender or a principal, partner, trustee, director, or officer of the lender;

4. Receive compensation from a borrower other than that specified in a written agreement signed by the borrower;

5. Receive compensation for negotiating, placing or finding a mortgage loan where such mortgage broker, or any person affiliated with the mortgage broker, has otherwise acted as a real estate broker, agent or salesman in connection with the sale of the real estate which secures the mortgage loan and such mortgage broker or person affiliated with the mortgage broker has received or will receive any other compensation or thing of value from the lender, borrower, seller or any other person, unless the borrower is given the following notice in writing at the time the mortgage broker services are first offered to the borrower:

NOTICE

WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU A FEE OF ..... % OF THE LOAN AMOUNT.

WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE.

IF YOU ARE A MEMBER OF A CREDIT UNION YOU SHOULD COMPARE OUR INTEREST RATES AND TERMS WITH THE MORTGAGE LOANS AVAILABLE THROUGH YOUR CREDIT UNION.

.....

BORROWER'S SIGNATURE

.....

BORROWER'S SIGNATURE

The foregoing notice shall be in at least 10-point type and the prospective borrower shall acknowledge receipt of the written notice; or

6. Fail to use reasonable skill, care, and diligence in exercising the broker's duty, which duty is hereby created, to make reasonable efforts to secure a mortgage loan that is in the best

interests of the applicant, considering the applicant's circumstances and loan characteristics, including but not limited to the product type, rates, charges, and repayment terms of the loan.

C. Notwithstanding the provisions of subdivision B 5, no person shall act as a mortgage broker in connection with any real estate sales transaction in which such person, or any person affiliated with such person, has acted as a real estate broker, agent, or salesman and has received or will receive compensation in connection with such transaction, unless such person was regularly engaged in acting as a mortgage broker in the Commonwealth as of February 25, 1989.

**Drafting note: This new section is part of existing subsection B of § 6.1-422. The definition of "affiliated person of a mortgage broker" is moved to the front of the section recast as "person affiliated" in order to fit in the context of subsection C.**

§ 6.2-1617. Application to certain real estate brokers.

The provisions of this chapter shall not be construed to prohibit a real estate broker, as defined in § 54.1-2100, who is either an owner of an interest in a real estate firm or acts as a real estate broker in a sole proprietorship, from:

1. Having an ownership interest in a mortgage broker or mortgage lender;

2. Receiving returns on investment arising from the real estate broker's ownership interest in a mortgage broker or mortgage lender; or

3. Receiving payment of compensation for services actually performed for a mortgage broker or mortgage lender in which the real estate broker has an ownership interest.

**Drafting note: This new section contains the exception for certain real estate brokers in part of existing subsection C of § 6.1-422.**

~~§ 6.1-422.1. "Flipping" prohibited.~~

~~A. As used in this section, "flipping" a mortgage loan means refinancing a mortgage loan within 12 months following the date the refinanced mortgage loan was originated, unless the refinancing is in the borrower's best interest. Factors to be considered in determining the same would include but not be limited to whether:~~

~~1. The borrower's new monthly payment is lower than the total of all monthly obligations being financed, taking into account the costs and fees;~~

~~2. There is a change in the amortization period of the new loan;~~

~~3. The borrower receives cash in excess of the costs and fees of refinancing;~~

~~4. The borrower's note rate of interest is reduced;~~

~~5. There is a change from an adjustable to a fixed rate loan, taking into account costs and fees; or~~

~~6. The refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction.~~

~~B. No mortgage lender or broker shall knowingly or intentionally engage in the act or practice of "flipping" a mortgage loan. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed any limitation established pursuant to Article 9 (§ 6.1-330.69 et seq.) of Chapter 7.3 of this title.~~

~~C. The Attorney General, the Commission, or any party to a mortgage loan may enforce the provisions of this section or § 6.1-422.~~

~~D. In any suit instituted by a borrower who alleges that the defendant violated this section or § 6.1-422, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that (i) the party charged with the violation has willfully engaged in the act or practice with which he was charged; or (ii) the party instituting the action knew, or should have known, that the action was frivolous and malicious.~~

~~E. The provisions of this section shall be in addition to, and shall not impair, the rights of and remedies available to borrowers in mortgage loans otherwise provided by law.~~

**Drafting note: Subsections A and B of this section are relocated to, and merged into, subdivision 7 of proposed § 6.2-1614, to place it with the other prohibited practices applicable to mortgage lenders and mortgage brokers. Subsections C, D, and E are relocated to proposed § 6.2-1628.**

§ ~~6.1-423~~ 6.2-1618. Escrow accounts.

A. All moneys required by a mortgage lender required to be licensed under this chapter to be paid by borrowers in escrow to defray future taxes or insurance premiums, or for other lawful purposes, shall be kept in accounts segregated from accounts of the lender, and shall not be commingled with other funds of the lender.

B. No licensed mortgage lender shall require any borrower to pay any moneys in escrow to defray future taxes and insurance premiums, or for any other purpose, in connection with a subordinate mortgage loan as referred to in Article 2 of Chapter ~~7.3~~ 4 (§ ~~6.1-330.49~~ 6.2-406 et seq.) ~~of this title~~, except where escrows for such purposes are not being maintained in connection with the mortgage loan superior to such subordinate mortgage loan.

C. Mortgage lenders holding money in escrow for insurance premiums shall notify the insurer in writing within ~~thirty~~ 30 days of a change of the mortgage lender's billing address, or ~~sixty~~ 60 days prior to the renewal date of the insurance policy, whichever is later.

**Drafting note: Technical changes.**

§ ~~6.1-424. Advertising.~~

~~No mortgage lender or broker required to be licensed under this chapter shall use or cause to be published any advertisement which:~~

~~1. Contains any false, misleading or deceptive statement or representation; or~~

~~2. Identifies the lender or broker by any name other than the name set forth on the license issued by the Commission.~~

**Drafting note: Section is moved to subdivision 8 of proposed § 6.2-1614, with the other prohibited conduct of mortgage lenders and brokers.**

§ ~~6.1-425~~ 6.2-1619. Suspension or revocation of license.

A. The Commission may suspend or revoke any ~~lender's or broker's~~ license issued under this chapter to a mortgage lender or mortgage broker upon any of the following grounds:

1. Any ground for denial of a license under this chapter;

2. Any violation of the provisions of this chapter or regulations ~~promulgated~~ adopted by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the mortgage lender's or mortgage broker's business;

3. A course of conduct consisting of the failure to perform written agreements with borrowers;

4. Failure to account for funds received or disbursed to the satisfaction of the person supplying or receiving such funds;

5. Failure to pay when due reasonable fees to a licensed appraiser for appraisal services that are (i) requested from the appraiser in writing by the mortgage broker or mortgage lender or an employee of the mortgage broker or mortgage lender and (ii) performed, in accordance with the terms of the contract with the appraiser and all regulatory requirements related to such appraiser and appraisal, by the appraiser in connection with the origination or closing of a mortgage loan for a customer of the mortgage broker or mortgage lender;

6. Failure to disburse funds in accordance with any agreement connected with, and promptly upon closing of, a mortgage loan, taking into account any applicable right of rescission;

7. Conviction of a felony or misdemeanor involving fraud, misrepresentation or deceit;

8. Entry of a judgment against ~~such lender or broker~~ the licensee involving fraud, misrepresentation or deceit;

9. Entry of a federal or state administrative order against ~~such lender or broker~~ the licensee for violation of any law or any regulation applicable to the conduct of his business;

10. Refusal to permit an investigation or examination by the Commission;

11. Failure to pay any fee or assessment imposed by this chapter; or

12. Failure to comply with any order of the Commission.

B. For the purposes of this section, acts of any officer, director, member, partner or principal shall be deemed acts of the ~~lender or broker~~ licensee.

**Drafting note: Technical changes.**

§ ~~6.1-425.1~~ 6.2-1620. ~~Suspension~~ Censuring, suspending, or barring persons.

A. The Commission, after providing notice and an opportunity for a hearing, may (i) censure~~,~~ a person, (ii) suspend a person for a defined period from any position of employment, management, or control of any licensee, or (iii) bar a person from any position of employment, management, or control of any licensee ~~or registrant~~, if the Commission finds that:

1. The censure, suspension or bar is in the public interest and that the person, after July 1, 2003, has committed or caused a violation of this chapter or any ~~rule,~~ regulation or order of the ~~Commissioner~~ Commission; or

2. The person ~~has been~~, after July 1, 2003, was (i) convicted of, or pled guilty ~~to~~ or ~~pled~~ nolo contendere to, any crime; ~~or~~ (ii) held liable in any civil action by final judgment~~,~~; or (iii) held liable in any administrative ~~judgment~~ proceeding by any public agency, if the criminal~~,~~ conviction or plea, or the holding in the civil action or administrative ~~judgment~~ proceeding, involved any offense reasonably related to the qualifications, functions, or duties of a person

~~engaged in the business in accordance with the provisions of this chapter~~ employed by, or in a position of management or control of, a licensee.

B. Persons suspended or barred under this section are prohibited from participating in any business activity of a ~~registrant~~ licensee and from engaging in any business activity on the premises where a ~~registrant~~ licensee is conducting its business. This subsection shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a ~~registrant~~ licensee.

~~C. This section shall apply to any violation, conviction, plea, or judgment after July 1, 2003.~~

**Drafting note: References to "registrant" are changed to "licensee" because this chapter requires licensure, not registration. Subdivision A 2 is reworded to clarify the effect of criminal, civil, and administrative actions. Subsection C is deleted, with the temporal requirement incorporated into subdivisions A 2 and A 3. Other changes are technical and clarifying.**

§ ~~6.1-425.2~~ 6.2-1621. Filing of written report with Commissioner; events ~~impacting~~ affecting activities of ~~registrant~~ licensee.

~~Within 15 days of becoming aware of the occurrence of any of the events listed below, a registrant~~ A. A licensee shall file a written report with the Commissioner ~~describing such event and its expected impact on the activities of the registrant in the Commonwealth~~ within 15 days of becoming aware of the occurrence of any of the following:

1. The filing for bankruptcy or reorganization by the ~~registrant~~ licensee;

2. The institution of revocation or suspension proceedings against the ~~registrant~~ licensee by any state or governmental authority;

3. The denial of the opportunity of the licensee to engage in business by any state or governmental authority;

4. Any felony indictment of the ~~registrant~~ licensee or any of its employees, officers, directors or principals;

5. Any felony conviction of the ~~registrant~~ licensee or any of its employees, officers, directors, or principals; and

6. Such other events as the Commissioner may determine and identify by ~~rule~~ regulation.

B. The report shall be in writing and describe the event and its expected impact on the activities of the licensee in the Commonwealth.

**Drafting note: References to "registrant" are changed to "licensee" because this chapter requires licensure, not registration. Other changes are technical.**

§ ~~6.1-426~~ 6.2-1622. Cease and desist orders.

A. If the ~~Commissioner~~ Commission determines that any mortgage lender or mortgage broker required to be licensed hereunder has violated any provision of this chapter or any regulation adopted pursuant to thereto, ~~he~~ the Commission may, upon ~~twenty-one~~ 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of

business of such mortgage lender or mortgage broker and shall state the grounds for the contemplated action.

B. Within ~~fourteen~~ 14 days of mailing the notice, the person ~~or persons~~ named therein may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is requested, the ~~Commissioner~~ Commission shall not issue a cease and desist order except based upon findings made at ~~such~~ the hearing. ~~Such~~ The hearing shall be conducted in accordance with the provisions of Title 12.1. The Commission may enforce compliance with any such order issued under this section by imposition and collection of such fines and penalties as may be prescribed by Commission regulations.

**Drafting note: Changes conform to existing practice that the State Corporation Commission, rather than the Commissioner of Financial Institutions, is authorized to issue cease and desist orders.**

§ ~~6.1-427~~ 6.2-1623. Notice of proposed suspension or revocation.

The Commission may not revoke or suspend the license of any ~~lender or broker licensed under this chapter~~ licensee upon any of the grounds set forth in § ~~6.1-425~~ 6.2-1619 until it has given the mortgage lender or mortgage broker ~~twenty-one~~ (i) 21 days' notice in writing of the reasons for the proposed revocation or suspension and ~~has given the lender or broker~~ (ii) an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of such ~~lender or broker~~ licensee and shall state with particularity the grounds for the contemplated action. Within ~~fourteen~~ 14 days of mailing the notice, the ~~person or persons~~ licensee named therein may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with the provisions of Title 12.1.

**Drafting note: Technical changes.**

§ ~~6.1-428~~ 6.2-1624. ~~Fines for violations~~ Civil penalties.

In addition to the authority conferred under §§ ~~6.1-425~~ 6.2-1619 and ~~6.1-426~~ 6.2-1622, the Commission may impose a ~~fine or~~ civil penalty not exceeding $2,500 upon any mortgage lender or mortgage broker required to be licensed under this chapter who it determines, in proceedings commenced in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~, has violated any of the provisions of this chapter~~,~~ or any other law or regulation applicable to the conduct of the mortgage lender's or mortgage broker's business. For the purposes of this section, each separate violation shall be subject to the ~~fine or~~ civil penalty herein prescribed, and each day after the date of notification, excluding Sundays and holidays, as prescribed in § 2.2-3300, that an unlicensed person engages in the business or holds himself out to the general public as a mortgage lender or mortgage broker shall constitute a separate violation.

**Drafting note: The references to "fine or penalty" are changed to "civil penalty" to be consistent with other similar provisions in proposed Title 6.2. Civil penalties are to be distributed as provided in proposed § 6.2-106. Other change are technical.**

§ ~~6.1-429~~ 6.2-1625. Criminal penalties.

Any person not exempt from ~~licensing under~~ the licensure requirements of this chapter who ~~shall act~~ acts as a mortgage lender or mortgage broker in ~~this~~ the Commonwealth without having obtained a license ~~shall be~~ is guilty of a Class 6 felony. For the purposes of this section, each violation shall constitute a separate offense.

**Drafting note: Technical changes.**

§ ~~6.1-430~~ 6.2-1626. Authority of Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a ~~mortgage lender or broker licensed under this chapter~~ licensee is in violation of, or has violated, § 6.2-1614, 6.2-1615, or 6.2-1616, or any provision of ~~Articles~~ Chapter 3 (§ ~~6.1-330.53~~ 6.2-300 et seq.) ~~through 12 (§ 6.1-330.80 et seq.) of Chapter 7.3 of this title or § 6.1-422 or 6.1-422.1~~ or Chapter 4 (§ 6.2-400 et seq.), the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations.

B. ~~In the case of~~ Upon such referral, the Attorney General ~~is hereby authorized to~~:

1. May seek to enjoin violations of such laws. The appropriate circuit court ~~having jurisdiction~~ may enjoin such violations notwithstanding the existence of an adequate remedy at law~~.~~; and

~~Upon such referral of the Commission, the Attorney General may also seek~~ 2. May seek, and the circuit court may order or decree, damages and such other relief allowed by law, including restitution to the extent available to borrowers under applicable law.

C. Persons entitled to any relief ~~as~~ authorized by this section shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

D. In any action brought by the Attorney General by virtue of the authority granted in this ~~provision~~ section, the Attorney General shall be entitled to seek ~~attorney's~~ attorney fees and costs.

~~B~~ E. The Attorney General shall be authorized to bring an action to enjoin violations of the Real Estate Settlement Procedures Act of 1974 (RESPA)~~,~~ (12 U.S.C. § 2601 et seq.), to the extent authorized by §§ 8 and 16 of RESPA~~,~~ (12 U.S.C. §§ 2607 and 2614).

**Drafting note: Existing § 6.1-424 (Advertising) is set out as proposed subdivision 8 of § 6.2-1614, and thus is made subject to the provisions of subsection A. Other changes are technical.**

~~§ 6.1-430.1. Prohibited practices; authority of the Attorney General.~~

~~A. Notwithstanding whether a person is licensed, is required to be licensed, or is exempt from licensure under this chapter, and notwithstanding any other provision of the law to the contrary, no person who is engaged in the business of originating residential mortgage loans in the Commonwealth shall use any deception, fraud, false pretense, false promise, or misrepresentation in connection with a mortgage loan transaction.~~

~~B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of this section, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.~~

~~C. The Attorney General may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth to enjoin any violation of this section. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages or intent be proved to establish a violation. The standard or proof at trial shall be preponderance of the evidence. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this section.~~

~~D. In any action brought under this section, if the court finds that a person has willfully engaged in a violation of this section, the Attorney General may recover, upon petition to the court, a civil penalty of not more than $2,500 per violation.~~

~~E. In any action brought under this section, the Attorney General may recover damages and such other relief allowed by law, including restitution on behalf of borrowers injured by violations of this section as well as costs and reasonable expenses incurred by the Commonwealth in investigation and preparing the case, including attorney fees.~~

~~F. Unless the Attorney General determines that a person subject to the provisions of this section intends to depart from the Commonwealth or to remove his property herefrom, or to conceal himself or his property herein, or on a reasonable determination that irreparable harm may occur if immediate action is not taken, the Attorney General shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated, and allow such person a reasonable opportunity to appear before the Attorney General and show that a violation did not occur or execute an assurance of voluntary compliance or consent judgment.~~

~~G. Nothing in this section shall create a private right of action in favor of any individual aggrieved by a violation of this section.~~

**Drafting note: Section is moved to proposed § 6.2-1629.**

§ ~~6.1-431~~ 6.2-1627. Private ~~action still maintainable~~ actions.

A. Nothing in this ~~article~~ chapter shall be construed to preclude any ~~individual or entity~~ person who suffers loss as a result of a violation of ~~Articles~~ Chapter 3 (§ ~~6.1-330.53~~ 6.2-300 et seq.) ~~through 12 (§ 6.1-330.80 et seq.) of Chapter 7.3 of this title~~ or Chapter 4 (§ 6.2-400 et seq.) from maintaining an action to recover damages or restitution and, as provided by statute, ~~attorney's~~ attorney fees. However, in any matter in which the Attorney General has exercised his authority pursuant to § ~~6.1-430~~ 6.2-1626, an individual action shall not be maintainable if the individual has received damages or restitution pursuant to § ~~6.1-430~~ 6.2-1626.

B. A borrower who suffers a loss as a result of a mortgage broker's breach of duty as set forth in subdivision B 6 of § ~~6.1-422~~ 6.2-1616 may bring an action against such broker to

recover actual damages. In addition to any damages awarded, such borrower also may be awarded attorney fees and court costs.

**Drafting note: The catchline is amended to better describe the substance of the section. The reference in the first sentence to "this article" is apparently a mistake. The sections in existing Articles 3 through 12 of Chapter 7.3 are located in proposed Chapters 3 and 4, though other sections in existing Chapter 1 are also in Chapter 4. "Individual or entity" is replaced with "person." Other changes are technical.**

§ 6.2-1628. Enforcement of prohibitions on certain practices; recovery of attorney fees.

~~C~~ A. The Attorney General, the Commission, or any party to a mortgage loan may enforce the provisions of ~~this section or § 6.1-422~~ §§ 6.2-1614, 6.2-1615, and 6.2-1616.

~~D~~ B. In any suit instituted by a borrower who alleges that the defendant violated ~~this section or § 6.1-422~~ § 6.2-1614, 6.2-1615, or 6.2-1616, the presiding judge may, in the judge's discretion, allow reasonable ~~attorneys'~~ attorney fees to the attorney representing the prevailing party~~, such attorneys'~~. The attorney fees ~~to~~ shall be taxed as a part of the court costs and payable by the losing party~~,~~ upon a finding by the presiding judge that (i) the party charged with the violation has willfully engaged in the act or practice with which he was charged~~;~~ or (ii) the party instituting the action knew, or should have known, that the action was frivolous and malicious.

~~E~~ C. The provisions of this section shall be in addition to, and shall not impair, the rights of and remedies available to borrowers in mortgage loans otherwise provided by law.

**Drafting note: Proposed new section is existing subsections C, D, and E of § 6.1-422.1; these provisions are shown as existing language in order to assist in identifying the changes.**

§ ~~6.1-430.1~~ 6.2-1629. Prohibited practices; authority of the Attorney General.

A. Notwithstanding whether a person is licensed, is required to be licensed, or is exempt from licensure under this chapter, and notwithstanding any other provision of the law to the contrary, no person that is engaged in the business of originating residential mortgage loans in the Commonwealth shall use any deception, fraud, false pretense, false promise, or misrepresentation in connection with a mortgage loan transaction.

B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of this section, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply, mutatis mutandis, to civil investigative demands issued pursuant to this section.

C. The Attorney General may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth to enjoin any violation of this section. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages or intent be proved to establish a violation. The standard or proof at trial shall be preponderance of the evidence. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this section.

D. In any action brought under this section, if the court finds that a person has willfully engaged in a violation of this section, the Attorney General may recover, upon petition to the court, a civil penalty of not more than $2,500 per violation.

E. In any action brought under this section, the Attorney General may recover damages and such other relief allowed by law, including restitution on behalf of borrowers injured by violations of this section as well as costs and reasonable expenses incurred by the Commonwealth in investigation and preparing the case, including attorney fees.

F. Unless the Attorney General determines that a person subject to the provisions of this section intends to depart from the Commonwealth or to remove his property ~~herefrom~~ from the Commonwealth, or to conceal himself or his property ~~herein~~ in the Commonwealth, or on a reasonable determination that irreparable harm may occur if immediate action is not taken, the Attorney General shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated, and allow such person a reasonable opportunity to appear before the Attorney General and show that a violation did not occur or execute an assurance of voluntary compliance or consent judgment.

G. Nothing in this section shall create a private right of action in favor of any individual aggrieved by a violation of this section.

**Drafting note: Changes are technical.**

CHAPTER ~~16.1~~ 17.

MORTGAGE LOAN ORIGINATORS.

**Chapter drafting note: Existing Chapter 16.1 of Title 6.1 was enacted by the 2009 Session.**

§ ~~6.1-431.1~~ 6.2-1700. Definitions.

As used in this chapter:

"Act" means the federal Secure and Fair Enforcement for Mortgage Licensing Act, Title V (§ 1501 et seq.) of the Housing and Economic Recovery Act of 2008, P.L. 110-289.

"Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a residential mortgage loan in the mortgage industry and communication with the consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

~~"Commissioner" means the Commissioner of the Bureau of Financial Institutions.~~

"Depository institution" has the same meaning as in § 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1811 et seq.), and includes any credit union.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

"Individual loan servicer" means any person who, on behalf of the note holder, collects or receives payments, including payments of principal, interest, escrow amounts, and other amounts

due, on obligations due and owing to the note holder pursuant to a residential mortgage loan, or who, when the borrower is in default or in foreseeable likelihood of default, works on behalf of the note holder with the borrower to modify or refinance, either temporarily or permanently, the obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.

"Licensee" means an individual licensed under this chapter.

"Loan processor or underwriter" means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or a person exempt from licensing under this chapter. For the purposes of this definition, clerical or support duties may include (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

"Mortgage loan originator" means an individual who takes an application for or offers or negotiates the terms of a residential mortgage loan, as defined in § 1503(8) of the ~~federal Secure and Fair Enforcement for Mortgage Licensing~~ Act ~~of 2008 (P.L. 110-289)~~, that is secured by real property located in the Commonwealth. "Mortgage loan originator" does not include (i) any individual who only performs administrative or clerical tasks on behalf of a person licensed or exempt pursuant to Chapter 16 (§ ~~6.1-408~~ 6.2-1600 et seq.) or on behalf of any individual licensed pursuant to this chapter; (ii) ~~a person~~ any individual who only performs real estate brokerage activities and is licensed or registered in accordance with applicable law, unless the ~~person~~ individual is compensated by the lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; (iii) ~~a person~~ any individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D); (iv) a registered mortgage loan originator; (v) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; (vi) any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence; (vii) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; or (viii) any individual acting as an individual loan servicer.

"Nationwide Mortgage Licensing System and Registry" or "Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

~~"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals however organized.~~

"Real estate brokerage activities" means any activity governed by Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

"Registered mortgage loan originator" means any individual who (i) ~~meets the definition of mortgage loan originator~~ takes an application for or offers or negotiates the terms of a residential mortgage loan, as defined in § 1503(8) of the Act, that is secured by real property located in the Commonwealth and is an employee of (a) a depository institution, (b) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or (c) an institution regulated by the Farm Credit Administration, and (ii) is registered with, and maintains a unique identifier through, the Registry.

"Unique identifier" means a number or other identifier assigned by protocols established by the Registry.

**Drafting note: The definitions of "Commissioner" and "person" are deleted because the terms are defined on a title-wide basis in § 6.2-100. The definition of "Act" is added. In the definition of "registered mortgage loan originator," the phrase "meets the definition of mortgage loan originator" is replaced with language from the definition of mortgage loan originator because the existing definition is circular; the definition of mortgage loan originator excludes (at clause (iv)) registered mortgage loan originators.**

§ ~~6.1-431.2~~ 6.2-1701. License requirement.

On or after July 1, 2010, no individual shall act as a mortgage loan originator, or hold himself out to the general public as a mortgage loan originator, unless such individual has first obtained a license under this chapter. An individual ~~engaging~~ engaged solely ~~in~~ as a loan processor~~,~~ or underwriter ~~activities~~, who does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator, shall not be required to obtain a mortgage loan originator license. An individual acting as an independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such individual obtains a mortgage loan originator license.

**Drafting note: Technical changes avoid awkward phrase "loan processor, or underwriter activities," which are not defined.**

§ ~~6.1-431.3~~ 6.1-1702. Application for license; form; content; fee.

A. An application for a license under this chapter shall be on a form provided by the Registry.

B. The application shall set forth:

1. The name and residential address of the applicant;

2. The address of the applicant's employer or the address where the applicant will act as a mortgage loan originator, as applicable; and

3. Such other information concerning the financial responsibility, background, experience, and activities of the applicant as the Commissioner may require.

C. The application shall be accompanied by payment of an application fee in an amount not to exceed $150, or a lesser amount as may be prescribed by the Commission. The application fee shall be in addition to any other fees payable by the applicant, including but not limited to fees for pre-licensing education and testing, fingerprinting, criminal background checks, credit reports, or administrative fees charged by the Registry.

D. The application fee shall not be refundable in any event. The fee shall not be abated by surrender, suspension, or revocation of the license.

**Drafting note: No change.**

§ ~~6.1-431.4~~ 6.2-1703. Bond required.

A. The application for a license shall be accompanied by a bond to be filed with the Commission with corporate surety authorized to execute such bond in the Commonwealth, the form of which shall be approved by the Commission.

1. If the applicant is not an employee or exclusive agent of a person licensed or exempt from licensing under Chapter 16 (§ ~~6.1-408~~ 6.2-1600 et seq.), the bond shall be an individual surety bond for the applicant; or

2. If the applicant is an employee or exclusive agent of a person licensed or exempt from licensing under Chapter 16 (§ 6.2-1600 et seq.), ~~such~~ the bond shall be a surety bond filed by such person covering all such employees and exclusive agents holding or applying for a license as a mortgage loan originator.

B. The amount of the bond shall be $25,000, or such greater sum as the Commission may require based on the total dollar amount of residential mortgage loans originated in the preceding calendar year by (i) the applicant, in the case of the bond referred to in subdivision A 1 or (ii) the person licensed or exempt from licensing under Chapter 16 (§ ~~6.1-408~~ 6.2-1600 et seq.), in the case of the bond referred to in subdivision A 2. A bond already filed with the Commission pursuant to § ~~6.1-413~~ 6.2-1604 may be applied toward the minimum bond required by this section, subject to approval by the Commission. In the case of the bond referred to in subdivision A 2, it shall be the responsibility of the person licensed or exempt from licensing under Chapter 16 (§ ~~6.1-408~~ 6.2-1600 et seq.) to provide information, in a form satisfactory to the Commission, sufficient for determining and verifying the total dollar amount of residential mortgage loans originated in the preceding calendar year.

C. Such bond shall be continuously maintained thereafter in full force.

D. Such bond shall be conditioned upon the licensee: (i) performing all written agreements with borrowers or prospective borrowers; (ii) correctly and accurately accounting for all funds received by him in the course of his business activities as a licensee; and (iii) conducting himself in conformity with this chapter and all applicable laws and regulations.

E. Any person who may be damaged by noncompliance of a licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to

recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

**Drafting note: Technical changes.**

§ ~~6.1-431.5~~ 6.2-1704. Mortgage loan originator background checks.

A. In connection with an application for licensing as a mortgage loan originator, the applicant shall furnish to the Registry information concerning the applicant's identity, including fingerprints for submission to the Federal Bureau of Investigation or any federal or state governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check, as prescribed by the Commission.

B. The applicant shall also submit personal history and experience in a form prescribed by the Registry, including submission of authorization for the Registry and the Commission to obtain (i) an independent credit report from a consumer reporting agency described in § 603(p) of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), and (ii) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

C. For the purposes of this section and in order to reduce the points of contact that the Federal Bureau of Investigation may ~~have~~ be required to maintain, the Commission may use the Registry as a channeling agent for requesting information from, and distributing information to, the Department of Justice ~~or any~~, other governmental agency, or ~~for requesting and distributing information to and from~~ any other source.

**Drafting note: The second amendment in proposed subsection C removes duplicative language. Other changes are technical.**

§ ~~6.1-431.6~~ 6.2-1705. Coordination of licensing.

In connection with its administration and enforcement of this chapter, the Commission is authorized to establish agreements or contracts with the Registry or other entities designated by the Registry to collect, distribute, and maintain information and records, and to process transaction fees and other fees, related to licensees and other persons subject to this chapter. When establishing such agreements or contracts the Commission shall not be subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.). Notwithstanding the provisions of § ~~6.1-1.1~~ 6.2-101, the Commission shall report regularly to the Registry any violations of this chapter, enforcement actions, and license status changes. The Commission shall report to the Registry only those violations, actions, and license status changes effected by final order of the Commission or by the Commissioner pursuant to his delegated authority.

**Drafting note: Technical changes.**

§ ~~6.1-431.7~~ 6.2-1706. Qualifications.

Upon the filing and investigation of an application for a license, and compliance by the applicant with all applicable provisions of this chapter, the Commission shall issue and deliver to the applicant the license applied for to engage in business under this chapter if it finds that the financial responsibility, character, and general fitness of the applicant are such as to warrant belief that the licensee will act as a mortgage loan originator efficiently and fairly, in the public interest, and in accordance with law. If the Commission fails to make such findings, no license

shall be issued and the Commissioner shall notify the applicant of the denial and the reasons for such denial. The Commission shall not base a license denial, in whole or in part, on an applicant's credit score, nor shall it use a credit report as the sole basis for license denial.

**Drafting note: No change.**

§ ~~6.1-431.8~~ 6.2-1707. Other conditions for mortgage loan originator licensing.

In addition to the findings required by § ~~6.1-431.7~~ 6.2-1706, the Commission shall not issue a mortgage loan originator license unless it ~~makes the following findings~~ finds that:

1. The applicant has never had a mortgage loan originator license revoked by any governmental authority;

2. The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court (i) during the seven-year period preceding the application for licensing and registration; or (ii) at any time preceding such date of application if such felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

3. The applicant has completed the pre-licensing education requirement described in § ~~6.1-431.9~~ 6.2-1708;

4. The applicant has passed a written test that meets the test requirement described in § ~~6.1-431.10~~ 6.2-1709; and

5. The applicant has become registered through, and obtained a unique identifier from, the Registry.

**Drafting note: Technical changes.**

§ ~~6.1-431.9~~ 6.2-1708. Pre-licensing education of mortgage loan originators.

A. In order to meet the pre-licensing education requirement referred to in subdivision 3 of § ~~6.1-431.8~~ 6.2-1707, an applicant shall complete at least 20 hours of pre-licensing education courses, approved in accordance with subsection B, which shall include at least (i) three hours of federal law and regulations~~,~~; (ii) three hours of ethics, which shall include instruction about fraud, consumer protection, and fair lending issues~~,~~; and (iii) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

B. ~~For purposes of subsection A, pre-licensing~~ Pre-licensing education courses shall be reviewed and approved by the Registry based upon reasonable standards. Review and approval of a course shall include review and approval of the course provider.

C. Nothing in this section shall preclude the provision of any pre-licensing education course~~, as~~ that has been approved by the Registry~~, that is provided~~ by: (i) the employer of the applicant; (ii) an entity that is affiliated with the applicant by any agency contract; or (iii) a subsidiary or affiliate of such employer or entity.

D. Pre-licensing education courses may be offered in a classroom, online, or by any other means approved by the Registry.

**Drafting note: Technical changes are intended to improve the section's readability.**

§ ~~6.1-431.10~~ 6.2-1709. Testing of mortgage loan originator applicants.

A. In order to meet the written test requirement referred to in subdivision 4 of § ~~6.1-431.8~~ 6.2-1707, an individual shall pass, in accordance with reasonable standards established under this

subsection, a qualified written test that has been developed by the Registry and administered by a test provider approved by the Registry.

B. A written test shall not ~~be treated as~~ be a qualified written test for purposes of subsection A unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including: (i) ethics~~,~~; (ii) federal law and regulation pertaining to mortgage loan origination~~,~~; (iii) state law pertaining to mortgage loan origination~~,~~; and (iv) federal and state law and regulation~~, including instruction about~~ pertaining to fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

C. Nothing in this section shall prohibit a test provider approved by the Registry from providing a test at a location of: (i) the employer of the applicant~~,~~; (ii) any subsidiary or affiliate of the employer~~,~~; or (iii) any entity with which the applicant maintains an exclusive arrangement to act as a mortgage loan originator.

D. An individual shall not be considered to have passed a qualified written test unless he has correctly answered at least 75 percent of the test questions. An individual may retake a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before ~~taking~~ retaking the test ~~again~~. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer, exclusive of any period during which such individual is a registered mortgage loan originator, shall retake the test~~, not taking into account any time during which such individual is a registered mortgage loan originator~~.

E. An applicant who has successfully completed ~~the Registry-approved~~ pre-licensing education and testing~~, not including any limited or separate state test in addition to~~ that is mandated by the ~~federal Secure and Fair Enforcement for Mortgage Licensing~~ Act ~~of 2008, (P.L. 110-289),~~ and approved by the Registry~~,~~ for any state shall be deemed to have completed Virginia's pre-licensing education and testing requirements, other than any limited or separate state testing requirements relating to Virginia law and regulation as described in subsection B.

**Drafting note: Substantive amendments to subsection E resolve an internal inconsistency within the existing section. Subsection B requires the written test to cover state law and regulation with respect to fraud, consumer protection, and other specific issues, but existing subsection E provides that successful completion of approved education and testing, excluding limited state tests, satisfies Virginia's pre-licensing testing requirements. In addition, the scope of the existing phrase, "not including any limited or separate state test in addition to that mandated by the [Act] and the Registry," read literally, could mean that a person who passes the "national portion" of an examination anywhere shall be deemed to have completed Virginia's pre-licensing education and testing requirements, whether or not the person passed the portion of another state's test pertaining to state law and regulations. As revised, subsection E clarifies that a person who passes an approved written test in any state is deemed to have satisfied all of Virginia's testing requirements except those pertaining to the specified areas of Virginia law, which the person would be required to successfully complete.**

§ ~~6.1-431.11~~ 6.2-1710. Continuing education requirements ~~for mortgage loan originators~~.

A. A licensed mortgage loan originator shall complete annually at least eight hours of continuing education courses approved in accordance with subsection B, which shall include at least: (i) three hours related to federal law and regulations~~,~~; (ii) two hours related to ethics, which shall include instruction about fraud, consumer protection, and fair lending issues~~,~~; and (iii) two hours related to lending standards for the nontraditional mortgage product marketplace.

B. ~~For purposes of subsection A, continuing~~ Continuing education courses shall be reviewed and approved by the Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

C. Nothing in this section shall preclude the provision of any continuing education course~~, as~~ that has been approved by the Registry~~, that is provided~~ by: (i) the employer of the mortgage loan originator; (ii) an entity that is affiliated with the mortgage loan originator by an agency contract; or (iii) ~~any~~ a subsidiary or affiliate of such employer or entity.

D. Continuing education courses may be offered in a classroom, online, or by any means approved by the Registry.

E. A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

F. A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for his annual continuing education requirement at the rate of two hours of credit for every one hour of teaching.

G. ~~Successful completion of the~~ A licensed mortgage loan originator who has successfully completed Registry-approved continuing education ~~requirements approved by the Registry in~~ courses that satisfy the requirements of subsection A for any state shall be ~~accepted as completion of~~ deemed to have satisfied the continuing education requirements ~~in the Commonwealth~~ of this chapter.

**Drafting note: Revisions to subsection G make its structure parallel to proposed subsection E of § 6.2-1709. Other changes are technical.**

§ ~~6.1-431.12~~ 6.2-1711. Licenses; places of business; changes.

A. Each license shall state fully the name and address of record of the licensee. Each licensee shall be required to display proof of licensing upon request, and to prominently display at any location where he acts as a mortgage loan originator the telephone numbers and Internet addresses for the Registry and the Commission where consumers and other interested parties may confirm the status of his license. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name, in acting as a mortgage loan originator, other than the name set forth on the license issued by the Commission.

B. Every licensee shall within 10 days notify the Commissioner, in writing, of any change of residential or business address and provide such other information with respect to any such change as the Commissioner may reasonably require.

C. Every license shall remain in force until it expires or has been surrendered, revoked, or suspended. The expiration, surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of the licensee. Licenses shall expire at the end of each calendar year unless renewed by prior payment of the annual license renewal fee.

**Drafting note: No change.**

§ ~~6.1-431.13~~ 6.2-1712. Provisional mortgage loan originator license.

A. ~~A~~ An applicant for licensure as a mortgage loan originator ~~applicant~~ who has completed and filed with the Commission and the Registry all information, documents, and requirements for licensure pursuant to this chapter shall be provided a provisional license, registration, and unique identifier as a mortgage loan originator for the period ~~prior to action being taken~~ preceding the date the Commission acts on his application ~~by the Commission~~ if (i) the applicant is employed by or contracted to act as a mortgage loan originator for a person licensed under Chapter 16 (§ ~~6.1-408~~ 6.2-1600 et seq.)~~,~~ and (ii) a senior officer or principal of such person licensed under Chapter 16 attests to the Commission that:

1. If the applicant is not currently ~~or~~, and has not within the six-month period ~~prior to~~ preceding the date of filing his application been, acting as a mortgage loan originator or a state-licensed mortgage loan originator in another state under provisions of § 1507 of the ~~federal Secure and Fair Enforcement for Mortgage Licensing~~ Act ~~of 2008 (P.L. 110-289)~~:

a. The applicant has never had a mortgage loan originator license denied, revoked, or suspended in any governmental jurisdiction;

b. The Commission has not denied the application of or revoked or taken any adverse action with respect to any license held by the applicant during the five-year period ending on the date of filing of the application;

c. The applicant has not been convicted of a felony that would otherwise authorize the Commission to deny a license;

d. The ~~application~~ applicant meets or exceeds all of the applicable requirements of this chapter for licensure; and

e. The licensed person will be responsible for the acts of the applicant during the period that such application is pending; or

2. If the applicant is currently, or has within the six-month period ~~prior to~~ preceding the date of ~~the~~ filing his application been, acting as a registered mortgage loan originator or a state-licensed mortgage loan originator in another state under provisions of § 1507 of the ~~federal Secure and Fair Enforcement for Mortgage Licensing~~ Act ~~of 2008 (P.L. 110-289)~~:

a. The applicant has never had a mortgage loan originator license denied, revoked, or suspended in any governmental jurisdiction; and

b. The applicant has not been convicted of a felony that would otherwise authorize the Commission to deny a license.

B. Any provisional license issued pursuant to this section shall expire on the earlier of the following:

1. The date upon which the Commission issues or denies the ~~license applied~~ application for licensure; or

2. Six months from the date of issuance of the provisional license ~~was issued~~.

C. The Commission may ~~(i)~~ suspend or revoke the license of, or ~~(ii)~~ impose a fine not exceeding $2,500 upon, a person licensed under Chapter 16 (§ ~~6.1-408~~ 6.2-1600 et seq.) if the Commission finds that the licensee, or a senior officer or principal thereof, did not ~~make the certification or undertaking set forth~~ act in good faith in making any attestation described in subsection A ~~in good faith~~.

**Drafting note: In subdivision A 1 d, "application" is replaced with "applicant" to correct an apparent error. Other changes attempt to clarify the verbiage. In subsection C, "certification or undertaking" is deleted because those terms are not used in subsection A.**

§ ~~6.1-431.14~~ 6.2-1713. Investigations; examinations.

The Commission may, by its designated officers and employees, as often as it deems necessary, investigate and examine the business activities, premises, and records of any individual required to be licensed under this chapter insofar as they pertain to any activities for which a license is required by this chapter. In the course of such investigations and examinations, the individual being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all persons, premises, books, records, and information that the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned individuals, and compel the production of papers and objects of all kinds.

**Drafting note: No change.**

§ ~~6.1-431.15~~ 6.2-1714. Annual fees.

A. In order to defray the costs of his examination, supervision, and regulation, every licensee shall pay an annual license renewal fee. The fee shall be $100 ~~or such other~~ unless another amount ~~as may be~~ is prescribed by the Commission. The renewal fee shall be paid by the licensee to the State Treasurer or through the Registry, as determined by the Commission, on or before the end of each license year.

B. ~~In addition to the annual fee prescribed in subsection A, when~~ When it becomes necessary to examine or investigate the books and records of an individual required to be licensed under this chapter at a location outside the Commonwealth, the individual shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of his examination, supervision, and regulation, or shall pay ~~at~~ a reasonable per diem rate approved by the Commission. Any sums due pursuant to this subsection shall be in addition to the annual fee prescribed in subsection A.

C. If an individual is an employee or exclusive agent of a person licensed under Chapter 16 (§ ~~6.1-408~~ 6.2-1600 et seq.), the expenses referred to in subsection B shall be paid by the licensed mortgage lender or mortgage broker.

**Drafting note: Technical changes.**

§ ~~6.1-431.16~~ 6.2-1715. Advertising.

No individual required to be licensed under this chapter shall use or cause to be published any advertisement that:

1. Contains any false, misleading, or deceptive statement or representation; or

2. Identifies a licensee by any name other than the name set forth on the license issued by the Commission.

**Drafting note: No change.**

§ ~~6.1-431.17~~ 6.2-1716. Suspension or revocation of license.

The Commission may suspend or revoke any license issued under this chapter based upon:

1. Any ground sufficient for denial of the issuance of a license under this chapter;

2. Any violation of the provisions of this chapter or regulations ~~promulgated~~ adopted by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's licensed activities;

3. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

4. Entry of a judgment against a licensee involving fraud, misrepresentation, or deceit;

5. Entry of a federal or state administrative order against a licensee for violation of any law or any regulation applicable to the conduct of his licensed activities;

6. Refusal to permit an investigation or examination by the Commission;

7. Failure to pay any fee or assessment imposed by this chapter;

8. Failure to comply with any order of the Commission; or

9. Failure to maintain registration with, or a unique identifier from, the Registry.

**Drafting note: Technical change.**

§ ~~6.1-431.18~~ 6.2-1717. Filing of written report with Commissioner; events ~~impacting~~ affecting a licensee.

Within 15 days of becoming aware of the occurrence of any of the events listed below, a licensee shall file a written report with the Commissioner describing such event:

1. The institution of revocation or suspension proceedings against the licensee by any state or other governmental authority;

2. The denial of the opportunity to engage in business by any state or other governmental authority;

3. Any felony indictment of the licensee;

4. Any felony conviction of the licensee; and

5. Such other events as the Commission may determine and identify by ~~rule~~ regulation.

**Drafting note: Technical change.**

§ ~~6.1-431.19~~ 6.2-1718. Notice of proposed suspension or revocation.

The Commission may not revoke or suspend the license of any licensee under this chapter unless it has given the licensee ~~21 days'~~ 21 days' notice in writing of the reasons for the proposed revocation or suspension and has given the licensee an opportunity to introduce

evidence and be heard. The notice shall be sent by certified mail to the licensee's last address on the Commission's records and shall state with particularity the basis for the contemplated action. Within 14 days of mailing the notice, the ~~individual named therein~~ licensee may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with the provisions of Title 12.1.

**Drafting note: Technical changes.**

§ ~~6.1-431.20~~ 6.2-1719. ~~Fines for violations~~ Civil penalties.

The Commission may impose a ~~fine or~~ civil penalty not exceeding $2,500 upon any individual required to be licensed under this chapter who it determines, in proceedings commenced in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~, has violated any of the provisions of this chapter~~,~~ or any other law or regulation applicable to the licensee's activities. For the purposes of this section, each separate violation shall be subject to the ~~fine or~~ civil penalty herein prescribed, and each day that an unlicensed individual acts as or holds himself out to the general public as, a mortgage loan originator shall constitute a separate violation.

**Drafting note: References to fines or penalties are recast as civil penalties. The "Commission's Rules" are defined in proposed § 6.2-100. Civil penalties are to be distributed as provided in § 6.2-106. Other changes are technical.**

§ ~~6.1-431.21~~ 6.2-1720. ~~Rules and regulations~~ Regulations; agreements between Commission and Registry.

A. The Commission shall ~~promulgate~~ adopt such ~~rules and~~ regulations as it deems appropriate to effect the purposes of this chapter. Before ~~promulgating~~ adopting any such ~~rules and~~ regulations, the Commission shall give reasonable notice of their content and shall afford interested parties an opportunity to present evidence and be heard, in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~.

B. The Commission shall, to the extent practicable, include in any written memorandum of understanding or other written agreement between the Commission and the Registry provisions substantially similar to the following:

1. Any organization serving as the administrator of the Registry or any officer or employee of any such entity shall implement and maintain an information security program that meets or exceeds federal and state standards pursuant to § 18.2-186.6 and that complies with the regulation guidelines promulgated under the Gramm-Leach-Bliley Act~~,~~ (15 U.S.C. § 6801 et seq.)~~,~~ ~~regulation guidelines~~ for safeguarding personal information of mortgage loan originators and applicants~~.~~;

2. The Registry shall not under any circumstances disclose to any third party any information pertaining to any pending or incompletely adjudicated regulatory matters~~.~~;

3. The Registry shall develop, as requested by the Commission, a mortgage loan originator licensing test that may be limited to specific products and services~~.~~;

4. The Registry shall provide to the Commission summary statistical information by March 31 of each year relating to loan originator examinations taken by applicants for a mortgage loan originator license in ~~Virginia~~ the Commonwealth during the preceding calendar year~~.~~;

5. Except as otherwise provided in § 1512 of the ~~federal Secure and Fair Enforcement for Mortgage Licensing~~ Act ~~of 2008 (P.L. 110-289)~~, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law~~.~~; and

6. Information or material that is subject to ~~a~~ privilege or confidentiality under § ~~6.1-1.1~~ 6.2-101 shall not be subject to: (i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the Commonwealth; or (ii) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Registry with respect to such information or material, the individual to whom such information or material pertains waives, in whole or in part, in the discretion of such individual, that privilege.

C. Any provision of the laws of the Commonwealth relating to the disclosure of confidential supervisory information or any information or material described in § ~~6.1-1.1~~ 6.2-101 that is inconsistent with such provision shall be superseded by the requirements of this chapter.

D. This chapter shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Registry for access by the public.

E. The Commission shall:

1. Annually review the proposed budget, fees, and audited financial statements of the Registry~~.~~;

2. Annually, to the extent practicable, report to the House and Senate Committees on Commerce and Labor on the operations of the Registry, including compliance with its established protocols for securing and safeguarding personal information in the Registry~~.~~; and

3. To the extent practicable, prepare, publicly announce, and publish a report, by no later than May 1 of each year, that summarizes statistical test results and demographic information to be prepared by the Registry or its test administrator.

**Drafting note: The catchline is amended to better describe the scope of the section. The term "rule" is deleted when used in conjunction with "regulation" because it has the same meaning and is therefore redundant. Other changes are technical.**

CHAPTER 18.

PAYDAY ~~LOAN ACT~~ LENDERS.

**Chapter drafting note: The revised caption reflects the disinclination to refer to chapters as "acts," and the focus of this subtitle on the regulated providers of financial services.**

§ ~~6.1-444~~ 6.2-1800. Definitions.

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

"Check" means a draft drawn on the account of an individual ~~or individuals~~ at a depository institution.

~~"Commissioner" means the Commissioner of Financial Institutions.~~

"~~Financial~~ Depository institution" means a bank, savings institution, or credit union.

"Licensee" means a person to whom a license has been issued under this chapter.

"Payday loan" means a small, short-maturity loan on the security of (i) a check, (ii) any form of assignment of an interest in the account of an individual ~~or individuals~~ at a depository institution, or (iii) any form of assignment of income payable to an individual ~~or individuals~~, other than loans based on income tax refunds.

~~"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals however organized.~~

"Principal" means any person who, directly or indirectly, owns or controls (i) ~~ten~~ 10 percent or more of the outstanding stock of a stock corporation or (ii) a ~~ten~~ 10 percent or greater interest in a nonstock corporation or a limited liability company.

**Drafting note: "Commissioner" and "person" are defined in proposed § 6.2-100. "Depository institution," which had been used but not defined in this chapter, replaces "financial institution." "Or individuals" is deleted in two instances because § 1-227 provides that any word in the singular includes the plural and vice versa.**

§ ~~6.1-445~~ 6.2-1801. License requirement.

A. No person shall engage in the business of making payday loans to any consumer residing in the Commonwealth, whether or not the person has ~~a~~ an office or conducts business at a location in the Commonwealth, except in accordance with the provisions of this chapter and without having first obtained a license under this chapter from the Commission.

B. No person shall engage in the business of arranging or brokering payday loans for any consumer residing in the Commonwealth, whether or not the person has ~~a~~ an office or conducts business at a location in the Commonwealth.

**Drafting note: Changes clarify what is meant by having a location in the Commonwealth.**

§ ~~6.1-446~~ 6.2-1802. Applicability.

The provisions of this chapter shall not apply to any ~~bank, savings institution or credit union~~ depository institution that does not elect to become licensed under this chapter. Electing to become licensed under this chapter~~, however,~~ shall constitute a waiver of the benefit of any and all laws of ~~this~~ the Commonwealth and other states~~, territories, possessions, and districts of the United States~~ and federal laws preemptive of, or inconsistent with, the provisions of this chapter.

**Drafting note: "Depository institution" is defined in proposed § 6.2-1800. "State" is defined in § 1-245 in a manner that encompasses territories and other districts. Other changes are technical.**

§ ~~6.1-447~~ 6.2-1803. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath and on a form provided by the Commissioner.

B. The application shall set forth:

1. The name and address of the applicant;

2. If the applicant is a firm or partnership, the name and address of each member of the firm or partnership;

3. If the applicant is a corporation or a limited liability company, the name and address of each officer, director, registered agent and each principal;

4. The addresses of the locations of the ~~business~~ offices to be ~~licensed~~ approved; and

5. Such other information concerning the financial responsibility, background, experience and activities of the applicant and its members, officers, directors and principals as the Commissioner may require.

C. The application shall be accompanied by payment of an application fee of $500.

D. The application fee shall not be refundable in any event. The fee shall not be abated by surrender, suspension or revocation of the license.

**Drafting note: In subdivision 4, changes clarify that offices are approved, not licensed.**

§ ~~6.1-448~~6.2-1804. Bond required.

The application for a license shall ~~also~~ be accompanied by a bond filed with the Commissioner with corporate surety authorized to execute such bond in ~~this~~ the Commonwealth, in the sum of $10,000 per ~~location~~ office, not to exceed a total of $50,000. The form of such bond shall be approved by the Commission. ~~Such~~ The bond shall be continuously maintained thereafter in full force. ~~Such~~ The bond shall be conditioned upon the applicant or licensee performing all written agreements with borrowers or prospective borrowers, correctly and accurately accounting for all funds received by him in his licensed business, and conducting his licensed business in conformity with this chapter and all other applicable law. Any person who may be damaged by noncompliance of the licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

**Drafting note: Technical changes.**

§ ~~6.1-449~~ 6.2-1805. Investigation of applications.

The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations ~~promulgated~~ adopted thereunder.

**Drafting note: Technical change.**

§ ~~6.1-450~~ 6.2-1806. Qualifications.

A. Upon the filing and investigation of an application for a license, and compliance by the applicant with the provisions of §§ ~~6.1-447~~ 6.2-1803 and ~~6.1-448~~ 6.2-1804, the Commission shall issue and deliver to the applicant the license applied for to engage in business under this chapter at the ~~locations~~ offices specified in the application if it finds:

1. That the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, senior officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest and in accordance with law; and

2. That the applicant has unencumbered liquid assets per ~~location~~ office available for the operation of the business of at least $25,000.

B. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant of the denial and the reasons for such denial.

**Drafting note: Technical changes.**

§ ~~6.1-451~~ 6.2-1807. Licenses; places of ~~business~~ offices; changes.

A. Each license shall ~~state~~:

1. State the address ~~or addresses~~ of each approved office at which the business is to be conducted ~~and shall state~~;

2. State fully the name of the licensee~~. Each license shall be~~; and

3. Be prominently posted in each ~~place of business~~ office of the licensee.

B. ~~Licenses shall not be transferable or assignable, by operation of law or otherwise.~~ No licensee shall ~~use~~:

1. Use any name other than the name set forth on the license issued by the Commission~~.~~;

or

~~B. No licensee shall open~~ 2. Open an additional office or relocate any ~~place of business~~ office without prior approval of the Commission.

C. Applications for ~~such~~ Commission approval to open an additional office or relocate any office shall be made in writing on a form provided by the Commissioner and shall be accompanied by payment of a $150 nonrefundable application fee. The application shall be approved unless the Commission finds that the applicant does not have the required liquid assets or has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the Commission to the applicant within ~~thirty~~ 30 days of the date the application is received by the Commission. After approval, the applicant shall give written notice to the Commissioner within ~~ten~~ 10 days of the commencement of business at the additional ~~location~~ office or relocated ~~place of business~~ office.

~~C~~ D. Every licensee shall within ~~ten~~ 10 days notify the Commissioner, in writing, of the closing of any ~~business location~~ office and of the name, address, and position of each new senior officer, member, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.

~~D~~ E. Licenses shall:

1. Not be transferable or assignable, by operation of law or otherwise; and ~~Every license shall remain~~

2. Remain in force until ~~it has~~ they have been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of ~~such~~ the licensee.

**Drafting note: The term "location" is replaced with "office" to create consistency throughout the section. Certain requirements are relocated within the section. "Or addresses" is deleted because § 1-227 provides that any word in the singular includes the plural and vice versa. Other changes are technical.**

§ ~~6.1-452~~ 6.2-1808. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire, directly or indirectly, ~~twenty-five~~ 25 percent or more of the voting shares of a corporation or ~~twenty-five~~ 25 percent or more of the ownership of any other person licensed to conduct business under this chapter unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals and members, and of any proposed new directors, senior officers, principals or members of the licensee; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers and principals, and any proposed new directors, members, senior officers and principals have the financial responsibility, character, reputation, experience and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within ~~sixty~~ 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed by this chapter, (ii) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person affiliated through common ownership with the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, survivorship or operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within ~~thirty~~ 30 days of its closing.

**Drafting note: Technical changes.**

§ ~~6.1-453~~ 6.2-1809. Retention of books, accounts, and records.

Every licensee shall maintain in its ~~licensed~~ approved offices such books, accounts and records as the Commission may reasonably require in order to determine whether such licensee is complying with the provisions of this chapter and ~~rules and~~ regulations adopted in furtherance thereof. Such books, accounts and records shall be maintained apart and separate from any other business in which the licensee is involved. Such records relating to payday loans, including copies of checks given to a licensee as security for such loans, shall be retained for at least three years after final payment is made on any loan.

**Drafting note: "Licensed" is replaced with "approved" in the first sentence because, per proposed § 6.2-1807, offices are approved rather than licensed. Other changes are technical.**

§ ~~6.1-453.1~~ 6.2-1810. Payday lending database.

A. The Commission shall certify and contract with one or more third parties to develop, implement, and maintain a real-time, Internet-accessible database that contains such payday loan information as the Commission may require from time to time by administrative rule or policy statement. The database shall be operational by January 1, 2009.

B. The following provisions shall apply to the database:

1. Before making a payday loan, a licensee shall query the database through a Commission-certified database provider and shall retain evidence of the query for the Commission's supervisory review. The database ~~will~~ shall allow a licensee to make a payday loan only if making the loan is permissible under the provisions of this chapter. During any period that the database is unavailable due to technical problems beyond the licensee's control, a licensee may rely on the payday loan applicant's written representations, rather than the database's information, to verify that making the loan applied for is permissible under the provisions of this chapter. Because a licensee may rely on the accuracy of the applicant's representations and the database's information, a licensee is not subject to any administrative penalty or civil liability if that information is later determined to be inaccurate.

2. The database provider ~~will~~ shall maintain the database, ~~will~~ take all actions it deems necessary to protect the confidentiality and security of the information contained in the database, ~~will~~ be responsible for the confidentiality and security of such information, and ~~will~~ own the information contained in the database. The Commission ~~will~~ shall have access to and utilize the database as an enforcement tool to ensure licensees' compliance with the provisions of this chapter.

3. Upon a licensee's query, the database ~~will~~ shall advise the licensee whether the applicant is eligible for a new payday loan and, if the applicant is ineligible, the reason for such ineligibility. If the database advises the licensee that the applicant is ineligible for a payday loan, then the applicant shall direct any inquiry regarding the specific reason for such ineligibility to the database provider rather than to the licensee. The information contained in the payday loan database is confidential and exempt from the Freedom of Information Act (§ 2.2-3700 et seq.).

4. If a licensee and borrower consummate a payday loan, then the licensee shall pay a fee to defray the costs of submitting the database inquiry. The amount of the database inquiry fee shall be calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to actual cost of the operation of the database. If a licensee submits a database inquiry but does not consummate a payday loan with the applicant, then the licensee shall not pay the database inquiry fee. Each licensee shall remit all database inquiry fees directly to the database provider on a weekly basis.

5. If a borrower enters into a payday loan or pays or otherwise satisfies a payday loan in full, or if a borrower enters into an extended payment plan as provided in subdivision 26 of § ~~6.1-459~~ 6.2-1816 or an extended term loan as provided in subdivision 27 of § ~~6.1-459~~ 6.2-1816, then the licensee making the loan shall report such event or other information to the database not later than the close of business on the date of such event.

**Drafting note: Technical changes.**

§ ~~6.1-454~~ 6.2-1811. Annual report.

Each licensee under this chapter shall annually, on or before March 25, file a written report with the Commissioner containing such information as the Commissioner may require concerning his business and operations during the preceding calendar year as to each ~~licensed place of business~~ approved office. Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

**Drafting note: "Approved office" is substituted for "licensed place of business" to conform to proposed § 6.2-1807.**

§ ~~6.1-455~~ 6.2-1812. Other reporting requirements.

~~Within fifteen days following the occurrence of any of the following events, a~~ A. A licensee shall file a written report with the ~~Commission describing such event and its expected impact upon the business of the licensee~~ Commissioner within 15 days following the occurrence of any of the following:

1. The filing of bankruptcy, reorganization or receivership proceedings by or against the licensee;

2. The institution of administrative or regulatory proceedings against the licensee by any governmental authority;

3. Any felony indictments of the licensee or any of its members, partners, directors, officers, or principals;

4. Any felony conviction of the licensee or any of its members, partners, directors, officers, or principals; and

5. Such other event as the Commission may prescribe by regulation.

B. The report shall be in writing and describe the event and its expected impact on the business of the licensee.

**Drafting note: Section A is restructured to follow the format of similar sections in Chapters 16 and 20.**

§ ~~6.1-456~~ 6.2-1813. Investigations; examinations.

The Commission may~~, by its designated officers and employees~~, as often as it deems necessary, investigate and examine the affairs, business, premises and records of any person licensed or required to be licensed under this chapter or any person who may be violating §~~ 6.1-445~~ 6.2-1801. Examinations of licensees shall be conducted at least once in each three-year period. In the course of such investigations and examinations, the owners, members, officers, directors, partners, and employees of such person being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information that the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

**Drafting note: The reference to designated officers and employees is deleted as unnecessary; § 12.1-16 authorizes the delegation of duties to employees and agents.**

§~~ 6.1-457~~ 6.2-1814. Annual fees.

A. ~~In order to~~ To defray the costs of~~ their~~ examination, supervision and regulation, every licensee~~ under this chapter~~ shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the business volume of ~~such~~ licensees, the actual costs of their examinations, and to other factors relating to their supervision and regulation. All such fees shall be assessed on or before September 15 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before October 15 following each assessment.

B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or investigate the books and records of a licensee~~ under this chapter~~ at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission within~~ thirty~~ 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of its examination, supervision and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

**Drafting note: Technical changes.**

§~~ 6.1-458~~ 6.2-1815. ~~Rules and regulations~~ Regulations.

The Commission shall~~ promulgate~~ adopt such~~ rules and~~ regulations as it deems appropriate to effect the purposes of this chapter. Before~~ promulgating~~ adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Commission's Rules~~ of Practice and Procedure of the Commission~~.

**Drafting note: Technical changes. "Commission's Rules" is defined in proposed § 6.2-100.**

§~~ 6.1-459~~ 6.2-1816. Required and prohibited business methods.

Each licensee shall comply with the following requirements:

1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the borrower and a person authorized by the licensee to sign such agreements and dated the same day the loan is made and disbursed. The loan agreement shall set forth, at a

minimum: (i) the principal amount of the loan; (ii) the interest and any fee charged; (iii) the annual percentage rate, which shall be stated using that term, applicable to the transaction calculated in accordance with Federal Reserve Board Regulation Z (12 C.F.R. Part 226); (iv) evidence of receipt from the borrower of a check, dated as of the date that the loan is due, as security for the loan, stating the amount of the check; (v) an agreement by the licensee not to present the check for payment or deposit until the date the loan is due, which date shall produce a loan term of at least two times the borrower's pay cycle and after which date interest shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement by the licensee that the borrower shall have the right to cancel the loan transaction at any time before the close of business on the next business day following the date of the transaction by paying to the licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying the licensee the principal amount advanced and any accrued and unpaid interest, fees, and charges.

2. The licensee shall give a duplicate original of the loan agreement to the borrower at the time of the transaction.

3. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii) waiving any right the borrower has under this chapter.

4. A licensee shall not require or accept more than one check from a borrower as security for any loan.

5. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time in the principal amount of more than $500.

6. A licensee shall not (i) refinance, renew or extend any payday loan; (ii) make a loan to a person if the loan would cause the person to have more than one payday loan from any licensee outstanding at the same time; (iii) make a loan to a borrower on the same day that a borrower paid or otherwise satisfied in full a previous payday loan; (iv) make a payday loan to a person within 90 days following the date that the person has paid or otherwise satisfied in full a payday loan through an extended payment plan as provided in subdivision 26; (v) make a payday loan to a person within 45 days following the date that the person has paid or otherwise satisfied in full a fifth payday loan made within a period of 180 days as provided in subdivision 27 a; or (vi) make a payday loan to a person within the longer of (a) 90 days following the date that the person has paid or otherwise satisfied in full an extended term loan or (b) 150 days following the date that the person enters into an extended term loan, as provided in subdivision 27 b.

7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time.

8. A check accepted by a licensee as security for any loan shall be dated as of the date the loan is due.

9. ~~A~~ Notwithstanding any provision of § 8.01-226.10 to the contrary, a licensee shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored. In addition to any other remedies available at law, a licensee that knowingly violates this prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of the dishonored check.

10. A licensee shall not take an interest in any property other than a check payable to the licensee as security for a loan.

11. A licensee shall not make a loan to a borrower to enable the borrower to pay for any other product or service sold at the licensee's ~~business~~ office location.

12. Loan proceeds shall be disbursed in cash or by the licensee's business check. No fee shall be charged by the licensee or an affiliated check casher for cashing a loan proceeds check.

13. A check given as security for a loan shall not be negotiated to a third party.

14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18 (§ ~~6.1-444~~ 6.2-1800 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia, and any holder of this check takes it subject to all claims and defenses of the maker."

15. Before entering into a payday loan, the licensee shall provide each borrower with a pamphlet, in form consistent with regulations ~~promulgated~~ adopted by the Commission, explaining in plain language the rights and responsibilities of the borrower and providing a toll-free number at the Commission for assistance with complaints.

16. Before disbursing funds pursuant to a payday loan, a licensee shall provide a clear and conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet long-term financial needs and that the borrower should use a payday loan only to meet short-term cash needs.

17. A borrower shall be permitted to make partial payments, in increments of not less than $5, on the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed, dated receipts for each payment made, which shall state the balance due on the loan. Upon repayment of the loan in full, the licensee shall mark the original loan agreement with the word "paid" or "canceled," return it to the borrower, and retain a copy in its records.

18. Each licensee shall conspicuously post in ~~its licensed location~~ each approved office a schedule of fees and interest charges, with examples using a $300 loan payable in 14 days and 30 days.

19. Any advertising materials used to promote payday loans that includes the amount of any payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall also include a statement of the interest, fees and charges, expressed as an annual percentage rate, payable using as an example a $300 loan payable in 14 and 30 days.

20. In any print media advertisement, including any web page, used to promote payday loans, the disclosure statements shall be conspicuous. "Conspicuous" shall have the meaning set forth in subdivision (a) (14) of § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement applies only to one page, fold, or face. In a television

advertisement used to promote payday loans, the visual disclosure legend shall include 20 scan lines in size. In a radio advertisement or advertisement communicated by telephone used to promote payday loans, the disclosure statement shall last at least two seconds and the statement shall be spoken so that its contents may be easily understood.

21. A licensee or affiliate shall not knowingly make a payday loan to a person who is a member of the military services of the United States or the spouse or other dependent of a member of the military services of the United States. Prior to making a payday loan, every licensee or affiliate shall inquire of every prospective borrower if he ~~or she~~ is a member of the military services of the United States or the spouse or other dependent of a member of the military services of the United States. The loan documents shall include verification that the borrower is not a member of the military services of the United States or the spouse or other dependent of a member of the military services of the United States.

22. In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.) regarding harassment or abuse, false or misleading misrepresentations, and unfair practices in collections.

23. A licensee may not file or initiate a legal proceeding of any kind against a borrower until 60 days after the date of default on a payday loan, during which period the licensee and borrower may voluntarily enter into a repayment arrangement.

24. A licensee shall not obtain authorization to electronically debit a borrower's deposit account in connection with any payday loan.

25. A licensee may not engage in any unfair, misleading, deceptive, or fraudulent acts or practices in the conduct of its business.

26. A borrower may pay any outstanding payday loan from any licensee by means of an extended payment plan as follows:

a. A borrower shall not be eligible to enter into more than one extended payment plan in any 12-month period.

b. To enter into an extended payment plan with respect to a payday loan, the borrower shall agree in a written and signed document to repay the amount owed in at least four equal installments over an aggregate term of at least 60 days. Interest shall not accrue on the indebtedness during the term of the extended payment plan. The borrower may prepay an extended payment plan in full at any time without penalty. If the borrower fails to pay the amount owed under the extended payment plan when due, then the licensee may immediately accelerate the unpaid loan balance.

c. If the borrower enters into an extended payment plan, then no licensee may make a payday loan to the borrower until a waiting period of 90 days shall have elapsed from the date that the borrower pays or satisfies in full the balance of the loan under the terms of the extended payment plan.

d. At each ~~licensed location~~ approved office, the licensee shall post a notice in at least 24-point bold type, in a form established or approved by the Commission, informing persons that they may be eligible to enter into an extended payment plan.

e. The licensee shall provide oral notice to any borrower who is eligible to enter into an extended payment plan, at the time a payday loan is made, which notice shall inform the borrower of his ability to pay the payday loan by means of an extended payment plan. The information contained in the notice shall be in a form provided by the Bureau ~~of Financial Institutions~~.

27. In addition to the other conditions set forth in this chapter, the fifth payday loan that is made to any person within a period of 180 days shall be made only in compliance with, at the option of the borrower, either of the following:

a. The fifth payday loan is made upon the same terms and conditions otherwise applicable to payday loans under the terms of this chapter, except that (i) no licensee may make a payday loan to such borrower during a period of 45 days following the date such fifth payday loan is paid or otherwise satisfied in full and (ii) the borrower may elect, at any time on or before its due date, to repay such fifth payday loan by means of an extended payment plan as provided in subdivision 26 b; or

b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a loan that complies with the terms and conditions otherwise applicable to payday loans under the terms of this chapter except that (i) the principal amount of the loan ~~amount~~, and any interest and fees permitted by § ~~6.1-460~~ 6.2-1817, shall be payable in four equal installments over a payment period of 60 days following the date the loan is made and (ii) no licensee may make a payday loan to such borrower during the longer of (a) 90 days following the date the extended term loan is paid or otherwise satisfied in full or (b) 150 days following the date the extended term loan is made.

**Drafting note: In subdivision 9, the reference to § 8.01-226.10 is intended to clarify that the civil immunities provided by that section are inapplicable to the penalty to which licensees are subject under this section. In subdivision 21, "or she" is deleted because § 1-216 provides that a word used in the masculine includes the feminine, and "or other dependent" is added to make the provision consistent with other parts of the subdivision. Other changes are technical.**

§ ~~6.1-460~~ 6.2-1817. Rate of interest, loan fee, and verification fee.

A. A licensee may charge and receive on each loan interest at a simple annual rate not to exceed 36 percent. A licensee may also charge (i) a loan fee as provided in subsection B and (ii) a verification fee as provided in subsection C.

B. A licensee may charge and receive a loan fee in an amount not to exceed 20 percent of the amount of the loan proceeds advanced to the borrower.

C. A licensee may charge and receive a verification fee in an amount not to exceed $5 for a loan made under this chapter. The verification fee shall be used in part to defray the costs of submitting a database inquiry as provided in subdivision B 4 of § ~~6.1-453.1~~ 6.2-1810.

**Drafting note: Technical change.**

§ ~~6.1-461~~ 6.2-1818. Additional charges.

In addition to the loan principal, interest, and fees permitted under § ~~6.1-460~~ 6.2-1817, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received or recovered except (i) any deposit item return fee incurred by the licensee, not to exceed $25, if the check given by the borrower as security is returned because the account on which it was drawn was closed by the borrower or contained insufficient funds, or the borrower stopped payment on the check, and (ii) if judgment is obtained against the borrower, court costs and reasonable ~~attorneys'~~ attorney fees if awarded by the court, incurred as a result of the returned check in an amount not to exceed $250. A licensee shall not be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to § ~~6.1-330.54~~ 6.2-302, 8.01-27.2, or 8.01-382.

**Drafting note: Technical changes.**

§ ~~6.1-462~~ 6.2-1819. Advertising.

No person licensed or required to be licensed under this chapter shall use or cause to be published any advertisement that (i) contains any false, misleading or deceptive statement or representation; or (ii) identifies the person by any name other than the name set forth on the license issued by the Commission.

**Drafting note: No changes.**

§ ~~6.1-463~~ 6.2-1820. Other business.

No licensee shall conduct the business of making payday loans under this chapter at any office, suite, room, or other place of business where any other business is solicited or conducted except a registered check cashing business or such other business as the Commission determines should be permitted, and subject to such conditions as the Commission deems necessary and in the public interest. No such other business shall be allowed except as permitted by Commission regulation or upon the filing of a written application with the Commission, payment of a $300 fee, and provision of such information as the Commission may deem pertinent. The Commission shall not, however, permit the sale of insurance or the enrolling of borrowers under group insurance policies.

**Drafting note: Technical change.**

§ ~~6.1-464~~ 6.2-1821. Suspension or revocation of license.

A. The Commission may suspend or revoke any license issued under this chapter upon any of the following grounds:

1. Any ground for denial of a license under this chapter;

2. Any violation of the provisions of this chapter or regulations ~~promulgated~~ adopted by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's business;

3. A course of conduct consisting of the failure to perform written agreements with borrowers;

4. Conviction of a felony or misdemeanor involving fraud, misrepresentation or deceit;

5. Entry of a judgment against the licensee involving fraud, misrepresentation or deceit;

6. Entry of a federal or state administrative order against such licensee for violation of any law or any regulation applicable to the conduct of his business;

7. Refusal to permit an investigation or examination by the Commission;

8. Failure to pay any fee or assessment imposed by this chapter; or

9. Failure to comply with any order of the Commission.

B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall be deemed acts of the licensee.

**Drafting note: Technical change.**

§ ~~6.1-465~~ 6.2-1822. Cease and desist orders.

If the ~~Commissioner~~ Commission determines that any person has violated any provision of this chapter or any regulation adopted hereunder, ~~he~~ the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice, the person ~~or persons~~ named therein may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is requested, the ~~Commissioner~~ Commission shall not issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the provisions of Title 12.1. The Commission may enforce compliance with any such order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

**Drafting note: "Or persons" is deleted because § 1-227 provides that any word in the singular includes the plural and vice versa. Changes conform to existing practice that the State Corporation Commission, rather than the Commissioner of Financial Institutions, is authorized to issue cease and desist orders. Other changes are technical.**

§ ~~6.1-466~~ 6.2-1823. Notice of proposed suspension or revocation.

The Commission shall not revoke or suspend the license of any ~~person licensed under this chapter~~ licensee upon any of the grounds set forth in § ~~6.1-464~~ 6.2-1821 until it has given the licensee ~~twenty-one~~ 21 days' notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within ~~fourteen~~ 14 days of mailing the notice, the person ~~or persons~~ named therein may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with the provisions of Title 12.1.

**Drafting note: "Or persons" is deleted because under § 1-227 any word in the singular includes the plural and vice versa. Other changes are technical.**

§ ~~6.1-467~~ 6.2-1824. ~~Fines for violations~~ Civil penalties.

In addition to the authority conferred under §§ ~~6.1-464~~ 6.2-1821 and ~~6.1-465~~ 6.2-1822, the Commission may impose a ~~fine or~~ civil penalty not exceeding $1,000 upon any person who it determines, in proceedings commenced in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~, has violated any of the provisions of this chapter, the regulations ~~promulgated~~ adopted by the Commission pursuant thereto, or any other law or regulation applicable to the conduct of the lender's business. For the purposes of this section, each separate violation shall be subject to the ~~fine or~~ civil penalty herein prescribed, and in the case of a violation of § ~~6.1-445~~ 6.2-1801, each loan made or arranged shall constitute a separate violation.

**Drafting note: Technical changes. The references to penalties are deleted to fines or penalties are revised to refer to civil penalties, to be consistent with similar provisions in proposed Title 6.2. The disposition of civil penalties is addressed in proposed § 6.2-106.**

§ ~~6.1-468~~ 6.2-1825. Criminal penalties.

Any person violating § ~~6.1-445 shall, upon conviction, be~~ 6.2-1801 is guilty of a Class 6 felony. For the purposes of this section, each violation shall constitute a separate offense.

**Drafting note: Technical change.**

§ ~~6.1-469~~ 6.2-1826. Validity of noncompliant loan agreement; private right of action.

A. If any provision of a written loan agreement violates this chapter, such provision shall be unenforceable against the borrower.

B. Any person who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provision. Any person who is successful in such action shall recover reasonable ~~attorney's~~ attorney fees, expert witness fees, and court costs incurred by bringing such action.

**Drafting note: Technical changes.**

§ ~~6.1-469.1~~ 6.2-1827. Application of chapter to Internet loans.

The provisions of this chapter, including specifically the licensure requirements of § ~~6.1-445~~ 6.2-1801, shall apply to persons making payday loans over the Internet to Virginia residents, whether or not the person making the loan maintains a physical presence in the Commonwealth.

**Drafting note: Technical change.**

§ ~~6.1-470~~ 6.2-1828. Authority of Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a person is in violation, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. ~~In the case of~~ Upon such referral, the Attorney General is ~~hereby~~ authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

B. Upon such referral ~~of~~ by the Commission, the Attorney General may also seek, and the circuit court may order or decree, damages and such other relief allowed by law, including restitution to the extent available to borrowers under applicable law. Persons entitled to any relief

as authorized by this section shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

C. In any action brought by the Attorney General by virtue of the authority granted in this provision, the Attorney General shall be entitled to seek reasonable ~~attorney's~~ attorney fees and costs.

**Drafting note: Changes are technical.**

§ ~~6.1-471~~ 6.2-1829. Violation of the Virginia Consumer Protection Act.

Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

**Drafting note: No change.**

CHAPTER ~~12~~ 19.

MONEY ORDER ~~SALES~~ SELLERS AND MONEY ~~TRANSMISSION SERVICES~~ TRANSMITTERS.

**Chapter drafting note: Existing Chapter 12 of Title 6.1 is renamed to follow the format of other chapters in this subtitle by naming the regulated provider of the financial service.**

§ ~~6.1-370~~ 6.2-1900. Definitions.

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

"Authorized delegate" means a person designated or appointed by a licensee to sell money orders or provide money transmission services on behalf of the licensee.

~~"Commissioner" means the Commissioner of Financial Institutions.~~

"Licensee" means a person licensed under this chapter to engage in the business of selling money orders or the business of money transmission, or both.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Money order" means a check, traveler's check, draft, or other instrument for the transmission or payment of money or monetary value whether or not negotiable.

"Money order seller" means a person engaged in the business of selling money orders.

"Money transmission" means receiving money or monetary value for transmission by wire, facsimile, electronic means or other means or selling or issuing stored value.

"Money transmitter" means a person engaged in the business of money transmission.

"Outstanding" means:

1. With respect to a money order, a money order that has been issued and sold directly by a licensee, or sold by an authorized delegate of the licensee and reported to the licensee, that has not yet been paid by or on behalf of the licensee; or

2. With respect to a money transmission transaction, a money transmission transaction for which the licensee, directly or through an authorized delegate of the licensee, has received money or monetary value from a customer for transmission, but has not yet (i) completed the money transmission transaction by delivering the money or monetary value to the person designated by the customer, or (ii) refunded the money or monetary value to the customer.

~~"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals however organized.~~

"Principal" means any person who, directly or indirectly, owns or controls a ~~ten~~ 10 percent or greater interest in any form of ~~business organization~~ entity.

"Stored value" means monetary value that is evidenced by an electronic record.

**Drafting note: The definitions of "Commissioner" and "person" are deleted because they are set out on a title-wide basis in proposed § 6.2-100. The definition of "licensee" is revised to recognize that unlicensed money order sellers and money transmitters are subject to requirements of this chapter. Definitions of "money order seller" and "money transmitter" are derived from the definition of "'money transmitter' or 'licensee'" that existed until it was deleted in the 2009 Session. Other changes are technical.**

§ ~~6.1-371~~ 6.2-1901. License required; ~~exceptions~~ exception.

A. No person shall engage in the business of selling money orders or engage in the business of money transmission, whether or not the person has a location in the Commonwealth, unless ~~such~~ the person obtains from the Commission a license issued pursuant to this chapter. ~~However, the provisions of this chapter shall not apply to: (i) the United States, or any department, instrumentality or agency thereof; (ii) the Commonwealth, or any political subdivision thereof; (iii) a bank, trust company, savings institution or credit union operating under the laws of the United States or any state or territory thereof, or other person, firm, corporation or other entity to the extent providing money transmission services to or for one or more banks, trust companies, savings institutions or credit unions operating under the laws of the United States or any state or territory thereof; or (iv) a private security services business, licensed under § 9.1-139, that transports or offers to transport money.~~

~~This chapter shall be construed by the Commission for the purpose of protecting, against financial loss, citizens of the Commonwealth who purchase money orders or who give money or control of their funds or credit into the custody of another person for transmission, regardless of whether the transmitter has any office, facility, agent or other physical presence in the Commonwealth.~~

B. No license under this chapter shall be required of any authorized delegate of a licensee.

**Drafting note: Proposed subsection B is the second sentence of existing subsection A of § 6.1-377, which is relocated to this section in order to place the exception from the licensing requirement with the provision requiring licensure generally. The current last sentence of the first paragraph and the second paragraph are relocated to proposed § 6.2-1902, as they do not pertain specifically to licensure of money transmitters.**

§ 6.2-1902. Scope and construction of chapter.

A. The provisions of this chapter shall not apply to: ~~(i) the~~

1. The United States, or any department, instrumentality or agency thereof; ~~(ii) the~~

2. The Commonwealth, or any political subdivision thereof; ~~(iii) a~~

3. Any bank, trust company, savings institution, or credit union operating under the laws of the United States or any state or territory thereof, or other person to the extent ~~providing~~ the person provides money transmission services as an agent of one or more banks, trust companies, savings institutions, or credit unions operating under the laws of the United States or any state or territory thereof; or ~~(iv) a~~

4. Any private security services business, licensed under § 9.1-139, that transports or offers to transport money.

B. This chapter shall be construed by the Commission for the purpose of protecting, against financial loss, ~~citizens~~ residents of the Commonwealth who (i) purchase money orders or ~~who~~ (ii) give money or control of their funds or credit into the custody of another person for transmission, regardless of whether the money order seller or money transmitter has any office, facility, authorized delegate, or other physical presence in the Commonwealth.

**Drafting note: These provisions are currently the last sentence of the first paragraph and the second paragraph of existing § 6.1-371; see the note to proposed § 6.2-1901. "Citizens" is changed to "residents" in order to be consistent with other similar provisions in the title. "Money order seller" is inserted in proposed subsection B to reflect the revision to the definition of "money transmitter" in proposed § 6.2-1900. Other changes are technical.**

§ ~~6.1-372~~ 6.2-1903. ~~Same; application; balance sheet required; filing~~ Application for license; financial statements; application fee~~; surety bond~~.

A. Applications for a license shall be made on forms furnished by the Commission and shall set forth the name and address of the applicant, which shall be ~~a corporation, limited liability company, or other legal or commercial~~ an entity, a description of the manner in which and the locations at which it proposes to do business, and such additional relevant information as the Commission requires.

B. The application shall be accompanied by such audited financial statements as the Commission may require~~,~~ and an application fee of $1,000~~, and, except as provided in subsection B, a~~. If an application for a license under this chapter is denied, the application fee shall not be refunded. The fee shall not be abated by the expiration, surrender, or revocation of the license.

**Drafting note: The bonding requirement is relocated to proposed § 6.2-1904. In subsection A, surplus language is deleted because the definition of "entity" in proposed § 6.2-100 encompasses the enumerated entities. The provision in existing § 6.1-373 regarding refunds of license application fees is relocated to subsection B of this section.**

§ 6.2-1904. Bond required.

A. The application for a license shall be accompanied by a surety bond satisfactory to the Commission in the principal amount as determined by the Commission ~~but~~. The amount of the bond shall be not less than $25,000 nor more than $ 1 million~~, and~~. The bond shall be conditioned as the Commission may require for the benefit of purchasers, payees, and holders of money orders sold by the licensee and its authorized delegates in ~~this~~ the Commonwealth, and for the benefit of purchasers of money transmission services. If any material information provided to the Commission in an application changes during the investigation period, the

applicant shall immediately notify the Commission. ~~The application fee shall not be refundable in any event. The fee shall not be abated by the expiration, surrender, or revocation of the license.~~

B. As an alternative security device and in lieu of the surety bond required by subsection A, a license applicant may deposit with a financial institution designated by such applicant and approved by the Commission for that purpose, cash, stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of ~~this~~ the Commonwealth, or of a ~~city, county, town~~ locality or other political subdivision of ~~this~~ the Commonwealth, in an aggregate amount, based upon the principal amount or market value, whichever is lower, of not less than the amounts required by the Commission pursuant to subsection A. Such cash or securities shall be deposited and held to secure obligations established in subsection A, but the licensee shall be entitled to (i) receive all interest and dividends thereon and (ii) substitute, with the Commission's prior approval, other securities for those deposited. The Commission may also direct the licensee, for good cause shown, to substitute other securities for those deposited.

C. The security device required by this section shall remain in place for five years after a licensee ~~under this chapter~~ ceases money order sales or money transmission activities within ~~this~~ the Commonwealth. ~~However, the~~ The Commission may permit the security device to be reduced or eliminated prior to that time to the extent the amount of such licensee's money orders and money transmission transactions outstanding in ~~this~~ the Commonwealth are reduced. The Commission may also permit any ~~such~~ licensee to substitute a letter of credit, or such other form of security device as may be acceptable to the Commission, for the security device in place at the time the ~~applicant~~ licensee ceases money order sales or money transmission activities in ~~this~~ the Commonwealth.

**Drafting note: Section is part of subsection A and all of subsections B and C of existing § 6.1-372. Per § 1-221, "locality" is substituted for "county, city or town." "Applicant" in subsection C is changed to "licensee" because the provision applies to persons ceasing business after having been licensed. The provision addressing refunds of application fees is moved to subsection B of proposed § 6.2-1903. Other changes are technical.**

§ ~~6.1-373~~ 6.2-1905. Annual fees; expenses; annual reports; renewal.

A. Each licensee shall pay to the Commission annually on or before September 1 a license renewal fee of $750. All fees paid pursuant to this chapter shall be paid into the state treasury and credited to the "Financial Institutions Special Fund - State Corporation Commission."

B. In order to defray the costs of their examination and supervision, every licensee under this chapter shall pay an annual assessment calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the dollar volume of money orders sold and Virginia money transmission business conducted by licensees, either directly or through their authorized delegates, the costs of their examinations, and to other factors relating to their supervision and regulation. All such fees shall be assessed on or before August 1 for every

calendar year. All such fees shall be paid by licensees to the State Treasurer on or before September 1 following each assessment.

C. In addition to the annual assessment prescribed in subsection B, when it becomes necessary to examine or investigate the books and records of a licensee at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of its examination and supervision, or shall pay a reasonable per diem rate approved by the Commission.

D. Each licensee under this chapter shall annually, on or before April 15, file a written report with the Commissioner along with such information as the Commissioner may require concerning the licensee's business, including audited financial statements. If a licensee is unable to furnish copies of its audited financial statements by April 15, the licensee may request an extension, which may be granted by the Commissioner for good cause shown.

E. Every license shall remain in force until it expires or has been surrendered or revoked. The expiration, surrender, or revocation of a license shall not affect any preexisting legal right or obligation of the licensee.

F. If a license has expired or has been surrendered or revoked, the former licensee shall immediately (i) cease selling money orders and engaging in the money transmission business, and (ii) instruct its authorized delegates to cease selling money orders and accepting funds for transmission on behalf of the licensee. The Commission may grant relief from this subsection for good cause shown.

G. A license issued under this chapter shall expire on September 30 of each year unless it is renewed by a licensee. A licensee may renew its license by complying with the following: (i) paying its license renewal fee in accordance with subsection A; (ii) paying its annual assessment in accordance with subsection B; (iii) filing its annual report and audited financial statements in accordance with subsection D; and (iv) maintaining the minimum net worth specified in subsection ~~A~~ B of § ~~6.1-374~~ 6.2-1906, as evidenced by its audited financial statements. Upon receiving a licensee's renewal fee, annual assessment, and the documents and other information required by this section, the Commissioner shall renew such person's license. If a license has expired, the former licensee may seek reinstatement within three months after the license expiration date. Upon receiving a former licensee's renewal fee, annual assessment, and the documents and other information required by this section, together with payment of a reinstatement fee of $1,000, the Commissioner shall reinstate such person's license.

**Drafting note: Technical changes.**

§ ~~6.1-374~~ 6.2-1906. ~~License required; conditions~~ Conditions prerequisite to issuance of license; ~~revocation for inability to meet obligations; reinstatement after revocation~~ net worth requirement.

A. The Commission shall not issue a license to an applicant unless it ~~is of the opinion~~ determines that ~~the~~:

1. The applicant will be able to and will perform its obligations to purchasers of money transmission services and purchasers, payees, and holders of money orders sold by it and its authorized delegates in ~~this~~ the Commonwealth~~, and that the~~; and

2. The financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, senior officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with ~~the~~ applicable law and regulations.

B. Each licensee ~~under this chapter~~ shall at all times have a net worth of not less than $200,000, or a higher amount not to exceed $1 million as determined by the Commission, calculated in accordance with generally accepted accounting principles. Any person who was licensed under this chapter on July 1, 2009, shall have three years from that date to comply with the minimum net worth requirement of this section, during which period the licensee shall at all times have a net worth of not less than $100,000, or a higher amount not to exceed $1 million as determined by the Commission, calculated in accordance with generally accepted accounting principles.

**Drafting note: In proposed subdivision A 2, "applicable" is inserted to be consistent with other provisions of this chapter, including subdivisions B 2 b and B 2 e of proposed § 6.2-1907. Existing subsections B and C of § 6.1-374 (pertaining to investigations and license revocation) are made a separate proposed § 6.2-1907. Other changes are technical.**

§ 6.2-1907. Investigations; license revocation.

~~B~~ A. The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations adopted thereunder.

~~C~~ B. The Commission may revoke a license issued under this chapter:

1. If it reasonably determines that (i) a licensee is engaging in one or more unsafe or unsound practices, (ii) a licensee may be unable to perform its obligations, or (iii) a licensee has willfully failed without reasonable cause to pay or provide for the payment of any of its obligations; or

2. Upon any of the following grounds:

a. Any ground for denial of a license under this chapter;

b. Any violation of the provisions of this chapter or regulations ~~promulgated~~ adopted by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's business;

c. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

d. Entry of a judgment against such licensee involving fraud, misrepresentation, or deceit;

e. Entry of a federal or state administrative order against such licensee for violation of any law or any regulation applicable to the conduct of his business;

f. Refusal to permit an investigation or examination by the Commission;

g. Failure to pay any fee or assessment imposed by this chapter; or

h. Failure to comply with any order of the Commission.

**Drafting note: The section is currently subsections B and C of existing § 6.1-374, and are made a separate section. The changes are technical.**

§ ~~6.1-374.1~~ 6.2-1908. Notice of proposed revocation.

The Commission may not revoke a license issued under this chapter upon any of the grounds set forth in § ~~6.1-374~~ 6.2-1907 until it has given the licensee 21 days' notice in writing of the reasons for the proposed revocation and has given the licensee an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of such licensee and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not revoke the license except based upon findings made at such hearing.

**Drafting note: Technical changes.**

§ ~~6.1-374.2~~ 6.2-1909. Cease and desist orders.

A. If the Commission determines that (i) any person has violated any provision of this chapter or any regulation adopted hereunder or (ii) a licensee is engaging in one or more unsafe or unsound practices, the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. The Commission may enforce compliance with any such order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

B. When, in the opinion of the Commission, immediate action is required to protect the public interest, a cease and desist order may be issued immediately without prior hearing. In such cases, the Commission shall make a hearing available to the person on an expedited basis.

C. If required to conserve the assets of a licensee or protect the public interest, the Commission may order a licensee and its authorized delegates to cease and desist from selling additional money orders or receiving additional funds for transmission.

D. The Commission shall have jurisdiction to enter and enforce a cease and desist order against any person, regardless of whether such person is present in the Commonwealth, who directly or indirectly (i) sells money orders to citizens of the Commonwealth or (ii) obtains money or control over such citizens' funds for transmission.

**Drafting note: The changes are technical.**

§ ~~6.1-375~~ 6.2-1910. ~~Selling without license; examination~~ Examination of books by Commission; ~~penalty~~ reporting violations.

A. ~~Any person required by this chapter to have a license who sells money orders or engages in the business of money transmission without first being licensed shall be guilty of a Class 1 misdemeanor.~~

~~B.~~ The Commission shall have authority to examine the books and records of all ~~persons engaged in the sale of money orders or engaged in the business of money transmission~~ money order sellers and money transmitters, either directly or through authorized delegates ~~and shall report violations of § 6.1-371 to the attorney for the Commonwealth of the city or county in which such violation occurs~~. Except as provided herein, the Commission shall make an examination of the books and records of each licensee at least once in every three-year period, and shall adjust the surety bond or alternative security device as it may deem necessary in accordance with ~~§ 6.1-372~~ 6.2-1904. The Commission may also examine the books and records of any authorized delegate of a licensee as often as it is deemed to be in the public interest. Examinations under this section may be conducted in conjunction with examinations to be performed by representatives of agencies of the federal government or another state. The Commission, in lieu of an examination, may accept the examination report of the federal government or another state.

B. ~~For the foregoing purposes, the~~ Any person designated by the Commission to make ~~such~~ examinations pursuant to this section shall have authority to (i) administer oaths, (ii) examine under oath in the course of such examinations, the principals, officers, directors, partners, and employees of any person required to be licensed by this chapter or such person's authorized delegates, and (iii) compel the production of documents.

C. The Commission shall report violations of the licensing requirements of § 6.2-1901 to the attorney for the Commonwealth of the city or county in which such violation occurs.

**Drafting note: The section is structured into subsections to make it more accessible. Subsection A (criminal penalty) is relocated to the proposed § 6.2-1921. The requirement to report violations is moved to subsection C, in which the duty to report violations is limited to the licensing requirements of § 6.2-1901 because it is the only criminal violation in the chapter. Other changes are technical.**

~~§ 6.1-376.~~

**Drafting note: Repealed by Acts 1994, c. 889.**

§ ~~6.1-377~~ 6.2-1911. ~~License not required of~~ Conduct of business through authorized delegates of licensee.

A. A licensee may conduct its business through or by means of such authorized delegates as the licensee may designate or appoint under a written agreement with such authorized delegates. ~~No license under this chapter shall be required of any authorized delegate of a licensee.~~ The agreement between a licensee and an authorized delegate shall (i) require the authorized delegate to comply with the provisions of this chapter and all other applicable state and federal laws and regulations; (ii) require the authorized delegate to remit all sums owing to the licensee in accordance with the terms of the written agreement; (iii) require the authorized delegate to permit the Commission to investigate or examine its business pursuant to § ~~6.1-375~~ 6.2-1910; and (iv) prohibit the authorized delegate from using a subdelegate, or from otherwise designating or appointing another person to sell money orders or engage in money transmission business on behalf of the licensee.

B. A licensee shall conduct a due diligence review of all new authorized delegates. A licensee shall be responsible for implementing and maintaining a reasonable risk-based supervision program to monitor its authorized delegates.

**Drafting note: The second sentence (excepting authorized delegates from the licensing requirement) is relocated to proposed § 6.2-1901.**

§ ~~6.1-378~~ 6.2-1912. Liability of licensee for payment of money order; ~~negotiable instruments law applicable;~~ money order to bear name of licensee.

A. A licensee shall be liable for the payment of all funds collected for transmission by the licensee or its authorized delegates and all money orders which it sells, in whatever form and whether directly or through an authorized delegate, as the maker or drawer thereof according to the negotiable instrument laws of ~~this~~ the Commonwealth. A licensee who sells a money order, whether directly or through an authorized delegate, upon which he is not designated as maker or drawer shall nevertheless have the same liabilities with respect thereto as if he had signed ~~same~~ the money order as the maker or drawer thereof.

B. Every money order sold by a licensee, whether directly or through an authorized delegate, shall bear the name of the licensee clearly imprinted thereon as it appears on its license.

**Drafting note: The catchline is revised to better describe the purpose of the section. Changes are technical.**

§ ~~6.1-378.1~~ 6.2-1913. ~~Rules and regulations~~ Regulations.

The Commission may ~~promulgate~~ adopt such ~~rules and~~ regulations as it deems appropriate to effect the purposes of this chapter. Before ~~promulgating~~ adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~.

**Drafting note: The changes reflect the current style favoring "adopt" rather than "promulgate." The Commission's Rules are defined in proposed § 6.2-100.**

§ ~~6.1-378.2~~ 6.2-1914. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire directly or indirectly 25 percent or more of the voting shares of a corporation or 25 percent or more of the ownership of any other entity licensed to conduct business under this chapter unless such person first:

1. Files an application with the Commission in such form as the Commission may prescribe from time to time;

2. Delivers such information as the Commission may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals, and members, and of any proposed new directors, senior officers, principals, or members of the licensee; and

3. Pays such application fee as the Commission may prescribe.

B. If any material information provided to the Commission in an application changes during the investigation period, the applicant shall immediately notify the Commission.

C. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers, and principals, and any proposed new directors, members, senior officers, and principals have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with the ~~law~~ applicable laws and regulations. The Commission shall grant or deny the application within 90 days from the date a completed application, accompanied by the required fee, is filed unless the period is extended by the Commission. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

D. The provisions of this section shall not apply to the acquisition of an interest in a licensee directly or indirectly by merger, consolidation, or otherwise, (i) by or with a person licensed under this chapter, (ii) by or with a person affiliated through common ownership with the licensee, or (iii) by bequest, descent, survivorship, or by operation of law. The person acquiring an interest in a licensee in a transaction which is exempt from filing an application by this subsection shall send written notice to the Commission of such acquisition within 30 days after its closing.

E. If any person acquires an ownership interest in a licensee without obtaining prior approval from the Commission as required by this section, the Commission may for good cause shown order such person to divest himself or itself of such ownership interest.

F. The Commission may not enter an order requiring divestiture pursuant to subsection E until it has given the person 21 days' notice in writing of the reasons for the proposed divestiture and has given the person an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to such person and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person named therein may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not require divestiture except based upon findings made at such hearing.

**Drafting note: The addition of the phrase "applicable laws and regulations" in subsection C makes the provision consistent with terminology in other places in this chapter. The other changes are technical.**

§ ~~6.1-378.3~~ 6.2-1915. Sale or issuance of bearer money orders; prohibition.

A. No authorized delegate of a licensee shall sell a money order with a face amount of $750 or more that does not designate a specific payee.

B. This section applies only to paper money orders ~~and~~.

C. This section does not apply to (i) travelers checks, (ii) electronic instruments, (iii) stored value products or other similar instruments for the transmission or payment of money, or (iv) money orders sold or issued by insured financial institutions.

~~C. This provision shall not apply to money orders sold or issued by insured financial institutions.~~

D. Licensees shall inform their authorized delegates of the obligations imposed by this section.

**Drafting note: Existing subsection C is added to the other items listed in proposed subsection C. Other changes are technical.**

~~§ 6.1-378.4. Civil penalties.~~

~~In addition to the authority conferred under § 6.1-374 and 6.1-374.2, the Commission may impose a penalty not exceeding $2,500 upon any person licensed or required to be licensed under this chapter who the Commission determines has violated any of the provisions of this chapter or any other law or regulation appo;icable to the conduct of the person's business. For the purposes of this section, each separate violation shall be subject to the fine or penalty herein prescribed, and in the case of a violation of § 6.1-371, each money order sale or money transmission transaction shall constitute a separate violation.~~

**Drafting note: Section is relocated to proposed § 6.2-1920.**

§ ~~6.1-378.5~~ 6.2-1916. Retention of books, accounts, and records.

A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the Commission may reasonably require in order to determine whether such licensee is complying with the provisions of this chapter and other laws applicable to the conduct of its licensed business. Such books, accounts, and records shall be maintained apart and separate from any other business in which the licensee is involved.

B. Each licensee shall retain the following records for at least three years:

1. A record of each money transmission transaction and money order sold;

2. A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

3. Bank statements and bank reconciliation records;

4. Records of outstanding money orders and money transmission transactions;

5. Records of each money order and money transmission transaction paid or completed within the three-year period; and

6. A list of the names, addresses, and telephone numbers of all of the licensee's authorized delegates.

C. Each licensee shall maintain policies and procedures sufficient for it to comply with this chapter and all other laws and regulations applicable to the conduct of its licensed business. A licensee shall furnish copies of its policies and procedures, as amended, to all of its authorized delegates.

**Drafting note: No change.**

§ ~~6.1-378.6~~ 6.2-1917. Other reporting requirements.

A. A licensee or other person shall file a report with the Commission within 15 days after the licensee or other person becomes aware of any material changes in information previously provided in an application filed under § ~~6.1-372~~ 6.2-1903 or ~~6.1-378.2~~ 6.2-1914. This requirement shall be applicable only to material changes that occur within one year after the date the licensee begins business or the acquisition is consummated.

B. A licensee shall file with the Commission no later than 45 days after the end of each fiscal quarter its quarterly financial statements along with a current list of all authorized delegates and locations in the Commonwealth where the licensee or an authorized delegate of the licensee sells money orders or receives money for transmission. The licensee shall state the name, street address, and telephone number of each location and authorized delegate.

C. A licensee shall file a report with the Commission within one business day after the licensee becomes aware of the occurrence of any of the following events:

1. The filing of a petition by or against the licensee for bankruptcy or reorganization;

2. The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

3. The commencement of administrative or regulatory proceedings against the licensee by any governmental authority;

4. The cancellation or other impairment of the licensee's bond or other security;

5. Any felony indictment of the licensee or any of its members, partners, directors, officers, principals, or authorized delegates;

6. Any felony conviction of the licensee or any of its members, partners, directors, officers, principals, or authorized delegates; or

7. Such other events as the Commission may prescribe by regulation.

D. A licensee shall within 10 days notify the Commissioner, in writing, of the name, address and position of each new member, senior officer, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.

**Drafting note: Technical changes.**

§ ~~6.1-378.7~~ 6.2-1918. Maintenance of permissible investments.

A. A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate dollar amount of all of its (i) outstanding money orders from all states, and (ii) outstanding money transmission transactions from all states.

B. The Commission, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The Commission may prescribe by regulation other types of investments that the Commission determines to have a safety substantially equivalent to other permissible investments.

C. Permissible investments shall be deemed to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding money orders and money transmission services in the event of bankruptcy or receivership of the licensee.

**Drafting note: The amendment to subsection C clarifies that a licensee is not required to take any action in order to establish that it holds the permissible investments in trust in the event of a licensee's bankruptcy or receivership. The change is consistent with the provision of the Uniform Money Service Act upon which the 2009 legislation that added**

**this section was based. The amendment is not intended to be substantive change, and is similar to provisions in laws of Georgia, Illinois, and North Carolina that have clarified the wording of the provision of the Uniform Money Service Act by stating that "permissible investments shall be deemed by operation of law to be held in trust" in such instances.**

§ ~~6.1-378.8~~ 6.2-1919. Types of permissible investments.

A. Except to the extent otherwise limited by the Commission pursuant to § ~~6.1-378.7~~ 6.2-1918, the following investments are permissible under § ~~6.1-378.7~~ 6.2-1918:

1. Cash, a certificate of deposit, or senior debt obligation of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act~~,~~ (12 U.S.C. § 1813).

2. A banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank.

3. An investment bearing a rating of one of the three highest grades, as defined by a nationally recognized organization that rates securities.

4. An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof.

5. Receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection if the licensee does not hold at one time receivables under this paragraph from any one person aggregating more than 10 percent of the licensee's total permissible investments. An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate but in no event more than seven business days.

6. A share or a certificate issued by an open-end management investment company that is registered with the U.S. Securities and Exchange Commission under the Investment Companies Act of 1940~~,~~ (15 U.S.C. § 80a-1 et seq.), and whose portfolio is restricted by the management company's investment policy to investments specified in subdivisions 1 through 4 ~~of this subsection~~.

B. The following investments are permissible under § ~~6.1-378.7~~ 6.2-1918, but only to the extent specified:

1. An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this subdivision does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this subdivision in any one person aggregating more than 10 percent of the licensee's total permissible investments~~.~~;

2. A share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the U.S. Securities and Exchange Commission under the

Investment Companies Act of 1940~~,~~ (15 U.S.C. § 80a-1 et seq.), and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this ~~paragraph~~ subdivision does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than 10 percent of the licensee's total permissible investments~~.~~;

3. A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this ~~paragraph~~ subdivision does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding under demand-borrowing agreements under this ~~paragraph~~ subdivision with any one person aggregating more than 10 percent of the licensee's total permissible investments~~.~~; and

4. Any other investment the Commission designates, to the extent specified by the Commission.

C. The aggregate of investments under subsection B may not exceed 50 percent of the total permissible investments of a licensee calculated in accordance with § ~~6.1-378.7~~ 6.2-1918.

**Drafting note: Technical changes.**

§ ~~6.1-378.4~~ 6.2-1920. Civil penalties.

In addition to the authority conferred under § ~~6.1-374~~ 6.2-1907 and ~~6.1-374.2~~ 6.2-1909, the Commission may impose a civil penalty not exceeding $2,500 upon any person licensed or required to be licensed under this chapter who the Commission determines has violated any of the provisions of this chapter or any other law or regulation applicable to the conduct of the person's business. For the purposes of this section, each separate violation shall be subject to the ~~fine or~~ civil penalty herein prescribed~~, and in~~. In the case of a violation of § ~~6.1-371~~ 6.2-1901, each money order sale or money transmission transaction shall constitute a separate violation.

**Drafting note: Existing section is relocated in order to place penalty provisions at the end of the chapter. The references to "fine or penalty" are replaced with "civil penalty" in order to be consistent with the section's catchline and similar provisions in other chapters of proposed Title 6.2. The disposition of civil penalties is addressed in proposed § 6.2-106. Other changes are technical.**

§ 6.2-1921. Criminal penalty.

Any person required by this chapter to have a license who sells money orders or engages in the business of money transmission without first being licensed as required by § 6.2-1901 is guilty of a Class 1 misdemeanor.

**Drafting note: This provision is the first sentence of existing § 6.1-375.**

~~§ 6.1-379.~~

**Drafting note: Repealed by Acts 1990, c. 259.**

~~§ 6.1-380.~~

**Drafting note: Repealed by Acts 1987, c. 283.**

CHAPTER ~~10.2~~ 20.

~~CREDIT COUNSELING ACT~~ AGENCIES PROVIDING DEBT MANAGEMENT PLANS.

**Chapter drafting note: The revised caption reflects that the chapter regulates the provision of debt management plans rather than any counseling that is provided to consumers. The caption also reflects the disinclination to refer to chapters as "acts," and the drafting convention in this subtitle that names chapters based on the regulated provider of financial services.**

§ ~~6.1-363.2~~ 6.2-2000. Definitions.

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

~~"Bureau" means the Bureau of Financial Institutions.~~

~~"Commissioner" means the Commissioner of Financial Institutions.~~

"Agency" means any person that provides or offers to provide debt management plans for consumers.

"Consumer" means an individual residing in the Commonwealth who owes money to one or more creditors, for personal, family, or household purposes, including an individual who owes money jointly with one or more other individuals.

~~"Credit Counseling Agency" or "Agency" means any person that provides or offers to provide to consumers credit counseling services, including debt management plans.~~

"Credit counselor" means an employee or agent of an ~~Agency~~ agency who designs a debt management plan, provides consumer budget and basic financial planning services, or engages in debt settlement or debt pooling and distribution services on a consumer's behalf.

"Creditor" or "credit-granting organization" does not include (i) doctors, lawyers, or other professionals who receive payment for their services in installments or (ii) persons whose only participation in a credit transaction is to honor a credit card.

"Debt collector" means a person defined as a debt collector under 15 U.S.C. § 1692a of the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.).

"Debt management plan" or "DMP" means a program whereby ~~an Agency~~ a person agrees to engage in ~~debt settlement or~~ debt pooling and distribution services on behalf of a consumer ~~(~~, or multiple consumers if a joint account~~) with the consumer's creditors, and under which the consumer gives money or control of his funds to such Agency for distribution to the consumer's creditors~~.

"Debt pooling and distribution service" means an arrangement whereby a consumer gives money or control of his funds to a person for distribution to the consumer's creditors.

"Debt settlement" means any action or negotiation initiated or taken by or on behalf of any consumer with any creditor of the consumer for the purpose of obtaining debt forgiveness of a portion of the credit extended by the creditor to the consumer or reduction of payments, charges, or fees payable by the consumer.

"Duplicate original" means an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature, or in the case of an electronic transaction, an electronic version with electronic signatures.

"Electronic signature" means a signature as defined in § 59.1-480.

"Licensee" means a person licensed under this chapter.

"Maintenance fee" means a fee paid by a consumer to an ~~Agency~~ agency for ~~continuing provision~~ the administration of a DMP ~~services~~.

~~"Person" means any individual, firm, corporation, limited liability company, partnership, association, trust, or legal or commercial entity, or group of individuals however organized.~~

"Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a person.

"Set-up fee" means a fee paid by a consumer to an ~~Agency~~ agency for the establishment of ~~the~~ a DMP.

**Drafting note: "Credit counseling agency" is deleted because the term is not used in the chapter. "Agency" is used with a lower case initial letter to conform to standard usage. "Bureau," "Commissioner," and "person" are defined in proposed § 6.2-100. The qualification that consumers reside the Commonwealth in the definition removes the need to state it in other sections of the chapter (see, e.g., § 6.1-363.3). "Credit counseling services" is not currently a defined term, though it was used in the current definition of "credit counseling agency." Rather than creating a new definition for credit counseling services, an amendment provides that agencies provide the service of establishing or administering debt management plans. Similarly, the definition of "maintenance fee" refers to the provision of DMP services, which is not defined; the proposed revision brings parallel structure to the definitions of maintenance fee and set-up fee. In the definition of "debt management plan," (i) "person" replaces "agency" in order to avoid the circularity of defining an agency as a person who provides a DMP, and (ii) "debt settlement or" is deleted because licensure is not required if a person provides debt settlement without providing debt pooling and distribution services. A new definition of "debt pooling and distribution service" is proposed; it is based on a provision in the current definition of "debt management plan." The definition of "creditor" or "credit-granting organization" is relocated from subsection C of existing § 6.1-363.7.**

§ ~~6.1-363.3~~ 6.2-2001. License requirement; exceptions.

A. No person shall engage in the business of providing or offering to provide a DMP to any consumer ~~residing in the Commonwealth~~, whether or not the person has ~~a location~~ an office, facility, agent, or other physical presence in the Commonwealth, unless such person obtains from the Commission a license issued pursuant to this chapter. ~~However, the~~ The provisions of this chapter shall not apply to a person licensed to practice law in the Commonwealth.

B. This chapter shall be construed by the Commission to promote sound personal financial advice and management, and protect against financial loss ~~residents of the~~

~~Commonwealth~~ consumers who place money or control of their funds or credit into the custody of an ~~Agency~~ agency for transmission to such ~~residents'~~ consumers' creditors~~, regardless of whether the Agency has any office, facility, agent, or other physical presence in the Commonwealth~~.

C. ~~An Agency operating under a license previously issued by the Commission under former Chapter 10.1 (§ 6.1-363.1) of this title may continue to operate in the Commonwealth pursuant to such license; provided, however, that such license shall automatically terminate on the earliest of the following: (i) the date the Commission issues a license to the Agency under this chapter; (ii) the date the Commission denies an application for a license under this chapter, unless such Agency reapplies within 30 days thereafter, provided that only one such reapplication shall be permitted; or (iii) June 30, 2005. An Agency operating under a license previously issued by the Commission under former Chapter 10.1 of this title shall reapply to the Commission for a license under this chapter no later than October 1, 2004~~.

~~D.~~ A person licensed under this chapter is not required to ~~also~~ be licensed as a money transmitter under Chapter ~~12~~ 19 (§ ~~6.1-370~~ 6.2-1900 et seq.) ~~of this title~~, ~~provided such~~ if the person's money transmission activities are limited to providing debt pooling and distribution services in accordance with this chapter.

~~E. Any person who violates this section is guilty of a Class 1 misdemeanor. Each violation of this section shall constitute a separate offense.~~

**Drafting note: The provisions in subsection C that grandfathered in credit counselors operating under prior law until June 30, 2005, are deleted. The provision in subsection A regarding residence in the Commonwealth ("regardless of whether . . . ") has been relocated to the definition of consumer. The last phrase of existing subsection B is integrated into the similar phrase in subsection A and deleted from proposed subsection B. "Consumers" replaces "residents of the Commonwealth," based on the proposed definition of "consumer" in proposed § 6.2-2000. Subsection E is moved to proposed § 6.2-2022 in order to follow the organizational structure of similar chapters.**

§ ~~6.1-363.4~~ 6.2-2002. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath, and on a form provided by the Commissioner.

B. The application shall include:

1. The name and address of the applicant; and (i) if the applicant is a partnership, firm, or association, the name and address of each partner or member; (ii) if the applicant is a corporation or limited liability company, the name and address of each director, member, registered agent, and principal; or (iii) if the applicant is a business trust, the name and address of each trustee and beneficiary;

2. The name and address of each manager and officer;

3. The addresses of the locations of the business to be licensed;

4. Financial statements for the applicant as of the most recent fiscal year;

5. A current copy of the ~~Agency's~~ agency's standard DMP agreement;

6. Such other information concerning the financial responsibility, background, experience, and activities of the applicant and the persons referred to in this section as the Commissioner may require;

7. Any other pertinent information as the Commissioner may require; and

8. Payment of an application fee of $500.

C. The application fee shall not be refundable in any event. The fee shall not be abated by surrender, suspension, or revocation of the license.

**Drafting note: Technical change.**

§ ~~6.1-363.5~~ 6.2-2003. Bond required.

The application for a license shall ~~also~~ be accompanied by a bond filed with the Commissioner with corporate surety authorized to execute ~~such~~ the bond in the Commonwealth, in the principal amount as determined by the Commission ~~but~~. The amount of the bond shall be not less than $25,000 nor more than $350,000. The form of ~~such~~ the bond shall be approved by the Commission. ~~Such~~ The bond shall be continuously maintained thereafter in full force, and the Commission may require the principal amount to be adjusted as it deems necessary. ~~Such~~ The bond shall be conditioned upon the licensee performing all written agreements with consumers, correctly and accurately accounting for all funds received by the licensee in the licensed business, and conducting the licensed business in conformity with this chapter and all applicable law. Any person who may be damaged by noncompliance of the licensee with any condition of ~~such~~ the bond may proceed on ~~such~~ the bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

**Drafting note: Technical changes.**

§ ~~6.1-363.6~~ 6.2-2004. Investigation of applications.

The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations ~~promulgated~~ adopted thereunder.

**Drafting note: Technical change.**

§ ~~6.1-363.7~~6.2-2005. Qualifications.

A. Upon the filing and investigation of an application for a license, and compliance by the applicant with the provisions of §§ ~~6.1-363.4~~ 6.2-2002 and ~~6.1-363.5~~ 6.2-2003, the Commission shall issue and deliver to the applicant the license to engage in business under this chapter at the locations specified in the application if it finds that:

1. ~~That the~~ The financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, senior officers, directors, trustees, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law;

2. ~~That the~~ The applicant has made acceptable provision for the avoidance of conflicts of interest;

3. The applicant maintains a separate trust account with an FDIC-insured depository institution for the handling of customers' funds;

4. The applicant's credit counselors are certified through a bona fide third-party certification provider unaffiliated with the applicant that authenticates the competence of counselors providing consumer assistance;

5. No more than one-third of the board of directors or managing members are employees, officers, members, principals, trustees, directors, agents, or other representatives of organizations that grant credit to consumers;

6. The applicant is accredited by the International Standards Organization or the Council on Accreditation or any other organization approved by the Commission;

7. The applicant has fidelity bond coverage in such principal amount as may be determined by the Commission;

8. The applicant (i) is not the subject of any current material administrative or regulatory proceedings by any governmental authority~~,~~ and (ii) has not received a material adverse determination in any past administrative or regulatory proceedings by any governmental authority; and

9. The applicant has filed with the Commission a form, that shall be provided to each consumer prior to his execution of a DMP, that contains the following disclosures to the consumer: (i) all fees charged by the applicant or contributions solicited by the applicant from the consumer; (ii) whether the applicant is a for-profit entity or nonprofit entity; and (iii) whether the applicant received financial support from creditors during the preceding calendar year.

B. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant of the denial and the reasons for such denial.

C. A license shall not be issued to a collection agency, or to any creditor or association of creditors, or to any credit-granting organization or association of such organizations. ~~For purposes of this chapter the term "creditor" or "credit-granting organization" does not include doctors, lawyers, or other professionals who receive payment for their services in installments, nor does the term include persons whose only participation in a credit transaction is to honor a credit card.~~

**Drafting note: The provision in subsection C regarding the definition of "creditor" and "credit-granting organization" is relocated to § 6.2-2000.**

§ ~~6.1-363.8~~ 6.2-2006. Licenses; places of business; changes.

A. Each license shall state the address or addresses at which the business is to be conducted and shall state fully the legal name of the licensee as well as any fictitious name by which the licensee is operating in the Commonwealth. Each license shall be posted prominently in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name in the Commonwealth other than the legal name or fictitious name set forth on the license issued by the Commission.

B. No licensee shall open an additional office or relocate any place of business without prior approval of the Commission. Applications for such approval shall be made in writing on a

form provided by the Commissioner and shall be accompanied by payment of a $150 nonrefundable application fee. The application shall be approved unless the Commission finds that the applicant has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the Commission to the applicant within 30 days of the date the application is received by the Commission, but this period may be extended for good cause. After approval, the applicant shall give written notice to the Commissioner within 20 days of the commencement of business at the additional location or relocated place of business.

C. Every licensee shall within 20 days notify the Commissioner, in writing, of the closing of any business location and of the name, address, and position of each new senior officer, member, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.

D. Every license shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not affect any preexisting legal right or obligation of such licensee.

**Drafting note: No changes.**

§ ~~6.1-363.9~~ 6.2-2007. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or more of the voting shares of a corporation, or 25 percent or more of the ownership of any other person, licensed to conduct business under this chapter unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, trustees, beneficiaries, principals, and members, and of any proposed new directors, senior officers, principals, or members of the licensee; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers, members, trustees, beneficiaries, and principals, and any proposed new persons having any such status have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee, directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed by this chapter, (ii) the acquisition of an interest in a licensee, directly or

indirectly, including an acquisition by merger or consolidation, by or with a person affiliated through common ownership with the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, survivorship, or operation of law. The person acquiring an interest in a licensee in a transaction that is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within 30 days of its closing.

**Drafting note: Technical changes.**

§ ~~6.1-363.10~~ 6.2-2008. Retention of books, accounts, and records; responding to Bureau.

A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the Commission may reasonably require in order to determine whether ~~such~~ the licensee is complying with the provisions of this chapter and ~~rules and~~ regulations adopted ~~in furtherance thereof~~ thereunder. Such books, accounts, and records shall be maintained apart and separate from any other business in which the licensee is involved. Such records relating to DMPs shall be retained for at least three years after the DMPs are terminated. To safeguard the privacy of consumers, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for ~~service~~ the shredding, incineration, or other disposal of the records from a business record destruction vendor.

B. When the Bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the Bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the Bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the Bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the Bureau and when considering a request for an extension of time to respond, the Bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information and such other factors as the Bureau determines to be relevant under the circumstances.

**Drafting note: Technical changes.**

§ ~~6.1-363.11~~ 6.2-2009. Annual report.

Each licensee under this chapter shall annually, on or before March 25, file a written report with the Commissioner containing such information as the Commissioner may require concerning his business and operations during the preceding calendar year as to each licensed place of business. Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

**Drafting note: No change.**

§ ~~6.1-363.12~~ 6.2-2010. Other reporting requirements.

A. Within 15 days following the occurrence of any of the following events, a licensee shall file a written report with the Commission describing such event and its expected impact upon the business of the licensee:

1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;

2. The institution of administrative or regulatory proceedings against the licensee by any governmental authority;

3. Any felony indictments of the licensee or any of its members, partners, directors, officers, trustees, beneficiaries, or principals, if known;

4. Any felony conviction of the licensee or any of its members, partners, directors, officers, trustees, beneficiaries, or principals, if known;

5. The institution of an action against the licensee under the Virginia Consumer Protection Act (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or

6. Such other event as the Commission may prescribe by regulation.

B. Within 30 days of judgment against the licensee in a civil action relating to the DMP of a consumer ~~who is a resident of the Commonwealth~~, a licensee shall file a written report with the Commission describing such event and its expected impact upon the business of the licensee. The licensee shall advise the Commission within 30 days of any settlement or the result of any judgment entered.

C. Within 10 days of receipt of any qualified audit, a licensee shall notify the Commission and describe what steps are being taken to address concerns raised in the audit.

D. Failure to file a report or other information or documents required under this section shall subject the licensee to a fine of $25 for each day the report is overdue.

**Drafting note: The provision in subsection B regarding residence in the Commonwealth has been relocated to the definition of consumer.**

§ ~~6.1-363.13~~6.2-2011. Investigations; examinations.

The Commission may, by its designated officers and employees, as often as it deems necessary, investigate and examine the affairs, business, premises, and records of any person licensed or required to be licensed under this chapter insofar as they pertain to any business for which a license is required by this chapter. Examinations of licensees shall be conducted at least once in each three-year period. In the course of such investigations and examinations, the owners, members, officers, directors, partners, trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information that the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

**Drafting note: No changes.**

§ ~~6.1-363.14~~ 6.2-2012. Annual fees.

A. ~~In order to~~ To defray the costs of ~~their~~ the examination, supervision, and regulation of licensees, every licensee under this chapter shall pay an annual fee calculated in accordance with

a schedule set by the Commission. The schedule shall bear a reasonable relationship to the total number of DMPs maintained by licensees in ~~Virginia~~ the Commonwealth, the actual costs of their examinations, and to other factors relating to their supervision and regulation. All such fees shall be assessed on or before June 1 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before July 1 following each assessment.

B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or investigate the books and records of a licensee under this chapter at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

**Drafting note: Technical changes.**

§ ~~6.1-363.15~~ 6.2-2013. ~~Rules and regulations~~ Regulations.

The Commission shall ~~promulgate~~ adopt such ~~rules and~~ regulations as it deems appropriate to effect the purposes of this chapter. Before ~~promulgating~~ adopting any such regulation, the Commission shall give reasonable notice of its content and shall afford interested parties an opportunity to be heard, in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~.

**Drafting note: The Commission's Rules are defined in proposed § 6.2-100. The other changes are technical.**

§ ~~6.1-363.16~~ 6.2-2014. Required and prohibited business methods.

Each licensee shall comply with the following requirements:

1. Each DMP shall be evidenced by an agreement, which shall be maintained in either a hard copy, including a faxed copy, or electronic version and which shall be signed by the consumer and a person authorized by the licensee to sign such agreements and dated the same day the DMP is executed by the consumer. The agreement may be signed by the parties either originally or by electronic signature. The agreement shall set forth, at a minimum: (i) the name and address of both the consumer and the licensee; (ii) a full description of all services to be performed for the consumer by the licensee; (iii) a clear explanation, highlighted in bold type, of the costs to the consumer; (iv) a statement that the DMP agreement can be terminated for any reason by the consumer and that the consumer has no obligation to continue the arrangement unless satisfied with the services provided; (v) a statement that in the event of termination of the agreement, the consumer shall be entitled to a refund of all funds that have not been disbursed to creditors and either (a) all fees paid if terminated within five days of the date the DMP agreement is executed by the consumer or (b) all fees paid less the set-up fee if terminated more than five but less than 31 days after execution by the consumer; (vi) an explanation of the method of dispute resolution under the agreement; (vii) an explanation of the obligations of the consumer and the licensee that are subject to the agreement; (viii) notification of privacy policies in compliance with state and federal laws and regulations; and (ix) a statement that ~~the provision~~

~~of~~ participating in a DMP ~~or debt pooling and distribution services~~ may have a derogatory effect upon the consumer's credit report~~.~~;

2. A licensee shall give to the consumer a duplicate original of the agreement executed by the consumer and licensee upon full execution~~.~~;

3. At the time of execution of the DMP, a licensee shall have a good faith belief that the creditors listed in the DMP will participate in the DMP. A licensee shall advise the consumer of any changes by ~~the~~ a creditor in accepting payments under the DMP promptly upon learning of such changes~~.~~;

4. A licensee shall provide a consumer enrolled in a DMP with periodic statements, no less often than quarterly, accounting for the funds received from the consumer for payments to the consumer's creditors and disbursements made to each such creditor on the consumer's behalf since the last report~~.~~;

5. A licensee shall not purchase any debt or obligation of a consumer~~.~~;

6. A licensee shall not lend money or provide credit to any consumer~~.~~;

7. A licensee shall not obtain a mortgage or any other security interest in the property of a consumer~~.~~;

8. A licensee shall not operate as a debt collector~~.~~;

9. A licensee shall not structure an agreement for the consumer that, at the conclusion of the DMP, would knowingly result in negative amortization of any of the consumer's obligations to creditors~~.~~;

10. A licensee shall not give legal advice to a consumer or perform legal services on behalf of a consumer~~.~~;

11. A licensee shall have an established practice of disbursing to creditors funds received from a consumer under a DMP within eight business days of receipt~~. Consumers~~ and shall ~~be provided~~ provide consumers its disbursement practices in writing ~~with the disbursement practices of the licensee and the~~, including any circumstances that would establish an exception to the eight-day practice~~.~~;

12. A licensee shall maintain appropriate safeguards against conflicts of interest in the conduct of its DMP activities~~.~~;

13. A licensee shall not employ any person who is employed at the same time by a creditor or collection agency~~.~~;

~~13~~ 14. A licensee shall keep (i) its operating funds separate from the funds entrusted to the licensee by consumers for disbursement to creditors~~. Consumers'~~ and (ii) consumers' funds ~~shall be kept~~ in a trust account, held in the name of the licensee by an insured depository institution~~.~~;

~~14~~ 15. A licensee shall upon request give a consumer signed, dated receipts for funds received from a consumer under a DMP, or provide a means whereby the consumer may view the status of his account electronically~~.~~; and

~~15~~ 16. A licensee shall not obtain any agreement from a consumer (i) giving the licensee or any third person power of attorney or authority to confess judgment for the borrower; (ii)

authorizing the licensee or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii) waiving any right the borrower has under this chapter.

**Drafting note: The change in clause (ix) of subdivision 1 conforms the provision to the definition of "debt management plan" in proposed § 6.2-2000, which defines a DMP as a program whereby a person agrees to engage in debt pooling and distribution services. Subdivision 12 is split into separate subdivisions because it creates a distinct requirement on licensees. Other changes are technical and stylistic.**

§ ~~6.1-363.17~~ 6.2-2015. Fees and contributions.

For establishing and maintaining a DMP, a licensee may charge or receive fees or contributions in an amount not to exceed the following: (i) $75 for a ~~Set-Up Fee~~ set-up fee; and (ii) a monthly ~~Maintenance Fee~~ maintenance fee of 15 percent of the total amount disbursed, but in no event more than $60 per month.

**Drafting note: Technical changes conform the capitalization to the definitions in § 6.2-2000.**

§ ~~6.1-363.18~~ 6.2-2016. Additional charges.

In addition to the fees and contributions permitted under § ~~6.1-363.17~~ 6.2-2015, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, collected, received, or recovered with respect to a DMP except, with the consumer's advance permission after disclosure of such amounts, reimbursement for (i) the actual cost of obtaining for such consumer one credit report and related credit report information from a credit reporting agency; and (ii) the actual bank charges for automatic account debiting for debt repayment.

**Drafting note: Technical change.**

§ ~~6.1-363.19~~ 6.2-2017. Advertising.

No person licensed or required to be licensed under this chapter shall use or cause to be published any advertisement that (i) contains any false, misleading, or deceptive statement or representation; or (ii) identifies the person by any name other than the name set forth on the license issued by the Commission.

**Drafting note: No changes.**

§ ~~6.1-363.20~~ 6.2-2018. Suspension or revocation of license.

A. The Commission may suspend or revoke any license issued under this chapter upon any of the following grounds:

1. Any ground for denial of a license under this chapter;

2. Any violation of the provisions of this chapter or regulations ~~promulgated~~ adopted by the Commission ~~pursuant thereto~~ thereunder, or a violation of any other law or regulation applicable to the conduct of the licensee's business;

3. A course of conduct consisting of the failure to perform written agreements with borrowers;

4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;

6. Entry of a federal or state administrative order against such licensee for violation of any law or any regulation applicable to the conduct of his business;

7. Refusal to permit an investigation or examination by the Commission;

8. Failure to pay any fee or assessment imposed by this chapter;

9. Failure to comply with any order of the Commission; or

10. Insolvency of the licensee.

B. For the purposes of this section, acts of any officer, director, member, trustee, beneficiary, partner, or principal shall be deemed acts of the licensee.

**Drafting note: Technical changes.**

§ ~~6.1-363.21~~ 6.2-2019. Cease and desist orders.

A. If the Commission determines that any person has violated any provision of this chapter or any regulation adopted hereunder, the Commission may, upon 21 ~~days~~ days' notice in writing, order such person to cease and desist from such practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to the principal place of business of such person or other address authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except based upon findings made at such hearing. Such hearing shall be conducted in accordance with the Commission's Rules ~~of Practice and Procedure~~. The Commission may enforce compliance with any order issued under this section by imposition and collection of such fines and penalties as may be prescribed by law.

B. When, in the opinion of the Commission, immediate action is required to protect the public interest, a cease and desist order may be issued without prior hearing. In such cases, the Commission shall make a hearing available to the person on an expedited basis.

C. The Commission shall have jurisdiction to enter and enforce a cease and desist order against any person, regardless of whether such person is present in the Commonwealth, who obtains money or funds from a ~~resident of the Commonwealth~~ consumer for transmission to ~~such resident's~~ the consumer's creditors.

**Drafting note: Technical changes.**

§ ~~6.1-363.22~~ 6.2-2020. Notice of proposed suspension or revocation.

The Commission shall not revoke or suspend the license of any person licensed under this chapter upon any of the grounds set forth in § ~~6.1-363.20~~ 6.2-2018 until it has given the licensee 21 ~~days~~ days' notice in writing of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend or

revoke the license except based upon findings made at such hearing. The hearing shall be conducted in accordance with the Commission's Rules ~~of Practice and Procedure~~.

**Drafting note: Technical change.**

§ ~~6.1-363.23~~ 6.2-2021. ~~Fines for violations~~ Civil penalties.

A. In addition to the authority conferred under §§ ~~6.1-363.20~~ 6.2-2018 and ~~6.1-363.21~~ 6.2-2019, the Commission may impose a ~~fine or~~ civil penalty not exceeding $1,000 upon any person who it determines, in proceedings commenced in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~, has violated any of the provisions of this chapter. For the purposes of this section, each separate violation shall be subject to the ~~fine or~~ civil penalty herein prescribed~~, and in~~. In the case of a violation of § ~~6.1-363.3~~ 6.2-2001, each DMP entered into shall constitute a separate violation.

B. The Commission shall have jurisdiction to impose ~~fines~~ civil penalties upon any person, regardless of whether such person is present in the Commonwealth, who obtains money or funds from a ~~resident of the Commonwealth~~ consumer for transmission to ~~such resident's~~ the consumer's creditors.

**Drafting note: "Civil penalties" is substituted for "fine" and "penalty" to be consistent with other chapters in proposed Title 6.2. Civil penalties shall be distributed as provided in proposed § 6.2-106. Other changes are technical.**

§ 6.2-2022. Criminal penalty.

Any person violating subsection A of § 6.2-2001 is guilty of a Class 1 misdemeanor. For purposes of this section, each violation shall constitute a separate offense.

**Drafting note: This provision is relocated from existing subsection E of § 6.1-363.3, in order to conform to the organizational structure of similar chapters.**

§ ~~6.1-363.24~~ 6.2-2023. Private right of action.

Any person who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provision. Any person who is successful in such action shall recover reasonable ~~attorney's~~ attorney fees, expert witness fees, and court costs incurred by bringing such action.

**Drafting note: Technical change.**

§ ~~6.1-363.25~~ 6.2-2024. Authority of Attorney General; referral by Commission to Attorney General.

A. If the Commission determines that a person is in violation, or has violated, any provision of this chapter, the Commission may refer the information to the Attorney General and may request that the Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law.

B. Upon such referral by the Commission, the Attorney General may also seek, and the circuit court may order or decree, damages and such other relief allowed by law, including restitution to the extent available to borrowers under applicable law. Persons entitled to any relief

as authorized by this section shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

C. In any action brought by the Attorney General by virtue of the authority granted in this provision, the Attorney General shall be entitled to seek reasonable ~~attorney's~~ attorney fees and costs.

**Drafting note: Technical change.**

§ ~~6.1-363.26~~ 6.2-2025. Violation of the Virginia Consumer Protection Act.

Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

**Drafting note: No changes.**

CHAPTER ~~17~~ 21.

CHECK ~~CASHER ACT~~ CASHERS.

**Chapter drafting note: The caption of the chapter is revised to follow the format of other chapters in this subtitle of (i) not referring to it as an "act" and (ii) focusing on the regulated provider of the financial service. The chapter was enacted in 1995 and most of the changes are technical and stylistic.**

§ ~~6.1-432~~ 6.2-2100. Definitions.

As used in this chapter, ~~the following words and terms shall have the following meanings~~ unless the context ~~clearly~~ requires a different meaning:

"Check casher" means a person engaged in the business of cashing checks, drafts, or money orders for compensation.

~~"Commission" means the State Corporation Commission.~~

~~"Commissioner" means the Commissioner of the Bureau of Financial Institutions.~~

"Item" means a check, draft, or money order.

~~"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals, however organized.~~

"Registrant" means a person registered under this chapter.

"Registration" means a registration filed under this chapter.

**Drafting note: Deleted definitions of "Commission," "Commissioner," and "person" because they are defined in proposed § 6.2-100.**

§ ~~6.1-433~~ 6.2-2101. Registration requirement; offices.

A. No person shall engage in business as a check casher ~~on or after July 1, 1995,~~ in the Commonwealth unless such person has first registered with the Commission in accordance with procedures established by the Commission under this chapter.

B. Every registered check casher shall give written notice to the Commission, within ~~ten~~ 10 days thereafter, of the opening, closing, or relocation of an office.

**Drafting note: The phrase "in the Commonwealth" is relocated from existing § 6.1-441. The reference to the July 1, 1995, is deleted as obsolete.**

§ ~~6.1-434~~ 6.2-2102. Exempt persons.

This chapter shall not apply to ~~any:~~

1. Any person ~~not holding~~ who:

a. Does not hold itself out to be a check cashing service~~, which is;~~

b. Is principally engaged in the bona fide retail sale of goods or services~~, who either;~~

c. Either as an incident to or independently of such a retail sale ~~or service,~~ from time to time cashes items ~~for a fee~~; and

d. Charges a fee or other consideration~~, where not more than two dollars~~ for the service that does not exceed the greater of $2 or two percent of the amount of the item~~, whichever is greater, is charged for the service, nor to any~~; or

2. Any person authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States~~,~~ or any state ~~or territory of the United States, or the District of Columbia~~.

**Drafting note: The Code-wide definition of "state" encompasses territories and the District of Columbia. Other changed are technical.**

§ ~~6.1-435~~ 6.2-2103. Registration~~; regulation~~ fees; reports.

~~An application for~~ A. Each registration form shall be accompanied by ~~a~~ payment of a $200 ~~application~~ fee, which shall not be refundable or abated in any event.

~~In order to~~ B. To defray the costs of their examination, supervision and regulation, ~~every~~ check ~~casher~~ cashers required to be registered under this chapter shall pay to the Commission annually on or before July 1 a registration fee in an amount prescribed by the Commission, but not exceeding $250~~, and shall file such annual or other reports as the Commission may prescribe~~.

C. All fees shall be paid into the state treasury and credited to the "Financial Institutions Special Fund - State Corporation Commission."

D. Every check casher required to be registered under this chapter shall file such annual or other reports as the Commission may prescribe.

**Drafting note: The catchline is amended to better describe the substance of the section. The separate fees are placed in separate subsections, and the sentence addressing the disposition of the fees is moved to follow the fee provisions. References to "application" are deleted because check cashers do not apply to the Commission in connection with their registration. The requirement for filing annual or other reports is made a separate sentence and subsection. "Check cashers" replaces "every check casher" in proposed subsection B to resolve the problem of agreement with "their examination."**

§ ~~6.1-436~~ 6.2-2104. Investigations.

The Commission ~~may, by its designated officers and employees~~, upon receiving a complaint or upon its own motion, may investigate the affairs, business, premises and records of any person required to be registered under this chapter. In the course of such investigation, all persons associated with the person being investigated shall afford full access to all premises, books, records and information which the person making such investigation deems necessary. For the foregoing purposes, the person making such investigation shall have authority to

administer oaths, examine under oath all the aforementioned persons, and compel the production of documents and objects of all kinds.

**Drafting note: The reference to "designated officers and employees" is deleted as unnecessary because § 12.1-16 authorizes delegation of powers to perform duties to employees and agents.**

§ ~~6.1-437~~ 6.2-2105. Fees posted; endorsement of items cashed.

A. A registrant shall~~, in every location conducting business under this chapter,~~ conspicuously post and at all times display, in every location at which it conducts the business of a check casher, a notice stating the fees charged for cashing items. A registrant shall further file with the Commissioner a statement of the fees currently charged at every such location ~~with the Commissioner~~.

B. Items cashed by registrants shall be deposited or presented for payment by the second business day from the date the item is cashed for the customer. A registrant shall endorse every item presented by the registrant for payment in the actual name under which the registrant is doing business.

C. A registrant shall post in every location at which it conducts the business of a check casher the Commission's toll-free telephone number and information on how to file a complaint pursuant to regulations adopted by the Commission.

D. A registrant shall provide each customer cashing an item with a receipt showing the name or trade name of the registrant, the transaction date, the amount of the check, the fee charged, and the cash given.

**Drafting note: Amendments clarify language that now states "in every location conducting business." Other changes are technical.**

§ ~~6.1-438~~ 6.2-2106. Regulations.

The Commission shall ~~promulgate~~ adopt such regulations as it deems appropriate to effect the purposes of this chapter. Before ~~promulgating~~ adopting any such regulations, the Commission shall give reasonable notice of the content thereof, and shall afford interested parties an opportunity to be heard, in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~.

**Drafting note: Technical changes.**

§ ~~6.1-439~~ 6.2-2107. Prohibited practices.

No person required to be registered under this chapter shall:

1. Engage in the business of making loans of credit, goods, or things; or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items without meeting the requirements of the laws of the Commonwealth;

2. Cash post-dated items, other than government or payroll checks;

3. Use, or cause to be published or disseminated, any advertisement or communication that (i) contains any false, misleading, or deceptive statement or representation or (ii) identifies the person by any name other than the name or trade name set forth on the registration;

4. Engage in unfair, deceptive, or fraudulent practices; or

5. Make loans unless such person is licensed under, and the loans are made in accordance with, Chapter 18 (§ ~~6.1-444~~ 6.2-1800 et seq.) ~~of this title~~.

**Drafting note: In subdivision 3, the addition of "trade name" makes the section consistent with the reference to trade name in existing subsection D of § 6.1-437 (proposed § 6.2-2105). Other changes are technical.**

§ ~~6.1-440~~ 6.2-2108. Civil penalties; civil action.

A. The Commission may impose a civil penalty not exceeding $1,000 upon any person required to be registered hereunder whom it determines, in proceedings commenced in accordance with the Commission's Rules ~~of Practice and Procedure of the Commission~~, has violated any of the provisions of this chapter or regulations ~~promulgated~~ adopted thereunder. For the purposes of this section, each separate violation shall be subject to the civil penalty therein prescribed. ~~Civil penalties paid pursuant to this chapter shall be deposited to the credit of the Literary Fund.~~

B. Any person who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provision. Any person who is successful in such action shall recover reasonable ~~attorney's~~ attorney fees, expert witness fees and court costs incurred by bringing such action.

**Drafting note: The catchline is amended to describe the purpose of subsection B. "Attorney fee" is substituted throughout to comply with the Code Commission's most recent position. The last sentence of subsection A is deleted because the distribution of civil penalties collected under this title is addressed in proposed § 6.2-106.**

§ ~~6.1-441~~ 6.2-2109. Criminal penalties.

Any person required to be registered under this chapter who acts as a check casher ~~in this Commonwealth~~ without ~~having obtained a registration shall be~~ first registering with the Commission as required by § 6.2-2101 is guilty of a Class 1 misdemeanor. For the purposes of this section, each transaction entered into involving the cashing of an item by such person shall constitute a separate offense.

**Drafting note: The deleted reference to the Commonwealth is incorporated into the registration requirement in proposed § 6.2-2101.**

§ ~~6.1-442~~ 6.2-2110. Revocation of registration.

A. The Commission may revoke a registration under this chapter upon any of the following grounds:

1. Any violation of the provisions of this chapter or regulations ~~promulgated hereunder,~~ adopted thereunder or ~~violation~~ of any law or regulation applicable to the conduct of the registrant's business;

2. Charging fees for cashing items in excess of fees posted at any place of business or filed with the Commission pursuant to § ~~6.1-437~~ 6.2-2105;

3. Conviction ~~or~~ of a felony or misdemeanor involving fraud, misrepresentation, deceit, false swearing, or theft; or

4. Refusal to permit or respond to an investigation by the Commission.

B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall be deemed acts of the registrant.

**Drafting note: A change in subdivision A 3 corrects an apparent mistake in current language that reads "conviction or a felony." The change to regulations adopted "thereunder" makes this provision consistent with subsection A of existing § 6.1-440 (proposed § 6.2-2108).**

§ ~~6.1-443~~6.2-2111. Notice of proposed revocation.

The Commission may not revoke a registration under this chapter until it has given the registrant ~~twenty-one~~ 21 days' notice in writing of the grounds for the proposed revocation and an opportunity to be heard. The notice shall be served in accordance with § 12.1-19.1. Within ~~fourteen~~ 14 days of mailing the notice, the registrant may file with the ~~Clerk~~ clerk of the Commission a written request for a hearing. If a written request for a hearing is filed, the Commission shall not revoke the registration except based upon findings made at such hearing.

**Drafting note: Technical changes.**

SUBTITLE IV.

OTHER FINANCIAL ACTIVITIES.

**Subtitle drafting note: Subtitle IV encompasses a variety of financial activities that are conducted by entities that are not subject to licensure by or registration with the State Corporation Commission.**

CHAPTER ~~8~~ 22.

~~SAFE-DEPOSIT OR STORAGE BUSINESS~~ SAFE DEPOSIT BOXES.

**Chapter drafting note: The term "safe-deposit" is replaced with "safe deposit," to reflect current usage that does not hyphenate the term. References to "safety-deposit box" are replaced with "safe deposit box" or "box." The term "renter" is replaced with "lessee" to provide uniformity throughout the chapter. The order of existing sections is amended, with § 6.1-331 (Notice to lessee of safe or box that same will be opened for nonpayment of rent) placed before proposed § 6.2-2206 (Opening box; marking contents), and existing § 6.1-342 (Rental for storage unpaid for three years) moved to follow the sections pertaining to the process for disposing of the contents of boxes on which the rent is unpaid. Existing § 6.1-332.1 is split into parallel proposed sections to address separately the limited access to a safe deposit box upon the death of the lessee (proposed § 6.2-2202) or upon the incapacity of the lessee (proposed § 6.2-2203).**

§ 6.2-2200. Definitions.

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

"Box" or "safe deposit box" means any safe or box that is available for rent within the vaults of a company.

"Company" means a bank, trust company, or other entity conducting the business of renting safe deposit boxes.

"Lessee" means the person renting a box from a company.

**Drafting note: New section.**

~~§ 6.1-331. Notice to lessee of safe or box that same will be opened for nonpayment of rent.~~

~~Whenever any amount due for the use of any safe or box, in the vaults of any safe deposit company, bank, trust company, or other corporation conducting a safe deposit business, shall have remained unpaid for a period of one year, such company, bank, trust company, or other corporation may, at the expiration of such period, send to the person, partnership or corporation in whose name such safe or box stands on its books a notice in writing in a securely closed, postpaid, registered or certified letter, directed to such renter or lessee at his last known post-office address, notifying such renter or lessee that if the amount due for the rental of such safe or box shall not be paid within sixty days from the date of sending such notice, the company, bank, trust company, or other corporation will then cause such safe or box to be opened, and the contents thereof to be inventoried, sealed, and placed in one of the general safes or boxes of the company, bank, trust company, or other corporation.~~

**Drafting note: Section is moved to proposed § 6.2-2205.**

§ ~~6.1-332~~ 6.2-2201. Access to joint ~~safety deposit~~ safe deposit box.

When a ~~safety deposit~~ box ~~shall have been hired, or shall hereafter be hired,~~ is rented from any ~~bank or trust~~ company transacting business in ~~this~~ the Commonwealth~~,~~ under the name of two or more persons~~,~~ with (i) the right of access being given to either~~,~~ or ~~with~~ (ii) access to either the survivor or survivors of such persons, any one or more of such persons, whether the other or others be living or not shall have the right of access to ~~such deposit vault,~~ the box and may remove therefrom ~~the~~ its contents ~~of such box; and in~~. In the case of such a removal ~~such bank or trust~~, the company shall be exempt from any liability for permitting such person access thereto.

**Drafting note: In two locations, "bank or trust company" is replaced with "company" in order that the section applies to all entities renting safe deposit boxes. The other changes are technical.**

§ ~~6.1-332.1~~ 6.2-2202. Limited access to ~~safe deposit~~ safe deposit box upon death of lessee.

A. Upon (i) the death of ~~a~~ the sole lessee of a ~~safe deposit~~ box or (ii) the death of a lessee of a box rented under the name of two or more persons upon proof satisfactory to the company that no then co-lessee is reasonably available for access to the box, the company ~~or bank~~ may permit limited access to the box by the spouse or next of kin of the deceased lessee ~~or by,~~ a court clerk, or other interested person for the limited purpose of looking for a will or other testamentary instruments. ~~Access shall be under the supervision of a designated officer or employee, and nothing shall be removed from the box except the will or testamentary instrument for transmission to the appropriate clerk.~~

~~If the box is co-leased, the company or bank may permit entry into the box by the spouse or next of kin or court clerk or other interested person for the purpose of looking for testamentary~~

~~instruments and subject to the limitations above, upon proof satisfactory to it that the then co-lessees are not reasonably available for access to the box~~.

B. The company ~~or bank~~ may require ~~such~~ proof of death as it deems necessary prior to permitting access to a box.

C. Access to a box shall be under the supervision of a designated officer or employee of the company, and nothing shall be removed from the box except the will or testamentary instrument for transmission to the appropriate clerk.

D. The company shall (i) make a photocopy of any document removed from a box pursuant to this section, (ii) place the copy in the box prior to delivering the original to any person, and (iii) not be liable except for acting in bad faith or for permitting the removal from the safe deposit box of items other than the will or other testamentary instrument of the deceased lessee.

**Drafting note: Existing § 6.1-332.1 is split into separate parallel sections (see drafting note to proposed § 6.2-2203).**

§ 6.2-2203. Limited access to safe deposit box upon incapacity of lessee.

~~B~~ A. Upon receiving a letter from a licensed physician that in his professional opinion an individual, who is the sole lessee of a ~~safe deposit~~ box, is incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity ~~to~~:

1. To manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of another, the company ~~or bank~~ may permit access to such box for the limited purpose of looking for a power of attorney executed by the lessee that relates to the management of his property or financial affairs; or

2. To meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of another, the company may permit access to the box for the limited purpose of looking for an advance medical directive executed by the lessee.

B. Such access shall only be ~~limited~~ granted to the lessee's guardian, conservator, spouse~~,~~ or next of kin~~, and persons~~ or to a person asserting a knowledge or belief:

1. If the access is sought pursuant to subdivision A 1, that ~~they are~~ he is named as an agent in ~~such~~ a power of attorney believed to be in the box; or

2. If the access is sought pursuant to subdivision A 2, that he is named as an agent in an advance medical directive believed to be in the box.

C. Access to a box shall be under the supervision of a designated officer or employee of the company, and nothing shall be removed from the box except (i) if the access is sought pursuant to subdivision A 1, the power of attorney for transmission to a person named as agent therein or (ii) if the access is sought pursuant to subdivision A 2, the advance medical directive for transmission to a person named as agent therein or in the absence of such a person, to the lessee's attending physician to be made a part of the lessee's medical records.

D. If the box is co-leased, the company ~~or bank~~ may permit entry into the box by the same persons and under the same circumstances and terms as specified above, upon proof satisfactory to it that the then co-lessees are not reasonably available for access to the box.

~~C. Upon receiving a letter from a licensed physician that in his professional opinion an individual, who is the sole lessee of a safe-deposit box, is incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of another, the company or bank may permit access to such box for the limited purpose of looking for an advance medical directive executed by the lessee. Such access shall be limited to the lessee's guardian, spouse, next of kin, and persons asserting a knowledge or belief that they are named as an agent in an advance medical directive believed to be in the box. Access shall be under the supervision of a designated officer or employee, and nothing shall be removed from the box except the advance medical directive for transmission to a person named as agent therein or, in the absence of such a person, to the lessee's attending physician to be made a part of the lessee's medical records. If the box is co-leased, the company or bank may permit entry into the box by the same persons and under the same circumstances and terms as specified above, upon proof satisfactory to it that the then co-lessees are not reasonably available for access to the box.~~

~~D.~~ E. The company ~~or bank~~ shall (i) make a photocopy of any document removed from a ~~lessee's~~ box pursuant to this section ~~and~~, (ii) place ~~such~~ the copy in the box prior to delivering the original to any person, and ~~it shall~~ (iii) not be liable except for acting in bad faith or ~~the~~ for permitting ~~of~~ the removal of other items from the ~~safe-deposit~~ box.

**Drafting note: Existing § 6.1-332.1 is split into this section and proposed § 6.2-2202, in order to address separately situations involving death or incapacity of the lessee of a box. In subsection B, a revision authorizes the lessee's guardian or conservator to be granted access to a box for the purpose of looking for a power of attorney or advance medical directive; currently, there is no provision authorizing a guardian to obtain access when looking for a power of attorney. Existing subsection C, addressing advance medical directives, is combined with the provisions relating to powers of attorney to delete duplicative language. Existing subsection D is replicated as proposed subsection D of § 6.2-2202 and subsection E of this section.**

§ ~~6.1-333~~ 6.2-2204. Duty to deny access to ~~safe-deposit~~ safe deposit boxes under certain conditions.

A. As used in this section, unless the context requires otherwise:

"Creditor" means (i) a judgment creditor, (ii) a plaintiff who has obtained a pre-judgment attachment order, or (iii) an appropriate federal or state tax official.

"Defendant" means the lessee of a box who is named as defendant, judgment debtor, or taxpayer in a notice of proceeding.

"Notice of proceeding" means a notice of (i) lien of fieri facias, (ii) other process under § 8.01-474, 8.01-478, 8.01-479, §§ 8.01-501 through 8.01-504, § 58.1-1804, 58.1-2020, or 58.1-

3952, (iii) levy for federal taxes, or (iv) attachment that states the office of the company where a box rented by the defendant is located.

~~In any case where~~ B. If a company~~, bank, trust company, or other corporation, hereinafter called "bank," having for rent safe deposit boxes~~ is served with a notice of ~~lien of fieri facias or other process under §§ 8.01-474, 8.01-478, 8.01-479, 8.01-501 through 8.01-504, 58.1-1804, 58.1-2020, or § 58.1-3952, or a notice of levy for federal taxes, or an attachment with respect to a safe deposit box, in which a renter or lessee, hereinafter called "lessee" of such safe deposit box is named defendant or judgment debtor or taxpayer, hereinafter called "defendant," and such notice of lien, process, notice of levy or attachment states the office where such safe deposit box is located, it shall be the duty of such bank to~~ proceeding with respect to a box, the company shall deny ~~such lessee~~ the defendant access to the ~~safe deposit~~ box leased in the name of the defendant unless otherwise directed by ~~a~~ an appropriate court ~~of competent jurisdiction~~ or ~~by~~ the judgment creditor~~, or the plaintiff or the District Director of Internal Revenue or the appropriate state tax official, hereinafter called the "judgment creditor~~.~~"~~

C. If the notice of ~~lien or other process or notice of levy or attachment~~ proceeding names less than all of the co-lessees of a ~~safe deposit~~ box~~, the bank, where~~ and:

1. If the rental contract ~~or lease~~ so provides, the company may deny ~~access to~~ all co-lessees access to the box, unless otherwise directed by ~~a~~ an appropriate court ~~of competent jurisdiction~~ or the judgment creditor~~; however, the bank~~. The company may allow access to such co-lessee ~~and~~ if in so doing ~~must comply~~ the company complies with the requirements of ~~this section in the same manner and in all respects~~ subdivision 2 as if ~~no such~~ the rental contract ~~or lease provision existed.~~ did not provide for denial of access to co-lessees not named in the notice of proceeding; and

~~Where~~ 2. If the rental contract ~~or lease~~ does not provide for denial of access to co-lessees not named in the ~~said~~ notice of ~~lien or other process or notice of levy or attachment as set forth in the foregoing paragraph~~ proceeding, the ~~bank~~ company shall not deny access to any ~~such~~ co-lessee not ~~so~~ named ~~who shall sign the hereinafter required~~ in the notice of proceeding if the co-lessee (i) is given notice by the company that if the co-lessee knowingly removes from the box any property subject to the notice of proceeding, the co-lessee shall be deemed guilty of larceny, (ii) is given a copy of the notice of proceeding, and (iii) signs and delivers to the company a written acknowledgment of receipt of such notices.

~~Notice of any lien or other process or notice of levy or attachment shall be given by the bank and a written and signed acknowledgment received from each co-lessee not named in said notice of lien or other process or notice of levy or attachment prior to such co-lessee's said entry into said safe deposit box. If thereafter any co-lessee shall knowingly remove from any such safe deposit box any property subject to said lien or other process or notice of levy or attachment, he shall be deemed guilty of larceny; and the notice given to such co-lessee by the bank shall so inform said co-lessee.~~

**Drafting note: Section is reorganized to improve its readability.**

§ ~~6.1-331~~ 6.2-2205. Notice to lessee ~~of safe or box that same will be opened for~~ upon nonpayment of rent.

Whenever any amount due for the use of any ~~safe or~~ box~~, in the vaults~~ of any ~~safe deposit~~ company~~, bank, trust company, or other corporation conducting a safe deposit business,~~ shall ~~have remained~~ remain unpaid for a period of one year, ~~such~~ the company~~, bank, trust company, or other corporation~~ may, at the expiration of such period, send to the ~~person, partnership or corporation in whose name such safe or~~ lessee of the box ~~stands on its books~~ a notice in writing ~~in a securely closed, postpaid,~~ by registered or certified ~~letter~~ mail, ~~directed to such renter or lessee~~ postage prepaid, at his last known post-office address, notifying ~~such renter or~~ the lessee that if the amount due for the rental of ~~such safe or~~ the box ~~shall~~ is not ~~be~~ paid within ~~sixty~~ 60 days from the date of sending ~~such~~ the notice, the company~~, bank, trust company, or other corporation~~ will ~~then~~ cause ~~such safe or~~ the box to be opened~~,~~ and the contents thereof to be inventoried, sealed, and placed in one of the general safes or boxes of the company~~, bank, trust company, or other corporation~~.

**Drafting note: Existing § 6.1-331 is relocated to be with other sections pertaining to the effect of nonpayment of rent. Technical changes update usage and reflect the defined term "company," which encompasses banks, trust companies, and other entities.**

§ ~~6.1-334~~ 6.2-2206. Opening box; marking contents.

Upon the expiration of 60 days from the date of mailing the notice required by § ~~6.1-331~~ 6.2-2205 and the failure within such period ~~of time~~ of the ~~renter or~~ lessee ~~in whose name the safe or~~ of the box ~~stands on the books~~ according to the records of the company~~, bank, trust company, or other corporation~~ to pay the amount due for the rental thereof ~~to the time of payment~~, together with ~~legal interest thereon~~ any charges for which the rental agreement provides, the company~~, bank, trust company, or other corporation~~ may, in the presence of two ~~bank~~ company employees, one of whom shall be a notary public, cause ~~such safe or~~ the box to be opened~~,~~ and the contents thereof, if any, to be removed, inventoried, and sealed up by ~~such~~ the notary public in a package~~, upon which the~~. The notary public shall distinctly mark upon the package the name of the ~~renter or~~ lessee ~~in whose name~~ of the ~~safe or~~ box ~~stood on the books~~ according to the records of the company~~, bank, trust company or other corporation,~~ and the date of removal of the property.

**Drafting note: Changes update archaic usage. For example, "in whose name the box stands on the books of the company" is replaced with "according to the records of the company." The phrase "legal interest" is replaced with "any charges for which the rental agreement provides."**

§ ~~6.1-335~~ 6.2-2207. Disposition of contents.

When a package has been marked for identification by a notary public as required under the provisions of ~~the preceding section (~~§ ~~6.1-334~~ 6.2-2206~~)~~, it shall, in the presence of ~~any one of the above-named officers~~ an officer of the company~~, bank, trust company or other corporation~~, be placed by the notary public in one of the general safes or boxes of the company~~, at a rental~~. The lessee shall be liable to the company for storage of the package at a rental rate that does not ~~to~~ exceed the original rental of the ~~safe or~~ box ~~which~~ that was opened~~, and~~. The package shall

remain in such general safe or box for a period of not less than two years, unless sooner removed by ~~such renter or~~ the lessee.

**Drafting note: In the first sentence, "an officer of the company" replaces the phrase "any one of the above-named officers of the company" because it is not clear to whom it refers. Other changes are technical.**

§ ~~6.1-336~~ 6.2-2208. Certificate of notary public.

A. The notary public who ~~shall have~~ placed a package in one of the general safes or boxes of the company as required under the provisions of ~~the preceding section (§ 6.1-335)~~ § 6.2-2207 shall ~~thereupon~~, upon doing so, file with the company a certificate, under seal, which shall ~~fully~~ set out the date of the opening of such ~~safe or~~ box, the name of the ~~renter or~~ lessee ~~in whose name it stood~~ of the box, and a list of the contents, if any. ~~Such~~ The certificate shall be sworn to by ~~such~~ the notary public and shall be prima facie evidence of the facts therein set forth in all legal proceedings ~~at law and in equity~~ wherein evidence of such facts would be ~~competent~~ admissible.

B. ~~A~~ The company shall mail a copy of such certificate ~~shall,~~ within ~~ten~~ 10 days ~~thereafter~~ after its filing, ~~be mailed~~ to the ~~renter or~~ lessee ~~in whose name~~ of the ~~safe or~~ box ~~so opened stood on the books of the company, bank, trust company, or other corporation,~~ at his last known post-office address, ~~in a securely closed, postpaid~~, by registered or certified ~~letter~~ mail, ~~together with~~ return receipt requested. The company shall include in its mailing of the copy of the certificate a notice that the contents will be kept, at the expense of ~~such renter or~~ the lessee, in a general safe or box in the vaults of the company~~, bank, trust company, or other corporation,~~ for a period of not less than two years, unless sooner removed by ~~such renter or~~ the lessee.

**Drafting note: Subsection B is re-written to state affirmatively that it is the duty of the company to send the notice to the lessee. The 10-day period starts to run when the box is opened or when the notary files his certificate.**

§ ~~6.1-337~~ 6.2-2209. Subsequent right of lessee to contents.

At any time after the mailing of ~~such~~ the notice as ~~is~~ required by ~~the preceding section (§ 6.1-336)~~ § 6.2-2208 and before the expiration of two years, ~~such renter or~~ the lessee may require the delivery of the contents of the ~~safe or~~ box as shown by the certificate, upon ~~the~~ payment of all rentals due at the time of opening the ~~safe or~~ box, the cost of opening the ~~safe or~~ box, the fees of the notary public for issuing his certificate thereon, and ~~the payment of~~ all charges accrued during the period the contents remained in the general safe or box of the company~~, bank, trust company, or other corporation~~, together with ~~legal interest on such rentals, costs, fees, and charges~~ any charges for which the rental agreement provides.

**Drafting note: Technical changes. See note after proposed § 6.2-2206 regarding "legal interest."**

§ ~~6.1-338~~ 6.2-2210. Sale of contents after two years.

A. After the expiration of two years from the time of mailing the certificate provided for ~~under~~ in § ~~6.1-336~~ 6.2-2208, if ~~such renter or~~ the lessee has not obtained delivery of ~~such~~ the contents ~~as aforesaid~~, the company~~, bank, trust company, or other corporation~~ shall ~~mail~~:

1. Mail in a securely closed envelope, ~~postpaid~~, by registered or certified ~~letter~~ mail, return receipt requested, addressed to ~~such renter or~~ the lessee at his last known post-office address, a notice stating that two years have elapsed since the opening of the ~~safe or~~ box and the mailing of ~~a~~ the certificate ~~thereof~~, and that the company~~, bank, trust company, or other corporation~~ will sell all the property or articles of value set out in ~~such~~ the certificate at a time and place stated in ~~such~~ the notice, which time shall be not less than ~~sixty~~ 60 days after the ~~time~~ date of mailing such notice~~, and stating~~. The notice shall also state the amount ~~which shall have then become~~ due for rental, up to the time of opening ~~such safe or~~ the box, the cost of opening ~~the same~~ the box, and the further cost of safekeeping of its contents for the period since the opening of the safe or box; and

2. Publish twice a notice of the time and place of the sale, not more than 20 days prior to the sale, in a newspaper published in the locality where the sale will be held. If there is no newspaper published in the locality, then in a newspaper published in the locality nearest thereto having a newspaper.

B. Unless ~~such renter or~~ the lessee ~~shall pay~~ pays, on or before the day ~~mentioned~~ stated in the notice, all such sums, and all the charges accruing to the time of payment, together with ~~legal interest on such sums and charges~~ any charges for which the rental agreement provides, the company~~, bank, trust company, or other corporation~~ may sell all the property or articles of value set out in such certificate for cash, at public auction, at the time and place stated in such notice~~,~~ ~~provided a notice of the time and place of sale has been published twice, not more than twenty days prior to the sale, in a newspaper published in the city, town, or county where the sale is held, or, if there is no such newspaper published in such city, town or county, then in a newspaper published in the city, town, or county nearest thereto having such newspaper~~.

**Drafting note: The section is reorganized in order to place the duty to publish the notice of the sale in proximity to the duty to mail the notice to the lessee, as conditions for conducting the sale. See note after proposed § 6.2-2206 regarding "legal interest."**

§ ~~6.1-339~~ 6.2-2211. Disposition of proceeds of sale.

From the proceeds of any sale held pursuant to the provisions of ~~the preceding section (~~§ ~~6.1-338~~ 6.2-2210~~)~~, the company~~, bank, trust company, or other corporation,~~ shall deduct all its charges, as stated in such notice, together with any further charges that shall have accrued since the mailing thereof, including reasonable expenses for notices, advertising and sale, together with ~~legal interest on all such charges~~ any charges for which the rental agreement provides. The balance, if any, of such proceeds, shall be deposited to the credit of ~~such renter or~~ the lessee~~,~~ and ~~the same~~ shall be paid to ~~such renter or~~ the lessee or his assignee~~,~~ or legal representative, on demand and upon production of satisfactory evidence of identity. The company~~, bank, trust company or other corporation~~ shall be liable to ~~such renter or~~ the lessee for interest on any balance so deposited at the annual rate of three ~~per centum per annum~~ percent.

**Drafting note: Technical changes. See note after proposed § 6.2-2206 regarding "legal interest."**

§ ~~6.1-342~~ 6.2-2212. Rental for storage unpaid for three years.

~~In any case where such~~ If a company~~, bank, trust company, or other corporation, shall have~~ has received for safekeeping from any person~~, partnership, or corporation,~~ any package or box to be stored in its general vault, and the rental for such storage shall have remained unpaid for a period of three years, ~~such~~ the company~~, bank, trust company, or other corporation,~~ shall have the right to open such package or box and to have the contents thereof inventoried, upon compliance substantially with the procedure as to witnesses, notices, and certificates ~~hereinbefore~~ provided ~~with reference to~~ for the opening of any ~~safe deposit vault or~~ box in §§ 6.2-2205 through 6.2-2208. ~~Should~~ If the rental or other charges for the safekeeping of such package or box and the charges incident to the opening of the same remain unpaid for a period of two years from the date of such opening, the contents thereof may be sold upon compliance substantially with the procedure ~~hereinbefore~~ provided for the sale of the contents of any ~~safe deposit vault or~~ box in § 6.2-2210, and the proceeds of such sale shall be treated in the same manner ~~hereinbefore~~ provided for the treatment of the proceeds of sale of the contents of any ~~safe deposit vault or~~ box in § 6.2-2211.

**Drafting note: Existing § 6.1-342 is relocated to follow the sections pertaining to the process for disposing of the contents of boxes on which the rent is unpaid; the following two sections are of a general nature and are more appropriate at the end of the chapter. Changes are technical.**

§ ~~6.1-340~~ 6.2-2213. Documents having pretium affectionis.

Whenever the contents of any ~~such safe or~~ box opened under the provisions of this chapter shall consist either wholly or in part of documents ~~or~~, letters, or other papers of a private nature, or articles having a pretium affectionis, such documents, letters, papers, or articles shall not be sold, but shall be retained by the company~~, bank, trust company or corporation~~, ~~but~~ without liability.

**Drafting note: "Pretium affectionis" is an imaginary value put upon a thing by the fancy of the owner in his affection for it, or for the person from whom he obtained it.**

§ ~~6.1-341~~ 6.2-2214. Provisions confer cumulative remedy.

The provisions of this chapter shall not (i) preclude any other remedy ~~by action or otherwise now~~ existing for the enforcement of the claims of ~~such~~ a company~~, bank, trust company, or other corporation~~ against the person~~, partnership, or corporation~~ in whose name ~~such safe or~~ the box ~~stood~~ is rented, nor (ii) bar the right of ~~such~~ the company~~, bank, trust company, or other corporation~~ to recover ~~so much~~ the unpaid portion of the debt ~~due it as shall not be paid by~~ from the proceeds of the sale of the property deposited with it.

**Drafting note: Technical changes.**

~~§ 6.1-342. Rental for storage unpaid for three years.~~

~~In any case where such company, bank, trust company, or other corporation, shall have received for safekeeping from any person, partnership, or corporation, any package or box to be stored in its general vault, and the rental for such storage shall have remained unpaid for a period of three years, such company, bank, trust company, or other corporation, shall have the right to open such package or box and to have the contents thereof inventoried, upon compliance~~

~~substantially with the procedure as to witnesses, notices, and certificates hereinbefore provided with reference to the opening of any safe-deposit vault or box. Should the rental or other charges for the safekeeping of such package or box and the charges incident to the opening of the same remain unpaid for a period of two years from the date of such opening, the contents thereof may be sold upon compliance substantially with the procedure hereinbefore provided for the sale of the contents of any safe-deposit vault or box, and the proceeds of such sale shall be treated in the same manner hereinbefore provided for the treatment of the proceeds of sale of the contents of any safe-deposit vault or box.~~

**Drafting note: Section is moved to proposed § 6.2-2212.**

CHAPTER ~~19~~ 23.

~~ASSET-BACKED SECURITIES FACILITATION ACT~~ SECURITIZATION TRANSACTIONS.

**Chapter drafting note: The title of the chapter is revised because the text of the chapter in no instance uses the phrases "asset-backed" or "securities facilitation," and instead refers consistently to "securitization transactions." An amendment to the chapter's title removes the word "Act" in keeping with the directive to delete "Virginia" and "Act." The primary change to this chapter is to divide existing § 6.1-473 into three separate sections.**

~~§ 6.1-472. Title.~~

~~This chapter shall be known as the Asset-Backed Securities Facilitation Act.~~

**Drafting note: This section is unnecessary because of the title-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

§ 6.2-2300. Definition.

As used in this chapter:

"Securitization transaction" means a transaction relating to the issuance or transfer by a special purpose entity of beneficial interests or undivided interests, which entitle their holders to receive payments or other distributions that depend primarily on the cash flow from assets, including financial assets and other credit exposures, in which that special purpose entity has rights or the power to transfer rights.

**Drafting note: New section; term is currently defined at subsection C of existing § 6.1-473.**

§ ~~6.1-473~~ 6.2-2301. Securitization transactions; no interest retained by transferor.

~~A.~~ Notwithstanding any other provision of law, including~~, but not limited to,~~ § 8.9A-623, to the extent set forth in the transaction documents relating to a securitization transaction:

1. Any property, assets, or rights purported to be transferred, in whole or in part, in the securitization transaction shall be deemed to no longer be the property, assets, or rights of the transferor;

2. A transferor in the securitization transaction, its creditors or, in any insolvency proceeding with respect to the transferor or the transferor's property, a bankruptcy trustee, receiver, debtor, debtor in possession, or similar person, to the extent the issue is governed by the laws of the Commonwealth, shall have no rights, legal or equitable, whatsoever to reacquire,

reclaim, recover, repudiate, disaffirm, redeem, or recharacterize as property of the transferor any property, assets, or rights purported to be transferred, in whole or in part, by the transferor; and

3. In the event of a bankruptcy, receivership, or other insolvency proceeding with respect to the transferor or the transferor's property, to the extent the issue is governed by the laws of the Commonwealth, such property, assets, and rights shall not be deemed to be part of the transferor's property, assets, rights, or estate.

**Drafting note: The phrase "but not limited to" is deleted because § 1-218 provides that "includes" means includes, but not limited to.**

§ 6.2-2302. Treatment of securitization transactions.

~~B.~~ Nothing contained in this chapter shall ~~be~~:

1. Be deemed to require any securitization transaction to be treated as a sale for federal or state tax purposes or to preclude the treatment of any securitization transaction as debt for federal or state tax purposes or to change any applicable laws relating to the perfection and priority of security or ownership interests of persons other than the transferor, hypothetical lien creditor or, in the event of a bankruptcy, receivership or other insolvency proceeding with respect to the transferor or its property, a bankruptcy trustee, receiver, debtor, debtor in possession, or similar person~~.~~; or

~~Nothing in this chapter shall change~~ 2. Change the tax treatment of ~~securitizations~~ securitization transactions that take place pursuant to this chapter.

~~C. "Securitization transaction" means a transaction relating to the issuance or transfer by a special purpose entity of beneficial interests or undivided interests, which entitle their holders to receive payments or other distributions that depend primarily on the cash flow from assets, including financial assets and other credit exposures, in which that special purpose entity has rights or the power to transfer rights.~~

**Drafting note: The definition of "securitization transaction" in subsection C is relocated to proposed § 6.2-2300. Other changes are technical.**

CHAPTER ~~20~~ 24.

REFUND ANTICIPATION LOANS.

**Chapter drafting note: Changes primarily update terminology to reflect current practice. The existing chapter was enacted in 2006.**

§ ~~6.1-474~~ 6.2-2400. Definitions.

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

"Applicant" means a customer who applies for a refund anticipation loan through a facilitator.

"Borrower" means an applicant who receives a refund anticipation loan through a facilitator.

"Customer" means an individual for whom tax preparation services are performed.

"Facilitator" means a person who receives or accepts for delivery an application for a refund anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan. "Facilitator" does not

include a bank, thrift, savings association, industrial bank, or credit union, operating under the laws of the United States or the Commonwealth, an affiliate that is a servicer for such an entity, or any person who acts solely as an intermediary and does not deal with an applicant in the making of the refund anticipation loan.

"Refund anticipation loan" means a loan, whether provided through a facilitator or by another entity such as a financial institution, in anticipation of, and whose payment is secured by, a customer's federal or state income tax refund or by both.

"Refund anticipation loan fee" means any fee, charge, or other consideration imposed by a lender or a facilitator for a refund anticipation loan. The term does not include any fee, charge, or other consideration usually imposed by a facilitator in the ordinary course of business for nonloan services, such as fees for preparing tax returns and fees for the electronic filing of tax returns.

"Refund anticipation loan fee schedule" means a list or table of refund anticipation loan fees that (i) includes three or more representative refund anticipation loan amounts~~. The schedule shall~~; (ii) lists separately ~~list~~ each fee or charge imposed, as well as a total of all fees imposed, related to the making of a refund anticipation loan~~. The schedule shall also include~~; and (iii) includes, for each representative loan amount, the estimated annual percentage rate calculated under the guidelines established by the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.).

"Tax return" means a return, declaration, statement, refund claim, or other document required to be made or filed in connection with state or federal income taxes.

**Drafting note: Technical changes.**

§ ~~6.1-475~~ 6.2-2401. Advertising; posting refund anticipation loan fee schedules; and disclosures.

A. Any facilitator who advertises the availability of a refund anticipation loan shall not directly or indirectly represent the loan as a customer's actual refund. Any advertisement that mentions a refund anticipation loan shall state conspicuously that it is a loan and that a fee or interest will be charged by the lending institution. The advertisement shall also disclose the name of the lending institution.

B. Every facilitator who offers to facilitate, or who facilitates, a refund anticipation loan to a customer shall ~~display~~ post a refund anticipation loan fee schedule showing the current fees for refund anticipation loans facilitated at the office, for the electronic filing of a customer's tax return, for setting up a refund account, and any other related activities necessary to receive a refund anticipation loan. The refund anticipation loan fee schedule also shall ~~also~~ include a statement indicating that a customer may have the tax return filed electronically without also obtaining a refund anticipation loan.

C. The ~~posting~~ refund anticipation loan fee schedule required by subsection B shall be made in not less than 28-point type on a document measuring not less than 16 inches by 20 inches. The postings required in this section shall be displayed in a prominent location at each office where any facilitator is offering to facilitate or is facilitating a refund anticipation loan.

D. Prior to an ~~applicant's:~~

~~1. Completion of the~~ applicant completing a refund anticipation loan application, a facilitator that offers to facilitate a refund anticipation loan shall provide to the applicant a ~~clear~~ disclosure ~~containing all of~~ clearly setting forth the following ~~information~~:

~~a~~ 1. The refund anticipation loan fee schedule~~.~~;

~~b~~ 2. That a refund anticipation loan is a loan and is not the applicant's actual income tax refund~~.~~;

~~c~~ 3. That a customer can file an income tax return electronically without applying for a refund anticipation loan~~.~~;

~~d~~ 4. The average amount of time, according to the Internal Revenue Service, within which a customer who does not obtain a refund anticipation loan can expect to receive a refund if a customer's return is filed or mailed as follows:

~~(1)~~ a. Filed electronically and the refund is deposited directly into a customer's bank account or mailed to ~~the~~ a customer~~.~~; and

~~(2)~~ b. Mailed to the Internal Revenue Service and the refund is deposited directly into a customer's bank account or mailed to a customer~~.~~;

~~e~~ 5. That the Internal Revenue Service does not guarantee that it will pay the full amount of the anticipated refund and it does not guarantee a specific date that a refund will be deposited into a customer's bank account or mailed to a customer~~.~~;

~~f~~ 6. That the borrower is responsible for the repayment of the refund anticipation loan and the related fees in the event that the tax refund is not paid or not paid in full~~.~~;

~~g~~ 7. The estimated time within which the loan proceeds will be ~~paid~~ disbursed to the borrower if the loan is approved~~.~~; and

~~h~~ 8. The fee that will be charged, if any, if the applicant's loan is not approved.

~~2. Consummation of the~~ E. Prior to consummating a refund anticipation loan transaction, a facilitator shall provide to the applicant, in either written or electronic form, the following ~~information~~:

~~a~~ 1. The estimated total fees for obtaining the refund anticipation loan~~.~~;

~~b~~ 2. The estimated annual percentage rate for the applicant's refund anticipation loan, using the guidelines established under the federal Truth ~~In~~ in Lending Act (15 U.S.C. § 1601 et seq.)~~.~~; and

~~c~~ 3. The various costs, fees, and finance charges, if applicable, associated with receiving a refund by mail or by direct deposit directly from the Internal Revenue Service, a refund anticipation loan, a refund anticipation check, or any other refund settlement options facilitated by the facilitator.

F. When an application involves more than one applicant, a disclosure pursuant to this section need only be given to one of the applicants applying for the refund anticipation loan.

**Drafting note: In subsection B, "display" is replaced with "post" to make the language consistent with subsection C. In subsection B, "fee" is inserted after "loan" to correct an existing oversight. The change in the first sentence of subsection C clarifies that it is the schedule, rather than the act of posting the schedule, that is required to comply with the**

**requirements. Existing subsection D is divided into proposed subsections D and E due to length of existing subdivision D 1. In subsection D, the phrase "clear disclosure" is reworded. In proposed subdivision D 7, "paid" is replaced with "disbursed" to be consistent with other sections, such as the existing Payday Loan Act. Other changes are technical. Proposed subsection F is relocated from existing § 6.1-476, as that section does not address customer notification or disclosures, with "customer" replaced by "applicant."**

§ ~~6.1-476~~ 6.2-2402. Prohibited activities.

~~A.~~ Any facilitator who offers to facilitate, or who facilitates, a refund anticipation loan shall not ~~engage in any of the following activities~~:

1. ~~Requiring~~ Require a customer to enter into a loan arrangement in order to complete a tax return~~.~~;

2. ~~Misrepresenting~~ Misrepresent a material factor or condition of a refund anticipation loan~~.~~;

3. ~~Failing~~ Fail to process the application for a refund anticipation loan promptly after an applicant applies for the loan~~.~~; or

4. ~~Engaging~~ Engage in any transaction, practice, or course of business that operates a fraud upon any person in connection with a refund anticipation loan.

~~B. When an application involves more than one customer, notification pursuant to this section need only be given to one customer.~~

**Drafting note: Subsection B is relocated to subsection F of proposed § 6.2-2401 because that section addresses notification. Other changes are technical.**

§ ~~6.1-477~~ 6.2-2403. Right of rescission.

A borrower who obtains a refund anticipation loan may rescind the loan, on or before the close of business on the next day of business, by either returning the original check issued for the loan or providing the amount of the loan in cash to the lender or the facilitator. The facilitator may not charge the borrower a fee for rescinding the loan or a refund anticipation loan fee if the loan is rescinded but may charge the customer a fee for establishing and administering a bank account to electronically receive and distribute the refund.

**Drafting note: No change.**

§ ~~6.1-478~~ 6.2-2404. Preemption of local laws.

This chapter shall preempt and be exclusive of all ~~local acts, statutes,~~ ordinances~~, and regulations~~ of any locality relating to refund anticipation loans. This ~~subsection~~ section shall be given retroactive and prospective effect.

**Drafting note: Technical changes.**

§ ~~6.1-479~~ 6.2-2405. ~~Civil penalties~~ Violations; enforcement.

Any violation of the provisions of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

**Drafting note: The current catchline is amended because it does not accurately state the substance of the section.**

**PROVISIONS RELOCATED TO OTHER TITLES.**

§ 8.4-105. "Bank"; "depositary bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank."

In this title:

(1) "Bank" means a person engaged in the business of banking, including a savings ~~bank, savings and loan association~~ institution, credit union or trust company.

(2) "Depositary bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "Payor bank" means a bank that is the drawee of a draft;

(4) "Intermediary bank" means a bank to which an item is transferred in the course of collection except the depositary or payor bank;

(5) "Collecting bank" means a bank handling an item for collection except the payor bank;

(6) "Presenting bank" means a bank presenting an item except a payor bank.

**Drafting note: Technical change; see drafting note to proposed § 6.2-1112.**

§ ~~6.1-118.1~~ 17.1-626.1. Recovery of costs in civil actions for bad checks.

A. In any civil action by a holder to recover the sum payable of a check drawn by the defendant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds, or in any civil action following an arrest under § 18.2-181 or ~~§~~ 18.2-182, the court, upon a determination that the plaintiff has prevailed, shall add the following amounts, as costs, to the amount due to the plaintiff for the check: (i) the sum of ~~ten dollars~~ $10 to defray the cost of processing the returned check; and (ii) the base wage of one employee for time actually spent acting as a witness for the Commonwealth; provided, however, that the total amount of allowable costs granted under the provisions of this section shall not exceed the sum of $250 excluding restitution for the amount of the check.

B. Such award of costs shall be contingent upon a finding (i) that the plaintiff complied with the provisions in § 18.2-183 relating to notice and (ii) that the defendant failed to deliver payment or evidence of bank error to the plaintiff within five days after receipt of such notice.

**Drafting note: Section is moved from existing Chapter 2 (Banking Act) of Title 6.1 to Title 17.1 because it (i) deals with the imposition of court costs and (ii) applies to bad checks written on all types of accounts.**

§ 26-7.5. Effect of orders of qualification of bank as committee or guardian.

In the case of qualification before or after July 1, 1984, if the order of qualification of a bank as committee or guardian fails to specify that the bank is to be guardian or committee of the person, it shall be deemed a qualification solely as committee, conservator, or guardian of the estate.

**Drafting note: Section is the last sentence of existing subdivision 8 of § 6.1-17 (Powers of banks and trust companies; national banks as fiduciaries.)**

TITLE 55.
PROPERTY AND CONVEYANCES.
CHAPTER ~~1.1~~ 27.1.

~~WET SETTLEMENT ACT~~ REAL ESTATE SETTLEMENTS.

**Chapter drafting note: Chapter is relocated from Title 6.1 to Title 55 because it pertains more to the conduct of real property conveyances than to the regulation of financial services and their providers. The word "Act" is deleted from the title in compliance with drafting guidelines. The existing chapter title is replaced with "Real Estate Settlements" because (i) the chapter does not use the phrase "wet settlements" and (ii) substantive provisions of the chapter impose requirements beyond those pertaining to the availability of funds.**

§ ~~6.1-2.10~~ 55-525.1. Definitions.

~~The following terms as~~ As used in this chapter ~~shall have the following meanings~~, unless the context requires a different meaning:

"Disbursement of loan funds" means the delivery of the loan funds by the lender to the settlement agent in one or more of the following forms:

1. Cash;

2. Wired funds;

3. Certified check;

4. Checks issued by the Commonwealth or a political subdivision of the Commonwealth;

5. Cashier's check, or teller's check with equivalent funds availability in conformity with the federal Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.);

6. Checks issued by a financial institution, the accounts of which are insured by an agency of the federal or state government, which checks are drawn on a financial institution located within the Fifth Federal Reserve District, the accounts of which are insured by an agency of the federal or state government;

~~6a~~ 7. Drafts issued by a state chartered or federally chartered credit union, which drafts are drawn on the United States Central Credit Union;

~~7~~ 8. Checks issued by an insurance company licensed and regulated by the State Corporation Commission, which checks are drawn on a financial institution located within the Fifth Federal Reserve District, the accounts of which are insured by an agency of the federal government; or

~~8~~ 9. Checks issued by a state or federal savings and loan association or savings bank operating in the Commonwealth, which checks are drawn on the Federal Home Loan Bank of Atlanta~~;~~.

"Disbursement of settlement proceeds" means the payment of all proceeds of the transaction by the settlement agent to the persons entitled thereto~~;~~.

"Lender" means any person regularly engaged in making loans secured by mortgages or deeds of trust on real estate~~;~~.

"Loan closing" means ~~that~~ the time agreed upon by the borrower and lender, when the execution of the loan documents by the borrower occurs~~;~~.

"Loan documents" means the note evidencing the debt due the lender, the deed of trust, or mortgage securing the debt due ~~to~~ the lender, and any other documents required by the lender to be executed by the borrower as a part of the transaction~~;~~.

"Loan funds" means the gross or net proceeds of the loan to be disbursed by the lender at loan closing~~;~~.

"Settlement" means the time when the settlement agent has received the duly executed deed, loan funds, loan documents, and other documents and funds required to carry out the terms of the contract between the parties and the settlement agent reasonably determines that

prerecordation conditions of such contracts have been satisfied. ~~However, a~~ A determination by a settlement agent that prerecordation conditions have been satisfied shall not control the rights and obligations of the parties under the contract including whether settlement has occurred under the terms and conditions of the contract. "Parties" as used in this ~~subsection~~ definition means the seller, purchaser, borrower, lender, and the settlement agent~~;~~.

"Settlement agent" means the person responsible for conducting the settlement and disbursement of the settlement proceeds and includes any individual, corporation, partnership, or other entity conducting the settlement and disbursement of loan proceeds~~;~~.

"Settlement service provider" means any person providing settlement services, as that term is defined under the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.).

"Thing of value" means any payment, advance, funds, loan, service, or other consideration.

**Drafting note: The definition of "thing of value" is relocated from existing § 6.1-2.13:1. Other changes are technical.**

§ ~~6.1-2.11~~ 55-525.2. Applicability; effect of noncompliance.

A. This chapter applies only to transactions involving loans that (i) are made by lenders~~, which loans~~ and (ii) will be secured by first deeds of trust or mortgages on real estate containing not more than four residential dwelling units.

B. Failure to comply with the provisions of this chapter shall not affect the validity or enforceability of any loan documents.

**Drafting note: Technical changes in subsection A. Subsection B is existing § 6.1-2.14, without the limitation that it applies only to documents executed after July 1, 1980.**

§ ~~6.1-2.12~~ 55-525.3. Duty of lender.

The lender shall, at or before loan closing, cause disbursement of loan funds to the settlement agent~~; however, in~~. In the case of a refinancing~~,~~ or any other loan where a right of rescission applies, the lender shall, within one business day after the expiration of the rescission period required under the federal ~~Truth-in-Lending~~ Truth in Lending Act (15 U.S.C. § 1601 et seq.), cause disbursement of loan funds to the settlement agent. The lender shall not be entitled to receive or charge any interest on the loan until disbursement of loan funds and loan closing has occurred.

**Drafting note: Technical changes.**

§ ~~6.1-2.13~~ 55-525.4. Duty of settlement agent.

The settlement agent shall cause recordation of the deed, the deed of trust, or mortgage, or other documents required to be recorded and shall cause disbursement of settlement proceeds within two business days of settlement. A settlement agent may not disburse any or all loan funds or other funds coming into its possession prior to the recordation of any instrument~~,~~ except (i) funds received ~~which~~ that are overpayments to be returned to the provider of such funds, (ii) funds necessary to effect the recordation of instruments, or (iii) funds ~~which~~ that the provider has by separate written instrument directed to be disbursed prior to recordation of any instrument. Additionally, in any transaction involving the purchase or sale of an interest in residential real property, the settlement agent shall provide notification to the purchaser of the availability of owner's title insurance as required under § 38.2-4616.

**Drafting note: Technical changes.**

§ ~~6.1-2.13:1~~ 55-525.5. Prohibition against payment or receipt of settlement services kickbacks, rebates, commissions and other payments; penalty.

A. No person selling real property, or performing services as a real estate agent, attorney, lay settlement agent or lender incident to any real estate settlement or sale, shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value, or other payment pursuant to any agreement or understanding, oral or otherwise, that business incident to services required to complete a settlement be referred to any person. ~~For purposes of this section, "thing of value" means any payment, advance, funds, loan, service or other consideration.~~

B. Nothing in this section shall be construed to prohibit ~~(i) payments or sums spent for~~:

1. Expenditures for bona fide advertising and marketing promotions otherwise permissible under the provisions of the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) ~~or (ii) providing~~;

2. The provision of educational materials or classes, ~~wherein~~ if such materials or classes are provided to a group of persons or entities pursuant to a bona fide marketing or educational effort;

3. The payment to any person of a bona fide salary or compensation or other payment for services actually performed for the business of the settlement service provider; or

4. An employer's payment to its own bona fide employees for referrals of mortgage loan or insurance business. An employer's payment to its own employees for the referral of insurance business shall be subject to the requirements of subdivision B 8 of § 38.2-1821.1.

C. No person shall be in violation of this section solely by reason of ownership in a settlement service provider ~~as defined in this chapter~~, ~~wherein~~ where such person receives returns on investments arising from the ownership interest. ~~In addition, this section shall not prohibit (i) the payment to any person of a bona fide salary or compensation or other payment for services actually performed for the business of the settlement service provider or (ii) any employer's payment to its own bona fide employees for referrals of mortgage loan or insurance business. Any employer's payment to its own employees for the referral of insurance business shall be subject to the requirements of subdivision B 8 of § 38.2-1821.1.~~

D. Any person who knowingly and willfully violates this section ~~shall be~~ is guilty of a Class 3 misdemeanor ~~and subject to a fine of not more than $1,000 for each violation~~. Any criminal charge brought under this section shall be by indictment pursuant to Chapter 14 (§ 19.2-216 et seq.) of Title 19.2.

**Drafting note: The provisions of existing subsections B and C are combined. In existing subsection D, the penalty is classified in accordance with § 18.2-11, which provides for a $500 penalty without sentencing to jail. (See note to § 3.2-5507 in House Doc. 43 (2007).)**

§ ~~6.1-2.13:2~~ 55-525.6. Disclosure of affiliated business by settlement service providers.

Any person making a referral to an affiliated settlement service provider shall disclose the affiliation in accordance with the federal Real Estate Settlement Procedures Act ~~of 1974~~ (12 U.S.C. § 2601 et seq.) ~~and provide such~~. Such disclosure shall be provided regardless of the amount of the person's actual ownership interest in the affiliated provider~~, unless such~~. However, if the person's ownership interest is one percent or less of the capital stock of a corporation or entity with a class of securities registered under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), ~~in which case such~~ the disclosure shall not be required.

**Drafting note: Existing sentence is divided to aid readability.**

§ ~~6.1-2.13:3~~ 55-525.7. Disclosure of charges for appraisal or valuation using automated or other valuation mechanism.

Any lender providing a loan secured by a first deed of trust or mortgage on real estate containing not more than four residential dwelling units shall disclose on the settlement

statement, as that term is defined in § ~~6.1-2.20~~ 55-525.9, any fee charged to the borrower for an appraisal~~,~~ as that term is defined in § 54.1-2009, and any fee charged to the borrower for a valuation or opinion of value of the property prepared using an automated or other mechanism prepared by a person who is not licensed as an appraiser under Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

**Drafting note: Technical changes.**

~~§ 6.1-2.14. Validity of loan documents.~~

~~Failure to comply with the provisions of this chapter shall not affect the validity or enforceability of any loan documents executed after July 1, 1980~~.

**Drafting note: Section is relocated to be subsection B of proposed § 55-525.2, without the statement that it applies to documents executed after July 1, 1980.**

§ ~~6.1-2.15~~ 55-525.8. Penalty.

Any persons suffering losses due to the failure of the lender or the settlement agent to cause disbursement as required by this chapter~~,~~ shall be entitled to recover, in addition to other actual damages, double the amount of any interest collected in violation of § ~~6.1-2.12~~ 55-525.3 ~~of this chapter~~ plus reasonable ~~attorneys'~~ attorney fees incurred in the collection thereof.

**Drafting note: Technical changes.**

CHAPTER ~~1.3~~ 27.2.

~~CONSUMER~~ REAL ESTATE ~~SETTLEMENT PROTECTION ACT~~ SETTLEMENT AGENTS.

**Chapter drafting note: Existing Chapters 1.3 (often referred to by its acronym as CRESPA) and 1.4 (Real Estate Settlement Agent Registration Act) of Title 6.1 are relocated to Title 55 (Property) because they pertain to the real property settlement process, and do not pertain to the financing of such transactions. The term "Act" is deleted from the chapter's caption per current style. Existing Chapters 1.3 and 1.4 are combined because they are extensively interconnected.**

~~§ 6.1-2.19. Title, purpose and applicability.~~

~~A. This chapter shall be known as the Consumer Real Estate Settlement Protection Act.~~

~~B. The purpose of this chapter is to authorize existing licensing authorities in the Commonwealth of Virginia to require persons performing escrow, closing or settlement services to comply with certain consumer protection safeguards relating to licensing, financial responsibility and the handling of settlement funds.~~

~~C. This chapter applies only to transactions involving the purchase of or lending on the security of real estate located in this Commonwealth containing not more than four residential dwelling units.~~

~~D. Nothing in this chapter shall be construed to prevent a person licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or such licensee's employees or independent contractors, from performing escrow, closing or settlement services, as defined by this chapter, to facilitate the settlement of a transaction in which the licensee is involved without complying with the provisions of this chapter, so long as the licensee, the licensee's employees or independent contractors, are not named as the settlement agent on the settlement statement and the licensee is otherwise not prohibited from performing such services by law or regulation.~~

**Drafting note: Subsection A is unnecessary because of the Code-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation. Subsection B is deleted because policy statements are not generally set out in the**

**Code. Subsection C is moved to proposed § 55-525.11. Subsection D, along with the identical provisions of existing subsection D of § 6.1-2.30, is moved proposed § 55-525.10.**

§ ~~6.1-2.20~~ 55-525.9. Definitions.

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

"Association" means the National Association of Insurance Commissioners.

"Commission" means the State Corporation Commission.

"Escrow" means written instruments, money, or other items deposited by a party with a settlement agent for delivery to other persons upon the performance of specified conditions or the happening of a certain event.

"Escrow, closing, or settlement services" means the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include~~, but are not limited to,~~ placing orders for title insurance, receiving and issuing receipts for money received from the parties, ordering loan checks and payoffs, ordering surveys and inspections, preparing settlement statements, determining that all closing documents conform to the parties' contract requirements, setting the closing appointment, following up with the parties to ensure that the transaction progresses to closing, ascertaining that the lenders' instructions have been satisfied, conducting a closing conference at which the documents are executed, receiving and disbursing funds, completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction, handling or arranging for the recording of documents, sending recorded documents to the lender, sending the recorded deed and the title policy to the buyer, and reporting federal income tax information for the real estate sale to the Internal Revenue Service.

"Lay real estate settlement agent" means a person who (i) is not licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, (ii) is not a party to the real estate transaction, (iii) provides escrow, closing, or settlement services in connection with a transaction related to any real estate in the Commonwealth, and (iv) is listed as the settlement agent on the settlement statement for such transaction.

"Licensing authority" shall mean the (i) ~~State Corporation~~ Commission acting pursuant to this ~~title~~ chapter, Title 6.2, Title 12.1, or Title 38.2; (ii) the Virginia State Bar acting pursuant to this chapter or Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1; or (iii) the Virginia Real Estate Board acting pursuant to this chapter or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

"Party to the real estate transaction" means with respect to that real estate transaction, a lender, seller, purchaser or borrower, and with respect to a corporate purchaser, any entity ~~which~~ that is a subsidiary of or under common ownership with that corporate purchaser.

~~"Person" means a natural person, partnership, association, cooperative, corporation, limited liability company, trust or other legal entity.~~

"Settlement agent" means a person, other than a party to the real estate transaction, who provides escrow, closing, or settlement services in connection with a transaction related to real estate in ~~this~~ the Commonwealth and who is listed as the settlement agent on the settlement statement for such transaction. Any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money shall be deemed a "settlement agent" subject to the applicable requirements of this chapter.

"Settlement statement" means the statement of receipts and disbursements for a transaction related to real estate, including~~, but not limited to,~~ a statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. § 2601 et seq., as amended, and the regulations thereunder.

**Drafting note: The definition of "person" is duplicative of the definition set out in § 1-230. The definition of "lay real estate settlement agent" is moved from subsection B of existing § 6.1-2.32. The definitions of "Association" and "Commission" are new. The phrase "but not limited to," following "including," is deleted pursuant to § 1-218. Other changes are technical.**

§ 55-525.10. Limitation on applicability of chapter.

~~D~~. Nothing in this chapter shall be construed to prevent a person licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or such licensee's employees or independent contractors, from performing escrow, closing, or settlement services~~, as defined by this chapter,~~ to facilitate the settlement of a transaction in which the licensee is involved without complying with the provisions of this chapter, so long as the licensee, the licensee's employees, or independent contractors~~,~~ are not named as the settlement agent on the settlement statement and the licensee is otherwise not prohibited from performing such services by law or regulation.

**Drafting note: Section is existing subsections D of both §§ 6.1-2.19 and 6.1-2.30, with the technical change as noted.**

§ 55-525.11. Scope of chapter; lay real estate settlement agents.

~~This~~ A. Except as provided in subsection B, this chapter applies only to transactions involving the purchase of or lending on the security of real estate located in ~~this~~ the Commonwealth containing not more than four residential dwelling units.

B. Notwithstanding any rule of court or other provision of this chapter to the contrary:

1. A lay real estate settlement agent may provide escrow, closing, and settlement services for any real property located within the Commonwealth, and receive compensation for such services, provided he is registered pursuant to and is in compliance with the provisions of this chapter with the exception of subsection A; and

2. A party to a real estate transaction involving the purchase of or lending on the security of real estate located in the Commonwealth containing more than four residential dwelling units shall have the same authority as a party to a real estate transaction as is provided pursuant to subsection B of § 55-525.12.

**Drafting note: Proposed subsection A is existing subsection C of § 6.1-2.19, with the changes as noted. Proposed subsection B is existing subsection A of § 6.1-2.32, with technical changes.**

§ ~~6.1-2.21~~ 55-525.12. ~~Licensing requirements, standards and financial responsibility~~ Persons who may act as a settlement agent.

A. A person shall not act in the capacity of a settlement agent, and a lender, seller, purchaser or borrower may not contract with any person to act in the capacity of a settlement agent, with respect to real estate settlements in ~~this~~ the Commonwealth unless the person ~~(i)~~ has not been convicted of a felony ~~and, if convicted, has not~~ , unless such person has had his civil rights restored by the Governor or been granted a writ of actual innocence, and ~~(ii)~~ is either:

1. ~~licensed~~ Licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1~~, is~~;

2. ~~licensed~~ Licensed as a title insurance company ~~or title insurance agent~~ under Title 38.2~~, is~~;

3. Licensed as a title insurance agent under Title 38.2 and is appointed by a title insurance company licensed in the Commonwealth pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

4. ~~licensed~~ Licensed as a real estate broker under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1~~, or is a~~;

5. A financial institution authorized to do business in ~~this~~ the Commonwealth under any of the provisions of Title ~~6.1~~ 6.2 or under federal law~~;~~ or ~~is a~~

6. A subsidiary or affiliate of ~~such~~ a financial institution described in subdivision 5. ~~Any title insurance agent acting in the capacity of a settlement agent shall be appointed by a title insurance company licensed in the Commonwealth pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2~~.

Any ~~such~~ person described in subdivisions 1 through 6, not acting in the capacity of a settlement agent, shall not be subject to the provisions of this chapter.

B. Notwithstanding any rule of court to the contrary, a settlement agent operating in compliance with the requirements of this chapter or a party to the real estate transaction may provide escrow, closing, or settlement services and receive compensation for such services.

~~C. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this chapter and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits, escrow account analyses and record retention.~~

~~D. A settlement agent other than a financial institution described in subsection A or title insurance company as defined in § 38.2-4601, shall maintain the following to the satisfaction of the appropriate licensing authority:~~

~~1. An errors and omissions or malpractice insurance policy providing a minimum of $250,000 in coverage;~~

~~2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing a minimum of $100,000 in coverage. When the settlement agent has no employees except the owners, partners, shareholders or members, the settlement agent may apply to the appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement; and~~

~~3. A surety bond of not less than $200,000.~~

~~E. 1. A settlement agent, other than an attorney or a title insurance company if such company's financial statements are audited annually by an independent certified public accountant, shall, at its expense, have an audit of its escrow accounts conducted by an independent certified public accountant at least once each consecutive 12-month period. The appropriate licensing authority shall require the settlement agent to provide a copy of its audit report to the licensing authority no later than 60 days after the date on which the audit is completed. A settlement agent that is a licensed title insurance agent under Title 38.2 shall also provide a copy of the audit report to each title insurance company which it represents.~~

~~2. In lieu of such annual audit, a settlement agent that is licensed as a title insurance agent under Title 38.2 shall allow each title insurance company for which it has an appointment to conduct an analysis of its escrow accounts in accordance with regulations promulgated by the State Corporation Commission or guidelines issued by the Bureau of Insurance of the State Corporation Commission, as appropriate, at least once each consecutive 12-month period and each title insurance company conducting such analysis shall submit a copy of its analysis report to the appropriate licensing authority no later than 60 days after the date on which the analysis is completed. With the consent of the title insurance agent, a title insurance company may share the results of its analysis with other title insurance companies that will accept the same in lieu of conducting a separate analysis.~~

~~3. A title insurance company shall retain a copy of the analysis or audit report, as applicable, for each title insurance agent it has appointed and such reports and other records of the insurance company's activities as a settlement agent shall be made available to the appropriate licensing authority when examinations are conducted pursuant to provisions in Title 38.2.~~

~~F. A person who has been convicted of a felony involving fraud, deceit or misrepresentation shall not assist a settlement agent in the performance of escrow, closing or settlement services involving, and a settlement agent shall not employ a person who has been convicted of a felony involving fraud, deceit or misrepresentation in an administrative or clerical capacity that involves, the receipt or disbursement of funds from real estate settlements in the Commonwealth.~~

**Drafting note: Section is divided into three proposed sections. Subsection A is restructured to improve readability. The reference to "such" persons in last sentence of existing subsection A ("Any such person, not acting in the capacity of a settlement agent, shall not be subject to the provisions . . . ") is revised to read, "Any person described subdivisions 1 through 6" in order to clarify that the provision does not apply only to title insurance agents. Subsections C, D, and E, which impose duties upon settlement agents, is made proposed § 55-525.13. Subsection F, which restricts the employment by settlement agents of certain persons, is made proposed § 55-525.14.**

§ 55-525.13. Duties of settlement agents.

A. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this chapter and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits, escrow account analyses and record retention.

B. A settlement agent who is not (i) a person described in subdivision A 5 of § 55-525.12 or (ii) a title insurance company as defined in § 38.2-4601 shall maintain the following to the satisfaction of the appropriate licensing authority:

1. An errors and omissions or malpractice insurance policy providing a minimum of $250,000 in coverage;

2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing a minimum of $100,000 in coverage. When the settlement agent has no employees except the owners, partners, shareholders or members, the settlement agent may apply to the appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement; and

3. A surety bond of not less than $200,000.

C. A settlement agent, other than an attorney or a title insurance company if such company's financial statements are audited annually by an independent certified public accountant, shall, at its expense, have an audit of its escrow accounts conducted by an independent certified public accountant at least once each consecutive 12-month period. The appropriate licensing authority shall require the settlement agent to provide a copy of its audit report to the licensing authority no later than 60 days after the date on which the audit is completed. A settlement agent that is a licensed title insurance agent under Title 38.2 shall also provide a copy of the audit report to each title insurance company that it represents. In lieu of such annual audit, a settlement agent that is licensed as a title insurance agent under Title 38.2 shall allow each title insurance company for which it has an appointment to conduct an analysis of its escrow accounts in accordance with regulations promulgated by the Commission or

guidelines issued by the Bureau of Insurance of the Commission, as appropriate, at least once each consecutive 12-month period, and each title insurance company conducting such analysis shall submit a copy of its analysis report to the appropriate licensing authority no later than 60 days after the date on which the analysis is completed. With the consent of the title insurance agent, a title insurance company may share the results of its analysis with other title insurance companies that will accept the same in lieu of conducting a separate analysis. A title insurance company shall retain a copy of the analysis or audit report, as applicable, for each title insurance agent it has appointed and such reports and other records of the insurance company's activities as a settlement agent shall be made available to the appropriate licensing authority when examinations are conducted pursuant to provisions in Title 38.2.

**Drafting note: Section is existing subsections C, D, and E of § 6.1-2.21.**

§ 55-525.14. Persons prohibited from assisting or being employed by settlement agents.

A. A person who has been convicted of a felony involving fraud, deceit, or misrepresentation shall not assist a settlement agent in the performance of escrow, closing, or settlement services involving the receipt or disbursement of funds from real estate settlements in the Commonwealth.

B. A settlement agent shall not employ a person who has been convicted of a felony involving fraud, deceit, or misrepresentation in an administrative or clerical capacity that involves the receipt or disbursement of funds from real estate settlements in the Commonwealth.

**Drafting note: Section is existing subsection F of § 6.1-2.21.**

§ ~~6.1-2.21:1~~ 55-525.15. Choice of settlement agent.

A purchaser or borrower in a transaction related to real estate in the Commonwealth shall have the right to select the settlement agent to provide escrow, closing, or settlement services in connection with the transaction. The seller in such a transaction may not require the use of a particular settlement agent as a condition of the sale of the property.

**Drafting note: No change. Section was added in the 2009 Session.**

§ ~~6.1-2.22~~ 55-525.16. Disclosure.

All contracts involving the purchase of real estate containing not more than four residential dwelling units shall include, in bold face, ~~ten-point~~ and in at least 10-point type, the following language:

"Choice of Settlement Agent: ~~Virginia's Consumer Real Estate Settlement Protection Act~~ Chapter 27.2 of Title 55 of the Code of Virginia provides that the purchaser or borrower has the right to select the settlement agent to handle the closing of this transaction. The settlement agent's role in closing this transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, the lender for the purchaser will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

"Variation by agreement: The provisions of ~~the Consumer Real Estate Settlement Protection Act~~ Chapter 27.2 of Title 55 of the Code of Virginia may not be varied by agreement, and rights conferred by this chapter may not be waived. The seller may not require the use of a particular settlement agent as a condition of the sale of the property.

"Escrow, closing, and settlement service guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, the purchaser or borrower is entitled to receive a copy of these guidelines from his settlement agent, upon request, in accordance with the provisions of ~~the Consumer Real Estate Settlement Protection Act~~ Chapter 27.2 of Title 55 of the Code of Virginia."

**Drafting note: The requirement that the disclosure be in 10-point type is revised to provide that it the minimum size permitted, and that larger type may be used. Other changes are technical.**

§ ~~6.1-2.23~~ 55-525.17. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in ~~this~~ the Commonwealth no later than the close of the second business day, in accordance with the following requirements:

1. The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with § ~~6.1-2.13~~ 55-525.4, except:

1. Title insurance premiums payable to title insurers under § 38.2-1813 or to title insurance agents. Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent's settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of § 38.2-1813; and

2. Escrows held by the settlement agent pursuant to written instruction or agreement. A settlement statement that has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. A settlement agent may not retain any interest received on funds deposited in connection with any escrow, settlement, or closing~~; provided, however, that an~~. An attorney settlement agent shall maintain escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

D. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided all parties consent to such recordation.

E. All settlement statements for transactions related to real estate governed by this chapter shall be in writing and identify, by name and business address, the settlement agent.

F. Nothing in this section is intended to amend, alter or supersede other sections of this chapter, or the laws of ~~this~~ the Commonwealth or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

**Drafting note: Technical changes.**

§ ~~6.1-2.23:1~~ 55-525.18. Falsifying settlement statements prohibited.

No settlement agent shall intentionally make any materially false or misleading statement or entry on a settlement statement. An estimate of charges made in good faith by a settlement agent, and indicated as such on the settlement statement, shall not be deemed to be a violation of this section.

**Drafting note: No change.**

§ ~~6.1-2.23:2~~ 55-525.19. Separate charge for reporting transactions limited.

No settlement agent shall charge any party to a real estate transaction, as a separate item on a settlement statement, a sum exceeding $10 for complying with any requirement imposed on the settlement agent by § 58.1-316 or 58.1-317.

**Drafting note: No change.**

§ ~~6.1-2.24~~ 55-525.20. Record retention requirements.

The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this chapter. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five years after the settlement is completed. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.

**Drafting note: No change.**

§ ~~6.1-2.25~~ 55-525.21. ~~Rules and regulations~~ Regulations and orders.

Except as provided in § ~~6.1-2.26~~ 55-525.23, the appropriate licensing authority may issue summonses, subpoenas, rules, regulations, and orders, including educational requirements, consistent with and necessary to carry out the provisions of this chapter. ~~When the registration of a settlement agent is renewed, the appropriate authority shall notify the registrant of the provisions of § 17.1-223. A title insurance company domiciled in the Commonwealth or acting in the capacity of a settlement agent pursuant to this chapter shall account for funds held and income derived from escrow, closing, or settlement services in accordance with the applicable instructions of, and the accounting practices and procedures manuals adopted by, the National Association of Insurance Commissioners when filing the annual statements and reports required under Chapter 13 (§ 38.2-1300 et seq.) of Title 38.2.~~

**Drafting note: The second sentence is relocated to subsection A of proposed § 55-525.23, with the requirement for registration renewal. The third sentence is proposed § 55-525.22.**

§ 55-525.22. Accounting by title insurance companies.

A title insurance company domiciled in the Commonwealth or acting in the capacity of a settlement agent pursuant to this chapter shall account for funds held and income derived from escrow, closing, or settlement services in accordance with the applicable instructions of, and the accounting practices and procedures manuals adopted by, the Association when filing the annual statements and reports required under Chapter 13 (§ 38.2-1300 et seq.) of Title 38.2.

**Drafting note: Section is the last sentence of existing § 6.1-2.25 (Rules and regulations).**

§ ~~6.1-2.26~~ 55-525.23. Settlement agent registration requirements and compliance with unauthorized practice of law guidelines.

A. Every settlement agent subject to the provisions of this chapter shall be registered as such with the appropriate licensing authority. In conjunction therewith, settlement agents shall furnish (i) their names, business addresses, and telephone numbers and (ii) such other information as may be required. Each such registration (~~i~~ a) shall be accompanied by a fee not to exceed $100, and (~~ii~~ b) shall be renewed at least biennially thereafter. When the registration of a settlement agent is renewed, the appropriate authority shall notify the registrant of the provisions of § 17.1-223.

B. The Virginia State Bar, in consultation with the ~~Virginia State Corporation~~ Commission and the Virginia Real Estate Board, shall ~~promulgate~~ adopt regulations establishing guidelines for settlement agents designed to assist them in avoiding and preventing the unauthorized practice of law in conjunction with providing escrow, closing, and settlement services. Such guidelines shall be furnished by the appropriate licensing authority to (i) each settlement agent at the time of registration and any renewal thereof, (ii) state and federal agencies that regulate financial institutions, and (iii) members of the general public upon request. Such guidelines shall also be furnished by settlement agents to any party to a real estate transaction in which such agents are providing escrow, closing, or settlement services, upon request.

C. The Virginia State Bar shall receive complaints concerning settlement agent or financial institution noncompliance with the guidelines established pursuant to subsection B and shall (i) investigate the same to the extent they concern the unauthorized practice of law or any other matter within its jurisdiction, and (ii) refer all other matters or allegations to the appropriate licensing authority. The willful failure of any settlement agent to comply with the guidelines shall be considered a violation of this chapter, and such agent shall be subject to a penalty of up to $5,000 for each such failure as the Virginia State Bar may determine.

**Drafting note: The last sentence of proposed subsection A is currently the second sentence of existing § 6.1-2.25.**

§ ~~6.1-2.27~~ 55-525.24. Penalties and liabilities.

A. If the appropriate licensing authority determines that the settlement agent licensed by it or any of its other licensees has violated this chapter, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the appropriate licensing authority may ~~order~~ do one or more of the following:

1. ~~A~~ Impose a penalty not exceeding $5,000 for each violation;

2. ~~Revocation or suspension of~~ Revoke or suspend the applicable licenses~~, or~~;

3. Issue a restraining order requiring such person to cease and desist from engaging in such act or practice; ~~and~~ or

~~3~~ 4. ~~Restitution~~ Require restitution to be made by the person violating this chapter in the amount of any actual, direct financial loss.

B. The appropriate licensing authority may terminate administratively the registration of any settlement agent if the settlement agent (i) no longer holds a license, (ii) fails to renew its registration, or (iii) fails to comply with the financial responsibility requirements set forth in § ~~6.1-2.21~~ 55-525.13.

C. In addition to the authority given in subsection A, and pursuant to § 12.1-13, the Commission, after determining that any person who does not hold a license from the appropriate

licensing authority has violated this chapter or any regulation or order promulgated thereunder, may ~~order~~ do one or more of the following:

1. ~~A~~ Impose a penalty not exceeding $5,000 for each violation;

2. ~~A~~ Issue a temporary or permanent injunction, or restraining order requiring such person to cease and desist from engaging in such act or practice; or

3. ~~Restitution~~ Require restitution to be made by the person violating this chapter in the amount of any actual, direct financial loss.

D. Nothing in this section shall affect the right of the appropriate licensing authority to impose any other penalties provided by law or regulation. Notwithstanding any provision contained in this section to the contrary, as to that portion of any complaint by a party to the real estate transaction arising under this chapter or any regulation or order ~~promulgated~~ adopted thereunder relating to the unauthorized practice of law, the Virginia State Bar, after complying with applicable law and regulation relating to unauthorized practice of law complaints and concluding the activity was not authorized by statute or regulation, may refer that portion of such complaint to the Attorney General ~~of Virginia~~ or ~~a Commonwealth's~~ an Attorney ~~who shall have the power~~ for the Commonwealth. The Attorney General or Attorney for the Commonwealth may, in addition to any other powers conferred on him by law, ~~to~~ seek the issuance of a temporary or permanent injunction or restraining order against any person so violating this chapter or any regulation or order ~~promulgated~~ adopted thereunder.

E. A final order of the licensing authority imposing a penalty or ordering restitution may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such order by the licensing authority.

**Drafting note: Technical changes.**

§ ~~6.1-2.27:1~~ 55-525.25. Confidentiality of information obtained by the Commission.

A. Any documents, materials, or other information in the control or possession of the Commission that are furnished by a title insurance company or title insurance agent or an employee thereof acting on behalf of the title insurance company or title insurance agent, or obtained by the Commission in an investigation pursuant to this chapter shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. ~~However, the~~ The Commission is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commission's duties.

B. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection A.

C. In order to assist in the performance of the Commission's duties under this chapter, the Commission:

1. May share documents, material, or other information, including the confidential and privileged documents, materials, or information subject to subsection A, with other state, federal, and international regulatory agencies; with the ~~National Association of Insurance Commissioners, hereafter referred to as the~~ Association, its affiliates or subsidiaries; and with local state, federal, and international law ~~-~~-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information; and

2. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the Association, its affiliates or subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commission under this section or as a result of sharing as authorized in subsection C.

E. Nothing in this chapter shall prohibit the Commission from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 4 (§ 12.1-18 et seq.) of Title 12.1 to a database or other clearinghouse service maintained by the Association, its affiliates, or subsidiaries.

**Drafting note: Technical changes.**

~~§ 6.1-2.28. Severability.~~

~~If any provision of this chapter, or the application of the provision to any person or circumstance, shall be held invalid, the remainder of the chapter, and the application of the provision to persons or circumstances other than those to which it is invalid, shall not be affected.~~

**Drafting note: Deleted because § 1-243 provides that laws are severable unless otherwise so provided.**

~~§ 6.1-2.29. Compliance.~~

~~A settlement agent operating in this Commonwealth prior to July 1, 1997, shall have ninety days after July 1, 1997, to comply with requirements of §§ 6.1-2.21 and 6.1-2.23.~~

**Drafting note: Deleted because the time limit for compliance by settlement agents operating prior to July 1997 has long since expired.**

~~CHAPTER 1.4.~~

~~REAL ESTATE SETTLEMENT AGENT REGISTRATION ACT.~~

**Drafting note: The Real Estate Settlement Agent Registration Act (RESARA) broadened CRESPA's authorization for non-lawyers to conduct real estate settlements. After the enactment of CRESPA, UPL Opinion No. 183 would have prohibited lay settlement agents from conducting settlements on any real estate not covered by CRESPA, which applies only to property with not more than four residential dwelling units. RESARA allows a lay settlement agent, if registered and in compliance with CRESPA, to close any real estate transaction in Virginia. The provisions of Chapter 1.4 are incorporated into proposed Chapter 27.2 of Title 55.**

~~§ 6.1-2.30. Title, purpose and applicability.~~

~~A. This chapter shall be known as the Real Estate Settlement Agent Registration Act.~~

~~B. The purpose of this chapter is to require lay persons performing escrow, closing or settlement services in relation to any real property located in the Commonwealth to comply with certain safeguards relating to licensure, registration, financial responsibility and the handling of settlement funds as detailed in the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq.).~~

~~C. This chapter applies to transactions involving the purchase of or lending on the security of real estate located in this Commonwealth not otherwise covered by the provisions of the Consumer Real Estate Settlement Protection Act~~.

~~D. Nothing in this chapter shall be construed to prevent a person licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or such licensee's employees or independent contractors, from performing escrow, closing or settlement services, as defined by § 6.1-2.20, to facilitate the settlement of a transaction in which the licensee is involved without complying with the provisions of this chapter, so long as the licensee, the licensee's employees or independent contractors, are not named as the settlement agent on the settlement statement and the licensee is otherwise not prohibited from performing such services by law or regulation.~~

**Drafting note: Subsection A is unnecessary because of the Code-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation. Subsection B is deleted because policy statements are no longer set out in the Code. Subsection C is deleted as unnecessary because the chapter no longer will exist as a separate chapter. Subsection D is incorporated into proposed § 55-525.10.**

§ ~~6.1-2.31. Definitions.~~

~~Unless otherwise provided for in this chapter, the definitions set forth in § 6.1-2.20 shall apply to the provisions of this chapter.~~

**Drafting note: Section deleted.**

~~§ 6.1-2.32. Lay real estate settlement agents.~~

~~A. Notwithstanding any rule of court to the contrary, (i) a lay real estate settlement agent may provide escrow, closing and settlement services for any real property located within the Commonwealth, and receive compensation for such services, provided he is registered pursuant to and is in compliance with the provisions of the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq.), with the exception of subsection C of § 6.1-2.19 and (ii) a party to the real estate transaction shall have the same authority under this chapter as a party to the real estate transaction under the Consumer Real Estate Settlement Protection Act.~~

~~B. As used in this chapter, "lay real estate settlement agent" means a person who (i) is not licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, (ii) is not a party to the real estate transaction, (iii) provides escrow, closing or settlement services in connection with a transaction related to any real estate in this Commonwealth, and (iv) is listed as the settlement agent on the settlement statement for such transaction.~~

**Drafting note: Subsection A is moved to proposed subsection B of § 55-525.11. Subsection B is moved to proposed § 55-525.9.**

# OUTLINE OF PROPOSED TITLE 6.2.

## TITLE 6.2.
## FINANCIAL INSTITUTIONS AND SERVICES.

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APPENDIX A

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