

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 678

*An Act to amend and reenact §§ 13.1-543, 13.1-544.1, 13.1-544.2, 13.1-1102, and 38.2-231 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 13.1-542.1 and 13.1-1101.1, relating to professional corporations and professional limited liability companies; professional services.*

[S 879]

Approved March 19, 2003

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 13.1-543, 13.1-544.1, 13.1-544.2, 13.1-1102, and 38.2-231 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 13.1-542.1 and 13.1-1101.1, as follows:**

*§ 13.1-542.1. Practice of certain professions by corporations.*

*Unless otherwise prohibited by law or regulation, the professional services defined in subsection A of § 13.1-543 may be rendered in this Commonwealth by:*

- 1. A corporation organized as a professional corporation pursuant to the provisions of this chapter;*
- 2. A foreign corporation that has obtained a certificate of authority pursuant to the provisions of this chapter;*
- 3. A corporation organized pursuant to the provisions of Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of this title; or*
- 4. A foreign corporation that has obtained a certificate of authority pursuant to the provisions of Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of this title.*

**§ 13.1-543. Definitions.**

**A. As used in this chapter:**

~~A.~~ The term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service or use of such title the obtaining of a license, certification or other legal authorization and shall be limited to the personal services rendered by pharmacists, optometrists, practitioners of the healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists, architects, professional engineers, land surveyors, certified landscape architects, certified interior designers, public accountants, certified public accountants, attorneys-at-law, insurance consultants, audiologists or speech pathologists, and clinical nurse specialists. For the purposes of this chapter, the following shall be deemed to be rendering the same professional service:

1. Architects, professional engineers and land surveyors; and
2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, nurse practitioners, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, physical therapists and physical therapist assistants, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, practitioners of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) and 37 (§ 54.1-3700 et seq.) of Title 54.1, and one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing.

~~B.~~ The term "professional corporation" means a corporation whose articles of incorporation set forth a sole and specific purpose permitted by this chapter and which is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers or land surveyors, or using a title other than that of certified landscape architects or certified interior designers and, except as expressly otherwise permitted by this chapter, which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the corporation and of which shareholders at least one is duly licensed or otherwise legally authorized to render such professional service within the Commonwealth; or (ii) organized under this chapter for the sole and specific purpose of rendering the professional services of architects, professional engineers or land surveyors, or using the title of certified landscape architects or certified interior designers, or any combination thereof, and at least two-thirds of whose shares are held by persons duly licensed within the Commonwealth to perform the services of an architect, professional engineer or land surveyor, or by persons legally authorized within the Commonwealth to use the title of certified landscape architect or certified interior designer; or (iii) organized under this chapter or under Chapter 10 (§ 13.1-801 et seq.) of this title for the sole and specific purpose of rendering the professional services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse

practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of practitioners of the healing arts, optometry, physical therapy, the behavioral science professions, and audiology or speech pathology, and all of whose shares are held by or all of whose members are persons duly licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts, *nurse practitioners*, optometry, physical therapy, the behavioral science professions, ~~or~~ audiology or speech pathology or of a clinical nurse specialist who renders mental health services; however, nothing herein shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the behavioral science professions, ~~or~~ audiology or speech pathology or a *nurse practitioner* or clinical nurse specialist to conduct his practice in a manner contrary to the standards of ethics of his branch of the healing arts, optometry, physical therapy, the behavioral science professions, ~~or~~ audiology or speech pathology, or nursing, as the case may be.

€ B. Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university that is an "educational institution" within the meaning of § 23-14.

§ 13.1-544.1. Use of initials "P.C." or "PC" in corporate name.

Any professional corporation as defined in ~~subsection B~~ of § 13.1-543 may, but is not required to, use the initials "P.C." or "PC," or the phrase "professional corporation" or "a professional corporation," at the end of its corporate name. Such initials or phrase may be used in the place of any word or abbreviation required by subsection A of § 13.1-630, but shall not be considered in determining whether a corporate name is distinguishable upon the records of the Commission.

§ 13.1-544.2. Certificate of authority for foreign professional corporations.

A. Notwithstanding any other provision of this chapter, a foreign professional corporation, organized under the laws of a jurisdiction other than the Commonwealth of Virginia to perform a professional service of the type defined in subsection A of § 13.1-543, may apply for and obtain a certificate of authority to render such professional services in Virginia on the following terms and conditions:

1. Only stockholders and employees licensed or otherwise legally qualified by this Commonwealth may perform the professional service in Virginia.
2. The professional corporation must meet every requirement of this chapter except the requirement that ~~all of~~ its stockholders be licensed to perform the professional service in this Commonwealth.
3. The powers of any foreign professional corporation admitted under this section shall not exceed the powers permitted to domestic professional corporations under this chapter.

B. In order to qualify, a foreign professional corporation shall make application to the Commission as provided in § 13.1-759 and shall make such application for and secure a certificate of authority as may be required by § 13.1-549; and, in addition, shall be required to set forth the name and address of each stockholder of the corporation who will be providing the professional service in this Commonwealth and whether such stockholder is licensed, or otherwise legally qualified, to perform the professional service in Virginia.

§ 13.1-1101.1. *Practice of certain professions by limited liability companies.*

*Unless otherwise prohibited by law or regulation, the professional services defined in subsection A of § 13.1-1102 may be rendered in this Commonwealth by:*

1. A limited liability company organized as a professional limited liability company pursuant to the provisions of this chapter;
2. A foreign limited liability company that has obtained a certificate of authority pursuant to the provisions of this chapter;
3. A limited liability company organized pursuant to the provisions of Chapter 12 (§ 13.1-1000 et seq.) of this title; or
4. A foreign limited liability company that has obtained a certificate of authority pursuant to the provisions of Chapter 12 (§ 13.1-1000 et seq.) of this title.

§ 13.1-1102. Definitions.

A. As used in this chapter:

"Professional business entity" means (i) a professional limited liability company, (ii) a professional corporation within the meaning of § 13.1-543 B A, or (iii) a partnership (including a professional registered limited liability partnership registered under § 54.1-3902) each of the partners of which is duly licensed or otherwise legally authorized to render the same professional services as those for which the

partnership was organized.

"Professional limited liability company" means a limited liability company whose articles of organization set forth a sole and specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers or land surveyors, or using a title other than that of certified landscape architects or certified interior designers and, except as expressly otherwise permitted by this chapter, that has as its members only persons or professional business entities that themselves are duly licensed or otherwise legally authorized to render the same professional service as the professional limited liability company and of which members at least one is duly licensed or otherwise legally authorized to render such professional service within the Commonwealth; or (ii) organized under this chapter for the sole and specific purpose of rendering professional service of architects, professional engineers or land surveyors, or using the title of certified landscape architects or certified interior designers, or any combination thereof, and at least two-thirds of whose membership interests are held by persons duly licensed within the Commonwealth to perform the services of an architect, professional engineer or land surveyor, or by persons legally authorized within the Commonwealth to use the title of certified landscape architect or certified interior designer; or (iii) organized under this chapter for the sole and specific purpose of rendering the professional services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of practitioners of the healing arts, of optometry, physical therapy, the behavioral science professions, and audiology or speech pathology and all of whose members are persons or professional business entities duly licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts, *nurse practitioners*, optometry, physical therapy, the behavioral science professions or audiology or speech pathology or of a clinical nurse specialist who renders mental health services; however, nothing herein shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the behavioral science professions, or audiology or speech pathology or a *nurse practitioner* or clinical nurse specialist to conduct that person's practice in a manner contrary to the standards of ethics of that person's branch of the healing arts, optometry, physical therapy, the behavioral science professions, or audiology or speech pathology, or nursing as the case may be.

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of that service or the use of that title the obtaining of a license, certification, or other legal authorization and shall be limited to the personal services rendered by pharmacists, optometrists, physical therapists and physical therapist assistants, practitioners of the healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists, architects, professional engineers, land surveyors, certified landscape architects, certified interior designers, public accountants, certified public accountants, attorneys at law, insurance consultants, audiologists or speech pathologists and clinical nurse specialists. For the purposes of this chapter, the following shall be deemed to be rendering the same professional services:

1. Architects, professional engineers, and land surveyors; and
2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, physical therapists, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, practitioners of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of Title 54.1, and clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing.

B. Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university that is an "educational institution" within the meaning of § 23-14.

C. Except as expressly otherwise provided, all terms defined in § 13.1-1002 shall have the same meanings for purposes of this chapter.

§ 38.2-231. Notice of cancellation, refusal to renew, reduction in coverage or increase in rate of certain liability insurance policies.

A. 1. No cancellation or refusal to renew by an insurer of a policy of insurance as defined in § 38.2-117 or § 38.2-118 insuring a business entity, or a policy of insurance that includes as a part thereof insurance as defined in § 38.2-117 or § 38.2-118 insuring a business entity, or a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity, shall be effective unless the insurer delivers or mails to the named insured at the address shown on the policy a written notice of cancellation or refusal to renew. Such notice shall:

- a. Be in a type size authorized under § 38.2-311;
- b. State the date, which shall not be less than ~~forty-five~~ 45 days after the delivery or mailing of the notice of cancellation or refusal to renew, on which such cancellation or refusal to renew shall become effective, except that such effective date may not be less than ~~fifteen~~ 15 days from the date of mailing or delivery when the policy is being cancelled or not renewed for failure of the insured to discharge when due any of its obligations in connection with the payment of premium for the policy;
- c. State the specific reason or reasons of the insurer for cancellation or refusal to renew;
- d. Advise the insured of its right to request in writing, within ~~fifteen~~ 15 days of the receipt of the notice, that the Commissioner of Insurance review the action of the insurer; and
- e. In the case of a policy of motor vehicle insurance, inform the insured of the possible availability of other insurance which may be obtained through its agent, through another insurer, or through the Virginia Automobile Insurance Plan.

2. Nothing in this subsection shall apply to any policy of insurance if the named insured or his duly constituted attorney-in-fact has notified orally, or in writing, if the insurer requires such notification to be in writing, the insurer or its agent that he wishes the policy to be canceled or that he does not wish the policy to be renewed, or if, prior to the date of expiration, he fails to accept the offer of the insurer to renew the policy.

B. No insurer shall cancel or refuse to renew a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity solely because of lack of supporting business or lack of the potential for acquiring such business.

C. No reduction in coverage for personal injury or property damage liability initiated by an insurer and no increase in the filed rate for such coverage greater than ~~twenty-five~~ 25 percent initiated by an insurer of a policy of insurance defined in § 38.2-117 or § 38.2-118 insuring a business entity, or of a policy of insurance that includes as a part thereof insurance defined in § 38.2-117 or § 38.2-118 insuring a business entity, or a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity, and which in the case of a reduction in coverage is subject to § 38.2-1912, shall be effective unless the insurer delivers or mails to the named insured at the address shown on the policy a written notice of such reduction in coverage or rate increase not later than ~~forty-five~~ 45 days prior to the effective date of same. Such notice shall:

1. Be in a type size authorized under § 38.2-311;
2. State the date, which shall not be less than ~~forty-five~~ 45 days after the delivery or mailing of the notice of reduction in coverage or increase in rate, on which such reduction in coverage or increase in rate shall become effective;
3. State the manner in which coverage under an existing policy will be reduced or the amount of such rate increase;
4. State the specific reason or reasons for the reduction in coverage or increase in rate;
5. Advise the insured of its right to request in writing, within ~~fifteen~~ 15 days of receipt of the notice, that the Commissioner of Insurance review the action of the insurer.

D. If an insurer does not provide notice in the manner required in subsection C, coverage shall remain in effect until ~~forty-five~~ 45 days after written notice of reduction in coverage or increase in rate is mailed or delivered to the insured at the address shown on the policy, unless the insured obtains replacement coverage or elects to cancel sooner in either of which cases coverage under the prior policy shall cease on the effective date of the replacement coverage or the elected date of cancellation as the case may be. If the insured fails to accept or rejects the changed policy, coverage for any period that extends beyond the expiration date will be under the prior policy's terms and conditions. If the insured accepts the changed policy, the reduction in coverage or increase in rate shall take effect upon the expiration of the prior policy.

E. Notice of reduction in coverage or increase in rate shall not be required if the insurer, after written demand, has not received, within ~~forty-five~~ 45 days after such demand has been mailed or delivered to the insured at the address shown on the policy, sufficient information from the insured to provide the required notice, or if such notice is waived in writing by the insured.

F. No written notice of cancellation, refusal to renew, reduction in coverage or increase in rate that is mailed by an insurer to an insured in accordance with this section shall be effective unless:

1. a. It is sent by registered or certified mail, or
- b. At the time of mailing the insurer obtains a written receipt from the United States Postal Service showing the name and address of the insured stated in the policy; and
2. The insurer retains a copy of the notice of cancellation, refusal to renew, reduction in coverage or increase in rate.

3. a. If the terms of a policy of motor vehicle insurance insuring a business entity require the notice of cancellation, refusal to renew, reduction in coverage or increase in rate to be given to any lienholder, then the insurer shall mail such notice and retain a copy of the notice in the manner required by this subsection. If the notices sent to the insured and the lienholder are part of the same form, the insurer may retain a single copy of the notice. The registered, certified or regular mail postal receipt and the copy of the notices required by this subsection shall be retained by the insurer for at least one year from the date of termination.

b. Notwithstanding the provisions of subdivision 3 a, if the terms of the policy require the notice of cancellation, refusal to renew, reduction in coverage or increase in rate to be given to any lienholder, the insurer and lienholder may agree by separate agreement that such notices may be transmitted electronically provided that the insurer and lienholder agree upon the specifics for transmittal and acknowledgement of notification. Evidence of transmittal or receipt of the notification required by this subsection shall be retained by the insurer for at least one year from the date of termination.

4. Copy, as used in this subsection, shall include photographs, microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

G. Nothing in this section shall prohibit any insurer or agent from including in a notice of cancellation, refusal to renew, reduction in coverage or rate increase any additional disclosure statements required by state or federal laws.

H. For the purpose of this section the terms (i) "business entity" shall mean an entity as defined by subsection B A of § 13.1-543, § 13.1-603 or § 13.1-803 and shall include an individual, a partnership, an unincorporated association, the Commonwealth, a county, city, town, or an authority, board, commission, sanitation, soil and water, planning or other district, public service corporation owned, operated or controlled by the Commonwealth, a locality or other local governmental authority, (ii) "policy of motor vehicle insurance" shall mean a policy or contract for bodily injury or property damage liability insuring a business entity issued or delivered in this Commonwealth covering liability arising from the ownership, maintenance, or use of any motor vehicle, but does not include (a) any policy issued through the Virginia Automobile Insurance Plan, (b) any policy providing insurance only on an excess basis, or (c) any other contract providing insurance to the named insured even though the contract may incidentally provide insurance on motor vehicles, and (iii) "reduction in coverage" shall mean, but not be limited to, any diminution in scope of coverage, decrease in limits of liability, addition of exclusions, increase in deductibles, or reduction in the policy term or duration except a reduction in coverage filed with and approved by the Commission and applicable to an entire line, classification or subclassification of insurance.

I. Within ~~fifteen~~ 15 days of receipt of the notice of cancellation, refusal to renew, reduction in coverage or increase in rate, the insured shall be entitled to request in writing to the Commissioner that he review the action of the insurer. Upon receipt of the request, the Commissioner shall promptly begin a review to determine whether the insurer's notice of cancellation, refusal to renew, reduction in coverage or rate increase complies with the requirements of this section. Where the Commissioner finds from the review that the notice of cancellation, refusal to renew, reduction in coverage or rate increase does not comply with the requirements of this section, he shall immediately notify the insurer, the insured and any other person to whom such notice was required to be given by the terms of the policy that such notice is not effective. Nothing in this section authorizes the Commissioner to substitute his judgment as to underwriting for that of the insurer. Pending review by the Commission, this section shall not operate to relieve an insured from the obligation to pay any premium when due; however, if the Commission finds that the notice required by this section was not proper, the Commission may order the insurer to pay to the insured any overpayment of premium made by the insured.

J. Every insurer shall maintain for at least one year records of cancellation, refusals to renew, reductions in coverage and rate increases to which this section applies and copies of every notice or statement required by subsections A, C and F of this section that it sends to any of its insureds.

K. There shall be no liability on the part of and no cause of action of any nature shall arise against (i) the Commissioner of Insurance or his subordinates, (ii) any insurer, its authorized representative, its agents, or its employees, or (iii) any firm, person or corporation furnishing to the insurer information as to reasons for cancellation, refusal to renew, reduction in coverage or rate increase, for any statement made by any of them in complying with this section or for providing information pertaining thereto.

**2. That an emergency exists and this act is in force from its passage.**