

# VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

## CHAPTER 715

*An Act to amend and reenact §§ 13.1-543, 13.1-544, 13.1-549, 13.1-549.1, 13.1-550, and 54.1-4412 of the Code of Virginia, relating to employee stock ownership plans for professional corporations, including certified public accounting firms; Board for Accountancy.*

[S 108]

Approved April 5, 2006

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

**1. That §§ 13.1-543, 13.1-544, 13.1-549, 13.1-549.1, 13.1-550, and 54.1-4412 of the Code of Virginia are amended and reenacted as follows:**

§ 13.1-543. Definitions.

A. As used in this chapter:

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.

"Eligible employee stock ownership plan" means an employee stock ownership plan as such term is defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, sponsored by a professional corporation and with respect to which:

1. All of the trustees of the employee stock ownership plan are individuals who are duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter; however, if a conflict of interest exists for one or more trustees with respect to a specific issue or transaction, such trustees may appoint a special independent trustee or special fiduciary, who is not duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, which special independent trustee shall be authorized to make decisions only with respect to the specific issue or transaction that is the subject of the conflict;

2. The employee stock ownership plan provides that no shares, fractional shares, or rights or options to purchase shares of the professional corporation shall at any time be issued, sold, or otherwise transferred directly to anyone other than an individual duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, unless such shares are transferred as a plan distribution to a plan beneficiary and subject to immediate repurchase by the professional corporation, the employee stock ownership plan or another person authorized to hold such shares; however:

a. With respect to a professional corporation rendering the professional services of public accounting or certified public accounting:

(1) The employee stock ownership plan may permit individuals who are not duly licensed or otherwise legally authorized to render these services to participate in such plan, provided such individuals are employees of the corporation and hold less than a majority of the beneficial interests in such plan; and

(2) At least 51% of the total of allocated and unallocated equity interests in the corporation sponsoring such employee stock ownership plan are held (i) by the trustees of such employee stock ownership plan for the benefit of persons holding a valid CPA certificate as defined in § 54.1-4400, with unallocated shares allocated for these purposes pursuant to § 409(p) of the Internal Revenue Code of 1986, as amended, or (ii) by individual employees holding a valid CPA certificate separate from any

*interests held by such employee stock ownership plan; and*

*b. With respect to a professional corporation rendering the professional services of architects, professional engineers, land surveyors, certified landscape architects, or certified interior designers, the employee stock ownership plan may permit individuals who are not duly licensed to render the services of architects, professional engineers or land surveyors or individuals legally authorized to use the title of certified landscape architects or certified interior designers to participate in such plan, provided such individuals are employees of the corporation and together hold not more than one-third of the beneficial interests in such plan, and that the total of the shares (i) held by individuals who are employees but not duly licensed to render such services or legally authorized to use a title and (ii) held by the trustees of such employee stock ownership plan for the benefit of individuals who are employees but not duly licensed to render such services or legally authorized to use a title, shall not exceed one-third of the shares of the corporation; and*

*3. The professional corporation, the trustees of the employee stock ownership plan, and the other shareholders of the professional corporation comply with the foregoing provisions of the plan.*

~~The term "professional~~ "Professional corporation" means a corporation whose articles of incorporation set forth a sole and specific purpose permitted by this chapter and ~~which 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, ~~which that~~ has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the corporation, *including the trustees of an eligible employee stock ownership plan*, 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, *including the trustees of an eligible employee stock ownership plan*, 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, audiology or speech pathology or of a clinical nurse specialist who renders mental health services, *including the trustees of an eligible employee stock ownership plan*; however, nothing herein shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the behavioral science professions, 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, audiology or speech pathology, or nursing, as the case may be.

*"Professional service" means any type of personal service to the public that 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, 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 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 are 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.

§ 13.1-544. Who may organize and become shareholder.

A. An individual or group of individuals (i) duly licensed or otherwise legally authorized to render the same professional services other than those of architects, professional engineers or land surveyors, or to use a title other than those of certified landscape architects or certified interior designers, of which at least one is duly licensed or otherwise legally authorized to render such professional services within the Commonwealth, or (ii) complying with the provisions of § 13.1-549 and duly licensed to render within the Commonwealth the professional services of architects, professional engineers or land surveyors, or legally authorized to use within the Commonwealth the title of certified landscape architects or certified interior designers, or any combination thereof, may organize ~~and become a shareholder or shareholders~~ of a professional corporation for pecuniary profit under the provisions of Chapter 9 (§ 13.1-601 et seq.) of this title or ~~become a member or members of~~ organize a professional corporation as a nonstock corporation under the provisions of Chapter 10 (§ 13.1-801 et seq.) of this title, for the sole and specific purpose of rendering the same and specific professional service, subject to any laws, not inconsistent with the provisions of this chapter, which are applicable to the practice of that profession in the corporate form.

*B. An eligible employee stock ownership plan or any individual or group of individuals described in clause (i) or (ii) of subsection A may become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Chapter 9 (§ 13.1-601 et seq.) of this title, for the sole and specific purpose of rendering the same and specific professional service, subject to any laws, not inconsistent with the provisions of this chapter, that are applicable to the practice of that profession in the corporate form.*

C. Any individual or group of individuals described in clause (i) or (ii) of subsection A may become a member or members of a professional corporation organized as a nonstock corporation ~~so organized~~ under the provisions of Chapter 10 (§ 13.1-801 et seq.) of this title for the sole and specific purpose of rendering such professional services ~~shall be~~, subject to all limitations and restrictions imposed by any laws, not inconsistent with the provisions of this chapter, that are applicable to the practice of that profession in the corporate form.

§ 13.1-549. Qualifications of shareholders; special provisions for corporations rendering services of architects, professional engineers and land surveyors, and using the title of certified landscape architects and certified interior designers.

A. A corporation rendering the services of architects, professional engineers or land surveyors, or using the title of certified landscape architects or certified interior designers, or any combination thereof, shall issue not less than two-thirds of its ~~capital stock shares~~ to individuals duly licensed to render the services of architect, professional engineer or land surveyor, or to individuals legally authorized to use the title of certified landscape architect or certified interior designer, and the remainder of said ~~stock shares~~ may be issued only to and held by individuals who are employees of the corporation whether or not such employees are licensed to render professional services or authorized to use a title. For ~~those corporations~~ a corporation using the title of certified interior designers and providing the services of architects, professional engineers or land surveyors, or any combination thereof, not less than two-thirds of the ~~capital stock of the corporation~~ its shares shall be held by individuals who are duly licensed. No other professional corporation, except for a corporation engaged in the practice of accounting as described in § 13.1-549.1, may issue any of its ~~capital stock shares~~ to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated, *including trustees of an eligible employee stock ownership plan*. Notwithstanding the above limitations, a professional corporation may (i) issue its ~~stock shares~~ to a partnership each of the partners of which is duly licensed or otherwise legally authorized to render the same professional services as those for which the corporation was incorporated or (ii) *issue any of its shares to, and have as shareholders, directly or indirectly, whether through shares, fractional shares, or rights or options to purchase shares, the trustees of an eligible employee stock ownership plan.*

~~It is further provided,~~ as B. As an additional prerequisite for a corporation engaging in the practice of the professions of architecture, professional engineering or land surveying, or using the title of certified landscape architect or certified interior designer, or any combination thereof, ~~that~~ such corporation shall

secure a certificate of authority, which may be renewable and may be either general or limited, from the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects. Such certificate of authority shall be issued or renewed by the Board when in its discretion such corporation is in compliance with rules and regulations which shall be promulgated by the said Board consistent with its jurisdiction to provide adequate safeguards for the public's health, welfare and safety. The fees for a certificate of authority as described above shall be the same fees as provided for in Chapter 4 (§ 54.1-400 et seq.) of Title 54.1.

§ 13.1-549.1. Special provision for corporation engaged in practice of accounting.

Before any professional corporation may engage in the practice of accounting in this Commonwealth it shall first obtain and maintain any registration required for such corporation by Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1. A corporation rendering the services of accounting shall issue not less than fifty-one percent of its ~~capital stock shares~~ to individuals duly licensed or otherwise legally authorized to render the services of accounting, *including trustees of an eligible employee stock ownership plan*, and the remainder of said ~~stock shares~~ may be issued only to and held by individuals who are employees of the corporation, whether or not such employees are licensed or otherwise authorized to render professional services.

§ 13.1-550. Transfer of shares.

A. No shareholder of a corporation organized under this chapter may sell or transfer his shares in such corporation except to ~~said~~ (i) the corporation ~~or~~, (ii) another individual who is eligible to be a shareholder of such corporation ~~or to~~, (iii) a qualified charitable remainder trust as ~~described~~ *defined* in subsection B, *or* (iv) *the trustees of an eligible employee stock ownership plan*. In the case of a corporation rendering the services of architects, professional engineers, land surveyors and certified landscape architects, or any combination thereof, no person who is not duly licensed or otherwise legally authorized to render one such service shall be eligible unless at least two-thirds of the remaining shares after the sale or transfer shall be held by persons duly licensed or otherwise legally authorized to perform one such service.

B. As used in this section, "qualified charitable remainder trust" means a trust meeting the requirements of § 664 of the United States Internal Revenue Code of 1986, as amended, and which meets all of the following conditions:

1. Has one or more current income beneficiaries, all of which are eligible to be a shareholder in the corporation under § 13.1-544.
2. Has a trustee or independent special trustee who:
  - a. Is eligible to be a shareholder in the corporation under § 13.1-544; and
  - b. Has exclusive authority over the shares of the corporation while the shares are held in the trust.
3. Has one or more irrevocably designated charitable remaindermen, all of which must at all times be domiciled or maintain a local chapter in the Commonwealth of Virginia.
4. When transferring any assets during the term of the trust to charitable organizations, the distributions are made only to charitable organizations described in § 170 (c) of the Internal Revenue Code that are domiciled or maintain a local chapter in this Commonwealth.

§ 54.1-4412. Firms.

A. Any person holding a valid CPA certificate may organize a firm as a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form ~~or of~~ organization permitted by law. Any person holding a valid CPA certificate may offer services that do not constitute the practice of public accounting as defined in § 54.1-4400 through any lawful form of organization while representing himself as a "Certified Public Accountant" or "CPA."

B. Any firm with one or more offices in the Commonwealth that practices, directly or indirectly, public accounting or that uses the CPA title shall register under this chapter.

Only one permit shall be required for a firm with multiple offices. Each firm registered under this section shall designate an individual to register as the primary contact on behalf of the firm. A firm with no offices in the Commonwealth may offer public accounting services in the Commonwealth if the individual members or employees providing services are (i) holders of CPA certificates from the Board, (ii) have met the substantial equivalency requirements of this chapter, or (iii) are otherwise eligible to practice in the Commonwealth as determined by the Board. The Board may revoke the privileges of such firm to offer public accounting services in the Commonwealth for good cause shown, pursuant to regulations promulgated by the Board.

C. Any firm with an office in the Commonwealth providing or offering to provide public accounting services shall register under this chapter and be issued a permit by the Board upon application and payment of the required fee and shall maintain such certificate provided that:

1. At least 51 percent of the owners of the firm, as determined on a firm-wide basis, hold a valid CPA certificate, *or are trustees of an eligible employee stock ownership plan as defined in § 13.1-543*.
2. At least 51 percent of the voting equity interest in the firm, as determined on a firm-wide basis, is owned by persons holding a valid CPA certificate, *or by trustees of an eligible employee stock ownership plan as defined in § 13.1-543*. If this requirement or the requirement of subdivision C 1 is not met due to the death, retirement or departure of an owner, the requirements shall be met within one

year of such event.

3. All non-CPA owners work in the firm as prescribed by Board regulations. Retirees or heirs who do not meet this requirement shall have a period specified by Board regulation to dispose of their interest.

4. All public accounting services are under the supervision of a person holding a valid CPA certificate.

5. The firm provides, as may be required by regulations of the Board, evidence satisfactory to the Board that the firm has undergone, no less frequently than every three years, a peer review in accordance with requirements established by the Board.

6. The firm conducts its accounting practice in conformity with the Board's standards of practice for firms and also with standards of conduct and practice that its CPA certificate holders are required to observe in the practice of public accountancy.

7. Any individual CPA who is responsible for supervising public accounting services and signs or authorizes another person to sign the accountant's report on the financial statement on behalf of the firm shall meet the experience requirements for these individuals as established by the Board.

8. The name of the firm is not false, misleading or deceptive.

D. Any firm with an office in the Commonwealth that is not engaged in the practice of public accounting but uses the CPA title shall register under this chapter and be issued a permit by the Board upon its application and payment of the required fee provided that such firm is in compliance with subdivisions C 1, 2, 3 and 8 of this section and the firm:

1. Conducts its practice in conformity with the ethical standards and standards of practice that the CPA certificate holders in the firm are required to observe; and

2. Affirms that it has met the requirements of this section and has not provided nor offered to provide services involving the practice of public accounting in the previous two years and will not provide or offer to provide such services in the future, unless it first meets the requirements set forth in subsection C.

In addition, any such firm using certified public accountants to compile financial statements shall compile such statements in compliance with SSARS and shall provide evidence satisfactory to the Board that the firm has undergone, no less frequently than every three years, a peer review in accordance with the requirements established by the Board.

E. A firm's permit shall be renewed annually on the anniversary date if such firm meets the requirements for registration and has paid the required fee. The Board shall establish a renewal fee.

**2. That the Board for Accountancy shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.**