

080099332

## SENATE BILL NO. 209

Offered January 9, 2008

Prefiled January 7, 2008

*A BILL to amend and reenact §§ 13.1-543, 13.1-549, 13.1-549.1, 13.1-550, and 13.1-1102 of the Code of Virginia, relating to professional business entities.*

\_\_\_\_\_  
Patron—Stosch

\_\_\_\_\_  
Referred to Committee on Commerce and Labor

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

**1. That §§ 13.1-543, 13.1-549, 13.1-549.1, 13.1-550, and 13.1-1102 of the Code of Virginia are amended and reenacted as follows:**

§ 13.1-543. Definitions.

A. As used in this chapter:

"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 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.

"Professional business entity" means any entity as defined in § 13.1-603 that is duly licensed or

INTRODUCED

SB209

59 otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under  
60 whose laws the entity is formed to render the same professional service as that for which a professional  
61 corporation or professional limited liability company may be organized, including, but not limited to, (i)  
62 a professional limited liability company as defined in § 13.1-1102, (ii) a professional corporation as  
63 defined in this subsection, or (iii) a partnership that is registered as a registered limited liability  
64 partnership registered under § 50-7.132, all of the partners of which are duly licensed or otherwise  
65 legally authorized to render the same professional services as those for which the partnership was  
66 organized.

67 "Professional corporation" means a corporation whose articles of incorporation set forth a sole and  
68 specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole  
69 and specific purpose of rendering professional service other than that of architects, professional  
70 engineers or land surveyors, or using a title other than that of certified landscape architects or certified  
71 interior designers and, except as expressly otherwise permitted by this chapter, that has as its  
72 shareholders or members only individuals who themselves or professional business entities that are duly  
73 licensed or otherwise legally authorized to render the same professional service as the corporation,  
74 including the trustees of an eligible employee stock ownership plan, and of which shareholders at least  
75 one is duly licensed or otherwise legally authorized to render such professional service within the  
76 Commonwealth; or (ii) organized under this chapter for the sole and specific purpose of rendering the  
77 professional services of architects, professional engineers or land surveyors, or using the title of certified  
78 landscape architects or certified interior designers, or any combination thereof, and at least two-thirds of  
79 whose shares are held by persons duly licensed within the Commonwealth to perform the services of an  
80 architect, professional engineer or land surveyor, including the trustees of an eligible employee stock  
81 ownership plan, or by persons legally authorized within the Commonwealth to use the title of certified  
82 landscape architect or certified interior designer; or (iii) organized under this chapter or under Chapter  
83 10 (§ 13.1-801 et seq.) of this title for the sole and specific purpose of rendering the professional  
84 services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29  
85 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29  
86 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of Chapter  
87 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants  
88 licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more  
89 practitioners of the behavioral science professions, licensed under the provisions of Chapter 35  
90 (§ 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  
91 practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600  
92 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services  
93 licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing,  
94 or any combination of practitioners of the healing arts, optometry, physical therapy, the behavioral  
95 science professions, and audiology or speech pathology, and all of whose shares are held by or all of  
96 whose members are persons individuals or professional business entities duly licensed or otherwise  
97 legally authorized to perform the services of a practitioner of the healing arts, nurse practitioners,  
98 optometry, physical therapy, the behavioral science professions, audiology or speech pathology or of a  
99 clinical nurse specialist who renders mental health services, including the trustees of an eligible  
100 employee stock ownership plan; however, nothing herein shall be construed so as to allow any member  
101 of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech  
102 pathology or a nurse practitioner or clinical nurse specialist to conduct his practice in a manner contrary  
103 to the standards of ethics of his branch of the healing arts, optometry, physical therapy, the behavioral  
104 science professions, audiology or speech pathology, or nursing, as the case may be.

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

- 114 1. Architects, professional engineers, and land surveyors; and
- 115 2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.)  
116 of Title 54.1; nurse practitioners, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of  
117 Title 54.1; optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1;  
118 physical therapists and physical therapist assistants, licensed under the provisions of Chapter 34.1  
119 (§ 54.1-3473 et seq.) of Title 54.1; practitioners of the behavioral science professions, licensed under the  
120 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.

§ 13.1-549. 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 shares to individuals *or professional business entities* 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 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 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 its shares shall be held by individuals *or professional business entities* 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 shares to anyone other than an individual *or professional business entity* 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 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.

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, 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 shares to individuals *or professional business entities* 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 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 (i) the corporation, (ii) another individual *or professional business entity* who is eligible to be a shareholder of such corporation, (iii) a qualified charitable remainder trust as 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~~ *individuals or professional business entities* 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

182 meets all of the following conditions:

183 1. Has one or more current income beneficiaries, all of which are eligible to be a shareholder in the  
184 corporation under § 13.1-544.

185 2. Has a trustee or independent special trustee who:

186 a. Is eligible to be a shareholder in the corporation under § 13.1-544; and

187 b. Has exclusive authority over the shares of the corporation while the shares are held in the trust.

188 3. Has one or more irrevocably designated charitable remaindermen, all of which must at all times be  
189 domiciled or maintain a local chapter in the Commonwealth of Virginia.

190 4. When transferring any assets during the term of the trust to charitable organizations, the  
191 distributions are made only to charitable organizations described in § 170 (c) of the Internal Revenue  
192 Code that are domiciled or maintain a local chapter in this Commonwealth.

193 § 13.1-1102. Definitions.

194 A. As used in this chapter:

195 "Professional business entity" means *any entity as defined in § 13.1-603 that is duly licensed or*  
196 *otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under*  
197 *whose laws the entity is formed to render the same professional service as that for which a professional*  
198 *corporation or professional limited liability company may be organized, including, but not limited to, (i)*  
199 *a professional limited liability company as defined in this subsection, (ii) a professional corporation*  
200 *within the meaning of as defined in subsection A of § 13.1-543 A, or (iii) a partnership (including a*  
201 *professional that is registered as a registered limited liability partnership registered under § 54.1-3902)*  
202 *each 50-73.132, all of the partners of which is are duly licensed or otherwise legally authorized to*  
203 *render the same professional services as those for which the partnership was organized.*

204 "Professional limited liability company" means a limited liability company whose articles of  
205 organization set forth a sole and specific purpose permitted by this chapter and that is either (i)  
206 organized under this chapter for the sole and specific purpose of rendering professional service other  
207 than that of architects, professional engineers or land surveyors, or using a title other than that of  
208 certified landscape architects or certified interior designers and, except as expressly otherwise permitted  
209 by this chapter, that has as its members only ~~persons~~ *individuals* or professional business entities that  
210 ~~themselves~~ are duly licensed or otherwise legally authorized to render the same professional service as  
211 the professional limited liability company and of which members at least one is duly licensed or  
212 otherwise legally authorized to render such professional service within the Commonwealth; or (ii)  
213 organized under this chapter for the sole and specific purpose of rendering professional service of  
214 architects, professional engineers or land surveyors, or using the title of certified landscape architects or  
215 certified interior designers, or any combination thereof, and at least two-thirds of whose membership  
216 interests are held by persons duly licensed within the Commonwealth to perform the services of an  
217 architect, professional engineer or land surveyor, or by persons legally authorized within the  
218 Commonwealth to use the title of certified landscape architect or certified interior designer; or (iii)  
219 organized under this chapter for the sole and specific purpose of rendering the professional services of  
220 one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et  
221 seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.)  
222 of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et  
223 seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the  
224 provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the  
225 behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36  
226 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology  
227 or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or  
228 one or more clinical nurse specialists who render mental health services licensed under Chapter 30  
229 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of  
230 practitioners of the healing arts, of optometry, physical therapy, the behavioral science professions, and  
231 audiology or speech pathology and all of whose members are ~~persons~~ *individuals* or professional  
232 business entities duly licensed or otherwise legally authorized to perform the services of a practitioner of  
233 the healing arts, nurse practitioners, optometry, physical therapy, the behavioral science professions,  
234 audiology or speech pathology or of a clinical nurse specialist who renders mental health services;  
235 however, nothing herein shall be construed so as to allow any member of the healing arts, optometry,  
236 physical therapy, the behavioral science professions, audiology or speech pathology or a nurse  
237 practitioner or clinical nurse specialist to conduct that person's practice in a manner contrary to the  
238 standards of ethics of that person's branch of the healing arts, optometry, physical therapy, the  
239 behavioral science professions, or audiology or speech pathology, or nursing as the case may be.

240 "Professional services" means any type of personal service to the public that requires as a condition  
241 precedent to the rendering of that service or the use of that title the obtaining of a license, certification,  
242 or other legal authorization and shall be limited to the personal services rendered by pharmacists,  
243 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.