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HOUSE BILL NO. 2408

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking
on February 2, 1999)

(Patron Prior to Substitute—Delegate Bryant)

A BILL to amend and reenact §§ 13.1-550, 13.1-552, 13.1-1115 and 13.1-1117 of the Code of Virginia, relating to professional corporations and professional limited liability companies; transfer of shares to charitable remainder trusts.

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-550, 13.1-552, 13.1-1115 and 13.1-1117 of the Code of Virginia are amended and reenacted as follows:

§ 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 corporation or another individual who is eligible to be a shareholder of such corporation or to a qualified charitable remainder trust as described in subsection B. 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.

§ 13.1-552. Conversion into nonprofessional corporation; disposition of shares of deceased or disqualified shareholders.

(a) A corporation under this chapter shall have perpetual existence until dissolved in accordance with other provisions of this title.

(b) Whenever all shareholders of a corporation licensed under this chapter cease at any one time and for any reason to be licensed, certified or registered in the particular field of endeavor for which the corporation was organized, or by the vote of the holders of at least two-thirds of its outstanding capital stock exclusive of treasury stock, the corporation thereupon shall be treated as converted into, and shall operate henceforth solely as, a corporation under applicable provisions of this title, exclusive of this chapter, but may be reconverted upon removal of the disability or by the vote of the holders of at least two-thirds of its outstanding capital stock exclusive of treasury stock.

(c) Within one year following the date of death of a shareholder, or his disqualification as hereinbefore provided, all of the shares of such shareholders shall be transferred to, and acquired by, the corporation or persons qualified to own the shares, if the provisions of subsection (b) are inapplicable. If no other provision to accomplish this transfer and acquisition is in effect and carried out within this period, the corporation thereafter shall purchase and redeem all of the decedent shareholder's shares of stock at book value, determined as of the end of the month immediately preceding death or disqualification. The book value shall be determined from the books and records of the corporation in accordance with the generally accepted accounting principles on the accrual method of accounting. No subsequent adjustment of this book value, whether by the corporation itself, by federal income tax audit made and agreed to, or by a court decision which has become final, shall alter the redemption price. Nothing contained in this section shall prevent the parties involved from making any other arrangement or provision in the corporate articles, bylaws, or by contract to transfer the shares of a (i) deceased or disqualified shareholder, or (ii) disqualified charitable remainder trust to the corporation or to persons qualified to own the shares, whether made before or after (i) the death or disqualification of the shareholder, or (ii) the disqualification of a charitable remainder trust, provided that within the one-year

60 period herein specified all the stock involved shall have been so transferred.

61 § 13.1-1115. Transfer of membership interests.

62 A. No member of a professional limited liability company organized under this chapter may sell,
63 assign in whole or in part, or otherwise transfer that member's membership interest in the professional
64 limited liability company except to (i) the professional limited liability company or, (ii) another
65 individual or professional business entity that is eligible to be a member of that professional limited
66 liability company, or (iii) a qualified charitable remainder trust as described in subsection B. In the
67 case of a professional limited liability company rendering the services of architects, professional
68 engineers, land surveyors and certified landscape architects, or any combination thereof, no person or
69 professional business entity which is not duly licensed or otherwise legally authorized to render one of
70 those services will be eligible unless at least two-thirds of the remaining membership interests after the
71 sale or transfer are held by persons or professional business entities duly licensed or otherwise legally
72 authorized to perform one of those services.

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

76 1. Has one or more current income beneficiaries, all of which are eligible to be members in the
77 professional limited liability company under § 13.1-1103.

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

79 a. Is eligible to have a membership interest in the professional limited liability company under
80 § 13.1-1103; and

81 b. Has exclusive authority over the membership interests while such interests are held in the trust.

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

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

87 § 13.1-1117. Conversion into nonprofessional company; disposition of membership interests of
88 deceased or disqualified members.

89 A. A professional limited liability company organized under this chapter shall continue until
90 dissolved in accordance with other provisions of this chapter or the provisions of Article 9 (§ 13.1-1046
91 et seq.) of Chapter 12 of this title.

92 B. Whenever all members of a professional limited liability company licensed under this chapter
93 cease at any one time and for any reason to be licensed, certified or registered in the particular field of
94 endeavor for which the professional limited liability company was organized, or by the vote of the
95 holders of at least two-thirds of its membership interests, the professional limited liability company
96 thereupon shall be treated as converted into, and shall operate henceforth solely as, a limited liability
97 company under applicable provisions of this title, exclusive of this chapter, but may be reconverted upon
98 removal of the disability or by the vote of the holders of at least two-thirds of its membership interests.

99 C. Following the occurrence of any event, including a disqualification that terminates membership as
100 provided in § 13.1-1116, that terminates the continued membership of a member in a professional
101 limited liability company, if the professional limited liability company has been continued as provided in
102 § 13.1-1046, then the limited liability company shall pay to the former member or his or its successor in
103 interest the value of the interest of the former member. The time of payment and value of the interest of
104 the former member shall be determined in the manner provided in writing in the articles of organization
105 or an operating agreement of the limited liability company, and to the extent not so provided in the
106 articles of organization or an operating agreement, the payment shall be made within one year following
107 the occurrence of the event that terminates the former member's membership and for the book value of
108 the interest, determined as of the end of the month immediately preceding the event that terminated the
109 membership of the former member. If applicable, the book value shall be determined from the books
110 and records of the limited liability company in accordance with the generally accepted accounting
111 principles on the accrual method of accounting. No subsequent adjustment of this book value, whether
112 by the limited liability company itself, by federal income tax audit made and agreed to, or by a court
113 decision which has become final, shall alter the amount of the payment to be made.

114 D. An arrangement or provision in the articles of organization, operating agreement or by contract
115 may be made to transfer any membership interest held by a disqualified charitable remainder trust to
116 the professional limited liability company or to persons qualified to hold such an interest under
117 § 13.1-1103, whether made before or after the disqualification of a charitable remainder trust, provided
118 that the membership interest involved shall have been so transferred within one year following such
119 disqualification.