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SENATE BILL NO. 108

Offered January 11, 2006

Prefiled January 9, 2006

A BILL to amend and reenact §§ 13.1-544, 13.1-549.1, 13.1-550 and 54.1-4412 of the Code of Virginia, relating to the Board for Accountancy, ownership of CPA firms by employee stock ownership plans.

 Patron—Stosch

 Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

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

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

An *eligible employee stock ownership plan* as defined in § 13.1-549.1 or any 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 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. Any nonstock corporation so organized for the sole purpose of rendering such professional services shall be subject to all limitations and restrictions imposed by this chapter.

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

A. 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 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 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.

B. For purposes of this subsection, "*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, 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 services of accounting; provided that 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, who is not duly licensed or otherwise legally authorized to render the services of accounting, 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 actually issued, sold, or otherwise transferred directly to anyone other than an individual duly licensed or otherwise legally authorized to render the services of accounting, although such employee stock ownership plan may permit individuals to participate in such plan who are not duly licensed or otherwise legally authorized to render the services of accounting, provided such individuals hold less than a majority of the beneficiary interests in such plan; and

3. At least 51% of the total of allocated and unallocated equity interests in the corporation sponsoring such employee stock ownership plan are held (i) in trust by 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 Section 409(p) of the Internal Revenue Code

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59 *as amended, or (ii) by individuals holding a valid CPA certificate separate from any interests held in*
60 *trust by such employee stock ownership plan.*

61 4. *The professional corporation and the trustees of the employee stock ownership plan comply with*
62 *the foregoing provisions of the plan.*

63 § 13.1-550. Transfer of shares.

64 A. No shareholder of a corporation organized under this chapter may sell or transfer his shares in
65 such corporation except to said corporation, *to an eligible employee stock ownership plan as defined in*
66 *§ 13.1-549.1*, or another individual who is eligible to be a shareholder of such corporation or to a
67 qualified charitable remainder trust as described in subsection B. In the case of a corporation rendering
68 the services of architects, professional engineers, land surveyors and certified landscape architects, or any
69 combination thereof, no person who is not duly licensed or otherwise legally authorized to render one
70 such service shall be eligible unless at least two-thirds of the remaining shares after the sale or transfer
71 shall be held by persons duly licensed or otherwise legally authorized to perform one such service.

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

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

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

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

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

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

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

85 § 54.1-4412. Firms.

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

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

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

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

104 1. At least 51 percent of the owners of the firm, as determined on a firm-wide basis, hold a valid
105 CPA certificate, *or are trustees of an eligible employee stock ownership plan as defined in § 13.1-549.1.*

106 2. At least 51 percent of the voting equity interest in the firm, as determined on a firm-wide basis, is
107 owned by persons holding a valid CPA certificate, *or are trustees of an eligible employee stock*
108 *ownership plan as defined in § 13.1-549.1.* If this requirement or the requirement of subdivision C 1 is
109 not met due to the death, retirement or departure of an owner, the requirements shall be met within one
110 year of such event.

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

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

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

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

121 observe in the practice of public accountancy.

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

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

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

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

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

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

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

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