

CHAPTER 184
FORMERLY
HOUSE BILL NO. 139
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 6, TITLE 8 OF THE DELAWARE CODE RELATING TO PROFESSIONAL SERVICE CORPORATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 6, Title 8 of the Delaware Code as follows:

§ 601. Legislative intent.

It is the legislative intent to provide for the incorporation of an individual, or group of individuals who render the same professional service or qualified related professional services to the public, for which such individuals are required by law to be licensed or to obtain other legal authorization.

§ 603. Definitions.

As used in this chapter the following words shall have the meaning indicated:

(1) The term "professional service" shall mean any type of personal service to the public which requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization, and which, by reason of law, prior to June 7, 1969, could not be performed by a corporation. In addition, and by way of example without limiting the generality thereof, the personal services which come within this chapter are the personal services rendered by architects, certified or other public accountants, chiropodists, chiropractors, doctors of dentistry, doctors of medicine, optometrists, doctors of osteopathy, doctors of podiatric medicine, professional engineers, veterinarians, and, subject to the Rules of the Supreme Court, attorneys-at-law.

(2) The term "professional corporation" means a corporation which is organized and incorporated, under this chapter, for the sole and specific purpose of rendering a single professional service or qualified related professional services, and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this State to render the same professional service, or those component qualified related professional services, as the corporation.

(3) The term "qualified related professional services" means, and is limited to, any combination of the practice of medicine by doctors of medicine or doctors of osteopathy or both, and the practice of podiatry by doctors of podiatric medicine.

§ 605. Authority to organize; law governing.

One or more persons, each of whom is duly licensed or otherwise legally authorized to render the same professional service or any of the qualified related professional services within this State, may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit, under this title, for the sole and specific purpose of rendering the same professional service or qualified related professional services; provided however, a professional corporation shall not be permitted to render qualified related professional services unless at all times at least one shareholder is duly licensed or otherwise legally authorized to render each of the component qualified related professional services then comprising the professional corporation.

§ 606. Number of directors; officers.

A professional corporation which has only 1 shareholder need have only 1 director, who shall be the shareholder. The 1 shareholder shall also serve as the president of the professional corporation. The other officers of the professional corporation, in such a case, need not be licensed or otherwise legally authorized to render the same professional service within this State, as the 1 shareholder. A professional corporation which has only 2 shareholders need have only 2 directors who shall be such shareholders. The 2 shareholders shall, between them, fill all the offices of the professional corporation.

§ 607. Rendition of professional services through licensed officers, employees and agents.

No professional corporation may render professional services except through its officers, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this State;

provided, however, this provision shall not be interpreted to include in the term "employee" as used in this chapter, clerks, secretaries, nurses, administrators, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by law, custom and practice to be rendering professional services to the public for which a license, or other legal authorization, is required in connection with the profession to be practiced, nor does the term "employee" include any other person who performs all of such person's employment under the direct supervision and control of an officer, employee or agent who renders professional service to the public on behalf of the professional corporation; provided that, no person shall, under the guise of employment, practice a profession unless duly licensed to practice that profession under the laws of this State. Notwithstanding any other or contrary provisions of the laws of this State, a professional corporation may charge for the services of its officers, employees and agents, may collect such charges, and may compensate those who render such professional services.

§ 608. Chapter not to affect professional relationship; legal liabilities and standards for professional conduct; negligence; attachment of assets.

Nothing contained in this chapter shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this State, applicable to the professional relationship and the contract, tort, and other legal liabilities between the person furnishing the professional service and the person receiving the professional service, and to the standards for professional conduct, including the confidential relationship between the person rendering the professional service and the person receiving such professional service, if any; and all confidential relationships previously enjoyed under the laws of this State or hereafter enacted shall remain inviolate. Any officer, employee, agent or shareholder of a professional corporation shall remain personally and fully liable and accountable for any negligent, wrongful acts, or misconduct committed by such person, or by any person under such person's direct supervision and control, while rendering professional services on behalf of the professional corporation to the person for whom such professional services were being rendered. The professional corporation shall be liable up to the full value of its property for any negligent, wrongful acts, or misconduct committed by any of its officers, employees, agents or shareholders while they are engaged in behalf of the professional corporation in the rendering of professional services. The assets of a professional corporation shall not be liable to attachment for the individual debts of its shareholders. Notwithstanding the foregoing, the relationship of an individual to a professional corporation with which such individual is or may be associated, whether as officer, employee, agent, or shareholder director, shall in no way modify, extend, or diminish the jurisdiction over such individual, of and by whatever state agency, or office which licensed or otherwise legally authorized such person for or to render service in a particular field of endeavor.

§ 609. Engaging in other business prohibited.

No professional corporation shall engage in any business other than the rendering of the professional services set forth in its certificate of incorporation; provided, however, nothing in this chapter or in any other provisions of existing law applicable to professional corporations shall be interpreted to prohibit such professional corporation from investing its funds in real estate, mortgages, stocks, bonds, or any other type of investments, or from owning real or personal property necessary for, or appropriate or desirable in, the fulfillment or rendering of its professional services.

§ 610. Issuance of capital stock to licensed individuals; voting trust agreements prohibited; holding of stock by shareholder's estate.

No professional corporation may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional service or any of the component qualified related professional services as those for which the professional corporation was organized. No shareholder of a professional corporation shall enter into a voting trust agreement, proxy, or any other type of agreement vesting another person with the authority to exercise the voting power of any or all of such shareholder's stock, unless such other person is also a shareholder of the professional corporation duly licensed or otherwise legally authorized to render the same specific professional service as such shareholder. Subject to the professional corporation's certificate of incorporation, the estate of a shareholder who was a person duly licensed or otherwise legally authorized to render the same professional service or any of the qualified related professional services as that

for which the professional corporation is organized may continue to hold stock pursuant to the certificate of incorporation for a reasonable period of administration of the estate, but shall not be authorized to participate in any decisions concerning the rendering of professional service.

§ 611. Disqualification of officer, shareholder, agent or employee.

(a) Any officer, employee, agent or shareholder of a professional corporation shall forthwith sever all employment with, and financial interests in, the professional corporation in the event that such person:

- (1) Becomes legally disqualified to render such professional service within this State;
- (2) Is elected to a public office that, pursuant to existing law, places restrictions or limitations upon such person's continued rendering of such professional service; or
- (3) Accepts employment that, pursuant to existing law, places restrictions or limitations upon such person's continued rendering of such professional service.

(b) A professional corporation's failure to require compliance with subsection (a) of this section shall constitute a ground for the forfeiture of its charter and its dissolution. When a professional corporation's failure to comply with subsection (a) of this section is brought to the attention of the office of the Secretary of State, the Secretary of State shall forthwith certify that fact to the Attorney General for appropriate action to dissolve the professional corporation.

§ 612. Sale or transfer of shares.

Except as provided in § 616 of this title, no shareholder of a professional corporation may sell or transfer such shareholder's shares in the professional corporation, except to the professional corporation, or to another individual who is eligible to be a shareholder of such professional corporation. Unless the certificate of incorporation or bylaws of a professional corporation, or a separate contract among all of the shareholders of the professional corporation, provides otherwise for the manner in which such sale or transfer of shares as permitted under this section is to take place, the sale or transfer may be made only after the same shall have been approved, at a stockholders' meeting specially called for such purpose, or at an annual meeting with 10 days' notice of such additional purpose, by such proportion, not less than a majority, of the outstanding stock entitled to be voted on that question as may be provided in the certificate of incorporation or in the bylaws. At such shareholders' meeting the shares of stock held by the shareholder proposing to sell or transfer such shareholder's shares may not be voted or counted for any purpose. The certificate of incorporation may provide specifically for additional restraints on the alienation of shares, including the redemption or purchase of such shares by the professional corporation at prices and in a specific manner, or the bylaws of the professional corporation, or a separate contract among all of the shareholders of the professional corporation and, if such contract provides for redemption, the professional corporation itself, may provide for such restraints on alienation of shares including the prices and manner of redemption or purchase as permitted under this section; provided, however, such provisions, dealing with the purchase or redemption by the professional corporation of its shares, may not be invoked at a time or in a manner that would impair the capital of the professional corporation.

§ 613. Price for shares.

If the certificate of incorporation or bylaws of a professional corporation, or a separate contract among all of the shareholders of the professional corporation and, if such contract provides for redemption, the professional corporation itself, fails to fix a price at which a professional corporation or its shareholders may purchase the shares of a deceased, retired, expelled or disqualified shareholder, and if the certificate of incorporation or bylaws or such contract do not otherwise provide, then the price for the share or shares shall be the book value at the end of the month immediately preceding the death or disqualification of the shareholder. Book value shall be determined by an independent certified public accountant employed by the professional corporation. The determination by the certified public accountant of book value shall be conclusive on the professional corporation and its shareholders.

§ 614. Perpetual corporate existence.

A professional corporation shall have perpetual existence until dissolved in accordance with other provisions of this chapter.

§ 615. Conversion into business corporation.

Whenever all shareholders of a professional corporation cease at any time, and for any reason, to be licensed, certified or registered in the particular professional service or at least one of the qualified related professional services for which such professional corporation was organized, the professional corporation shall thereupon be treated as converted into and shall operate henceforth solely as a business corporation under applicable provisions of Chapter 1 of this title, exclusive of this chapter.

§ 616. Time for transfer of shares upon death or disqualification.

Within 375 days following the date of death of a shareholder, or within 30 days following such shareholder's disqualification to own shares in the professional corporation, as provided in this chapter, all of the shares of such shareholder shall be transferred to, and acquired by, the professional corporation or persons qualified to own such shares. If no other provision to accomplish such transfer and acquisition is in effect and carried out within said period, the professional corporation shall thereafter purchase and redeem all of such shareholder's shares of its stock at the book value thereof, determined as of the end of the month immediately preceding death or disqualification. For this purpose, the book value shall be determined from the books and records of the professional corporation in accordance with the regular methods of accounting used by it for the purposes of determining its net taxable income for federal income tax purposes; and no subsequent adjustment of such income, whether by the professional 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 certificate of incorporation, bylaws, or by separate contract to transfer the shares of a deceased or disqualified shareholder to the professional corporation or to persons qualified to own the same, whether made before or after the death or disqualification of the shareholder, provided that within the period specified by this section, all the stock involved shall have been so transferred.

§ 617. Corporate name.

The corporate name of a professional corporation shall contain either a word or words descriptive of the professional service to be rendered by the professional corporation, or any of the qualified related professional services to be rendered by the professional corporation, or shall contain the last names of 1 or more of its present, prospective or former shareholders or of persons who were associated with a predecessor person, partnership, professional corporation or other organization or whose name or names appeared in the name of such predecessor organization. The corporate name shall also contain the words "chartered" or "professional association" or abbreviation "P.A." The use of the word "company," "corporation" or "incorporated" or any other word, words, abbreviations, affix or prefix indicating that it is a corporation, in the corporate name of a professional corporation is specifically prohibited. However, it shall be permissible for the professional corporation and its shareholders to render professional services and to exercise the professional corporation's authorized powers under a name which is identical to its corporate name except for the omission of the words "chartered" or "professional association" or the omission of the abbreviation "P.A."

§ 618. Applicability of General Corporation Law; consolidation or merger of professional corporations; annual report.

This title shall be applicable to a corporation organized pursuant to this chapter, except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions of this title, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized pursuant to this chapter. A professional corporation may consolidate or merge only with another professional corporation empowered to render the same specific professional service or any qualified related professional services; and a merger or consolidation with any foreign corporation is prohibited. Sections 501-518 of this title shall be applicable to a professional corporation; but in addition to the information called for on the annual report of all corporations by those provisions, the annual report of a professional corporation may, by its terms, separately require that the professional corporation shall certify that its shareholders, directors and officers listed on such report are duly licensed or otherwise legally authorized to render the same specific professional service, or those component qualified related professional services, as the professional corporation.

§ 619. Construction of chapter.

(1) This chapter shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to incorporations, sales of securities, or regulating the several professions enumerated in this chapter, except insofar as such laws conflict with this chapter.

(2) The provisions in this chapter authorizing "qualified related professional services" shall not create any vested rights to practice professions in any particular combination. If by reason of a change in law, rule or regulation, the right to practice professions in any particular combination is modified or terminated, each existing professional corporation rendering a combination of professional services previously permitted as qualified related professional services shall promptly reduce the specific kinds of professional services rendered by the professional corporation or shall otherwise reconstitute itself so as to comply with the currently applicable restrictions applicable to each of the professions involved.

Approved September 03, 2015