

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 193\*

Short Title: Amend Professional Corp. Act/AB.

(Public)

Sponsors: Senators Hartsell; and Soles.

Referred to: Judiciary I.

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO PERMIT CERTAIN EMPLOYEE RETIREMENT PLANS TO HOLD SECURITIES AS A LICENSEE AND TO REVISE THE DEFINITION OF A FOREIGN PROFESSIONAL CORPORATION THAT MAY BE AUTHORIZED TO DO BUSINESS IN THIS STATE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-6 reads as rewritten:

"§ 55B-6. Capital stock.

(a) ~~Except as provided in subsection (b), a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer such shares of stock issued to him only to another such licensee. No share or shares of any stock of such corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee of such shares is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, and 89E, for non-licensed employees of such corporation to own not more than one-third of the total issued and outstanding shares of such corporation. Provided further, subject to any additional conditions that the appropriate licensing board may by~~

1 rule or order impose in the public interest, it shall be lawful for individuals who are not  
2 licensees but who perform professional services on behalf of a professional corporation in  
3 another jurisdiction in which the corporation maintains an office, and who are duly  
4 licensed to perform professional services under the laws of the other jurisdiction, to be  
5 shareholders of the corporation so long as there is at least one shareholder who is a  
6 licensee as defined in G.S. 55B-2, and the corporation renders its professional services in  
7 the State only through those shareholders that are licensed in North Carolina. Upon the  
8 transfer of any shares of such corporation to a non-licensed employee of such  
9 corporation, the corporation shall inform the appropriate licensing board of the name and  
10 address of the transferee and the number of shares issued to such nonprofessional  
11 transferee. Any share of stock of such corporation issued or transferred in violation of  
12 this section shall be null and void. No shareholder of a professional corporation shall  
13 enter into a voting trust agreement or any other type of agreement vesting in another  
14 person the authority to exercise the voting power of any or all of his stock.

15 (b) A professional corporation formed pursuant to this Chapter may issue one  
16 hundred percent (100%) of its capital stock to another professional corporation in order  
17 for that corporation (the distributing corporation) to distribute the stock of the controlled  
18 corporation to one or more shareholders of the distributing corporation in accordance  
19 with section 355 of the Internal Revenue Code of 1986, as amended. The distributing  
20 corporation shall distribute the stock of the controlled corporation within 30 days after  
21 the stock was issued to the distributing corporation. A share of stock of the controlled  
22 corporation that has not been transferred to a licensee more than 30 days after it was  
23 issued to the distributing corporation is void.

24 (a) Subject to subsection (d) of this section and except as provided in subsections  
25 (b), (c), and (e) of this section, a professional corporation may issue shares of its capital  
26 stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily  
27 transfer shares of stock issued to the shareholder only to another licensee. No share or  
28 shares of any stock of a professional corporation shall be transferred upon the books of  
29 the corporation unless the corporation has received a certification of the appropriate  
30 licensing board that the transferee is a licensee. The issuance or transfer of any share of  
31 stock in violation of this section is null and void. No shareholder of a professional  
32 corporation shall enter into a voting trust agreement or any other type of agreement  
33 vesting in another person the authority to exercise the voting power of any of the stock of  
34 a professional corporation.

35 (b) A professional corporation formed pursuant to this Chapter may issue one  
36 hundred percent (100%) of its capital stock to another professional corporation in order  
37 for that corporation (the distributing corporation) to distribute in accordance with section  
38 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the  
39 stock of the controlled corporation to one or more shareholders of the distributing  
40 corporation authorized under this section to hold the shares. The distributing corporation  
41 shall distribute the stock of the controlled corporation within 30 days after the stock is  
42 issued to the distributing corporation. A share of stock of the controlled corporation that

1 is not transferred in accordance with this subsection within 30 days after the share was  
2 issued to the distributing corporation is void.

3 (c) Nonlicensed employees of a professional corporation rendering services as  
4 defined in Chapter 83A, 89A, 89C, or 89E of the General Statutes may own in the  
5 aggregate not more than one-third of the total and outstanding shares of the corporation.

6 (d) With respect to a professional corporation rendering services as defined in  
7 Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan  
8 qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any  
9 succeeding section), is deemed for purposes of this section to be a licensee if the trustee  
10 or trustees of the plan are licensees.

11 (e) Subject to any additional conditions that the appropriate licensing board may  
12 by rule or order impose in the public interest, individuals who are not licensees but who  
13 perform professional services on behalf of a professional corporation in another  
14 jurisdiction in which the corporation maintains an office, and who are duly licensed to  
15 perform professional services under the laws of the other jurisdiction, may be  
16 shareholders of the corporation so long as there is at least one shareholder who is a  
17 licensee as defined in G.S. 55B-2, and the corporation renders its professional services in  
18 the State only through those shareholders that are licensed in North Carolina.

19 (f) Upon the transfer of any shares of a professional corporation to a nonlicensed  
20 employee, the corporation shall inform the appropriate licensing board of the name and  
21 address of the transferee and the number of shares issued to the nonprofessional  
22 transferee."

23 Section 2. G.S. 55B-16 reads as rewritten:

24 "**§ 55B-16. Foreign professional corporations.**

25 (a) A foreign professional corporation may apply for a certificate of authority to  
26 transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of  
27 the General Statutes provided that:

28 (1) The corporation obtains a certificate of registration from the appropriate  
29 licensing board or boards in this State;

30 (2) With respect to each professional service practiced through the  
31 corporation in this State, at least one director and one officer shall be a  
32 licensee of the licensing board which regulates the profession in this  
33 State;

34 (3) Each officer, employee, and agent of the corporation who will provide  
35 professional services to persons in this State shall be a licensee of the  
36 appropriate licensing board in this State;

37 (4) The corporation shall be subject to the applicable rules and regulations  
38 adopted by, and all the disciplinary powers of, the appropriate licensing  
39 board or boards in this State;

40 (5) The corporation's activities in this State shall be limited as provided by  
41 G.S. 55B-14; and

42 (6) The application for certificate of authority, in addition to the  
43 requirements of G.S. 55-15-03, shall set forth the personal services to be

1 rendered by the foreign professional corporation and the individual or  
2 individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and  
3 shall be accompanied by a certification by the appropriate licensing  
4 board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and  
5 by additional certifications as may be required to establish that the  
6 corporation is a 'foreign professional corporation' as defined in G.S.  
7 55B-16(b).

8 (b) For purposes of this section, 'foreign professional corporation' means a  
9 corporation for profit that:

- 10 (1) Is incorporated under a law other than the law of this State;  
11 (2) Is incorporated for the ~~sole and specific~~ purpose of rendering professional  
12 services of the type that if rendered in this State would require the  
13 obtaining of a license from a licensing board pursuant to the statutory  
14 provisions referred to in G.S. 55B-2(6); and  
15 (3) Has as its shareholders only individuals who:  
16 a. Qualify to hold shares of a corporation organized under this  
17 Chapter;  
18 b. Are licensed to provide professional services as defined in G.S.  
19 55B-2(6) in a state in which the corporation is incorporated or is  
20 authorized to transact business, provided that such professional  
21 services are the same as the professional service rendered by the  
22 corporation; or  
23 c. Are nonlicensed employees of a corporation rendering services  
24 of the type defined in Chapters 83A, 89A, 89C, and 89E of the  
25 General Statutes, provided that all such nonlicensed employees  
26 own no more than one-third of the total issued and outstanding  
27 shares of such corporation in the aggregate.

28 (b1) With respect to a professional corporation rendering services as defined in  
29 Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan  
30 qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any  
31 succeeding section), is deemed for purposes of this section to be an individual licensee if  
32 the trustee or trustees of the plan are licensees.

33 (c) A foreign professional corporation with a valid certificate ~~of~~ of authority has  
34 the same but no greater rights and ~~has the same but no greater~~ privileges as, and is subject  
35 to the same duties, restrictions, penalties, and liabilities now or later imposed on, a  
36 domestic professional corporation of like character, except that the provisions of G.S.  
37 55B-6 and G.S. 55B-7 ~~shall do not~~ apply."

38 Section 3. This act is effective when it becomes law.