

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1075

By: Webb

AS INTRODUCED

An Act relating to professional entities; amending 18 O.S. 1991, Sections 801, 802, 803, 804, 805, 806, 807, 809, 810, 811, 812, 813, 814, 815, 818 and 819, which relate to the Professional Corporation Act; modifying the Professional Corporation Act to cover limited liability companies; modifying short title; modifying general purpose of the act; adding and modifying definitions; providing requirements and procedures for the formation of professional entities; stating applicability of other laws; providing purposes for which professional entities may be formed; stating requirements for the names of professional entities; modifying provisions relating to the issuance and transfer of shares; prohibiting certain persons from holding an interest in a professional entity; making certain issuances or transfers void; prohibiting certain persons from being managers; modifying entities through which a professional entity may render professional services; precluding vicarious liability in certain instances; clarifying professional regulation; modifying prohibited acts; providing for the death, disqualification or withdrawal of owners; modifying requirements for

issuance of certain certificates; providing for the inapplicability of conflicting laws; repealing 18 O.S. 1991, Section 808, which relates to the principal office of professional corporations; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 18 O.S. 1991, Section 801, is amended to read as follows:

Section 801. This act is known and may be cited as the "Professional ~~Corporation~~ Entity Act".

SECTION 2. AMENDATORY 18 O.S. 1991, Section 802, is amended to read as follows:

Section 802. ~~This act~~ The Professional Entity Act shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the corporate and limited liability company form for the business aspects of their practices while preserving the established professional aspects of the personal relationship between the professional person and those he serves.

SECTION 3. AMENDATORY 18 O.S. 1991, Section 803, is amended to read as follows:

Section 803. A. As used ~~herein~~ in the Professional Entity Act, unless the context clearly indicates that a different meaning is intended:

1. " Associated Act" means the Oklahoma General Corporation Act in the case of a corporation, or the Oklahoma Limited Liability Company Act in the case of a limited liability company;

2. "Interest" means a share of stock in a corporation or a membership interest in a limited liability company;

3. "Manager" means a director or officer in the case of a corporation, or a manager as such term is defined in the Oklahoma Limited Liability Company Act in the case of a limited liability company;

4. "Owner" means a shareholder in the case of a corporation, or a member in the case of a limited liability company;

5. "Professional ~~corporation~~ entity" means a domestic corporation ~~organized under the Professional Corporation Act.~~ or limited liability company;

~~2.~~ 6. "Professional service" means the personal service rendered by:

- a. a physician, surgeon or doctor of medicine pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 481 through 524, and any subsequent laws regulating the practice of medicine~~-.1~~
- b. an osteopathic physician or surgeon pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 621 through 643, and any subsequent laws regulating the practice of osteopathy~~-.1~~
- c. a chiropractor pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 161 through 170, and any subsequent laws regulating the practice of chiropractic~~-.1~~
- d. a chiropodist-podiatrist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 136 through 160.2, and any subsequent laws regulating the practice of chiropody~~-.1~~
- e. an optometrist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 581 through 606, and

- any subsequent laws regulating the practice of optometry~~-.L~~
- f. a veterinarian pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 698.1 through 698.19, and any subsequent laws regulating the practice of veterinary medicine~~-.L~~
 - g. an architect pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 45.1 through 45.24, and any subsequent laws regulating the practice of architecture~~-.L~~
 - h. an attorney pursuant to his authority to practice law granted by the Supreme Court of the State of Oklahoma~~-.L~~
 - i. a dentist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 328.1 through 328.50, and any subsequent laws regulating the practice of dentistry~~-.L~~
 - j. a public accountant pursuant to his authority to practice accounting under Title 59 of the Oklahoma Statutes, Sections 15.1 through ~~15.35~~ 15.37, and any subsequent laws regulating the practice of public accountancy~~-.L~~
 - k. a psychologist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 1351 through 1375, and any subsequent laws regulating the practice of psychology~~-.L~~
 - l. a physical therapist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 887.1 through 887.17, and any subsequent laws regulating the practice of physical therapy~~-.L~~
 - m. a registered nurse pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 567.1 through

567.16, and any other subsequent laws regulating the practice of nursing~~†~~†

- n. a professional engineer pursuant to a license under Sections 475.1 through 475.22 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of engineering~~†~~†, or
- o. a land surveyor pursuant to a license under Sections 475.24 through 475.37 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of land surveying~~†~~†

~~3.~~ 7. "Related professional services" means those services which are combined for professional ~~corporation~~ entity purposes as follows:

- a. any combination of the following professionals:
 - (1) a physician, surgeon or doctor of medicine pursuant to a license under Sections 481 through 524 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of medicine~~†~~†
 - (2) an osteopathic physician or surgeon pursuant to a license under Sections 621 through 643 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of osteopathy~~†~~†
 - (3) a dentist pursuant to a license under Sections 328.1 through 328.50 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of dentistry~~†~~†
 - (4) a chiropractor pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 161 through 170, and any subsequent laws regulating the practice of chiropractic~~†~~†

- (5) a psychologist pursuant to a license under Title 59 of the Oklahoma Statutes, Sections 1351 through 1375, and any subsequent laws regulating the practice of psychology~~+~~+ or
 - (6) a podiatrist pursuant to a license under Sections 136 through 160.2 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of podiatry~~+~~+ or
- b. any combination of the following professions:
- (1) an architect pursuant to a license under Sections 45.1 through 45.24 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of architecture~~+~~+
 - (2) a professional engineer pursuant to a license under Sections 475.1 through 475.22 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of engineering~~+~~+ or
 - (3) a land surveyor pursuant to a license under Sections 475.24 through 475.37 of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of land surveying~~+~~+; and

~~4. 8.~~ "Regulating board" means the board which is charged with ~~the~~ licensing and ~~regulation of~~ regulating the ~~practice of the~~ profession ~~which~~ to be practiced through the professional ~~corporation is organized to render~~ entity.

B. The definitions of the ~~Oklahoma General Corporation Act~~ applicable associated act shall apply to ~~this act~~ the Professional Entity Act, unless the context clearly indicates that a different meaning is intended.

SECTION 4. AMENDATORY 18 O.S. 1991, Section 804, is amended to read as follows:

Section 804. ~~One or more individuals, each of whom is licensed to render a professional service, may incorporate a professional corporation by filing a certificate of incorporation with the Secretary of State~~ A professional entity may be formed by filing the appropriate instrument required by the associated act with the Secretary of State. The individual or individuals forming the professional entity shall be duly licensed and in good standing within the profession to be practiced through the professional entity. Such ~~certificate of incorporation instrument~~ shall meet the requirements of the ~~Oklahoma General Corporation Act~~ applicable associated act and ~~in addition thereto~~ shall also contain the following:

~~(a) 1.~~ The profession or related professions to be practiced through the professional ~~corporation~~ entity;

~~(b) the names and residence addresses of all of the original shareholders, directors and officers of the professional corporation;~~

~~(c) 2.~~ A certificate by the regulating board of the profession or related professions involved that each of the ~~incorporators, directors and shareholders~~ persons who are to become owners or managers of the professional entity is duly licensed to practice such profession.

SECTION 5. AMENDATORY 18 O.S. 1991, Section 805, is amended to read as follows:

Section 805. The ~~Oklahoma General Corporation Act~~ respective associated act shall be applicable to each professional ~~corporations~~ entity, and ~~they~~ each professional entity shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other ~~corporations~~ similarly situated business entities, except where inconsistent with the letter and purpose of ~~this act~~ the Professional Entity Act. ~~This act~~ The Professional Entity Act shall take precedence in the event of any conflict with

provisions of the ~~Oklahoma General Corporation Act~~ applicable associated act or other laws.

SECTION 6. AMENDATORY 18 O.S. 1991, Section 806, is amended to read as follows:

Section 806. A professional ~~corporation~~ entity may be ~~organized pursuant to the provisions of this act~~ formed for the purpose of rendering one specific type of professional service or related professional services and services ancillary thereto and shall not engage in any business other than rendering the professional service or services which it was organized to render and services ancillary thereto; provided, however, that a professional ~~corporation~~ entity may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds and any other type of investments.

SECTION 7. AMENDATORY 18 O.S. 1991, Section 807, is amended to read as follows:

Section 807. The ~~corporate~~ name of every professional ~~corporation organized under this act~~ entity shall end with ~~the words "Corporation", "Incorporated" or "Professional Corporation" or the abbreviations "Corp.", "Inc." or "P.C."~~ one or more of the words or abbreviations permitted in the applicable associated act, provided that such words or abbreviations may be modified by the word "professional" or some abbreviation of the combination, including, without limitation, "P.C." or "P.L.L.C."; provided, that each of the regulating boards may by rule adopt further requirements as to the names of professional ~~corporations organized~~ entities formed to render professional services within the jurisdiction of such regulating board.

SECTION 8. AMENDATORY 18 O.S. 1991, Section 809, is amended to read as follows:

Section 809. ~~A professional corporation may issue the shares of its capital stock to persons who are~~ Except as provided in Section 815 of this title, no person shall hold an interest in a professional entity who is not duly licensed to render the same professional services or related professional services as those for which the ~~corporation~~ entity is ~~organized~~ formed. ~~A shareholder may voluntarily transfer his shares in a professional corporation to a person who is duly licensed to render the same professional services or related professional services as those for which the corporation is organized. Any shares issued in violation of this section are null and void. The voluntary transfer of any shares transferred in violation of this section is null and void. No shares may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate by the regulating board stating that the person to whom the transfer is to be made or the shares issued is duly licensed to render the same professional services or related professional services as those for which the corporation is organized~~ Any issuance or transfer of an interest in violation of this section shall be null and void.

SECTION 9. AMENDATORY 18 O.S. 1991, Section 810, is amended to read as follows:

Section 810. No person may be a ~~director, shareholder or officer, other than the secretary,~~ manager of a professional ~~corporation~~ entity who is not an individual duly licensed to render the same professional services or related professional services as those for which the ~~corporation~~ entity is ~~organized~~ formed.

SECTION 10. AMENDATORY 18 O.S. 1991, Section 811, is amended to read as follows:

Section 811. A professional ~~corporation~~ entity may render professional services only through its ~~officers~~ managers, employees and agents who are duly licensed to render professional services;

provided, however, this provision shall not be interpreted to include in the term "employee", as used herein, clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which the license is required.

SECTION 11. AMENDATORY 18 O.S. 1991, Section 812, is amended to read as follows:

Section 812. ~~This act~~ The Professional Entity Act does not alter any law applicable to the relationship between a person rendering professional services and a person receiving such services, including liability arising out of such professional services; provided, that an owner or manager shall not be vicariously liable for the acts of another owner or manager solely by reason of his capacity.

SECTION 12. AMENDATORY 18 O.S. 1991, Section 813, is amended to read as follows:

Section 813. Nothing in ~~this act~~ the Professional Entity Act shall restrict or limit in any manner the authority and duty of the regulating boards for the licensing of individual persons rendering professional services or the practice of the profession which is within the jurisdiction of such regulating board, notwithstanding that such person is an ~~officer, director, shareholder~~ owner, manager, or employee of a professional ~~corporation~~ entity and rendering such professional services or engaging in the practice of such profession through such professional ~~corporation~~ entity.

SECTION 13. AMENDATORY 18 O.S. 1991, Section 814, is amended to read as follows:

Section 814. No professional ~~corporation~~ entity may do any act which is prohibited to be done by individual persons licensed to practice a profession which the professional ~~corporation~~ entity is ~~organized~~ formed to render.

SECTION 14. AMENDATORY 18 O.S. 1991, Section 815, is amended to read as follows:

Section 815. ~~The~~ A. 1. If the professional entity is a corporation, the certificate of incorporation, bylaws or other agreement may provide for the purchase or redemption of the shares of any shareholder upon the death ~~or,~~ disqualification or ending of employment of such shareholder, ~~or the same may be provided in the bylaws or by private agreement.~~ In the absence of a provision for the same in the certificate of incorporation, or the bylaws, or by ~~private~~ other agreement, the professional corporation shall purchase the shares of a deceased shareholder ~~or,~~ a shareholder no longer qualified to own shares in such corporation, or a shareholder whose employment has ended, within ninety (90) days after ~~the~~ such shareholder's death ~~of the shareholder or,~~ disqualification of the shareholder or ending of employment, as the case may be.

2. The price for such shares shall be the book value as of the end of the month immediately preceding ~~the~~ such shareholder's death ~~or,~~ disqualification of the shareholder or ending of employment. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by such corporation. If the corporation shall fail to purchase said shares by end of said ninety (90) days, then the executor or administrator or other personal representative of the deceased shareholder or any disqualified shareholder may bring an action in the district court of the county in which the principal office or place of practice of the professional corporation is located for the enforcement of this provision. If the plaintiff is successful in such action, he shall be entitled to recover the book value of the shares involved and a reasonable attorney's fee and costs. The professional corporation shall repurchase such shares without regard to restrictions upon the repurchase of shares provided for in the Oklahoma General Corporation Act.

3. If there be but one shareholder of a professional corporation, and such shareholder dies or becomes incompetent, the executor or administrator or other personal representative of such shareholder shall have the authority to sell the shares of capital stock owned by said shareholder to a qualified purchaser, or to cause a dissolution of the professional corporation as provided by law. The vesting of ownership of shares of stock in a professional corporation in the executor or administrator or other personal representative shall be solely for the purposes set forth above and shall not be deemed to contravene any other provisions of ~~this act~~ the Professional Entity Act.

B. If the professional entity is a limited liability company, an owner's disqualification shall be deemed a withdrawal and the professional entity shall respond to the disqualification as it would any other withdrawal.

SECTION 15. AMENDATORY 18 O.S. 1991, Section 818, is amended to read as follows:

Section 818. The regulating boards of the respective professions described in Section 803 of this title are hereby authorized and directed to issue the certificates required by Section 804 of this title upon receipt of an affidavit or other instrument reciting the names and addresses of the prospective owners and managers. The regulating boards may charge and collect a reasonable fee ~~not to exceed Five Dollars (\$5.00) per person so certified to be duly licensed by such regulating board~~ for such issuance. The fee shall be deposited and expended as provided by law for other fees collected by each respective regulating board.

SECTION 16. AMENDATORY 18 O.S. 1991, Section 819, is amended to read as follows:

Section 819. All laws and parts of laws in conflict with any of the provisions of ~~this act~~ the Professional Entity Act shall be inapplicable to professional ~~corporations organized~~ entities formed

under ~~this act~~ the Professional Entity Act; provided, however, that nothing in ~~this act~~ the Professional Entity Act shall be construed to supersede the provisions of 59 O.S. 1951, Sections 581 through 592, both inclusive, Sections 601 through 606, both inclusive, or Sections 941 through 947, both inclusive, as amended. In the event of the conflict of any of the provisions of ~~this act~~ the Professional Entity Act with any of the above cited sections, then cited sections shall take precedence over ~~this act~~ the Professional Entity Act and ~~this act~~ the Professional Entity Act shall be construed accordingly.

SECTION 17. REPEALER 18 O.S. 1991, Section 808, is hereby repealed.

SECTION 18. This act shall become effective September 1, 1993.

44-1-5792 PS