

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1357

By: Settle

AS INTRODUCED

An Act relating to corporations; amending 18 O.S.

1991, Sections 801, 803, as last amended by Section 1, Chapter 216, O.S.L. 1994, 804, 805, 806, 807, 809, as amended by Section 2, Chapter 345, O.S.L. 1993, 810, as amended by Section 3, Chapter 345, O.S.L. 1993, 811, 813, 814, 815, as amended by Section 4, Chapter 345, O.S.L. 1993, 818 and 819 (18 O.S. Supp. 1994, Sections 803, 809, 810 and 815), which relate to professional corporations; modifying definitions; adding definitions; modifying references; providing for formation of professional entities; imposing certain requirement on persons forming professional entities; requiring demonstration by certificate of qualification; imposing requirements for names of professional entities; restricting ownership in professional entities; providing exceptions; modifying restrictions applicable to transfer of certain shares; providing for ownership interest by persons licensed in other jurisdictions; providing for nullification of certain ownership interest transfers; modifying requirements related to qualification for persons owning interest in professional entities; conforming references;

authorizing certain provisions regarding shares to be contained in bylaws or other agreements; providing for transfers of interest in the event of ending of employment and prescribing procedures related thereto; providing for disqualification of certain owners; authorizing certificates upon receipt of certain affidavits; modifying authorized fee for issuance of certificates; modifying provision related to conflicting laws; 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 803, as last amended by Section 1, Chapter 216, O.S.L. 1994 (18 O.S. Supp. 1994, Section 803), is amended to read as follows:

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

1. "Associated act" means the Oklahoma General Corporation Act, Section 1001 et seq. of this title, in the case of a corporation; the Oklahoma Revised Uniform Limited Partnership Act, Section 301 et seq. of Title 54 of the Oklahoma Statutes, in the case of a limited partnership; or the Oklahoma Limited Liability Company Act, Section 2000 et seq. of this title, in the case of a limited liability company;

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

3. "Owner" means a shareholder in the case of a corporation, a general or limited partner in the case of a limited partnership or a member in the case of a limited liability company;

4. "Manager" means a director or officer in the case of a corporation, a general partner in the case of a limited partnership or a manager in the case of a limited liability company;

5. "Professional ~~corporation~~ entity" means a domestic corporation ~~organized under the Professional Corporation Act,~~ limited partnership or limited liability company formed for the purpose of rendering professional service;

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

- a. a physician, surgeon or doctor of medicine pursuant to a license under Sections 481 through 524 of Title 59 of the Oklahoma Statutes, Sections 481 through 524, and any subsequent laws regulating the practice of medicine,
- b. an osteopathic physician or surgeon pursuant to a license under Sections 620 through 645 of Title 59 of the Oklahoma Statutes, Sections 621 through 643, and any subsequent laws regulating the practice of osteopathy,
- c. a ~~chiropractor~~ chiropractic physician pursuant to a license under Sections 161.1 through 161.20 of Title 59 of the Oklahoma Statutes, Sections 161 through 170, and any subsequent laws regulating the practice of chiropractic,
- d. a podiatrist pursuant to a license under Sections 136 through 160.2 of Title 59 of the Oklahoma Statutes,

- ~~Sections 136 through 160.2,~~ and any subsequent laws regulating the practice of ~~chiroprody~~ podiatry,
- e. an optometrist pursuant to a license under Sections 581 through 606 of Title 59 of the Oklahoma Statutes, ~~Sections 581 through 606,~~ and any subsequent laws regulating the practice of optometry,
 - f. a veterinarian pursuant to a license under Sections 698.1 through 698.18 of Title 59 of the Oklahoma Statutes, ~~Sections 698.1 through 698.19,~~ and any subsequent laws regulating the practice of veterinary medicine,
 - g. an architect pursuant to a license under Sections 46.1 through 46.37 of Title 59 of the Oklahoma Statutes, ~~Sections 45.1 through 45.24,~~ and any subsequent laws regulating the practice of architecture,
 - h. an attorney pursuant to his authority to practice law granted by the Supreme Court of the State of Oklahoma,
 - i. a dentist pursuant to a license under Sections 328.1 through 328.50 of Title 59 of the Oklahoma Statutes, ~~Sections 328.1 through 328.50,~~ and any subsequent laws regulating the practice of dentistry,
 - j. a certified public accountant or a public accountant pursuant to his authority to practice accounting under Sections 15.1 through 15.35 of Title 59 of the Oklahoma Statutes, ~~Sections 15.1 through 15.35,~~ and any subsequent laws regulating the practice of public accountancy,
 - k. a psychologist pursuant to a license under Sections 1351 through 1376 of Title 59 of the Oklahoma Statutes, ~~Sections 1351 through 1375,~~ and any subsequent laws regulating the practice of psychology,

- l. a physical therapist pursuant to a license under Sections 887.1 through 887.18 of Title 59 of the Oklahoma Statutes, ~~Sections 887.1 through 887.17,~~ and any subsequent laws regulating the practice of physical therapy,
- m. a registered nurse pursuant to a license under Sections 567.1 through 567.16a of 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~~ 475.22b 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~~ 475.1 through ~~475.37~~ 475.22b 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~~ 620 through ~~643~~ 645 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~~ chiropractic physician pursuant to a license under Sections 161.1 through 161.20 of 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 Sections 1351 through 1376 of Title 59 of the Oklahoma Statutes, ~~Sections 1351 through 1375,~~ and any subsequent laws regulating the practice of psychology,
 - (6) an optometrist pursuant to a license under Sections 581 through 606 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of optometry, or
 - (7) 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~~ 46.37 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~~ 475.22b 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~~ 475.1 through ~~475.37~~ 475.22b of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of land surveying;

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

~~5.~~ 9. "Individual", "incorporator" and "shareholder" each include the trustee of an express trust created by a person duly licensed to render a professional service who has the right to revoke said trust and who is serving as the trustee of said trust. Any certificate required by the Professional ~~Corporation~~ Entity Act to be issued to an individual incorporator or shareholder may be issued to the grantor on behalf of a trust. All references in the Professional ~~Corporation~~ Entity Act to death and incapacity of a shareholder shall include the death and incapacity of the grantor of a trust which own stock in a professional corporation;

~~6.~~ 10. "Incapacity" of a shareholder means a determination by a court of competent jurisdiction, or otherwise by two independent licensed physicians, that the share holder is fully incapacitated or is partially incapacitated to the extent that the shareholder is not capable of rendering the professional service for which the professional corporation was organized; and

~~7.~~ 11. "Other personal representative" include the successor trustee of an express trust owning stock in a professional corporation, which trust was created by a person duly licensed to render the professional service for which the professional corporation was organized who has the right to revoke the trust and who is the original trustee of the trust.

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

SECTION 3. 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~~ 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 in accordance with the provisions of this state's licensing laws for the profession 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) the 1.~~ The profession or related professions to be practiced through the professional ~~corporation~~ entity; and

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

~~(c) a 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 and who are to engage in the practice of the profession or related profession is duly licensed in accordance with the provisions of this state's licensing laws for the profession or related profession to practice such profession.

SECTION 4. 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. This 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 5. 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 6. 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 acts; provided, that such words or abbreviations shall be modified by the word "professional" or some abbreviation of the combination, including, without limitation: "P.C.", "P.L.P." or "P.L.L.C.". Provided

further, each of the regulating boards may by rule adopt further requirements as to the names of professional ~~corporations~~ entities organized to render professional services within the jurisdiction of such regulating board.

SECTION 7. AMENDATORY 18 O.S. 1991, Section 809, as amended by Section 2, Chapter 345, O.S.L. 1993 (18 O.S. Supp. 1994, Section 809), is amended to read as follows:

Section 809. ~~A professional corporation may issue the shares of its capital stock to individuals who are~~ A. Except as provided in Section 815 of this title, no person shall hold an interest in a professional entity who is not duly licensed in accordance with the provisions of this state's licensing laws for the profession or related profession to render the same professional services or related professional services as those for which the corporation entity is organized. A shareholder may voluntarily transfer his shares in a professional corporation to one or more individuals who are 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 void. The voluntary transfer of any shares in violation of this section is 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 individual or individuals 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 Provided, however, a person who is licensed in another state, district or territory of the United States to render the same professional services or related services for which the entity is organized may hold an interest in the professional entity but may not practice in this state unless such person is allowed reciprocity

to practice in this state pursuant to this state's licensing laws for the profession or related profession.

B. Any issuance or transfer of an interest in violation of this section shall be null and void.

SECTION 8. AMENDATORY 18 O.S. 1991, Section 810, as amended by Section 3, Chapter 345, O.S.L. 1993 (18 O.S. Supp. 1994, Section 810), is amended to read as follows:

Section 810. No person may be a ~~director or officer, other than the secretary,~~ manager of a professional ~~corporation~~ entity who is not a person duly licensed in accordance with the provisions of this state's licensing laws for the profession or related profession to render the same professional services or related professional services as those for which the ~~corporation~~ entity is ~~organized~~ formed. No person may be a shareholder of a professional corporation who is not an individual duly licensed to render the same professional services or related professional services as those for which the corporation is organized.

SECTION 9. 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~~ owners, managers, employees and agents who are duly licensed in accordance with the provisions of this state's licensing laws 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 a license is required.

SECTION 10. AMENDATORY 18 O.S. 1991, Section 813, is amended to read as follows:

Section 813. ~~Nothing~~ Subject to the provisions of Section 819 of this title, nothing in this 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 11. 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 to render.

SECTION 12. AMENDATORY 18 O.S. 1991, Section 815, as amended by Section 4, Chapter 345, O.S.L. 1993 (18 O.S. Supp. 1993, 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, incapacity ~~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 in the certificate of incorporation, or the bylaws, or a ~~private~~ other agreement, the professional corporation shall purchase the shares of a deceased shareholder ~~or,~~ a shareholder who is incapacitated or who is 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, incapacity 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, incapacity or disqualification or ending of employment of the shareholder. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the corporation. If the corporation shall fail to purchase the shares by the end of the ninety day period, then the executor or administrator or other personal representative of the deceased, incapacitated or 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, 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 is only one shareholder of a professional corporation, and the shareholder dies or becomes incapacitated, the executor or administrator or other personal representative of the shareholder shall have the authority to sell the shares of capital stock owned by the 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.

B. If the professional entity is a limited partnership or 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 13. 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 14. AMENDATORY 18 O.S. 1991, Section 819, is amended to read as follows:

Section 819. All laws and rules and parts of laws and rules in conflict with any of the provisions of this act or otherwise restricting the forms of organization available to persons providing professional services shall be inapplicable to professional ~~corporations organized~~ entities formed under this act; provided, however, that nothing in this 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, of Title 59 of the Oklahoma Statutes, both inclusive, as amended. In the event of the conflict of any of the provisions of this act with any of the above cited sections, then cited sections shall take precedence over this act and this act shall be construed accordingly.

SECTION 15. This act shall become effective November 1, 1995.

45-1-6038 MAH

