

No. 160

AN ACT

SB 1005

Relating to professional corporations; providing for the inclusion of certain existing entities within the provisions of the act; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.—This act shall be known and may be cited as the “Professional Corporation Law.”

Section 2. Definitions.—The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) “Business corporation” means a business corporation as defined in the Business Corporation Law.

(2) “Disqualified person” means a licensed person who for any reason is or becomes legally disqualified (temporarily or permanently) to render the same professional services which the particular professional corporation of which he is an officer, director, shareholder or employe is or was rendering.

(3) “Licensed person” means any natural person who is duly licensed or admitted to practice his profession by a court, department, board, commission or other agency to render a professional service which is or will be rendered by the professional corporation of which he is, or intends to become, an officer, director, shareholder, employe or agent.

(4) “Profession” includes the performance of any type of personal service to the public which requires as a condition precedent to the performance of such service the obtaining of a license or admission to practice or other legal authorization, including all personal services which prior to the enactment of this act could not lawfully be rendered by means of a corporation. By way of example, and without limiting the generality of the foregoing, such term includes for the purposes of this act personal services rendered as an architect, chiropractor, dentist, funeral director, osteopath, podiatrist, physician, professional engineer, veterinarian, certified public accountant or surgeon and, except as otherwise provided by the rules of the Supreme Court, an attorney at law. The definition specified in this clause shall be applicable to this act only and shall not affect the interpretation of any other statute or any local zoning ordinance or other official document heretofore or hereafter enacted or promulgated.

(5) “Professional corporation” means a corporation for profit which is included within the scope of this act by section 4 of this act.

(6) “Professional services” means any type of services which may be rendered by the member of any profession within the purview of his profession.

Section 3. Legislative Intent.—It is the intent of the General

Assembly to authorize by this act licensed persons to render professional services by means of a professional corporation in all cases.

This act shall not affect the existence of any entity existing on the effective date of this act which is brought within the scope of this act by section 4 of this act.

Section 4. Scope of Act.—(a) Except as provided in section 5 of this act, the provisions of this act shall apply to:

(1) Every business corporation which is incorporated under this act.

(2) Every professional association heretofore or hereafter organized under the act of August 7, 1961 (P.L.941), known as the “Professional Association Act,” which elects to accept the provisions of this act in the manner set forth in subsection (b) of this section.

(3) Every professional partnership association which on the effective date of this act is subject to the act of June 2, 1874 (P.L.271), entitled “An act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances.”

(b) The acceptance provided for in clause (2) of subsection (a) of this section shall be effected by the filing in the Department of State of a certificate which shall be executed by all of the associates of the professional association and shall set forth:

(1) The name and address of the professional association;

(2) The name of the county in the office of the prothonotary of which the initial articles of association of the association were filed; and

(3) A statement that the associates of the professional association have elected to accept the provisions of this act for the government and regulation of the affairs of the association.

This act shall become applicable to the association upon the filing of such certificate in the Department of State.

(c) A professional association organized under the act of August 7, 1961 (P.L.941), known as the “Professional Association Act,” shall be deemed to be incorporated on the date such association becomes subject to this act.

(d) Every entity which is brought within the scope of this act by or pursuant to this section which desires to file any document in the Department of State under any provision of the Business Corporation Law or which desires to secure from the department any certificate to the effect that the corporation is a corporation duly incorporated and existing under the laws of this Commonwealth or a certified copy of the articles of the corporation shall file in the department a certificate of summary of record, which shall be executed under the seal of the corporation by two duly authorized officers thereof and shall set forth:

(1) The name and location of the registered office of the corporation, including street and number, if any.

(2) The statute by or under which the corporation was formed.

(3) The name under which, the manner in which and the date on which the corporation was originally formed, including the date when and the place where the original statement, articles of association or other organic documents were recorded or filed.

(4) The place or places, including volume and page numbers or their equivalent, where the documents constituting the currently effective organic documents are recorded or filed, and the date or dates of each such recording or filing.

(5) Each name by which the corporation was known, if any, other than its original name and its current name, and the date or dates on which each change of name of the corporation became effective.

(6) Amended and restated articles of incorporation of the corporation, which shall include all of the information required to be set forth in restated articles of a professional corporation.

A corporation shall be required to make only one filing under this subsection.

Section 5. Prior Rights Unaffected.—(a) Except as provided in subsection (b) of this section, this act shall not apply to any business corporation now in existence or hereafter incorporated which was not incorporated hereunder and which may lawfully render professional services other than pursuant to this act, nor shall anything herein contained alter or affect any right or privilege existing under any statute heretofore or hereafter enacted (1) not prohibiting, or (2) in terms permitting performance of professional services in corporate form.

(b) A business corporation excluded from the scope of this act may become subject to this act by filing in the Department of State a certificate of acceptance of this act which shall be executed under the seal of the corporation, shall be signed by two duly authorized officers of the corporation, and shall set forth:

(1) The name and location of the registered office of the corporation;

(2) The act of Assembly by or under which the corporation was incorporated and the date of incorporation;

(3) The changes in the articles of incorporation of the corporation necessary so as to render them consistent with all of the provisions of this act and any other changes in the articles, including a restatement of the articles, which are deemed desirable; and

(4) A statement that the acceptance of this act and the resolution or petition containing the proposed amendments to the articles of the corporation were adopted by the unanimous vote of all shareholders of the corporation regardless of any limitations stated in the articles on the voting rights of any class.

This act shall become applicable to the corporation and the amendments to the articles of incorporation shall become effective upon the filing of such certificate in the Department of State.

Section 6. Applicability of Business Corporation Law.—(a) The

provisions of the Business Corporation Law shall apply to professional corporations, except to the extent such provisions are inconsistent with the provisions of this act.

(b) This act shall be deemed to be an act of Assembly specified in subsection A of section 4 of the Business Corporation Law. Subsection A of section 1010 of the Business Corporation Law shall be applicable to a foreign professional corporation which is a qualified foreign business corporation.

Section 7. Stated Purposes.—(a) Except as provided in subsection (b) of this section, a corporation may be incorporated as a professional corporation in the manner provided in this act only for the purpose of rendering one specific kind of professional service. The articles of a professional corporation shall contain a specific statement that the corporation is a professional corporation within the meaning of this act. No professional corporation shall engage in any business other than the rendering of the professional service or services for which it was specifically incorporated, except that a professional corporation may own real and personal property necessary for, or appropriate or desirable in, the fulfillment or rendering of its specific professional service or services and it may invest its funds in real estate, mortgages, stocks, bonds or any other type of investment.

(b) A professional corporation may be incorporated to render two or more specific kinds of professional services to the extent that:

(1) The several shareholders of the professional corporation, if organized as a partnership, could conduct a combined practice of such specific kinds of professional services; or

(2) The court, department, board, commission or other agency regulating each profession involved in the professional corporation has by rule or regulation applicable to professional corporations expressly authorized the combined practice of such profession with each other profession involved in the corporation. Except as otherwise provided by statute each such agency is hereby authorized to promulgate regulations authorizing combined practice to the extent consistent with the public interest or required by the public health or welfare.

(c) The provisions of subsection (b) of this section shall not create any vested rights. If by reason of a change in law, rule or regulation, the right to practice professions in any particular combination is terminated, all existing professional corporations rendering such combination of professional services shall promptly reduce the specific kinds of professional services rendered by such corporations or shall otherwise reconstitute themselves so as to comply with the currently applicable restrictions applicable to all professions involved.

Section 8. Corporate Name.—(a) A professional corporation may adopt any name which is not prohibited by law or the ethics of the profession in which such corporation is engaged or by a rule or regulation

of the court, department, board, commission or other agency regulating such profession.

(b) The provisions of the first sentence of section 202 of the Business Corporation Law shall not prohibit the use of a name of a professional corporation if such name shall contain and be restricted to 'the name or the last name of one or more of the present, prospective, or former shareholders or of individuals who were associated with a predecessor person, partnership or other organization or whose individual name or names appeared in the name of such predecessor organization. Such name may also contain (1) the word "and" or any symbol or substitute therefor, or (2) the word "associates," or both (1) and (2).

(c) The Department of State shall have no authority by reason of section 10 and the first sentence of section 202 of the Business Corporation Law to refuse to file articles of incorporation, amendment, merger or consolidation which set forth a name authorized by subsection (b) of this section.

Section 9. Number of Directors.—The board of directors of a professional corporation having not more than five voting shareholders may consist of two or more directors and the board of directors of a professional corporation having not more than three voting shareholders may consist of one or more directors.

Section 10. Issuance and Retention of Shares.—(a) Shares in a professional corporation may be issued only to a licensed person, and any shares issued in violation of this restriction shall be void. No shareholder of a professional corporation shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another licensed person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his shares, and any such purported voting trust, proxy or other arrangement shall be void. Unless a lesser period of time is provided in the articles of the corporation or in a written agreement among the shareholders of the corporation, the estate of a deceased shareholder may continue to hold shares of the professional corporation for a reasonable period of administration of the estate, but the personal representative of the estate shall not by reason of such retention of shares be authorized to participate in any decisions concerning the rendering of professional service.

(b) Where the activities in this Commonwealth of a person who is a licensed person under the laws of another jurisdiction would be unlawful unless such person were also a licensed person under the laws of this Commonwealth, no shares of a professional corporation shall be issued to or retained by him unless he is also a licensed person under the laws of this Commonwealth. Except as provided in the preceding sentence, nothing in this act shall be construed to require that any proportion or

¹"(1)" in original.

number of the shareholders of a professional corporation who are licensed persons shall be licensed persons under the laws of this Commonwealth.

Section 11. Transfer and Purchase of Shares.—(a) Shares in a professional corporation may be transferred only to a licensed person or to such professional corporation, and any transfer in violation of this restriction shall be void.

(b) Notwithstanding the limitations contained in clause (1) of subsection B of section 701 of the Business Corporation Law, a professional corporation may purchase its own shares and apply thereto the amount of stated capital represented thereby and any surplus of the corporation, and thereupon its stated capital and surplus shall be reduced by the amounts so applied. If either of the limitations contained in either clause (4) or clause (5) of subsection B of section 701 of the Business Corporation Law would otherwise prohibit such an acquisition, a professional corporation shall have the right to purchase its own shares for a nominal consideration.

(c) If the corporation shall not otherwise have the right to acquire all the shares of a shareholder who becomes a disqualified person or of a deceased shareholder, the corporation shall nevertheless have an option to acquire such shares, subject to the provisions of subsection (b) of this section, at a price which is agreed upon by the parties, or if no agreement is reached then at the fair value as determined by the court of common pleas of the county in which the registered office of the corporation is located. In order to determine fair value, the court may appoint an appraiser to receive evidence and report to the court his findings and recommendations as to fair value. The appraiser shall have such powers and shall proceed, so far as applicable, in the same manner as appraisers appointed under section 515 of the Business Corporation Law.

(d) If the corporation or a licensed person shall fail to acquire, or if the corporation shall fail to commence proceedings under subsection (c) of this section to acquire, all of the shares of a shareholder who becomes a disqualified person or of a deceased shareholder within ninety days following the date of disqualification, or within thirteen months following the date of death of such shareholder, as the case may be, then such failure shall constitute a ground for the forfeiture of the charter of the corporation and its dissolution. When the failure of a professional corporation to comply with this section is brought to the attention of the court, department, board, commission or other agency regulating the profession in which such corporation is engaged such agency shall certify that fact to the Department of Justice for appropriate action to dissolve the corporation.

Section 12. Rendering Professional Services.—(a) A professional corporation may lawfully render professional services only through officers, employes or agents who are licensed persons. The corporation

may employ persons not so licensed, but such persons shall not render any professional services rendered or to be rendered by it.

(b) This section shall not be interpreted to preclude the use of clerks, secretaries, nurses, administrators, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by law, custom and practice to be rendering the professional service or services for which the professional corporation was incorporated, nor to preclude the use of any other person who performs all his employment under the direct supervision and control of a licensed person, but no person shall, under the guise of employment, render professional services unless duly licensed or admitted to practice as required by law.

(c) Notwithstanding any other provision of law, a professional corporation may charge for the professional services of its officers, employes and agents, may collect such charges, and may compensate those who render such professional services.

Section 13. Professional Relationship Retained.—(a) Nothing in this act or in the Business Corporation Law shall affect the law of this Commonwealth applicable to the professional relationship and the contract, tort and other legal rights, duties and liabilities between the person furnishing professional services and the person receiving professional services and to the standards for professional conduct, including the law of this Commonwealth applicable to the confidential relationship, if any, between the person rendering professional services and the person receiving professional services, and all confidential relationships enjoyed under statutes heretofore or hereafter enacted shall remain inviolate.

(b) Any officer, shareholder, employe or agent of a professional corporation shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control, while rendering professional services on behalf of the 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 or wrongful acts or misconduct committed by any of its officers, shareholders, employes or agents while they are engaged on behalf of the corporation in rendering professional services. Except as otherwise provided in its articles, a subscriber to, or holder of, shares of a professional corporation shall not be under any liability to the professional corporation or any creditor thereof with respect to such shares, other than the obligation of complying with the terms of the subscription for such shares.

(c) A professional corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of the court, department, board, commission or other agency regulating the profession in which such corporation is engaged. Such court, department, board or other agency may require that a professional corporation include in its articles of incorporation provisions which conform to any such rule or

regulation heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession, but unless otherwise provided by statute, no such rule or regulation shall require the inclusion of any provision in the articles which is inconsistent with the provisions of the Business Corporation Law as modified by this act. Nothing in this act shall affect or impair the disciplinary powers of any such court, department, board, commission or other agency over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

Section 14. Repeals.—(a) The following acts are hereby repealed to the extent indicated:

(1) Act of June 2, 1874 (P.L.271), entitled “An act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances,” absolutely.

(2) Act of February 18, 1875 (P.L.3), entitled “An act supplementary to the act, approved the second day of June, Anno Domini eighteen hundred and seventy-four, entitled ‘An Act authorizing the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances,’ authorizing such associations to use a common seal in the execution of deeds, bonds and mortgages, and to acknowledge such instruments by their chairman and secretary,” absolutely.

(3) Act of May 1, 1876 (P.L.89), entitled “An act supplementary to the act, approved the second day of June, Anno Domini eighteen hundred and seventy-four, entitled ‘An Act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association except under certain circumstances,’ providing for the contribution of real and personal estate to the capital stock thereof and the service of process thereon,” absolutely.

(4) Act of June 8, 1895 (P.L.186), entitled “A supplement to an act, entitled ‘An act to authorize the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of the associations, except under certain circumstances,’ approved June second, one thousand eight hundred and seventy-four, providing for the continuance of such associations after the expiration of the original term, prescribing the manner of electing managers thereof, and conferring authority to adopt by-laws for the regulation and government thereof, fixing the number of managers and designating the title of the principal executive officer,” absolutely.

(5) Act of July 24, 1913 (P.L.969), entitled “An act supplementing an act, entitled ‘An act authorizing the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of

the association, except under certain circumstances,' approved the second day of June, Anno Domini one thousand eight hundred and seventy-four; providing for increase of capital stock and amendment of the articles, and continuing the term existing associations, and providing for certain additional officers in such associations," absolutely.

(6) Subclause (i) of clause (1) of subsection B of section 4, act of May 5, 1933 (P.L.364), known as the "Business Corporation Law," absolutely.

(b) The following acts and parts of acts are hereby repealed in so far as they prohibit the rendering by a professional corporation of the professional service or services for which it was incorporated:

(1) Act of April 28, 1899 (P.L.117), entitled "An act making it unlawful for any person to hold himself out or advertise himself as a lawyer, attorney-at-law, or counsellor-at-law in any county of the State of Pennsylvania, unless duly admitted to practice by a court of record of any county in this Commonwealth, and providing a penalty therefor."

(2) Act of July 12, 1919 (P.L.933), entitled "An act to regulate the practice of architecture in the Commonwealth of Pennsylvania by providing for the examination and registration of architects by a State Board of Examiners; defining the power and duties of said board of examiners; and providing penalties for the violation of this act."

(3) Act of July 12, 1935 (P.L.708), entitled "An act prohibiting others than members of the Bar to practice law and providing penalties."

(4) Act of June 9, 1939 (P.L.329), entitled "An act relating to unlawful practices in the procurement of retainers for attorneys."

(5) Act of May 26, 1947 (P.L.318), known as "The C.P.A. Law."

(6) Act of January 14, 1952 (P.L.1898), known as the "Funeral Director Law."

(7) All other acts and parts of acts relating to the regulation of the furnishing of professional services.

(c) All acts and parts of acts inconsistent with this act are hereby repealed to the extent of such inconsistency.

Section 15. Effective Date.—This act shall take effect in thirty days.

APPROVED—The 9th day of July, A. D. 1970.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 160.



Secretary of the Commonwealth.