

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-440
HOUSE BILL 202

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, AND TO ALLOW NONLICENSEES TO OWN UP TO FORTY-NINE PERCENT OF THE SHARES OF A PROFESSIONAL CORPORATION RENDERING CERTIFIED PUBLIC ACCOUNTANT SERVICES.

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),~~ subsections (a1) and (b) of this section, 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~~ the shareholder only to another ~~such~~ licensee. No share or shares of any stock of ~~such a professional~~ 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~~ nonlicensed employees of ~~such~~ the corporation to own not more than one-third of the total issued and outstanding shares of ~~such corporation.~~ the corporation; and provided further, with respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be a licensee if the trustee or trustees of the plan are licensees. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its

professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a ~~non-licensed~~ nonlicensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to ~~such the~~ nonprofessional transferee. ~~Any share of stock of such corporation issued or transferred~~ The issuance or transfer of any share of stock in violation of this section ~~shall be null and is~~ void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any ~~or all of his stock~~ of the stock of a professional corporation.

(a1) Any person may own up to forty-nine percent of the stock of a professional corporation rendering services under Chapter 93 of the General Statutes as long as:

- (1) Licensees continue to own and control voting stock that represents at least fifty-one percent (51%) of the votes entitled to be cast in the election of directors of the professional corporation; and
- (2) All licensees who perform professional services on behalf of the corporation comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

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

(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute in accordance with section 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the stock of the controlled corporation to one or more shareholders of the distributing corporation authorized under this section to hold the shares. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock is issued to the distributing corporation. A share of stock of the controlled corporation that is not transferred in accordance with this subsection within 30 days after the share was issued to the distributing corporation is void."

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

"§ 55B-16. Foreign professional corporations.

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

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

- (2) With respect to each professional service practiced through the corporation in this State, at least one director and one officer shall be a licensee of the licensing board which regulates the profession in this State;
- (3) Each officer, employee, and agent of the corporation who will provide professional services to persons in this State shall be a licensee of the appropriate licensing board in this State;
- (4) The corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the appropriate licensing board or boards in this State;
- (5) The corporation's activities in this State shall be limited as provided by G.S. 55B-14; and
- (6) The application for certificate of authority, in addition to the requirements of G.S. 55-15-03, shall set forth the personal services to be rendered by the foreign professional corporation and the individual or individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a certification by the appropriate licensing board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and by additional certifications as may be required to establish that the corporation is a 'foreign professional corporation' as defined in G.S. 55B-16(b).

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

- (1) Is incorporated under a law other than the law of this State;
- (2) Is incorporated for the ~~sole and specific~~ purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6); and
- (3) Has as its shareholders only individuals who:
 - a. Qualify to hold shares of a corporation organized under this Chapter;
 - b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; ~~or~~
 - c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the ~~aggregate~~; aggregate; or
 - d. With respect to a professional corporation rendering services under Chapter 93 of the General Statutes, are persons who own

not more than forty-nine percent (49%) of the stock in the professional corporation as long as:

1. Individuals who meet the requirements of sub-subdivision a. or b. of this subdivision own and control voting stock that represents at least fifty-one percent (51%) of the votes entitled to be cast in the election of directors of the professional corporation; and
2. All licensees who perform professional services on behalf of the corporation in this State comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

(b1) With respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be an individual licensee if at least one trustee of the plan is a licensee and all other trustees are licensees or are individuals who are licensed under the laws of a state in which the corporation maintains an office to perform at least one of the professional services, as defined in Chapter 83A, 89A, 89C, or 89E of the General Statutes, rendered by the corporation.

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

Section 3. G.S. 93-12(8b) reads as rewritten:

"(8b) To formulate rules ~~and regulations~~ for the continuing professional education of all persons holding the certificate of certified public accountant, subject to the following provisions:

- a. After January 1, 1983, any person desiring to obtain or renew a certificate as a certified public accountant must offer evidence satisfactory to the Board that ~~such the~~ person has complied with the continuing professional education requirement approved by the Board. The Board may grant a conditional license for not more than 12 months for persons who are being licensed for the first time, or moving into North Carolina, or for other good cause, in order that ~~such the~~ person may comply with the continuing professional education requirement.
- b. The Board shall ~~promulgate rules and regulations~~ adopt rules for the administration of the continuing professional education requirement with a minimum number of hours of 20 and a maximum number of hours of 40 per year, and the Board may exempt persons who are retired or inactive from ~~said the~~ continuing professional education requirement. The Board may also permit any certified public accountant to accumulate hours

of continuing professional education in any calendar year of as much as two additional years annual requirement in advance of or subsequent to the required calendar year.

- c. Any applicant who offers satisfactory evidence on forms promulgated by the Board that ~~he~~ the applicant has participated in a continuing professional education program of the type required by the Board shall be deemed to have complied with ~~this section.~~ subdivision."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:46 p.m. this 10th day of August, 1999