

A Bill for an Act Relating to the Formation of Professional Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 416, Hawaii Revised Statutes, is amended by adding a new part to be designated and to read as follows:

“PART VIII

PROFESSIONAL CORPORATIONS

Sec. 416-141. Title. This part shall be known as the “Professional Corporation Law”.

Sec. 416-142. Definitions. As used in this part:

(1) “Professional services” means any type of professional services which may be lawfully rendered only by persons licensed pursuant to chapters 442, 448, 453, 455, 458, 459, 460, 461, 466, 471, and 605.

(2) “Professional corporation” means a corporation organized under this part which is engaged in rendering professional services in a single profession, pursuant to a certificate of registration issued by the regulating board of the profession as herein provided.

(3) “Licensed person” means any natural person who is licensed under chapters 442, 448, 453, 455, 458, 459, 460, 461, 466, 471, or 605, to render the same professional services as are or will be rendered by the professional corporation of which he is, or intends to become, an officer, director, shareholder, or employee.

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

(5) “Regulating board” means the board which is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render, or in the case of attorneys, the supreme court of the State.

Sec. 416-143. Other laws. The provisions of this chapter shall apply to professional corporations, except where such provisions are in conflict with or inconsistent with the provisions of this part. A professional corporation which has only one shareholder need have only one director who shall be such shareholder and who shall also serve as the president and treasurer of the corporation. The other officers of the corporation in such situation need not be licensed persons. A professional corporation which has only two shareholders need have only two directors who shall be such shareholders. The two shareholders between them shall fill the offices of president, vice president, secretary, and treasurer. A professional corporation which has three or more shareholders shall have at least three directors, all of whom shall be shareholders, and all officers shall be shareholders.

Sec. 416-144. Formation of corporation. A corporation may be formed under this chapter for the purposes of qualifying as a professional corporation. The articles of association of a professional corporation shall contain a specific statement that the corporation is a professional corporation within the meaning of this part. No professional corporation shall render professional services in this State without a currently effective certificate of registration issued by the regulating board of the profession in which the corporation is or proposes to be engaged.

Sec. 416-145. Services rendered. A professional corporation may lawfully render professional services, but only through employees who are licensed persons. The corporation may employ persons not so licensed, but such persons shall not render any of the professional services which are rendered or are to be rendered by the corporation. In the case of the legal profession, nothing herein shall be construed as purporting to limit the power of the Supreme Court of the State of Hawaii to determine the conditions under which persons shall be admitted to the practice of law.

Sec. 416-146. Issuance of shares. Shares of capital stock 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.

Sec. 416-147. Transfer of shares. Shares in a professional corporation may be transferred only to a licensed person or to the professional corporation, and any transfer in violation of this restriction shall be void.

A professional corporation may purchase and redeem its own shares without regard to any restrictions provided in this chapter upon the purchase and redemption of shares of its own stock by a corporation, if at least one share remains issued and outstanding after such purchase and redemption.

If the corporation fails to acquire all of the shares of a disqualified or deceased shareholder, or if the disqualified shareholder or the representative of a deceased shareholder fails to transfer said shares to the corporation or to a licensed person, within ninety days following the date of disqualification, or within six months following the date of death of such shareholder, as the case may be, then the certificate of registration of the professional corporation may be suspended or revoked by the regulating board of the profession in which the corporation is engaged. In the event of such suspension or revocation the corporation shall cease forthwith to render professional services.

Sec. 416-148. Suspension or revocation of certificate of registration.

The following shall be grounds for the suspension or revocation of the certificate of registration of a professional corporation by the regulating board: (1) if all shareholders of the corporation at any one time become disqualified persons, or (2) if the sole shareholder becomes a disqualified person, or (3) if the

corporation knowingly employs or retains in its employment a disqualified person, or (4) if the corporation violates any applicable rule or regulation adopted by the regulating board of the profession in which the corporation is engaged, or (5) if any income of the professional corporation attributable to professional services rendered while a shareholder is a disqualified person accrues to the benefit of such shareholder or his shares in the professional corporation, or (6) if the corporation violates any statute applicable to a professional corporation. In the event of such suspension or revocation of its certificate of registration, the corporation shall cease forthwith to render professional services.

Sec. 416-149. Name. A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the regulating board of such profession; provided, that such name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation which is authorized to transact business in this State, or a name which is under reservation for another corporation. The director of regulatory agencies may require proof by affidavit or otherwise establishing that the name of the professional corporation complies with the requirements of this section, and of the law governing the profession in which the professional corporation is engaged, and of the rules or regulations of the regulating board of the profession. The statements of fact in such affidavits may be accepted by the director of regulatory agencies as sufficient proof of the facts.

Sec. 416-150. Professional regulation. A professional corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the regulating board of the profession in which the corporation is engaged. Nothing in this part shall effect or impair the disciplinary powers of any such agency over a licensed person 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 furnishing professional services and the person receiving such services.

Sec. 416-151. Additional powers of regulating board. In addition to all of its other regulatory and disciplinary powers, the regulating board shall have the following powers and duties with respect to professional corporations:

(1) Registration with regulating board: Any applicant for incorporation under this part shall register with the regulating board of the profession in which the proposed professional corporation is to be engaged. An applicant for registration as a professional corporation shall supply to the regulating board all necessary and pertinent documents and information requested by the regulating board concerning the applicant's plan of operation, including but not limited to, a copy of its articles of association, certified by the director of regulatory agencies, a copy of its bylaws, certified secretary of the corporation, the name and address of the corporation, the names and addresses of its officers, directors, shareholders, and employees who will render professional services, the address of each office, and any fictitious name or names which the corporation intends to use. The regulating board may provide forms of application.

If the regulating board finds that the corporation is duly organized and existing pursuant to this chapter, that each officer, director, shareholder, and each employee who will render professional services is a licensed person as defined in this part, and that from the application it appears that the affairs of the corporation will be conducted in compliance with law and the rules and regulations of the regulating board, the regulating board shall, upon payment of the registration fee in such reasonable amount as it may determine, issue a certificate of registration. The application shall be signed and verified by an officer of the corporation.

(2) Reports of personnel changes: Within such time as the regulating board may by rule provide, the professional corporation shall report in writing to the regulating board any change in directors, officers, employees performing professional services, and share ownership, and amendments to its articles of association and bylaws.

(3) Annual reports: Each professional corporation shall file with the regulating board annually and at such other times as the regulating board may require, a report containing such information pertaining to qualification and compliance with the statutes and rules and regulations of the regulating board as the regulating board may determine. The fee for filing such a report shall be fixed by the regulating board. All reports shall be signed and verified by an officer of the corporation.

(4) Rules and regulations: The regulating board may formulate and enforce rules and regulations to carry out the purposes and objectives of this section, including rules and regulations requiring (A) that the articles of association or bylaws of a professional corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person, or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within the time provided in section 416-147, and (B) that a professional corporation as a condition of obtaining a certificate pursuant to this part shall provide adequate security by insurance or otherwise for claims against it by its patients or clients arising out of the rendering of professional services.

Sec. 416-152. Professional relationships between persons not affected.

The provisions of this chapter shall not be construed to alter or affect the professional relationship between a person furnishing professional services and a person receiving the service with respect to the confidential relationship between the person rendering the professional service and the person receiving the professional service, if any, and all such confidential relationships enjoyed under the laws of this State, whether now in existence or hereafter enacted, shall remain inviolate.

Sec. 416-153. Personal liability of shareholders; liability of professional corporation for acts of shareholders, etc. Any shareholder of a professional corporation shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him while rendering professional services on behalf of the professional corporation to the person for whom such professional services were being rendered. Such share-

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holder shall not, by reason of being a shareholder, be personally liable for any debts or claims against, or the acts or omissions of, the professional corporation or of another shareholder or employee of the professional corporation, but the professional corporation shall be liable for the acts or omissions of its shareholders, officers, agents, employees, and servants to the same extent to which an ordinary business corporation would be liable for the acts or omissions of its officers, agents, employees, and servants while they are engaged in carrying on the corporate business.

Sec. 416-154. Provisions severable. If any provision of this part or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of the part which can be given effect without the invalid provisions or applications, and to this end the provisions of this part are severable.”

SECTION 2. Section 416-1, Hawaii Revised Statutes, is amended by inserting after the word “profession” in the first sentence a phrase to read as follows:

“except pursuant to part VIII of this chapter,”.

SECTION 3. Section 605-14, Hawaii Revised Statutes, is amended by amending the proviso clause in the first sentence to read as follows:

“; provided that nothing herein shall be deemed to authorize the licensing of a corporation to practice law except as provided in part VIII of chapter 416.”

SECTION 4. Section 448-15, Hawaii Revised Statutes, is amended by adding at the end of the first sentence a clause to read as follows:

“, nor shall it apply to professional corporations as defined in part VIII of chapter 416.”

SECTION 5. Chapter 235, Hawaii Revised Statutes, is amended by adding at the end of subsection 235-4(d) and at the end of the first paragraph of subsection 235-71(a) a paragraph to read as follows:

“ ‘Corporation’ includes any professional corporation incorporated pursuant to part VIII of chapter 416.”

SECTION 6. This Act shall take effect upon its approval.

(Approved July 14, 1969.)