

ACT 259

H.B. NO. 346

A Bill for an Act Relating to Corporations.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
PROFESSIONAL CORPORATION ACT**

§ -1 **Title.** This chapter shall be known and may be cited as the “Hawaii Professional Corporation Act.”

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires, the term:

“Director” means the director of commerce and consumer affairs.

“Disqualified person” means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity which for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

“Foreign professional corporation” means a corporation for profit organized for the purpose of rendering professional services under a law other than the law of this State.

“Licensing authority” means the officer, board, agency, court, or other authority in this State which has the power to issue a license or other legal authorization to render a professional service.

“Professional corporation” or “domestic professional corporation” means a corporation for profit subject to this chapter, except a foreign professional corporation.

“Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 458, 459, 460, 461, 466, 471, and 605 and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter .

“Qualified person” means a natural person, or general partnership, which is eligible under this chapter to own shares issued by a professional corporation.

§ -3 **Purposes.** (a) Except as provided in this section, professional corporations may be organized under this chapter only for the purpose of rendering professional services and services ancillary thereto within a single profession.

(b) A professional corporation may be incorporated for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which corporations may be organized under the Hawaii Business Corporation Act, chapter , to the extent that such combination of professional purposes or of professional and business purposes is permitted by the licensing laws of this State applicable to such professions and rules thereunder.

§ -4 **Prohibited activities.** A professional corporation shall not engage in any profession or business other than the profession or professions and businesses permitted by its articles of incorporation, except that a professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

§ -5 **General powers.** A professional corporation shall have the powers enumerated in the Hawaii Business Corporation Act, chapter , except that a professional corporation may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the articles of incorporation of the corporation.

§ -6 **Rendering professional services.** A professional corporation, domestic or foreign, may render professional services in this State only through natural

persons permitted to render such services in this State; but nothing in this chapter shall be construed to require that any person who is employed by a professional corporation be licensed to perform services for which no license is otherwise required or to prohibit the rendering of professional services by a licensed natural person acting in the person's individual capacity, notwithstanding such person may be a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

§ -7 Right of corporation to acquire its own shares. A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for such purchase; provided no purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

§ -8 Corporate name. The name of a domestic professional corporation or of a foreign professional corporation authorized to transact business in this State:

- (1) Shall contain the words, "professional corporation" or the abbreviation "P.C.";
- (2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;
- (3) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this State or any foreign corporation authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in the Hawaii Business Corporation Act, chapter , or the name of a corporation which has in effect a registration of its corporate name as provided in the Hawaii Business Corporation Act, chapter ; except that this provision shall not apply if:
 - (A) Such similarity results from the use in the corporate name of personal names of its shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or
 - (B) The applicant files with the director either of the following:
 - (i) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name, or
 - (ii) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this State; and
- (4) Shall otherwise conform to any rule adopted by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of such corporation.

§ -9 Issuance and transfer of shares; share certificates. (a) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

- (1) Natural persons who are authorized by law in this State or in any other state or territory of the United States or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation; and

- (2) General partnerships in which all the partners are qualified persons with respect to such professional corporation and in which at least one partner is authorized by law in this State to render a professional service permitted by the articles of incorporation of the corporation.

(b) Where deemed necessary by the licensing authority for any profession in order to prevent violations of the ethical standards of such profession, the licensing authority may by rule further restrict, condition, or abridge the authority of professional corporations to issue shares but no such rule, of itself, shall have the effect of causing a shareholder of a professional corporation at the time such rule becomes effective to become a disqualified person. All shares issued in violation of this section or any rule hereunder shall be void.

(c) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to natural persons and general partnerships qualified hereunder to hold shares issued directly to them by such professional corporation. Any transfer of shares in violation of this provision shall be void; provided nothing herein contained shall prohibit the transfer of shares of a professional corporation by operation of law or court decree.

(d) Every certificate representing shares of a professional corporation shall state conspicuously upon its face that the shares represented thereby are subject to restrictions on transfer imposed by this chapter and are subject to such further restrictions on transfer as may be imposed by the licensing authority from time to time pursuant to this chapter.

§ -10 Death or disqualification of a shareholder. (a) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares of such deceased shareholder or of such disqualified person may be transferred to a qualified person and, if not so transferred, shall be purchased or redeemed by the corporation to the extent of funds which may be legally made available for such purchase.

(b) If the price for such shares is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation within six months after such death or thirty days after such disqualification or transfer, as the case may be, shall make a written offer to pay for such shares at a specified price deemed by such corporation to be the fair value thereof as of the date of such death, disqualification, or transfer. Such offer shall be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and shall be accompanied by a balance sheet of the corporation, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

(c) If within thirty days after the date of such written offer from the corporation the fair value of such shares is agreed upon between such disqualified person and the corporation, payment therefor shall be made within sixty days, or such other period as the parties may fix by agreement, after the date of such offer, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the disqualified persons shall cease to have any interest in such shares.

(d) If within such period of thirty days the disqualified person and the corporation do not so agree, then the corporation, within thirty days after

receipt of written demand from the disqualified person given within sixty days after the date of the corporation's written offer or at its election at any time within such period of sixty days, shall file a petition in any court of competent jurisdiction in the county in this State where the registered office of the corporation is located requesting that the fair value of such share be found and determined. If the corporation shall fail to institute the proceeding as herein provided, the disqualified person may do so within sixty days after delivery of such written demand to the corporation. The disqualified person, wherever residing, shall be made a party to the proceeding as an action against the person's shares quasi in rem. A copy of the petition shall be served on the disqualified person, if a resident of this State, and shall be served by registered or certified mail on the disqualified person, if a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. The disqualified person shall be entitled to judgment against the corporation for the amount of the fair value of the person's shares as of the date of death, disqualification, or transfer upon surrender to the corporation of the certificate or certificates representing such shares. The court, in its discretion, may order that the judgment be paid in such installment as the court may determine. The court, if it so elects, may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof.

(e) The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date of death, disqualification, or transfer.

(f) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against the disqualified person if the court shall find that the action of such disqualified person in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to the disqualified person such sum as the court may determine to be reasonable compensation to any expert or experts employed by the disqualified person in the proceeding.

(g) If a purchase, redemption, or transfer of the shares of a deceased or disqualified shareholder or of a transferee who is a disqualified person is not completed within ten months after the death of the deceased shareholder or five months after the disqualification or transfer, as the case may be, the corporation shall cancel forthwith the shares on its books and the disqualified person shall have no further interest as a shareholder in the corporation other than the person's right to payment for such shares under this section.

(h) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares.

(i) This section shall not be deemed to require the purchase of shares of a disqualified person where the period of such disqualification is for less than five months from the date of disqualification or transfer.

(j) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, bylaws, or any private agreement shall be specifically enforceable in the courts of this State.

(k) Nothing herein contained shall prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

§ -11 Responsibility for professional services. (a) Any reference to a corporation in this section shall include both domestic and foreign corporations.

(b) Every individual who renders professional services as an employee of a professional corporation shall be liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual rendered such services as a sole practitioner. An employee of a professional corporation shall not be liable for the conduct of other employees unless the employee is at fault in appointing, supervising, or cooperating with them.

(c) Every corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation shall be liable to the same extent as its employees.

(d) Except as otherwise provided by statute, if any corporation is liable under subsection (c), every shareholder of that corporation shall be liable to the same extent as though the shareholder were a partner in a partnership and the services giving rise to liability had been rendered on behalf of the partnership, unless the corporation has provided security for professional responsibility as provided in this subsection and the liability is satisfied to the extent contemplated by the insurance or bond which effectuates the security.

A professional corporation, domestic or foreign, may provide security for professional responsibility by procuring insurance or a surety bond issued by an insurance company or a combination thereof, as the corporation may elect. The minimum amount of security and requirements as to the form and coverage provided by the insurance policy or surety bond may be established for each profession by the licensing authority for the profession, and the minimum amount may be set to vary with the number of shareholders, the type of practice, or other variables deemed appropriate by the licensing authority. If no effective determination by the licensing authority is in effect, the minimum amount of professional responsibility security for the professional corporation shall be the product of \$100,000 multiplied by the number of shareholders of the professional corporation.

§ -12 Professional relationships; privileged communications. (a) The relationship between an individual performing professional services as employee of a professional corporation, domestic or foreign, and a client or patient shall be the same as if the individual performed such services as a sole practitioner.

(b) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient shall be the same as between the client or patient and the individual performing the services.

(c) Any privilege applicable to communications between a person rendering professional services and the person receiving such services recognized under the laws of this State, whether statutory or deriving from common law, shall remain inviolate and shall extend to a professional corporation, domestic or foreign, and its employees in all cases in which it shall be applicable to communications between a natural person rendering professional services on behalf of the corporation and the person receiving such services.

§ -13 **Voting of shares.** No proxy for shares of a professional corporation shall be valid unless it shall be given to a qualified person. A voting trust with respect to shares of a professional corporation shall not be valid.

§ -14 **Directors and officers.** Not less than one-half the directors of a professional corporation and all the officers other than the secretary and the treasurer shall be qualified persons with respect to the corporations.

§ -15 **Amendments to articles of incorporation.** A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to such amendment. Articles of amendment so adopted shall be executed in duplicate by the corporation by such personal representative, guardian, conservator, or receiver and by the secretary or assistant secretary of the corporation, and verified by one of the persons signing such articles, and shall set forth:

- (1) The name of the corporation;
- (2) The amendments so adopted;
- (3) The date of adoption of the amendment by the personal representative, guardian, conservator, or receiver;
- (4) The number of shares outstanding; and
- (5) The number of shares held by the personal representative, guardian, conservator, or receiver.

§ -16 **Merger and consolidation.** (a) A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation.

(b) Upon the merger or consolidation of a professional corporation, if the surviving or new corporation, as the case may be, is to render professional services in this State, it shall comply with this chapter.

§ -17 **Termination of professional activities.** If a professional corporation shall cease to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of the Hawaii Business Corporation Act, chapter , regarding its corporate name. The corporation then may continue in existence as a corporation under the Hawaii Business Corporation Act, chapter , and shall no longer be subject to this chapter.

§ -18 **Involuntary dissolution.** A professional corporation may be dissolved involuntarily by a decree of the circuit court in an action filed by the attorney general when it is established that the corporation has failed to comply with any provision of this chapter applicable to it within sixty days after receipt of written notice of noncompliance. Each licensing authority in this State and the director shall certify to the attorney general, from time to time, the names of all corporations which have given cause for dissolution as provided in this chapter, together with the facts pertinent thereto. Whenever the director or any licensing authority shall certify the name of a corporation to the attorney general as having given any cause for dissolution, the director or such licensing authority, as the case may be, shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the attorney general shall file an action in the name of the State against such corporation for its dissolution.

§ -19 **Admission of foreign professional corporations.** (a) A foreign professional corporation shall be entitled to procure a certificate of authority to transact business in this State only if:

- (1) The name of the corporation meets the requirements of this chapter;
- (2) The corporation is organized only for purposes for which a professional corporation organized under this chapter may be organized; and
- (3) All the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(b) No foreign professional corporation shall be required to obtain a certificate of authority to transact business in this State unless it shall maintain an office in this State for the conduct of business or professional practice.

§ -20 Application for certificate of authority. The application of a foreign professional corporation for a certificate of authority for the purpose of rendering professional services shall include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in one or more states or territories of the United States or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

§ -21 Revocation of certificate of authority. The certificate of authority of a foreign professional corporation may be revoked by the director if the corporation fails to comply with any provision of this chapter applicable to it. Each licensing authority in this State shall certify to the director, from time to time, the names of all foreign professional corporations which have given cause for revocation as provided in this chapter, together with the facts pertinent thereto. Whenever a licensing authority shall certify the name of a corporation to the director as having given cause for dissolution, the licensing authority shall concurrently mail to the corporation at its registered office in this State a notice that such certification has been made. No certificate of authority of a foreign professional corporation shall be revoked by the director unless the director shall have given the corporation not less than sixty days' notice thereof and the corporation shall fail prior to revocation to correct such noncompliance.

§ -22 Annual report of domestic and foreign professional corporations. (a) The annual report of each domestic professional corporation, and each foreign professional corporation authorized to transact business in this State, filed with the director pursuant to the Hawaii Business Corporation Act, chapter , shall include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(b) Financial information contained in the annual report of a professional corporation, other than the amount of stated capital of the corporation, shall not be open to public inspection nor shall the licensing authority disclose any facts or information obtained therefrom except insofar as its official duty may require the same to be made public or in the event such information is required for evidence in any criminal proceedings or in any other action by this State.

§ -23 Annual statement of qualification of domestic and foreign professional corporations. (a) Each domestic professional corporation, and each foreign professional corporation, authorized to transact business in this State, shall file annually before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and respective addresses of the directors and officers of the corporation and such additional information as the licensing authority may by rule prescribe as appropriate in determining whether such corporation is complying with this chapter and rules promulgated hereunder.

(b) The licensing authority shall charge and collect a fee of \$10 for filing a statement of qualification pursuant to this chapter.

§ -24 Interrogatories by licensing authority. Each licensing authority of this State may propound to any professional corporation, domestic or foreign, organized to practice a profession within the jurisdiction of such licensing authority, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the licensing authority to ascertain whether such corporation has complied with all the provisions of this chapter applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the licensing authority, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary, or assistant secretary thereof. The licensing authority shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

(b) Interrogatories propounded by a licensing authority and the answers thereto shall not be open to public inspection nor shall the licensing authority disclose any facts or information obtained therefrom except insofar as its official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State.

§ -25 Penalties. (a) Each professional corporation, domestic or foreign, that fails or refuses to answer truthfully within the time prescribed by this chapter interrogatories propounded in accordance with this chapter by the licensing authority having jurisdiction of a type of professional service described in the articles of incorporation of such corporation, shall be deemed to be guilty of a misdemeanor.

(b) Each officer and director of a professional corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to such officer in accordance with this chapter the licensing authority having jurisdiction of a type of professional service described in the articles of incorporation of such corporation, or who signs any articles, statement, report, application, or other document filed with such licensing authority which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor.

§ -26 Regulation of professional corporations. No professional corporation, domestic or foreign, shall begin to render professional services in this State until it has filed a copy of its articles of incorporation with each licensing authority having jurisdiction of a type of professional service described in its articles of incorporation. Each licensing authority in this State is hereby authorized to promulgate rules in accordance with this chapter which specifically provide for the issuance of rules to the extent consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct. Nothing in this chapter shall restrict or limit in any manner the authority or duty of a licensing authority with respect to natural persons rendering a professional service within the jurisdiction of the licensing authority, or any law, rule, or regulation pertaining to standards of professional conduct.

§ -27 Application of business corporation act. The provisions of the Hawaii Business Corporation Act, chapter , shall apply to professional

corporations, domestic or foreign, except to the extent such provisions are inconsistent with this chapter.

§ -28 Application to existing corporations. (a) This chapter shall apply to all existing corporations organized under any general act of this State which is repealed by this chapter. Every such existing corporation which shall be required to amend its corporate name or purposes to comply with this chapter shall deliver duly executed duplicate originals of articles of amendment or restated articles of incorporation containing such amendments to the director within ninety days after the effective date of this chapter.

(b) Any corporation organized under any act of this State which is not repealed hereby may become subject to the provisions of this chapter by delivering to the director duly executed duplicate originals of articles of amendment or restated articles of incorporation stating that the corporation elects to become subject to this chapter and containing such amendment of its corporate name or purposes as may be required to comply with this chapter.

(c) This chapter shall not apply to any corporation now in existence or hereafter organized under any act of this State which is not repealed hereby unless such corporation voluntarily becomes subject to this chapter as herein provided, and nothing contained in this chapter shall alter or affect any existing or future right or privilege permitting or not prohibiting performance of professional services through the use of any other form of business organization. Nothing in this chapter shall affect the validity of any action taken by any corporation, or shall impair or affect the validity of any provision of the articles of incorporation or bylaws adopted by any corporation, prior to the effective date of this chapter.

§ -29 Reservation of power. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to this chapter, and the legislature shall have power to amend, repeal, or modify this chapter at pleasure.

§ -30 Effect of repeal of prior acts. The repeal of a prior act by this chapter shall not affect the validity of any provisions of articles of incorporation and bylaws which were adopted, any right accrued or established, or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

§ -31 Effect of invalidity of part of this chapter. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this chapter, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this chapter so adjudged to be invalid or unconstitutional."

SECTION 2. Chapter 416, part VIII, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act shall take effect on July 1, 1987.

(Approved June 5, 1985.)