



**House
Legislative
Analysis
Section**

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PROFESSIONAL SERVICE CORPORATIONS

Senate Bill 894 (Substitute H-1) 11-12-90
First Analysis (5-29-90)

Sponsor: Sen. Dick Posthumus
Senate Committee: Commerce & Technology
House Committee: Corporations & Finance

THE APPARENT PROBLEM:

The Professional Service Corporation Act permits professionals such as attorneys, physicians, and accountants to incorporate as professional service corporations (PCs). The act has been the subject of several attorney general opinions, most recently OAG 6592 of 1989 in which the attorney general ruled, among other things, that a professional corporation may render more than one service, but that each shareholder must be fully qualified to perform all professional services offered by the PC. The opinion also held that the act, which specifies that the Business Corporation Act is applicable to PCs except where a conflict exists, adopted the Business Corporation Act as it existed on July 18, 1980 (the effective date of the last amendment made to a portion of the PC act that refers specifically to the Business Corporation Act); consequently, subsequent amendments to the Business Corporation Act do not apply to professional corporations. The Business Law Section of the State Bar of Michigan has thus suggested amending the PC Act to ensure not only that PCs fall under the updated version of the Business Corporation Act, but also to ensure that the PC Act — as an enabling law — does not attempt to regulate the various professions by restricting their professional associations. The Business Law Section also feels PCs should be allowed to have shareholders who are licensed to practice in other states but not in Michigan, as this would enable state-based PCs to expand into other states and would be consistent with a similar practice in other states. (Currently, PC shareholders — except for the personal representative of a deceased or legally incompetent shareholder — must be licensed in Michigan.)

THE CONTENT OF THE BILL:

The bill would amend the Professional Service Corporation Act to allow a "licensed person" (which would mean an individual who was duly licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, an agency of this state or another jurisdiction, or any corporation all of whose shareholders were licensed persons) to become an officer, director, shareholder, employee, or agent of a PC, but such a person could not render a professional service in the state until he or she was licensed or legally authorized to render the service in Michigan. Unless otherwise prohibited, a PC could render one or more "professional services" (which would include certain services provided to the public that required a license, such as dentistry, optometry, medicine, engineering, and the like) although each shareholder would have to be a licensed person in one or more of the PC's rendered services. If, however, a PC rendered a professional service that was included within the Public Health Code, all of its shareholders would have to be licensed or legally authorized to render the same professional service. Finally, the bill would remove a

provision that prohibits a corporation from invoking parts of the act dealing with the purchase or redemption of its own shares at a time or in a manner that would impair the corporation's capital (as the Business Corporation Act specifically addresses this).

MCL 450.222 et al.

HOUSE COMMITTEE ACTION:

The House Corporations and Finance Committee adopted a substitute for the bill that added a provision specifying that if a PC rendered a professional service included within the Public Health Code, then all of the corporation's shareholders would have to be licensed or legally authorized in the state to render the same professional service.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would not affect state or local budget expenditures. (4-30-90)

ARGUMENTS:

For:

Allowing professional corporations to have shareholders who were licensed in another state but not in Michigan would enable Michigan-based PCs to expand into other states. While a person licensed in another state now currently can join a Michigan PC, that person also must be licensed in the state. For example, a Michigan law firm that has incorporated as a PC cannot have as shareholders Florida attorneys unless these are members of the State Bar of Michigan. The bill would allow the Michigan firm to expand into Florida without requiring that the Florida attorneys concurrently join the Michigan bar. The bill, however, specifically would prohibit a person from rendering a professional service in Michigan unless he or she was licensed to do so in the state, thus preventing — as in this example — the Florida attorneys from practicing here unless they joined the State Bar of Michigan.

For:

By amending the act and specifically citing the "Business Corporation Act" (instead of referring only to Public Act 284 of 1972), the bill would bring the PC Act under the updated version of the Business Corporation Act. According to the attorney general, amendments to the Business Corporation Act made after July 18, 1980 (when the PC Act adopted the Business Corporation Act) do not apply to PCs; only those provisions of the Business Corporation Act that existed at that time apply. Since then, the Business Corporation Act has been updated (by Public Act 1 of 1987 and Public Act 181 of 1989) to reflect current statutory trends regarding, for instance, the liability and indemnification of a corporation's directors, officers, and other employees,

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the distribution of dividends and corporate shares, the rights and responsibilities of shareholders and boards of directors, and various procedural matters. Thus, according to the Business Law Section, the PC Act is currently outdated. The bill would remedy this by making current provisions within the Business Corporation Act apply to PCs, but would also clarify that if the laws conflicted the PC Act would be controlling.

Response: If the bill's intent is to ensure that the PC Act is revised in concurrence with any new changes made to the Business Corporation Act, it should include a provision specifying that any future changes made to that act would also apply to the PC Act.

Reply:

According to the Legislative Service Bureau, it would be unconstitutional to insert a provision making future changes in one act apply to another act.

For:

While the PC Act currently allows a PC to render more than one professional service, the attorney general (in 1989 OAG No. 6295) interpreted the act as saying that "each shareholder [except for a personal representative of a dead or legally incompetent shareholder] . . . must be fully qualified to perform all of the professional services rendered" by the PC (emphasis in original). By requiring a PC's shareholders to be "licensed persons," rather than "individuals licensed to render the same professional services as the corporation," the bill would enable a PC to have shareholders who are licensed in different professions. (Although, under Substitute H-1, this would not apply to professional services included under the Public Health Code — such as dentistry, medicine, optometry, etc.) The Business Law Section has pointed out that the PC Act is an enabling act, not a regulatory or licensing law: by removing the limitation on who can join together to form a PC (except in health-related fields), the bill would make the act consistent with the Business Corporation Act and the Uniform Partnership Act, both of which also are enabling laws.

POSITIONS:

The Business Law Section of the State Bar of Michigan supports the bill. (5-25-90)

The Michigan Dental Association supports the bill. (5-25-90)