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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 894 (as enrolled)

Sponsor: Senator Dick Posthumus

Senate Committee: Commerce and Technology

House Committee: Corporations and Finance

Date Completed: 6-26-90

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**RATIONALE**

The Professional Service Corporation Act permits various professionals, such as attorneys, physicians, and accountants, to incorporate as professional service corporations (PCs). The Act has been the subject of several Opinions of the Attorney General (OAGs), most recently OAG No. 6592 of 1989. In that opinion, the Attorney General ruled, among other things, that a professional corporation may render more than one professional service, but each shareholder must be fully qualified to perform all of the professional services rendered by the PC. The Attorney General also held that the PC Act, which states that the Business Corporation Act is applicable to PCs except to the extent there is a conflict, adopted the Business Corporation Act as it existed on July 18, 1980, the effective date of the last amendment to the section of the PC Act making specific reference to the Business Corporation Act; therefore, subsequent amendments to that law do not apply to professional corporations. The Business Law Section of the State Bar has suggested that the PC Act be amended to address these points, claiming that the limited application of the Business Corporation Act to PCs is incomplete and confusing, and that the PC Act, as an enabling law, should not attempt to regulate the various professions by restricting their professional associations. The Business Law Section also believes that PCs should be permitted to have shareholders who are licensed to practice in other states but not in Michigan. (Currently, PC shareholders--except the personal representative of a deceased or legally incompetent shareholder--must be licensed in Michigan.) Making this change, according to the State Bar Section, would enable Michigan-based PCs to expand into other states and would be consistent with the trend in other jurisdictions.

**CONTENT**

The bill would amend the Professional Service Corporation Act to:

- Permit professional service corporations to have members who are licensed in other states but not in Michigan.
- Allow a PC to have shareholders licensed in different professions.
- Revise references to the Business Corporation Act.

The bill specifies that a licensed person of another jurisdiction could become an officer, director, shareholder, employee, or agent of a PC but could not render a professional service in this State until the person was licensed or otherwise legally authorized to render the service in Michigan.

The bill would define "licensed person" as 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 whose shareholders were all licensed persons.

Currently, the Act's definition of "professional corporation" refers to a corporation that is organized for the sole purpose of rendering one or more professional services and whose only shareholders are individuals licensed "to render the same professional services as the corporation". The bill would refer instead to a corporation that has as its shareholders only "licensed persons".

Except as otherwise prohibited, a PC could render one or more professional services, but each shareholder would have to be a licensed

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person in one or more of the services rendered by the corporation. If the PC rendered a professional service that is included in the Public Health Code, however, all of the PC's shareholders would have to be licensed or legally authorized in this State to render the same professional service.

Finally, the bill would refer to the "Business Corporation Act", in addition to citing the law as Public Act 284 of 1972, and would delete language under which provisions dealing with the purchase or redemption by a PC of its shares may not be invoked at a time or in a manner that would impair the capital of the corporation (which is an area covered in the Business Corporation Act).

MCL 450.222 et al.

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

### **ARGUMENTS**

#### **Supporting Argument**

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 it currently is possible for a person licensed in another state to join a Michigan PC, that person also must be licensed in this State. For example, a Michigan law firm that has incorporated as a PC cannot have as shareholders Florida attorneys unless they also are members of the State Bar of Michigan. Under the bill, the firm could expand into Florida without the Florida attorneys joining the Michigan State Bar. Since the bill specifies, however, that a person could not render a professional service in Michigan until he or she was licensed to render the service in this State, the Florida attorneys still could not practice here unless they became members of the State Bar.

#### **Supporting Argument**

By revising the Act's section that refers to the Business Corporation Act, the bill would make that law fully applicable to professional corporations. According to the Attorney General, amendments to the Business

Corporation Act made by Public Act 1 of 1987--which generally involve limitations on the liability of, and provide for the indemnification of directors, officers, employees, and agents of business corporations--do not apply to professional corporations, since the PC Act adopted the Business Corporation Act as it existed on July 18, 1980, and does not encompass subsequent additions or modifications. Needless to say, the PC Act also does not encompass 1989 amendments to the Business Corporation Act, such as the rather sweeping changes made by Public Act 181 concerning the distribution of dividends and corporate shares, the rights and responsibilities of shareholders and boards of directors, and procedural matters. As a result, according to the State Bar Business Law Section, the PC Act is considerably incomplete and the application of corporate law to professional corporations is quite confusing. The bill would remedy this situation and make the Business Corporation Act as it stands now applicable to professional corporations. In the event of a conflict between the laws, however, the PC Act would continue to be controlling.

#### **Supporting Argument**

Although the PC Act currently provides that a professional corporation may be organized to render more than one professional service, the Attorney General made it clear in 1989 OAG No. 6295 that "each shareholder (other than the personal representative of a deceased or legally incompetent shareholder) ... must be fully qualified to perform all of the professional services rendered by the corporation" (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 (with the exception of PCs rendering services under the Public Health Code). The State Bar Business Law Section has pointed out that the PC Act is an enabling law, not a regulatory or licensing law, and removing the limitation on who can join together to form a PC would make the PC Act consistent with the Business Corporation Act and the Uniform Partnership Act, which also are enabling laws. The bill would allow each profession to regulate itself. For example, although the bill would enable an accountant and an attorney to form a professional

corporation, the attorney still would be prohibited from doing so by the Rules of Professional Conduct, which regulate the activities of State Bar members.

**Supporting Argument**

The bill would maintain existing ownership restrictions for the health care profession, by providing that all of the shareholders of a PC rendering a service under the Public Health Code would have to be licensed or authorized by this State to render that service. As a result, for example, a group of nonphysicians could not purchase a medical clinic, and out-of-state doctors could not join a Michigan PC owned by physicians.

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