

SENATE, No. 2137

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Revises “The Professional Service Corporation Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning professional service corporations, and
2 amending, supplementing, and repealing various sections of
3 P.L.1969, c.232.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 3 of P.L.1969, c.232 (C.14A:17-3) is amended to
9 read as follows:

10 3. Terms defined. As used in **[this act]** P.L.1969, c.232
11 (C.14A:17-1 et seq.), the following words shall have the meanings
12 indicated:

13 (1) "Professional service" shall mean any type of personal
14 service to the public which requires as a condition precedent to the
15 rendering of such service the obtaining of a license or other legal
16 authorization and which prior to the passage of **[this act]** P.L.1969,
17 c.232 (C.14A:17-1 et seq.) and by reason of law could not be
18 performed by a corporation. By way of example and without
19 limiting the generality thereof, the personal services which come
20 within the provisions of **[this act]** P.L.1969, c.232 (C.14A:17-1 et
21 seq.) are the personal services rendered by certified public
22 accountants, architects, optometrists, ophthalmic dispensers and
23 technicians, professional engineers, land surveyors, land planners,
24 chiropractors, physical therapists, registered professional nurses,
25 psychologists, dentists, osteopaths, physicians and surgeons,
26 doctors of medicine, doctors of dentistry, podiatrists, veterinarians
27 and, subject to the Rules of the Supreme Court, attorneys-at-law;

28 (2) "Professional corporation" means a corporation which is
29 organized under **[this act]** P.L.1969, c.232 (C.14A:17-1 et seq.) for
30 the sole and specific purpose of rendering the same or closely allied
31 professional service as its shareholders, each of whom **[must]** shall
32 be licensed or otherwise legally authorized **[within this State]** to
33 render such professional service;

34 (3) "Closely allied professional service" means and is limited to
35 the practice of (a) architecture, professional engineering, land
36 surveying and land planning and (b) any branch of medicine and
37 surgery, optometry, opticianry, physical therapy, registered
38 professional nursing, psychology, and dentistry;

39 (4) "Domestic professional legal corporation" means a
40 professional corporation incorporated under P.L.1969, c.232
41 (C.14A:17-1 et seq.) for the sole purpose of rendering legal services
42 of the type provided by attorneys-at-law;

43 (5) "Foreign professional legal corporation" means a corporation
44 incorporated under the laws of another state for the purpose of

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 rendering legal services of the type provided by attorneys-at-law.
2 (cf: P.L.2014, c.79, s.1)

3
4 2. Section 5 of P.L.1969, c.232 (C.14A:17-5) is amended to
5 read as follows:

6 5. Professional corporation and foreign professional legal
7 corporation.

8 (a) One or more persons, each of whom is duly licensed or
9 otherwise legally authorized to render the same or closely allied
10 professional service within this State, may organize and become a
11 shareholder or shareholders of a professional corporation for
12 pecuniary profit under the provisions of the **【Business Corporation**
13 **Act of New Jersey (Title 14A, Corporations, General, of the New**
14 **Jersey Statutes)】** “New Jersey Business Corporation Act,”
15 N.J.S.14A:1-1 et seq. , for the sole and specific purpose of
16 rendering such professional service.

17 (b) A foreign professional **【legal】** corporation may render
18 **【legal】** services **【of the type provided by attorneys-at-law】** in this
19 State provided **【by】** that it secures a certificate of authority from
20 the **【Secretary of State】** Department of the Treasury in accordance
21 with Chapter 13 of the **【Business Corporation Act of New Jersey**
22 **(Title 14A, Corporations, General, of the New Jersey Statutes)】**
23 “New Jersey Business Corporation Act,” N.J.S.14A:1-1 et seq., and
24 provided further that every shareholder or employee of the foreign
25 professional **【legal】** corporation providing **【legal】** professional
26 services in this State is **【an attorney-at-law】** licensed and eligible to
27 practice in this State **【under】** by the licensing authority in this State
28 for the professional service, or in the case of a professional legal
29 corporation, the Rules of the Supreme Court.

30 (cf: P.L.1995, c.375, s.2)

31
32 3. Section 9 of P.L.1969, c.232 (C.14A:17-9) is amended to
33 read as follows:

34 9. Limitations on corporate business activity.

35 No professional corporation shall engage in any business other
36 than the rendering of the professional services for which it was
37 specifically incorporated; and no foreign professional **【legal】**
38 corporation shall engage in any business in this State other than the
39 rendering of **【legal】** professional services of the type **【provided by**
40 **attorneys-at-law】** for which it was formed ; provided, that nothing
41 in **【this act】** P.L.1969, c.232 (C.14A:17-1 et seq.) or in any other
42 provisions of existing law applicable to corporations shall be
43 interpreted to prohibit such corporation from investing its funds in
44 real estate, mortgages, stocks, bonds or any other type of
45 investments, or from owning real or personal property necessary
46 for, or appropriate or desirable in, the fulfillment or rendering of its
47 professional services.

48 (cf: P.L.1995, c.375, s.5)

1 4. Section 15 of P.L.1969, c.232 (C.14A:17-15) is amended to
2 read as follows:

3 15. Applicable law; consolidation, merger; report, contents. The
4 **【Business Corporation Act of New Jersey】** “New Jersey Business
5 Corporation Act,” N.J.S.14A:1-1 et seq., shall be applicable to a
6 professional corporation and to a foreign professional **【legal】**
7 corporation except to the extent that any of the provisions of **【this**
8 **act】** P.L.1969, c.232 (C.14A:17-1 et seq.) are interpreted to be in
9 conflict with the provisions of the **【Business Corporation Act of**
10 **New Jersey】** “New Jersey Business Corporation Act,” N.J.S.14A:1-
11 1 et seq. , and in such event the provisions and sections of **【this act】**
12 P.L.1969, c.232 (C.14A:17-1 et seq.) shall take precedence with
13 respect to a professional corporation and a foreign professional
14 **【legal】** corporation. **【Except for a domestic professional legal**
15 **corporation, a】** A professional corporation organized under **【this**
16 **act】** P.L.1969, c.232 (C.14A:17-1 et seq.) may consolidate or merge
17 only with another professional **【corporation】** entity organized under
18 **【this act】** P.L.1969, c.232 (C.14A:17-1 et seq.) or the laws of this
19 State or an act or the laws of another state of the United States
20 authorizing licensed professionals to operate in entity form, and
21 empowered to render the same professional service. **【A merger or**
22 **consolidation with any foreign corporation is prohibited.】** A
23 domestic professional legal corporation may consolidate or merge
24 either with another domestic professional legal corporation or with
25 a foreign professional legal corporation provided that the
26 registration requirements of **【this act】** P.L.1969, c.232 (C.14A:17-1
27 et seq.) and the Rules of the Supreme Court are complied with. A
28 professional corporation shall annually furnish a report to the
29 **【office of the Secretary of State】** Department of the Treasury on a
30 date designated by the **【Secretary of State】** State Treasurer showing
31 the names and post-office addresses of all its shareholders, directors
32 and officers, which shall certify that, with the exception permitted
33 in section **【6】** 5 of P.L. , c. (C.) (pending before the
34 Legislature as this bill) , all such persons are duly licensed or
35 otherwise legally authorized to render the same professional service
36 in this State or a foreign state. A foreign professional **【legal】**
37 corporation shall annually furnish a report to the **【office of the**
38 **Secretary of State】** Department of the Treasury on a date designated
39 by the **【Secretary of State】** State Treasurer showing the names and
40 post-office addresses of all its shareholders, directors and officers,
41 and shall certify that the foreign professional **【legal】** corporation is
42 authorized to render legal services of the type provided by
43 **【attorneys-at-law in】** the laws of its state of incorporation and
44 further certify that the shareholders and employees providing such
45 services in this State are **【attorneys-at-law】** licensed in New Jersey
46 and eligible to practice in this State. This report shall be made on
47 forms prescribed and furnished by the **【Secretary of State】**

1 Department of the Treasury , but shall contain no information
2 except that expressly called for by this section. It shall be signed by
3 the president or vice-president and the secretary or an assistant
4 secretary of the corporation, and acknowledged by the persons
5 signing the report before a notary public or other officer duly
6 authorized to administer oaths, shall be filed in the **【office of the**
7 **Secretary of State】** Department of the Treasury , and shall be in lieu
8 of the regular annual report of corporations otherwise required by
9 the **【Business Corporation Act of New Jersey】** “New Jersey
10 Business Corporation Act,” N.J.S.14A:1-1 et seq .
11 (cf: P.L.1995, c.375, s.7)

12
13 5. (New section) a. The board of directors of a professional
14 corporation shall consist of one or more members. Subject to any
15 provisions contained in the certificate of incorporation, the by-laws
16 shall specify the number of directors, or that the number of directors
17 shall not be less than a stated minimum nor more than a stated
18 maximum, with the actual number to be determined in the manner
19 prescribed in the by-laws, except as to the number constituting the
20 first board.

21 b. All of the directors of a professional corporation shall be
22 licensed in the profession for which the professional corporation is
23 formed.

24 c. The president of a professional corporation shall be licensed
25 or otherwise legally authorized in the profession for which the
26 professional corporation is formed. Other officers need not be so
27 licensed or otherwise legally authorized, but their duties shall be
28 limited to the administrative and business activities of the
29 professional corporation and they shall have no authority to direct,
30 administer, or participate directly, or indirectly, in any decisions
31 concerning the rendering of professional service by the
32 corporation's shareholders or its employees.

33
34 6. (New section) a. A professional corporation may issue its
35 shares only to the following:

36 (1) an individual licensed by the State of New Jersey or
37 otherwise legally authorized to render the same professional service
38 as that for which the corporation was incorporated;

39 (2) an individual licensed by another state of the United States
40 or otherwise legally authorized to render the same professional
41 service as that for which the professional corporation was
42 incorporated; or

43 (3) an entity owned solely by individuals licensed or otherwise
44 legally authorized as provided in paragraphs (1) and (2) of this
45 subsection.

46 b. At least one shareholder of a professional corporation shall
47 be either:

1 (1) an individual licensed by the State of New Jersey or
2 otherwise legally authorized to render the same professional service
3 as that for which the corporation was incorporated; or

4 (2) an entity described in paragraph (3) of subsection a. of this
5 section, provided that at least one of such entity's shareholders or
6 members is an individual licensed or otherwise legally authorized
7 by the State of New Jersey to render the professional service.

8 c. A physician licensed by the State of New Jersey may hold
9 shares in a professional corporation practicing medicine as a
10 nominee for a hospital for the purpose of directing the professional
11 corporation's professional services, with the hospital enjoying or
12 suffering the professional corporation's profits and losses.

13 d. No shareholder of a professional corporation shall enter into
14 a voting trust agreement or proxy or any other type of agreement
15 vesting another person, not a shareholder of the corporation, with
16 the authority to exercise the voting power of any or all of the
17 shareholder's shares. Subject to the provisions of the corporation's
18 certificate of incorporation, the estate of a deceased shareholder
19 may continue to hold the shares of such shareholder for a
20 reasonable period of administration of the estate, but shall not be
21 authorized to participate in any decisions concerning the rendering
22 of professional services.

23
24 7. (New section) If one or more professionals who desire to
25 practice in corporate form mistakenly form a corporation under the
26 "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., at a
27 time when the corporation was eligible to be formed under
28 P.L.1969, c.232 (C.14A:17-1 et seq.), the certificate of
29 incorporation of that corporation may be corrected to provide that
30 the corporation is a professional corporation formed under
31 P.L.1969, c.232 (C.14A:17-1 et seq.). The correction shall relate
32 back to the filing of the certificate of incorporation.

33
34 8. The following sections are repealed:
35 Section 6 of P.L.1969, c.232 (C.14A:17-6); and
36 Section 10 of P.L.1969, c.232 (C.14A:17-10).

37
38 9. This act shall take effect on the 120th day following
39 enactment.

40
41
42 STATEMENT

43
44 This bill amends, supplements and repeals various sections of
45 "The Professional Service Corporation Act" (PSCA), P.L.1969,
46 c.232 (C.14A:17-1 et seq.), in order to expand the ability of foreign

1 professionals and professional corporations to do business in New
2 Jersey, and to make the PSCA consistent with the “New Jersey
3 Business Corporation Act,” N.J.S.14A:1-1 et seq.

4 Current law requires each shareholder of a professional
5 corporation to be licensed within this State to provide the type of
6 professional services for which the corporation was incorporated.
7 This bill eliminates that requirement, enabling professionals who
8 are licensed or otherwise legally authorized to provide services in
9 other states to be shareholders of a New Jersey professional
10 corporation, provided that at least one shareholder is licensed by the
11 State of New Jersey.

12 In addition, the bill allows foreign professional corporations to
13 do business in this State through shareholders or employees who are
14 licensed in New Jersey. Current law only extends this privilege to
15 foreign professional legal corporations. This bill also expands the
16 ability of a domestic professional corporation to merge with a
17 foreign professional corporation, or a domestic or foreign limited
18 liability company, authorized to provide the same professional
19 services.

20 This bill repeals and replaces sections 6 and 10 of the PSCA in
21 order to make the PSCA consistent with the “New Jersey Business
22 Corporation Act.” When the PSCA was enacted, a business
23 corporation was required by the “New Jersey Business Corporation
24 Act” to have three directors, but the law was later amended to
25 require only a single director. This bill will similarly reduce the
26 number of required directors to one, and requires that all of the
27 directors and the president be licensed or otherwise legally
28 authorized professionals. Other officers need not be professionals
29 so long as they do not direct or engage in the professional practice.

30 The bill also broadens the categories of authorized shareholders
31 of a professional corporation to include individuals licensed or
32 otherwise legally authorized by states other than New Jersey and
33 entities, such as professional corporations or limited liability
34 companies, owned solely by individuals authorized to practice the
35 profession, so long as at least one individual shareholder or one
36 individual owner of a permitted entity shareholder is licensed or
37 otherwise authorized by the State of New Jersey. The term “another
38 state of the United States” rather than a “foreign state” is used to
39 limit ownership to professionals licensed in other states of the
40 United States, as distinguished from foreign countries.

41 Finally, as hospitals have increasingly looked to acquire
42 physician practices, the bill provides that a licensed physician
43 acting as a hospital’s nominee may direct the professional medical
44 practice, however the financial benefits and burdens shall be
45 enjoyed or suffered by the hospital.