

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2105

H.P. 1605

House of Representatives, February 12, 2002

An Act to Enact the Maine Professional Service Corporation Act.

Reported by Representative LaVERDIERE for the Joint Standing Committee on Judiciary pursuant to Joint Order 2001, H.P. 1601.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered under Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 13 MRSA c. 22, as amended, is repealed.**

6 **Sec. 2. 13 MRSA c. 22-A is enacted to read:**

8 **CHAPTER 22-A**

10 **MAINE PROFESSIONAL SERVICE CORPORATION ACT**

12 **SUBCHAPTER I**

14 **GENERAL PROVISIONS**

16 **§721. Short title**

18 This chapter may be known and cited as the "Maine Professional Service Corporation Act."

20 **§722. Application of Maine Business Corporation Act**

22 The Maine Business Corporation Act applies to professional corporations, both domestic and foreign, to the extent not
24 inconsistent with this chapter.

26 **§723. Definitions**

28 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

30 **1. Disqualified person.** "Disqualified person" means an
32 individual or entity that for any reason is or becomes ineligible
34 under this chapter to be issued shares by a professional
corporation.

36 **2. Domestic professional corporation.** "Domestic
38 professional corporation" means a professional corporation.

40 **3. Foreign professional corporation.** "Foreign professional
42 corporation" means a corporation or association for profit
incorporated for the purpose of rendering professional services
under law other than the law of this State.

44 **4. Professional corporation.** "Professional corporation"
46 means a corporation for profit, other than a foreign professional
corporation, subject to the provisions of this chapter.

48 **5. Professional limited liability company.** "Professional
50 limited liability company" means a limited liability company
formed to perform a professional service.

2 4. Election to be covered. A corporation incorporated
4 under a general law of this State may elect professional
6 corporation status by amending its articles of incorporation to
 comply with subsection 3 and section 736.

8 **§732. Purposes**

10 1. Single profession. Except to the extent authorized by
12 subsections 2 and 3, a corporation may elect professional
14 corporation status under section 731 solely for the purpose of
 rendering professional services, including services ancillary to
 them, and solely within a single profession.

16 2. Multiple professions. A corporation may elect
18 professional corporation status under section 731 for the purpose
20 of rendering professional services within 2 or more professions
22 and for the purpose of engaging in any lawful business authorized
 by Title 13-A, section 40, to the extent the combination of
 professional purposes or of professional and business purposes is
 not prohibited by the licensing law of this State applicable to
 each profession in the combination.

24 3. Accountants. Nonlicensed individuals may organize with
26 individuals who are licensed under Title 32, chapter 113 and may
28 become shareholders of a firm licensed to practice public
30 accountancy under Title 32, section 12252, as long as all of the
 requirements for licensure under Title 32, section 12252,
 subsection 3 are met by the firm.

32 **§733. General powers**

34 A professional corporation has the powers enumerated in
 Title 13-A, section 202.

36 **§734. Rendering professional services**

38 1. License required. A domestic professional corporation
40 or foreign professional corporation may render professional
42 services in this State only through individuals licensed or
 otherwise authorized in this State to render the services.

44 2. Scope. Nothing in subsection 1 may be construed to:

46 A. Require an individual employed by a professional
48 corporation to be licensed to perform services for the
 corporation if a license is not otherwise required;

50 B. Prohibit a licensed individual from rendering
 professional services in that individual's individual

2 capacity even though that individual is a shareholder,
3 director, officer, employee or agent of a domestic
4 professional corporation or foreign professional
5 corporation; or

6 C. Prohibit an individual licensed in another state from
7 rendering professional services for a domestic professional
8 corporation or foreign professional corporation in this
9 State if not prohibited by the licensing authority having
10 jurisdiction over such professional service.

12 **§735. Prohibited activities**

14 **1. Limited activities.** A professional corporation may not
15 render any professional service or engage in any business or
16 service other than the professional service and business
17 authorized by its articles of incorporation and services or
18 businesses reasonably related thereto.

20 **2. Investments.** Nothing in subsection 1 prohibits a
21 professional corporation from investing its funds in real estate,
22 mortgages, securities or any other type of investment.

24 **§736. Corporate name**

26 **1. Words required.** The name of a domestic professional
27 corporation or of a foreign professional corporation authorized
28 to transact business in this State, in addition to satisfying the
29 requirements of Title 13-A, sections 301 and 1205:

30 A. Must contain the words "chartered," "professional
31 corporation," "professional association" or "service
32 corporation" or the abbreviation "P.C.," "P.A." or "S.C.";

34 B. May not contain language stating or implying that it is
35 incorporated for a purpose other than that authorized by
36 section 732 and its articles of incorporation; and

38 C. Must conform with any rule adopted by the licensing
39 authority having jurisdiction over a professional service
40 described in the corporation's articles of incorporation.

42 **2. Assumed name.** A domestic professional corporation or
43 foreign professional corporation may render professional services
44 and exercise its authorized powers under a name that is identical
45 to its corporate name except that the words "chartered,"
46 "professional corporation," "professional association" or
47 "service corporation" or the abbreviation "P.C.," "P.A." or
48 "S.C." is omitted, as long as the corporation has first
49 registered the name to be so used in the manner required by Title
50 13-A, section 307.

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SUBCHAPTER III

SHARES

§741. Issuance of shares

1. Qualified shareholders. A professional corporation may issue shares, fractional shares and rights or options to purchase shares only to:

A. Individuals who are authorized by law in this State or another state to render a professional service described in the corporation's articles of incorporation;

B. General partnerships in which all the partners are qualified persons with respect to the professional corporation and in which at least one partner is authorized by law in this State to render a professional service described in the corporation's articles of incorporation;

C. Professional corporations, professional limited liability companies or professional limited liability partnerships, domestic or foreign, authorized by law in this State to render a professional service described in the corporation's articles of incorporation; or

D. Any other entity that is authorized by law to provide the same professional service provided by the professional corporation.

2. Licensing authority jurisdiction. If a licensing authority with jurisdiction over a profession considers it necessary to prevent violation of the ethical standards of the profession, the authority may adopt rules under its general rulemaking authority or other regulatory authority to restrict or condition, or revoke in part, the authority of professional corporations subject to its jurisdiction to issue shares. A rule described in this subsection does not, of itself, make a shareholder of a professional corporation at the time the rule becomes effective a disqualified person.

3. Unlawful shares void. Shares issued in violation of this section or a rule described in subsection 2 are void.

§742. Share transfer restriction

1. Limit to transfers. A shareholder of a professional corporation may transfer or pledge shares, fractional shares and

2 rights or options to purchase shares of the corporation only to
3 qualified persons.

4 2. Other transfers void. A transfer of shares made in
5 violation of subsection 1, except one made by operation of law or
6 court judgment, is void.

8 **§743. Compulsory acquisition of shares after death or**
9 **disqualification of shareholder**

10 1. Triggering events. A professional corporation must
11 acquire or cause to be acquired by a qualified person the shares
12 of its shareholder if:

14 A. The shareholder dies;

16 B. The shareholder becomes a disqualified person, except as
18 provided in subsection 4; or

20 C. The shares are transferred by operation of law or court
22 judgment to a disqualified person, except as provided in
23 subsection 4.

24 2. Agreements binding. If a professional corporation's
25 articles of incorporation or bylaws or a private agreement
26 provides the terms, price and other conditions for the
27 acquisition of the shares of a shareholder upon the occurrence of
28 an event described in subsection 1, then that article, bylaw or
29 private agreement is binding on the parties and is specifically
30 enforceable.

32 3. Corporate acquisition of shares. In the absence of an
33 article provision, bylaw provision or private agreement described
34 in subsection 2, a professional corporation shall acquire the
35 shares in accordance with section 744; except that, if the
36 disqualified person rejects the corporation's purchase offer,
37 either the person or the corporation may commence a proceeding
38 under section 745 to determine the fair value of the shares.

40 4. Limited disqualification. In the absence of an article
41 provision, bylaw provision or private agreement described in
42 subsection 2, this section does not require the acquisition of
43 shares in the event of a shareholder's becoming a disqualified
44 person if the disqualification lasts no more than 5 months from
45 the date the disqualification or the transfer of shares pursuant
46 to subsection 1 occurs.

48 5. Other benefits unaffected. Nothing in this section or
49 section 744 prevents or relieves a professional corporation from
50 paying pension benefits or other deferred compensation for

2 services rendered to a former shareholder if otherwise permitted
by law.

4 **§744. Acquisition procedure**

6 1. Written notice. In the absence of an article provision,
bylaw provision or private agreement described in section 743,
8 subsection 2, if shares must be acquired under section 743, a
professional corporation shall deliver a written notice to the
10 executor or administrator of the estate of its deceased
shareholder, or to the disqualified person or transferee,
12 offering to purchase the shares at a price the corporation
believes represents their fair value as of the date of death,
14 disqualification or transfer. The offer notice must be
accompanied by the corporation's balance sheet for a fiscal year
16 ending not more than 16 months before the effective date of the
offer notice, an income statement for that year, a statement of
18 changes in shareholders' equity for that year and the latest
available interim financial statements, if any.

20 2. Option period. A disqualified person has 30 days from
22 the effective date of the notice provided pursuant to subsection
1 to accept the professional corporation's offer or demand that
24 the corporation commence a proceeding under section 745 to
determine the fair value of that disqualified person's shares.
26 If the disqualified person accepts the offer, the corporation
shall make payment for the shares within 60 days from the
28 effective date of the offer notice, unless a later date is agreed
on, upon the disqualified person's surrender of the shares to the
30 corporation.

32 3. Termination of interest. After a professional
corporation makes payment for shares in accordance with this
34 section, a disqualified person has no further interest in those
shares.

36 **§745. Court action to appraise shares**

38 1. Demand for proceeding. If a disqualified person does
40 not accept a professional corporation's offer under section 744,
subsection 2 within the 30-day period, the disqualified person at
42 any time during the 60-day period following the effective date of
the notice may deliver a written notice to the corporation
44 demanding that it commence a proceeding to determine the fair
value of the shares. The corporation may commence a proceeding
46 at any time during the 60 days following the effective date of
its offer notice. If the corporation does not commence such a
48 proceeding, the disqualified person may commence a proceeding
against the corporation to determine the fair value of those
50 shares.

2 2. Court procedure. A professional corporation or
4 disqualified person shall commence a proceeding under this
6 section in the Superior Court of the county where the
8 corporation's principal office or, if there is no principle
10 office in this State, its registered office is located. The
 corporation shall make the disqualified person a party to the
 proceeding as in an action against the disqualified person's
 shares. The jurisdiction of the court in which the proceeding is
 commenced is plenary and exclusive.

12 3. Appraisers. The court may appoint one or more persons
14 as appraisers to receive evidence and recommend decision on the
16 question of fair value. The appraisers have the power described
 in the order appointing them or in any amendment to it.

18 4. Valuation date. A disqualified person is entitled to
20 judgment for the fair value of the person's shares determined by
22 the court as of the date of death, disqualification or transfer
 together with interest from that date at a rate found by the
 court to be fair and equitable.

24 5. Payment installments. The court may order a judgment
26 ordered under this section paid in installments determined by the
 court.

28 **§746. Court costs and fees of experts**

30 1. Assessment of costs. The court in an appraisal
32 proceeding commenced under section 745 shall determine all costs
34 of the proceeding, including the reasonable compensation and
36 expenses of appraisers appointed by the court, and shall assess
38 the costs against the professional corporation; except that the
 court may assess costs against the disqualified person in an
 amount the court finds equitable if the court finds the person
 acted arbitrarily, vexatiously or not in good faith in refusing
 to accept the corporation's offer.

40 2. Assessment against corporation. In addition to costs
42 assessed under subsection 1, the court may assess the fees and
44 expenses of counsel and experts for a disqualified person against
46 the professional corporation and in favor of the person if the
 court finds that the fair value of the person's shares
 substantially exceeded the amount offered by the corporation or
 that the corporation did not make an offer.

48 **§747. Cancellation of disqualified shares**

50 If the shares of a disqualified person are not acquired
 pursuant to section 743 within 10 months after the death of the

2 shareholder or within 5 months after the disqualification or
3 transfer, the professional corporation shall immediately cancel
4 the shares on its books and the disqualified person has no
5 further interest as a shareholder in the corporation other than
6 the right to payment for the shares under section 743.

8 SUBCHAPTER IV

10 GOVERNANCE

12 §751. Directors and officers

14 Not less than a majority of the directors of a professional
15 corporation and all of its officers, except the clerk, secretary
16 and treasurer, if any, must be qualified persons with respect to
17 the corporation.

18 §752. Voting of shares

20 1. Right to vote. Except as otherwise provided in this
21 section, only a qualified person may vote the shares of a
22 professional corporation.

24 2. Proxies. Only a qualified person may be appointed a
25 proxy to vote shares of a professional corporation.

28 3. Voting trusts. A voting trust with respect to shares of
29 a professional corporation is not valid unless all of its
30 trustees and beneficiaries are qualified persons; except that, if
31 a beneficiary who is a qualified person dies or becomes a
32 disqualified person, a voting trust valid under this subsection
33 continues to be valid for 10 months after the date of death or
34 for 5 months after the disqualification occurred.

36 4. Limited voting right. Any shares transferred to a
37 disqualified person by reason of the death of a qualified person
38 or by operation of law may be voted by such disqualified person
39 only for the purposes of amending the articles of incorporation
40 to convert to a regular business corporation or dissolving the
41 professional corporation.

42 §753. Responsibility for professional services

44 1. Relationship between professional and recipient of
45 services. This chapter does not modify the liability of a person
46 rendering professional service with respect to that service.

48 2. Shareholder liability for debts and claims. Except as
49 provided in subsection 3, the liability of shareholders for the
50 professional services rendered by the corporation shall be the

2 debts of and claims against a corporation is the same as that of
3 shareholders of a business corporation.

4 **3. Shareholder liability arising from rendering**
5 **professional service.** A shareholder is jointly and severally
6 liable for claims arising from the rendering of a professional
7 service by a domestic professional corporation or foreign
8 professional corporation if that shareholder:

10 A. Personally and directly participated in rendering that
11 portion of a professional service that was performed
12 negligently or in breach of any other legal duty; or

14 B. Directly supervised and controlled that portion of a
15 professional service rendered by another person that was
16 performed negligently or in breach of any other legal duty.

18 **SUBCHAPTER V**

20 **REORGANIZATION AND TERMINATION**

22 **§761. Merger**

24 **1. Merger allowed.** A professional corporation may merge
26 with another domestic professional corporation or foreign
27 professional corporation or with a domestic or foreign business
28 entity as defined in Title 13-A, chapter 9 if all the interest
29 holders of the constituent entities are qualified to be interest
30 holders of the surviving entity.

32 **2. Compliance.** After a merger in accordance with
33 subsection 1, if the surviving corporation is to render in this
34 State any of the professional services described in section 723,
35 subsection 7, paragraph A, the surviving corporation must comply
36 with this Act.

38 **§762. Termination of professional activities**

40 If a professional corporation ceases to render professional
41 services, it must amend its articles of incorporation to delete
42 references to rendering professional services and to conform its
43 corporate name to the requirements of Title 13-A, section 301.
44 After the amendment becomes effective, the corporation may
45 continue in existence as a business corporation under Title 13-A
46 and the corporation is no longer subject to this Act.

48 **§763. Judicial dissolution**

2 The Attorney General may commence a proceeding under Title
13-A, section 1111 to dissolve a professional corporation if:

4 1. Service of notice of violation. The Secretary of State
6 serves written notice on the professional corporation under Title
8 13-A, section 1112 that it has violated or is violating a
 provision or provisions of this Act;

10 2. Failure to correct. The professional corporation does
12 not correct each alleged violation or demonstrate to the
14 reasonable satisfaction of the Secretary of State that the
 violation or violations did not occur, within 60 days after
 service of the notice is perfected under Title 13-A, section
 1112; and

16 3. Certify. The Secretary of State certifies to the
18 Attorney General a description of the violation or violations,
20 that it notified the professional corporation of the violation or
22 violations and that the corporation did not correct the violation
 or violations or demonstrate that the violation or violations did
 not occur, within 60 days after perfection of service of the
 notice.

24

SUBCHAPTER VI

26

FOREIGN PROFESSIONAL CORPORATIONS

28

§771. Authority to transact business

30

32 1. Prohibition. Except as provided in subsection 3, a
34 foreign professional corporation may not transact business in
 this State until it obtains authority from the Secretary of State.

34

36 2. Preconditions. A foreign professional corporation may
 not obtain authority to transact business in this State unless:

36

38 A. Its corporate name satisfies the requirements of section
40 736;

40

42 B. It is incorporated for one or more of the purposes
 described in section 732; and

42

44 C. All of its shareholders, not less than a majority of its
46 directors and all of its officers other than its clerk,
 secretary and treasurer, if any, are licensed in one or more
48 states to render a professional service described in its
 articles of incorporation.

2 3. Office required. A foreign professional corporation is
not required to obtain authority to transact business in this
4 State unless it maintains or intends to maintain an office in
this State for conduct of business or professional practice.

6 **§772. Application for authority to transact business**

8 The application of a foreign professional corporation for
authority to render professional services in this State must
10 contain the information set forth in Title 13-A, section 1202 and
in addition include a statement that all of its shareholders, not
12 less than a majority of its directors and all of its officers
other than its clerk, secretary and treasurer, if any, are
14 licensed in one or more states to render a professional service
described in its articles of incorporation.

16 **Sec. 3. Application to existing corporations.**

18 **1. Existing professional corporations.** This Act applies to
20 every corporation incorporated under the Maine Revised Statutes,
Title 13, former chapter 22. An existing professional
22 corporation to which this Act applies need not amend its articles
of incorporation to specify the professional service that it
24 renders as of the effective date of this Act. A professional
corporation that is in existence on the effective date of this
26 Act shall amend its articles of incorporation if, after the
effective date of this Act, that professional corporation engages
28 in any additional professional service, which amendment must
specify all professional services to be engaged in by the
30 professional corporation.

32 **2. Other corporations.** This Act does not apply to a
corporation that is or will be incorporated under a law of this
34 State that is not repealed by this Act unless the corporation
elects professional corporation status under the Maine Revised
36 Statutes, Title 13, section 731.

38 **3. Other rights unaffected.** This Act does not affect any
right or privilege to render professional services through the
40 use of any other form of business entity.

42 **Sec. 4. Saving provisions.**

44 **1. Effect of repeal.** Except as provided in subsection 2,
the repeal of the Maine Revised Statutes, Title 13, chapter 22 by
46 this Act does not affect:

48 A. The operation of the statute or any action taken under
it before its repeal;

50

2 B. Any ratification, right, remedy, privilege, obligation
or liability acquired, accrued or incurred under the statute
before its repeal;

4
6 C. Any violation of the statute, or any penalty, forfeiture
or punishment incurred because of the violation, before its
repeal;

8
10 D. Any proceeding, reorganization or dissolution commenced
under the statute before its repeal, and the proceeding,
reorganization or dissolution may be completed in accordance
12 with the statute as if it had not been repealed; and

14 E. Any provision in an existing professional corporation's
articles of incorporation or bylaws that is legal and
16 enforceable as of the date of the adoption of this Act.

18 **2. Reduction in penalty or punishment.** If a penalty or
punishment imposed for violation of a statute repealed by this
20 Act is reduced by this Act, the penalty or punishment if not
already imposed must be imposed in accordance with this Act.

22
24 **Sec. 5. Revisor's review; cross-references.** The Revisor of
Statutes shall review the Maine Revised Statutes and include in
the errors and inconsistencies bill submitted to the First
26 Regular Session of the 121st Legislature pursuant to Title 1,
section 94 any sections necessary to correct and update any
28 cross-references in the statutes to provisions of law repealed in
this Act.

30
32 **Sec. 6. Effective date.** This Act takes effect July 1, 2003.

34 **SUMMARY**

36 This bill repeals the Professional Service Corporation Act
and replaces it with a new chapter of law governing professional
38 service corporations.