

MODEL PROFESSIONAL CORPORATION SUPPLEMENT (1984)

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GENERAL PROVISIONS

SECTION 1. SHORT TITLE

This Act shall be known and may be cited as the “[name of state] Professional Corporation Supplement.”

SECTION 2. APPLICATION OF [MODEL] BUSINESS CORPORATION ACT

The [Model] Business Corporation Act applies to professional corporations, both domestic and foreign, to the extent not inconsistent with the provisions of this Supplement.

SECTION 3. SUPPLEMENT DEFINITIONS

In this supplement:

- (1) “Disqualified person” means an individual or entity that for any reason is or becomes ineligible under this Supplement to be issued shares by a professional corporation.
- (2) “Domestic professional corporation” means a professional corporation.
- (3) “Foreign professional corporation” means a corporation or association for profit incorporated for the purpose of rendering professional services under a law other than the law of this state.
- (4) “Law” includes rules promulgated in accordance with section 63.
- (5) “Licensing authority” means the officer, board, agency, court, or other authority in this state empowered to license or otherwise authorize the rendition of a professional service.
- (6) “Professional corporation” means a corporation for profit, other than a foreign professional corporation, subject to the provisions of this Supplement.
- (7) “Professional service” means a service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service and that may not be lawfully rendered by a corporation under the [Model] Business Corporation Act.
- (8) “Qualified person” means an individual, general partnership, or professional corporation that is eligible under this Supplement to be issued shares by a professional corporation. [*Reviser’s note: the phrase “or professional corporation” should be deleted if Alternative 2 or 3 of section 34(c) or (c) and (d) is chosen.*]

Creation

SECTION 10. ELECTION OF PROFESSIONAL CORPORATION STATUS

- (a) One or more persons may incorporate a professional corporation by delivering to the secretary of state for filing articles of incorporation that state (1) it is a professional corporation and (2) its purpose is to render the specified professional services.
- (b) A corporation incorporated under a general law of this state that is not repealed by this Supplement may elect professional cor-

poration status by amending its articles of incorporation to comply with subsection (a) and section 15.

SECTION 11. PURPOSES

(a) Except to the extent authorized by subsection (b), a corporation may elect professional corporation status under section 10 solely for the purpose of rendering professional services (including services ancillary to them) and solely within a single profession.

(b) A corporation may elect professional corporation status under section 10 for the purpose of rendering professional services within two or more professions, and for the purpose of engaging in any lawful business authorized by [MBCA § 3.01], to the extent the combination of professional purposes or of professional and business purposes is authorized by the licensing law of this state applicable to each profession in the combination.

SECTION 12. GENERAL POWERS

(a) Except as provided in subsection (b), a professional corporation has the powers enumerated in [MBCA § 3.02].

(b) A professional corporation may be a promoter, general partner, member, associate, or manager of a partnership, joint venture, trust, or other entity only if the entity is engaged solely in rendering professional services or in carrying on business authorized by the professional corporation's articles of incorporation.

SECTION 13. RENDERING PROFESSIONAL SERVICES

(a) A domestic or foreign corporation may render professional services in this state only through individuals licensed or otherwise authorized in this state to render the services.

(b) Subsection (a) does not:

- (1) require an individual employed by a professional corporation to be licensed to perform services for the corporation if a license is not otherwise required;
- (2) prohibit a licensed individual from rendering professional services in his individual capacity although he is a shareholder, director, officer, employee, or agent of a domestic or foreign professional corporation;
- (3) prohibit an individual licensed in another state from rendering professional services for a domestic or foreign professional corporation in this state if not prohibited by the licensing authority.

SECTION 14. PROHIBITED ACTIVITIES

(a) A professional corporation may not render any professional service or engage in any business other than the professional service and business authorized by its articles of incorporation.

(b) Subsection (a) does not prohibit a professional corporation from investing its funds in real estate, mortgages, securities, or any other type of investment.

SECTION 15. CORPORATE NAME

(a) The name of a domestic professional corporation and of a foreign professional corporation authorized to transact business in this state, in addition to satisfying the requirements of [MBCA § 4.01 and 15.06]:

- (1) must contain the words "professional corporation," "professional association," or "service corporation" or the abbreviation "P.C.," "P.A.," or "S.C.;"
- (2) may not contain language stating or implying that it is incorporated for a purpose other than that authorized by section 11 and its articles of incorporation; and

(3) must conform with any rule promulgated by the licensing authority having jurisdiction over a professional service described in the corporation's articles of incorporation.

(b) [MBCA § 4.01 and 15.06] do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of a shareholder or former shareholder of the domestic or foreign professional corporation or the name of an individual who was associated with a predecessor of the corporation.

Shares

SECTION 20. ISSUANCE OF SHARES

(a) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(1) individuals who are authorized by law in this or another state to render a professional service described in the corporation's articles of incorporation;

(2) 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;

(3) professional corporations, domestic or foreign, authorized by law in this state to render a professional service described in the corporation's articles of incorporation. [*Reviser's note:* Subsection (3) should be deleted if Alternative 2 or 3 of section 34(c) or (c) and (d) is chosen.]

(b) 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 by rule restrict or condition, or revoke in part, the authority of professional corporations subject to its jurisdiction to issue shares. A rule promulgated under this section does not, of itself, make a shareholder of a professional corporation at the time the rule becomes effective a disqualified person.

(c) Shares issued in violation of this section or a rule promulgated under this section are void.

SECTION 21. NOTICE OF PROFESSIONAL CORPORATION STATUS ON SHARES

(a) The following statement must appear conspicuously on each share certificate issued by a professional corporation:

The transfer of shares of a professional corporation is restricted by the [Model Professional Corporation Supplement] and is subject to further restriction imposed from time to time by the licensing authority. Shares of a professional corporation are also subject to a statutory compulsory repurchase obligation.

(b) Within a reasonable time after the issuance or transfer of uncertificated shares of a professional corporation, the corporation shall send the shareholders a written notice containing the statement required by subsection (a).

SECTION 22. SHARE TRANSFER RESTRICTION

(a) 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 individuals, general partnerships, and professional corporations qualified under section 20 to be issued shares. [*Reviser's note:* The phrase "and professional corporations" should be deleted if Alternative 2 or 3 of section 34(c) or (c) and (d) is chosen.]

(b) A transfer of shares made in violation of subsection (a), except one made by operation of law or court judgment, is void.

SECTION 23. COMPULSORY ACQUISITION OF SHARES AFTER DEATH OR DISQUALIFICATION OF SHAREHOLDER

(a) A professional corporation must acquire (or cause to be acquired by a qualified person) the shares of its shareholder, at a price the corporation believes represents their fair value as of the date of death, disqualification, or transfer, if:

- (1) the shareholder dies;
- (2) the shareholder becomes a disqualified person, except as provided in subsection (c); or
- (3) the shares are transferred by operation of law or court judgment to a disqualified person, except as provided in subsection (c).

(b) If a price for the shares is fixed in accordance with the articles of incorporation or bylaws or by private agreement, that price controls. If the price is not so fixed, the corporation shall acquire the shares in accordance with section 24. If the disqualified person rejects the corporation's purchase offer, either the person or the corporation may commence a proceeding under section 25 to determine the fair value of the shares.

(c) This section does not require the acquisition of shares in the event of disqualification if the disqualification lasts no more than five months from the date the disqualification or transfer occurs.

(d) This section, and section 24, do not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to a former shareholder if otherwise permitted by law.

(e) A provision for the acquisition of shares contained in a professional corporation's articles of incorporation or bylaws, or in a private agreement, is specifically enforceable.

SECTION 24. ACQUISITION PROCEDURE

(a) If shares must be acquired under section 23, the professional corporation shall deliver a written notice to the executor or administrator of the estate of its deceased shareholder, or to the disqualified person or transferee, offering to purchase the shares at a price the corporation believes represents their fair value as of the date of death, disqualification, or transfer. The offer notice must be accompanied by the corporation's balance sheet for a fiscal year ending not more than 16 months before the effective date of the offer notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any.

(b) The disqualified person has 30 days from the effective date of the notice to accept the corporation's offer or demand that the corporation commence a proceeding under section 25 to determine the fair value of his shares. If he accepts the offer, the corporation shall make payment for the shares within 60 days from the effective date of the offer notice (unless a later date is agreed on) upon the disqualified person's surrender of his shares to the corporation.

(c) After the corporation makes payment for the shares, the disqualified person has no further interest in them.

SECTION 25. COURT ACTION TO APPRAISE SHARES

(a) If the disqualified shareholder does not accept the professional corporation's offer under section 24(b) within the 30 day period, the shareholder during the following 30 day period may deliver a

written notice to the corporation demanding that it commence a proceeding to determine the fair value of the shares. The corporation may commence a proceeding at any time during the 60 days following the effective date of its offer notice. If it does not do so, the shareholder may commence a proceeding against the corporation to determine the fair value of his shares.

(b) The corporation or disqualified shareholder shall commence the proceeding in the [name or describe] court of the county where the corporation's principal office (or, if none in this state, its registered office) is located. The corporation shall make the disqualified shareholder a party to the proceeding as in an action against his shares. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(c) The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the power described in the order appointing them, or in any amendment to it.

(d) The disqualified shareholder is entitled to judgment for the fair value of his shares determined by 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.

(e) The court may order the judgment paid in installments determined by the court.

SECTION 26. COURT COSTS AND FEES OF EXPERTS

(a) The court in an appraisal proceeding commenced under section 25 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court, and shall assess the costs against the professional corporation. But the court may assess costs against the disqualified shareholder, in an amount the court finds equitable, if the court finds the shareholder acted arbitrarily, vexatiously, or not in good faith in refusing to accept the corporation's offer.

(b) The court may also assess the fees and expenses of counsel and experts for the disqualified shareholder against the corporation and in favor of the shareholder if the court finds that the fair value of his shares substantially exceeded the amount offered by the corporation or that the corporation did not make an offer.

SECTION 27. CANCELLATION OF DISQUALIFIED SHARES

If the shares of a disqualified person are not acquired under section 24 or 25 within 10 months after the death of the shareholder or within 5 months after the disqualification or transfer, the professional corporation shall immediately cancel the shares on its books and the disqualified person has no further interest as a shareholder in the corporation other than his right to payment of the fair value of the shares under section 24 or 25.

Governance

SECTION 30. DIRECTORS AND OFFICERS

Not less than one-half of the directors of a professional corporation, and all of its officers except the secretary and treasurer (if any), must be qualified persons with respect to the corporation.

SECTION 31. VOTING OF SHARES

(a) Only a qualified person may be appointed a proxy to vote shares of a professional corporation.

(b) A voting trust with respect to shares of a professional corporation is not valid [unless all of its trustees and beneficiaries are

qualified persons. But if a beneficiary who is a qualified person dies or becomes disqualified, a voting trust valid under this subsection continues to be valid for 10 months after the date of death or for 5 months after the disqualification occurred.] [Reviser's note: The bracketed text should be deleted if Alternative 2 or 3 of section 34(c) or (c) and (d) is chosen.]

SECTION 32. CONFIDENTIAL RELATIONSHIP

(a) The relationship between an individual rendering professional services as an employee of a domestic or foreign professional corporation and his client or patient is the same as if the individual were rendering the services as a sole practitioner.

(b) The relationship between a domestic or foreign professional corporation and the client or patient for whom its employee is rendering professional services is the same as that between the client or patient and the employee.

SECTION 33. PRIVILEGED COMMUNICATIONS

A privilege applicable to communications between an individual rendering professional services and the person receiving the services recognized under the statute or common law of this state is not affected by this Supplement. The privilege applies to a domestic or foreign professional corporation and to its employees in all situations in which it applies to communications between an individual rendering professional services on behalf of the corporation and the person receiving the services.

SECTION 34. RESPONSIBILITY FOR PROFESSIONAL SERVICES

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

(b) A domestic or foreign professional corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation is liable to the same extent as its employees.

ALTERNATIVE 1

(c) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than the liability of a shareholder of a corporation incorporated under the [Model] Business Corporation Act.

ALTERNATIVE 2

(c) Except as otherwise provided by statute, if a domestic or foreign professional corporation is liable under subsection (b), every shareholder of the corporation is liable to the same extent as if he were a partner in a partnership and the services creating liability were rendered on behalf of the partnership.

ALTERNATIVE 3

(c) If a domestic or foreign professional corporation is liable under subsection (b), every shareholder of the corporation is liable to the same extent as if he were a partner in a partnership and the services creating liability were rendered on behalf of the partnership:

(1) except as otherwise provided by statute; or

(2) unless the corporation has provided security for professional responsibility under subsection (d) and the liability is satisfied to the extent provided by the security.

(d) A domestic or foreign professional corporation may provide security for professional responsibility by obtaining insurance or a surety bond. The licensing authority with jurisdiction over a profession may determine by rule the amount, coverage, and form of insurance or bond required based on the number of shareholders, type of practice, and other variables considered appropriate by the authority for the profession. If a licensing authority has not determined the amount of security required for the profession, the amount is the product of \$_____ multiplied by the number of shareholders of the corporation rendering services in that profession.

Reorganization and Termination

SECTION 40. MERGER

(a) If all the shareholders of the disappearing and surviving corporations are qualified to be shareholders of the surviving corporation, a professional corporation may merge with another domestic or foreign professional corporation or with a domestic or foreign business corporation.

(b) If the surviving corporation is to render professional services in this state, it must comply with this Supplement.

SECTION 41. TERMINATION OF PROFESSIONAL ACTIVITIES

If a professional corporation ceases to render professional services, it must amend its articles of incorporation to delete references to rendering professional services and to conform its corporate name to the requirements of [MBCA § 4.01]. After the amendment becomes effective the corporation may continue in existence as a business corporation under the [MBCA] and it is no longer subject to this Supplement.

SECTION 42. JUDICIAL DISSOLUTION

The attorney general may commence a proceeding under [MBCA § § 14.30-14.33] to dissolve a professional corporation if:

(1) the secretary of state or a licensing authority with jurisdiction over a professional service described in the corporation's articles of incorporation serves written notice on the corporation under [MBCA § 5.04] that it has violated or is violating a provision of this Supplement;

(2) the corporation does not correct each alleged violation, or demonstrate to the reasonable satisfaction of the secretary of state or licensing authority that it did not occur, within 60 days after service of the notice is perfected under [MBCA § 5.04]; and

(3) the secretary of state or licensing authority certifies to the attorney general a description of the violation, that it notified the corporation of the violation, and that the corporation did not correct it, or demonstrate that it did not occur, within 60 days after perfection of service of the notice.

Foreign Professional Corporations

SECTION 50. AUTHORITY TO TRANSACT BUSINESS

(a) Except as provided in subsection (c), a foreign professional corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(b) A foreign professional corporation may not obtain a certificate of authority unless:

(1) its corporate name satisfies the requirements of section 15;
 (2) it is incorporated for one or more of the purposes described in section 11; and

(3) all of its shareholders, not less than one-half of its directors, and all of its officers other than its secretary and treasurer (if any) are licensed in one or more states to render a professional service described in its articles of incorporation.

(c) A foreign professional corporation is not required to obtain a certificate of authority to transact business in this state unless it maintains or intends to maintain an office in this state for conduct of business or professional practice.

SECTION 51. APPLICATION FOR CERTIFICATE OF AUTHORITY

The application of a foreign professional corporation for a certificate of authority to render professional services in this state must contain the information called for by [MBCA § 15.03] and in addition include a statement that all of its shareholders, not less than one-half of its directors, and all of its officers other than its secretary and treasurer (if any), are licensed in one or more states to render a professional service described in its articles of incorporation.

SECTION 52. REVOCATION OF CERTIFICATE OF AUTHORITY

The secretary of state may administratively revoke under [MBCA § § 15.30-15.32] the certificate of authority of a foreign professional corporation authorized to transact business in this state if a licensing authority with jurisdiction over a professional service described in the corporation’s articles of incorporation certifies to the secretary of state that the corporation has violated or is violating a provision of this Supplement and describes the violation in the certificate.

Miscellaneous Regulatory Provisions

SECTION 60. ARTICLES OF INCORPORATION FOR LICENSING AUTHORITY

A domestic or foreign professional corporation authorized to transact business in this state may not render professional services in this state until it delivers a certified copy of its articles of incorporation for filing to each licensing authority with jurisdiction over a professional service described in the articles.

SECTION 61. ANNUAL QUALIFICATION STATEMENT FOR LICENSING AUTHORITY

(a) Each domestic professional corporation, and each foreign professional corporation authorized to transact business in this state, shall deliver for filing to each licensing authority having jurisdiction over a professional service described in the corporation’s articles of incorporation an annual statement of qualification setting forth:

- (1) the names and usual business addresses of its directors and officers; and
- (2) information required by rule promulgated by the licensing authority to determine compliance with this Supplement and other rules promulgated under it.

(b) The first qualification statement must be delivered to the licensing authority between January 1 and April 1 of the year following the calendar year in which a domestic corporation became a professional corporation or a foreign professional corporation

was authorized to transact business in this state. Subsequent qualification statements must be delivered to the licensing authority between January 1 and April 1 of the following calendar years.

(c) The licensing authority shall collect a fee of \$___ when a qualification statement is delivered to it for filing.

SECTION 62. ANNUAL REPORT FOR SECRETARY OF STATE

The annual report required by [MBCA § 16.22] for each domestic professional corporation, and for each foreign professional corporation authorized to transact business in this state, must include a statement that all of its shareholders, not less than one-half of its directors, and all of its officers other than its secretary and treasurer (if any), are qualified persons with respect to the corporation.

SECTION 63. RULEMAKING BY LICENSING AUTHORITY

Each licensing authority is empowered to promulgate rules expressly authorized by this Supplement if the rules are consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct.

SECTION 64. LICENSING AUTHORITY’S REGULATORY JURISDICTION

This Supplement does not restrict the jurisdiction of a licensing authority over individuals rendering a professional service within the jurisdiction of the licensing authority, nor does it affect the interpretation or application of any law pertaining to standards of professional conduct.

SECTION 65. PENALTY FOR SIGNING FALSE DOCUMENT

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the licensing authority for filing.

(b) An offense under this section is a [_____] misdemeanor [punishable by a fine of not to exceed \$_____].

(c) The offense created by this section is in addition to any other offense created by law for the same conduct.

Transition Provisions

SECTION 70. APPLICATION TO EXISTING CORPORATIONS

(a) This Supplement applies to every corporation incorporated under a general law of this state that is repealed by this Supplement. If an existing corporation to which this Supplement applies must amend its articles of incorporation to comply with this Supplement, it shall do so within 90 days after the effective date of this Supplement.

(b) This Supplement does not apply to a corporation now existing or later incorporated under a law of this state that is not repealed by this Supplement unless the corporation elects professional corporation status under section 10.

(c) This Supplement does not affect an existing or future right or privilege to render professional services through the use of any other form of business entity.

SECTION 71. RESERVATION OF POWER TO AMEND OR REPEAL

The [name of state legislature] has power to amend or repeal all or part of this Supplement at any time and all domestic and foreign

professional corporations subject to this Supplement are governed by the amendment or repeal.

SECTION 72. SAVING PROVISIONS

(a) Except as provided in subsection (b), the repeal of a statute by this Supplement does not affect:

- (1) the operation of the statute or any action taken under it before its repeal;
- (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
- (3) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
- (4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this Supplement is reduced by this Supplement, the penalty or punishment if not already imposed shall be imposed in accordance with this Supplement.

SECTION 73. SEVERABILITY

If any provision of this Supplement or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the Supplement that can be given effect without the invalid provision or application, and to this end the provisions of the Supplement are severable.

SECTION 74. REPEAL

THE FOLLOWING LAWS AND PARTS OF LAWS ARE REPEALED: _____.

SECTION 75. EFFECTIVE DATE

This Supplement takes effect _____.