

Professional Corporations

§ 79-10-1. Short title

Sections 79-10-1 through 79-10-117 shall be known and may be cited as the “Mississippi Professional Corporation Act.”

§ 79-10-3. Application of Mississippi Business Corporation Act

The Mississippi Business Corporation Act applies to professional corporations, both domestic and foreign, to the extent not inconsistent with the provisions of Sections 79-10-1 through 79-10-117.

§ 79-10-4. Uniform Partnership Act applicability

Professional corporations are not subject to the provisions of the Uniform Partnership Act.

§ 79-10-5. Definitions

As used in Sections 79-10-1 through 79-10-117, unless the context requires otherwise:

- (a) “Disqualified person” means an individual, general partnership, professional corporation or other entity that for any reason is or becomes ineligible under Sections 79-10-1 through 79-10-117 to be issued shares by a professional corporation.
- (b) “Domestic professional corporation” means a professional corporation.
- (c) “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.
- (d) “Law” includes rules promulgated in accordance with Section 79-10-103.
- (e) “Licensing authority” means the office, board, agency, court or other authority in this state empowered to license or otherwise authorize the rendition of a professional service.
- (f) “Professional corporation” means a corporation for profit, other than a foreign professional corporation, subject to the provisions of Sections 79-10-1 through 79-10-117.
- (g) “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, including, without limitation, certified public accountants, dentists, architects, veterinarians, osteopaths, physicians, surgeons and attorneys-at-law.

(h) "Qualified person" means an individual, general partnership, professional corporation or other entity that is eligible under Sections 79-10-1 through 79-10-117 to be issued shares by a professional corporation.

§ 79-10-11. Election of professional corporation status

(1) One or more persons may incorporate a professional corporation by delivering to the Secretary of State for filing articles of incorporation which include a statement that (a) it is a professional corporation, and (b) its purpose is to render the specified professional services.

(2) A corporation incorporated under a general law of this state (other than a professional corporation in existence on the effective date of this act which is subject to the provisions of Section 79-10-111) may elect professional corporation status by amending its articles of incorporation to comply with subsection (1) of this section and Section 79-10-21.

(3) Nothing in Sections 79-10-1 through 79-10-117 shall be construed to require a person rendering professional services in this state to render such services through a professional corporation or foreign professional corporation unless a law of this state other than Sections 79-10-1 through 79-10-117 so requires.

§ 79-10-13. Purposes

(1) Except to the extent authorized by subsection (2) of this section, a corporation may elect professional corporation status under Section 79-10-11 solely for the purpose of rendering professional services (including services ancillary to them) and solely within a single profession.

(2) A corporation may elect professional corporation status under Section 79-10-11 for the purpose of rendering professional services within two (2) or more professions, and for the purpose of engaging in any lawful business authorized by Section 79-4-3.01, Mississippi Code of 1972, 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.

§ 79-10-15. General powers

(1) Except as provided in subsection (2) of this section, a professional corporation has the powers enumerated in Section 79-4-3.02, Mississippi Code of 1972.

(2) 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 and not prohibited by the licensing laws applicable to each profession rendering services through the professional corporation.

§ 79-10-17. Rendering professional services

(1) 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.

(2) Subsection (1) does not:

(a) Require an individual employed by a professional corporation to be licensed to perform services for the corporation if a license is not otherwise required;

(b) 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;

(c) 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.

§ 79-10-19. Prohibited activities

(1) A professional corporation may not render any professional service other than the professional service authorized by its articles of incorporation.

(2) Subsection (1) does not prohibit a professional corporation from investing its funds in real estate, mortgages, securities, or any other type of investment or from owning real or personal property appropriate for carrying on its business.

§ 79-10-21. Corporate name

(1) 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 Sections 79-4-4.01 and 79-4-15.06, Mississippi Code of 1972:

(a) Must contain the words "professional corporation" or "professional association" or the abbreviations "P.C.," "PC," "P.A." or "PA";

(b) May not contain language stating or implying that it is incorporated for a purpose other than that authorized by Section 79-10-13 and its articles of incorporation; and

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

(2) Sections 79-4-4.01 and 79-4-15.06, Mississippi Code of 1972, 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.

§ 79-10-31. Issuance of shares

(1) 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 or another state to render a professional service described in the corporation's articles of incorporation;

(b) Professional corporations, domestic or foreign, authorized by law in this state to render a professional service described in the corporation's articles of incorporation;

(c) General partnerships in which all the partners are individuals or entities otherwise authorized by paragraph (a), (b) or (d) of this subsection (1) to be shareholders of a professional corporation under Sections 79-10-1 through 79-10-117;

(d) Any other individual or entity not included in paragraph (a), (b) or (c) of this subsection (1) if expressly authorized by the licensing authority having jurisdiction over the professional services described in the articles of incorporation of the professional corporation.

(2) A licensing authority with jurisdiction over a profession 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.

(3) The articles of incorporation may provide for additional limitations and restrictions on the ownership of shares or for additional qualifications of shareholders and such limitations, restrictions or qualifications shall be valid and enforceable in each instance.

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

§ 79-10-33. Notice of professional corporation status on shares

(1) In addition to any other statement required or permitted by applicable law, 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 Mississippi Professional Corporation Act. Shares of a professional corporation are also subject to a statutory compulsory repurchase obligation.

(2) 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 (1).

§ 79-10-35. Share transfer restriction

(1) A shareholder of a professional corporation may transfer shares, fractional shares and rights or options to purchase shares of the corporation only to qualified persons. A shareholder of a professional corporation may pledge shares to a qualified person or to a disqualified person.

(2) A transfer of shares made in violation of subsection (1), except one made by operation of law or court judgment, is void.

§ 79-10-37. Compulsory acquisition of shares after death or disqualification of shareholder

(1) A professional corporation must acquire (or cause to be acquired by a qualified person) the shares of its shareholder if:

(a) The shareholder dies and the successor in interest to the deceased shareholder is not a qualified person, except as provided in subsection (3);

(b) The shareholder becomes a disqualified person, except as provided in subsection (3); or

(c) The shares are transferred by operation of law or court judgment to a disqualified person, except as provided in subsection (3).

(2) If a price for the shares is established in accordance with the articles of incorporation or bylaws or by private agreement, that price controls. If the price is not so established, the corporation shall acquire the shares in accordance with Section 79-10-39. If the disqualified person rejects the corporation's purchase offer made pursuant to Section 79-10-39, either the person or the corporation may commence a proceeding under Section 79-10-41 to determine the price of the shares.

(3) This section does not require the acquisition of shares in the event of disqualification if the disqualification lasts no more than five (5) months from the date the disqualification or transfer occurs. A shareholder who becomes a disqualified person shall notify the corporation promptly.

(4) This section and Section 79-10-39 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.

(5) 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.

§ 79-10-39. Acquisition procedure

(1) If shares must be acquired under Section 79-10-37, 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 the most recent fiscal year ending prior to the date of death or disqualification, an income statement for that fiscal year, a statement of changes in shareholders' equity for that fiscal year, and the latest available interim financial statements, if any.

(2) The disqualified person has thirty (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 79-10-41 to determine the fair value of his shares. If he accepts the offer, the corporation shall make payment for the shares within sixty (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.

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

§ 79-10-41. Court action to appraise shares

(1) If the disqualified shareholder does not accept the professional corporation's offer under Section 79-10-39(2) within the thirty-day period, the shareholder during the following thirty-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 sixty (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.

(2) The corporation or disqualified shareholder shall commence the proceeding in the chancery 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 person 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.

(3) 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.

(4) 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.

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

§ 79-10-43. Court costs and fees of experts

(1) The court in an appraisal proceeding commenced under Section 79-10-41 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.

(2) 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.

§ 79-10-45. Cancellation of disqualified shares

If the shares of a disqualified person are not acquired under Section 79-10-39 or 79-10-41 within ten (10) months after the death of the shareholder or within five (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 79-10-39 or 79-10-41.

§ 79-10-61. Voting of shares

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

(2) 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 ten (10) months after the date of death or for five (5) months after the disqualification occurred.

§ 79-10-63. Confidential relationship

(1) 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.

(2) 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.

§ 79-10-65. 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 Sections 79-10-1 through 79-10-117. 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.

§ 79-10-67. Responsibility for professional services

(1) 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 or shareholder of a domestic or foreign professional corporation is not liable, however, for the conduct of other employees or shareholders of the corporation, except a person under his direct supervision and control, while rendering professional services on behalf of the professional corporation to the person for whom such professional services were being rendered.

(2) 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.

§ 79-10-81. Merger

(1) 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.

(2) If the surviving corporation is to render professional services in this state, it must comply with Sections 79-10-1 through 79-10-117.

§ 79-10-83. 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 Section 79-4-4.01, Mississippi Code of 1972. After the amendment becomes effective, the corporation may continue in existence as a business corporation under the Mississippi Business Corporation Act and it is no longer subject to Sections 79-10-1 through 79-10-117.

§ 79-10-85. Judicial dissolution

The Attorney General may commence a proceeding under Sections 79-4-14.30 through 79-4-14.33, Mississippi Code of 1972, to dissolve a professional corporation if:

- (a) 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 Section 79-4-5.04, Mississippi Code of 1972, that it has violated or is violating a provision of Sections 79-10-1 through 79-10-117;
- (b) 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 sixty (60) days after service of the notice is perfected under Section 79-4-5.04, Mississippi Code of 1972; and
- (c) 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 sixty (60) days after perfection of service of the notice.

§ 79-10-91. Authority to transact business

(1) A foreign professional corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

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

- (a) Its corporate name satisfies the requirements of Section 79-10-21;
- (b) It is incorporated for one or more of the purposes described in Section 79-10-13; and

(c) All of its shareholders would be qualified persons if the foreign professional corporation were a domestic professional corporation.

§ 79-10-93. 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 Section 79-4-15.03, Mississippi Code of 1972, and in addition include a statement that all of its shareholders meet the requirements of Section 79-10-91(2)(c).

§ 79-10-95. Revocation of certificate of authority

The Secretary of State may administratively revoke under Sections 79-4-15.30 through 79-4-15.32, Mississippi Code of 1972, 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 Sections 79-10-1 through 79-10-117 and describes the violation. Such administrative revocation may be challenged by the professional corporation in the chancery court of the county where the professional corporation maintains its principal place of business.

§ 79-10-101. Annual report for Secretary of State

The annual report required by Section 79-4-16.22, Mississippi Code of 1972, 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 are qualified persons with respect to the corporation or in the case of a foreign professional corporation that all of its shareholders meet the requirements of Section 79-10-91(2)(c).

§ 79-10-103. Rulemaking by licensing authority

Each licensing authority is empowered to promulgate rules expressly authorized by Sections 79-10-1 through 79-10-117 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.

§ 79-10-105. Licensing authority's regulatory jurisdiction

Sections 79-10-1 through 79-10-117 do 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.

§ 79-10-111. Application to existing corporations

(1) Except as otherwise provided in this section, Sections 79-10-1 through 79-10-117 apply to professional corporations in existence on July 1, 1995. A professional corporation in existence on July 1, 1995, may, but is not required to, amend its articles of incorporation to comply with Sections 79-10-1 through 79-10-117. If a professional corporation in existence on July 1, 1995, amends its articles of incorporation for any purpose after July 1, 1995, it must also amend its articles of incorporation to comply with Sections 79-10-1 through 79-10-117.

(2) Sections 79-10-1 through 79-10-117 do not apply to a corporation now existing or later incorporated under a law of this state that is not a professional corporation unless the corporation elects professional corporation status under Section 79-10-11.

(3) Sections 79-10-1 through 79-10-117 do not affect an existing or future right or privilege to render professional services through the use of any other form of business entity.

(4) Unless otherwise specifically provided by an amendment to the articles of incorporation, for professional corporations in existence on July 1, 1995, Sections 79-10-39, 79-10-41 and 79-10-43 shall be applied by substituting the term "book value" for the term "fair value" in such sections only. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the professional corporation and shall be determined as of the end of the month immediately preceding the death or disqualification of the shareholder.

§ 79-10-113. Reservation of power to amend or repeal

The Mississippi Legislature has power to amend or repeal all or part of Sections 79-10-1 through 79-10-117 at any time and all domestic and foreign professional corporations subject to this act are governed by the amendment or repeal.

§ 79-10-115. Saving provisions

(1) Except as provided in subsection (2), the repeal of a statute by Sections 79-10-1 through 79-10-117 does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(c) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal;

(d) 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.

(2) If a penalty or punishment imposed for violation of a statute repealed by Sections 79-10-1 through 79-10-117 is reduced by Sections 79-10-1 through 79-10-117, the penalty or punishment if not already imposed shall be imposed in accordance with Sections 79-10-1 through 79-10-117.

§ 79-10-117. Severability

If any provision of this act 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 act that can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.