

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2144
(Senators Laffen, Grindberg, Klein)
(Representatives Porter, Zaiser)

AN ACT to create and enact a new section to chapter 10-31 of the North Dakota Century Code, relating to ownership of professional organizations; and to amend and reenact sections 10-31-01, 10-31-02, 10-31-02.1, 10-31-04, and 10-31-13 of the North Dakota Century Code, relating to nonprofessional ownership of professional organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10-31-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Create" means to form an organization by:
 - a. Incorporating a professional corporation;
 - b. Organizing a professional limited liability company; or
 - c. Registering a professional limited liability partnership.
2. "Executive" means an officer or a director of a professional corporation, a manager or a governor of a professional limited liability company, or a partner of a professional limited liability partnership.
3. "Foreign limited liability partnership" has the meaning set forth in section 45-22-01.
4. "Foreign professional organization" means a professional organization that is created under laws other than the laws of this state for purposes for which a professional organization may be created under this chapter.
5. "Minority owner" means an owner of a professional organization:
 - a. Who is not licensed or otherwise legally authorized within this state to render the same professional service as the organization;
 - b. Who provides a service to the organization which is ancillary to the organization's professional service;
 - c. Who does not provide that owner's service to the public through the organization; and
 - d. Who is expressly authorized under subsection 3 of section 10-31-04.
- ~~6.~~ "Owner" means a shareholder of a professional corporation, a member of a professional limited liability company, or a partner of a limited liability partnership.
- ~~6-7.~~ "Professional corporation" or "corporation" means a corporation that is incorporated under this chapter for the purpose of rendering professional service and which has as its shareholders only individuals;

- a. Individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the corporation ~~or nonlicensed~~;
- b. Nonlicensed employees as provided in section 10-31-07.1; and
- c. Minority owners.

~~7-8.~~ "Professional limited liability company" or "limited liability company" means a limited liability company that is organized under this chapter for the purpose of rendering professional service and which has as its members only ~~individuals~~;

- a. Individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability company ~~or nonlicensed~~;
- b. Nonlicensed employees as provided in section 10-31-07.2; and
- c. Minority owners.

~~8-9.~~ "Professional limited liability partnership" or "limited liability partnership" means a limited liability partnership that is registered under this chapter for the purpose of rendering professional service, is not a foreign limited liability partnership, and has as its partners only ~~individuals~~;

- a. Individuals who are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability partnership ~~or nonlicensed~~;
- b. Nonlicensed employees as provided in section 10-31-07.1; and
- c. Minority owners.

~~9-10.~~ "Professional organization" or "organization" means:

- a. A professional corporation that is incorporated under this chapter;
- b. A professional limited liability company that is organized under this chapter; or
- c. A professional limited liability partnership that is registered under this chapter.

~~10-11.~~ "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which requires as a condition of licensure an undergraduate or advanced college degree in the specific field.

SECTION 2. AMENDMENT. Section 10-31-02 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02. Articles of incorporation.

1. One or more individuals may incorporate a professional organization in the form of a corporation for the practice of a profession by filing articles of incorporation with the secretary of state. The articles of incorporation must meet the requirements of chapter 10-19.1 and contain the following:
 - a. The profession to be practiced through the professional corporation; and
 - b. The names and residence addresses of all of the original shareholders of the professional corporation who will practice the profession in this state and of the original shareholders of the professional corporation who are minority owners.
2. At the time the articles of incorporation are filed with the secretary of state, the professional corporation also shall file a:

- a. A certificate from the regulating board of the profession involved that each of the directors and shareholders of voting shares who will practice the profession in this state, if any, is licensed to practice the profession in this state; or
- b. If there is one or more minority owners, a certificate from the regulating board of the profession of the corporation certifying that each of the directors and shareholders of voting shares who will practice the profession in this state, if any, is licensed to practice the profession in this state and a certificate from the corporation identifying the minority owners who are exempt from the licensing requirement and the express law authorizing minority ownership.

SECTION 3. AMENDMENT. Section 10-31-02.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02.1. Articles of organization.

1. One or more individuals may organize a professional organization in the form of a limited liability company for the practice of a profession by filing articles of organization with the secretary of state. The articles of organization must meet the requirements of chapter 10-32 and must contain the following:
 - a. The profession to be practiced through the professional limited liability company; and
 - b. The name and residence address of each original member of the professional limited liability company who will practice the profession in this state and of each original member of the professional limited liability company who is a minority owner.
2. At the time the articles of organization are filed with the secretary of state, the professional limited liability company also shall file a:
 - a. A certificate from the regulating board of the profession involved that each of the governors and members who will practice the profession in this state, if any, is licensed to practice the profession in this state; or
 - b. If there is one or more minority owners, a certificate from the regulating board of the profession of the limited liability company certifying that each of the governors and members who will practice the profession in this state, if any, is licensed to practice the profession in this state and a certificate from the limited liability company identifying the minority owners and the express law authorizing minority ownership.

SECTION 4. AMENDMENT. Section 10-31-04 of the North Dakota Century Code is amended and reenacted as follows:

10-31-04. Purpose for which created - Minority ownership.

1. A professional organization may be created pursuant to this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto or for the purpose of rendering two or more kinds of professional services that are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or partnership of licensed individuals and ancillary services. This subsection does not preclude an organization created pursuant to this chapter from rendering more than one specific type of professional service if the services rendered are set forth in chapters 43-03 and 43-19.1 or if the services rendered are set forth in chapters 43-26.1 and 43-40.
2. A professional organization may not engage in any business other than rendering the professional service for which it was created to render and services ancillary thereto that professional service. However, a professional organization may own real and personal

property necessary or appropriate for rendering the type of professional services it was created to render and may invest its funds in real estate mortgages, stocks, bonds, membership interests, and any other type of investment.

3. If expressly authorized under this subsection, a professional organization may have a minority ownership by one or more minority owners. A professional organization created under this chapter for the purpose of providing professional services as set forth in chapter 43-03 is expressly authorized to have minority owners.

SECTION 5. A new section to chapter 10-31 of the North Dakota Century Code is created and enacted as follows:

Issuance and transfer of shares, membership interests, and partnership interests - Exception for minority owners.

Notwithstanding sections 10-31-07, 10-31-07.2, and 10-31-07.3, if minority owners are expressly authorized under subsection 3 of section 10-31-04, a professional organization may issue shares and membership interests to minority members and an owner may transfer shares or membership interests to minority owners. In the case of issuance or transfer of shares or membership interests to a minority owner, the organization is exempt from the certificate filing requirement under sections 10-31-07, 10-31-07.2, and 10-31-07.3. However, if a professional organization has minority owners, an issuance or transfer of shares or membership interests may not result in minority owners having a majority ownership in the organization.

SECTION 6. AMENDMENT. Section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

10-31-13. Professional organizations - Annual reports - Renewal.

1. With respect to a professional organization in the form of a corporation:
 - a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-19.1 giving the name and residence address of each officer, director, and shareholder of the corporation at the time of filing of the report. With respect to shares, the report must include:
 - (1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; ~~and~~
 - (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and
 - (3) If there are minority owners, a statement of the issued shares, itemized by minority owner and nonminority owner.
 - b. ~~The~~Except as provided under subsection 4, the report must include a statement that all directors and shareholders of voting shares who practice in this state are licensed to render the same specific professional services as those for which the corporation was incorporated. The report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the corporation; and
 - (3) Accompanied by the filing fee prescribed in chapter 10-19.1.

- c. A copy of the report must be filed at the same time with the regulatory board that licenses the shareholders ~~described in the report~~providing the corporation's professional service. ~~No filing fee may be charged by the~~The regulatory board may not charge a filing fee.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.
 2. With respect to a professional organization in the form of a limited liability company:
 - a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-32 giving the name and residence address of all managers, governors, and members of the organization at the time of filing of the annual report.
 - b. ~~The~~Except as provided under subsection 4, the report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the limited liability company; and
 - (3) Accompanied by the filing fee prescribed in section 10-32-180.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the members ~~described in the report~~providing the limited liability company's professional service. ~~No filing fee may be charged by the~~The regulatory board may not charge a filing fee.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.
 3. With respect to a professional organization in the form of a limited liability partnership:
 - a. The annual report filed with the secretary of state at the time specified for the filing of the report by chapter 45-22 must include the name and residence address of each partner of the organization at the time of filing of the annual report.
 - b. ~~The~~Except as provided under subsection 4, the annual report must include a statement that each partner holding voting partnership interests who practices in this state is licensed to render the same specific professional services as those for which the limited liability partnership was registered. The annual report must be:
 - (1) Made on a form prescribed and furnished by the secretary of state;
 - (2) Signed by a managing partner of the limited liability partnership; and
 - (3) Accompanied by the filing fee prescribed in section 45-22-22.
 - c. A copy of the annual report must be filed at the same time with the regulatory board that licenses the partners ~~described in the annual report~~providing the limited liability partnership's professional service. ~~A filing fee may not be charged by the~~The regulatory board may not charge a filing fee.

- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not exceeding twenty dollars per individual certified to be licensed by the regulating board.
4. If the organization has a minority owner, the annual report must include a statement that:
 - a. Each nonminority owner who practices in this state is licensed to render the organization's professional service;
 - b. Each minority owner provides a service to the organization which is ancillary to the organization's professional service;
 - c. Each minority owner does not provide that owner's service to the public through the organization; and
 - d. The minority owners do not hold a majority interest in the organization.
5. In order to regulate organizations that have minority ownership, the secretary of state shall collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has a minority owner. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32-150. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2144.

Senate Vote: Yeas 45 Nays 1 Absent 1

House Vote: Yeas 87 Nays 5 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State