

CHAPTER 399—H.F.No.2234

[Coded in Part]

An act relating to the formation of professional corporations by certified public accountants; amending Minnesota Statutes 1969, Section 326.21.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [319.411] CERTIFIED PUBLIC ACCOUNTANTS; PROFESSIONAL CORPORATIONS; TITLE. This act may be cited as "The Certified Public Accountants Professional Corporation Act".

Sec. 2. [319.412] DEFINITIONS. Subdivision 1. For the purposes of this act the terms defined in this section shall have the meanings given them.

Subd. 2. "Professional service" means personal service rendered by a certified public accountant pursuant to a license granted him under the provisions of the Minnesota Statutes or under the provisions of the laws of another state.

Subd. 3. "Professional corporation" means a corporation organized for the purpose of rendering professional service.

Subd. 4. "Board" means the state board of accountancy.

Sec. 3. [319.413] FORMATION OF CORPORATION. One or more natural persons may form a corporation, pursuant to either Minnesota Statutes, Chapter 301, or Minnesota Statutes, Chapter 317, for the purpose hereinafter set forth.

Sec. 4. [319.414] PURPOSE FOR WHICH INCORPORATED. A professional corporation may be organized pursuant to provisions of this act for the purpose of rendering professional services and services ancillary thereto and shall not engage in any business other than rendering professional service and services ancillary thereto; provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering professional service and may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment, not incompatible with the practice of public accounting.

Sec. 5. [319.415] APPLICABILITY OF CORPORATION ACTS. A professional corporation incorporating pursuant to the provisions of this act under either Minnesota Statutes, Chapter 301, or Minnesota Statutes, Chapter 317, shall proceed in the manner specified in the particular act under which it has elected to incorporate except that:

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(1) If it has only one shareholder or member, it need have only one director who shall be such shareholder or member and it may permit such shareholder or member to hold all offices;

(2) If it has only two shareholders or members, it need have only two directors who shall be such shareholders or members and it may permit such shareholders or members to hold all offices; and

(3) If it elects to proceed pursuant to Minnesota Statutes, Chapter 317, its articles of incorporation need not contain the statement required by clause (3) of subdivision 2 of section 317.08 thereof. After incorporation a professional corporation shall enjoy the powers and privileges and shall be subject to the duties and liabilities of other corporations organized under the particular act under which it has elected to incorporate, except insofar as the same may be limited or enlarged by this act. If any provisions of this act conflict with the provisions of the act under which a professional corporation elects to incorporate, this act shall take precedence.

Sec. 6. [319.416] CORPORATE NAME. The corporate name of any professional corporation shall end with the word "Chartered" or the word "Limited", or the abbreviation "Ltd." or the words "Professional Association", or the abbreviation "P.A." No corporation other than one organized pursuant to this act shall style itself as certified public accountants or use the abbreviation C.P.A. with its corporate name.

Sec. 7. [319.417] CERTIFICATE OF REGISTRATION. No corporation shall open, operate, or maintain an establishment for any of the purposes set forth in this act without a certificate of registration from the board. Application for a certificate shall be made to the board in writing by a certified public accountant registered in this state and presently in good standing and shall contain the name of the applicant, the address of the location or locations of the establishment or establishments at which the applicant proposes to operate and such other information as may be required by the board. Upon receipt of such application, the board shall make an investigation of the professional corporation. If the board finds that the incorporators, officers, directors, members, and stockholders, if any, are all licensed certified public accountants and therefore able to render the type of professional service for which the professional corporation was organized to render, and that all of the shareholders or members are principally employed or actively engaged in rendering professional service, and that no disciplinary action is pending against any of them, and that at least one shareholder of the corporation is a certified public accountant licensed to render in this state the type of professional service for which the professional corporation was organized to render, and that the resident manager in charge of establishment or establishments at which the applicant proposes to operate is a certified public account-

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ant licensed to render in this state the type of professional service for which the professional corporation was organized to render, and if it appears to the board that the professional corporation will be conducted in compliance with the provisions of this act and such other regulations as the board may establish, the board shall issue, upon payment of a registration fee of \$100, which shall be for the use of the board, a certificate of registration covering the establishment or establishments at which the applicant proposes to operate which shall remain effective until January 1 following the date of issuance thereof.

Sec. 8. [319.418] ANNUAL RENEWAL. Upon written application of the holder containing such information as the board may require, accompanied by a fee of \$25 which shall be for the use of the board, the board shall annually renew the certificate of registration unless the board finds that the professional corporation does not meet all of the requirements of this act for a certificate of registration or unless the board finds that the professional corporation has failed to comply with the provisions of this act or the regulations of the board.

Sec. 9. [319.419] POSTING. The certificate of registration shall be conspicuously posted upon the premises of each of the establishments to which it is applicable.

Sec. 10. [319.42] CHANGE OF LOCATION. No professional corporation which has been issued a certificate of registration shall change the location of any establishment to which such certificate of registration is applicable until it has first notified the board of its intention so to do and obtained from the board a new certificate of registration. Upon receipt of any such notification the board, in accordance with its regulations, shall amend the certificate of registration so that it shall apply to the new location.

Sec. 11. [319.421] TRANSFER AND ASSIGNMENT OF CERTIFICATE. No certificate of registration shall be transferable or assignable.

Sec. 12. [319.422] SUSPENSION OR REVOCATION OF CERTIFICATE. The board may suspend or revoke a certificate of registration for any of the following reasons:

(a) The revocation or suspension of the license to render professional service of any officer, director, shareholder, member, or employee of a holder of a certificate of registration not promptly removed or discharged by such holder;

(b) The death of the last remaining shareholder or member, as the case may be, of a holder of a certificate of registration; or

(c) Upon finding that the holder of a certificate of registration has failed to comply with the provisions of this act or the regulations of the board.

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Sec. 13. [319.423] NOTICE OF SUSPENSION OR REVOCATION. Before any certificate of registration is suspended or revoked, the holder shall be given written notice of the proposed action and the reasons therefor, and shall be given a public hearing by the board with the right to produce testimony concerning the charges made. The notice shall also state the place and date of the hearing, which shall be at least ten days after service of said notice.

Sec. 14. [319.424] APPEALS. Subdivision 1. Any professional corporation whose application for a certificate of registration has been denied or whose certificate of registration has been suspended or revoked may, within 30 days after notice of such action by the board, appeal to the district court for Ramsey county. The court shall inquire into the cause of the board's action and may affirm, or reverse such decision and order a further hearing by the board, or may order the board to grant appellant a certificate of registration.

Subd. 2. An appeal may be instituted by serving a notice of appeal personally or by registered mail upon the board, or one of its members, or its secretary and by filing such notice of appeal in the office of the clerk of district court for the county of Ramsey, all within 30 days after the service of the order or decision of the board from which an appeal is taken.

Subd. 3. Within 30 days after the service of the notice of appeal upon the board, or within such further time as the court may allow, the board shall transmit to the court the original or a certified copy of the entire record of the proceedings in which the decision under appeal was made, but by stipulation of all parties to the appeal the record may be shortened by eliminating any portion thereof. The cost of preparing the transcript of the testimony, objections and rulings thereon, and exceptions shall be paid by the appellant.

Subd. 4. The appeal shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in the procedure before the board testimony thereon may be taken in the court.

Sec. 15. [319.425] HOW SERVICES RENDERED. A professional corporation may render professional service only through natural persons who possess a license to render professional service and may so render professional service notwithstanding any provision of law to the contrary. Such persons need not be members or shareholders of the professional corporation but may be employed by the professional corporation to perform professional service. Nothing contained in this act shall be construed to require a license or other legal authorization of any individual who is employed by a professional corporation to perform services for which no license or other legal authorization is otherwise required.

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Sec. 16. [319.426] **RELATIONSHIP TO PERSON SERVED.** This act does not alter any law applicable to the relationship between a person furnishing professional service and a person receiving such professional service, including liability arising out of such professional service; provided, however, that nothing contained in this section shall render a person personally liable in tort for any act in which he has not participated and; provided further, that nothing contained in this section shall render a director, officer, or employee of such a professional corporation personally liable in contract for any contract which he executes on behalf of a professional corporation within the limits of his actual authority.

Sec. 17. [319.427] **EMPLOYEES.** Each individual licensed to perform professional service who is employed by a professional corporation shall remain subject to reprimand or discipline for his conduct under the provisions of the licensing statute and rules and regulations pursuant to which he is licensed.

Sec. 18. [319.428] **SHARES AND MEMBERSHIP, ISSUANCE.** A professional corporation may issue its stock only to, and may admit as a member only a natural person who is licensed to render professional services. A person who becomes a shareholder or member in any professional corporation may transfer his shares or his membership only to a natural person to whom a professional corporation could issue such shares or such membership pursuant to the provisions of this section. The corporation shall notify the board within one month after the transfer of any stock or membership. No proxy to vote any share of or any membership in a professional corporation may be given to a person who is not so licensed, nor may any voting trust be established with respect to the shares of a professional corporation unless all the voting trustees are natural persons who are so licensed. In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the shareholders of the corporation to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder.

Sec. 19. [319.429] **DEATH OR DISQUALIFICATION OF SHAREHOLDER.** A professional corporation which holds a certificate of registration shall report to the board the death of any of its shareholders or members within 30 days thereafter. Within 90 days following the date of death of a shareholder or member of a professional corporation or the loss of his license to practice, all of the shares owned by such shareholder shall be transferred to and acquired by the professional corporation or persons qualified to own such shares. If the articles of incorporation or bylaws of a professional corporation fail to state a price or method of determining a price at which such corporation or its shareholders may purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in such corporation, then the price for such shares shall

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be the fair market value as determined by the board of directors but not less than the book value as of the end of the month immediately preceding the death or disqualification of the shareholder. Book value shall be determined from the books and records of such corporation in accordance with the regular method of accounting used by such corporation.

Sec. 20. **[319.43] EXAMINATION BY BOARD.** Subdivision 1. The board, or any employee designated by the board, shall have the right, at all reasonable times, to free access to all books and records of any professional corporation and may summon and examine under oath the officers, directors, and employees of any such corporation in all matters concerning the operations of any such corporation under this act; provided, however, that nothing contained in this section shall be deemed to authorize anyone to have access to, or to compel anyone to testify with respect to, books, records or information of any type relating to professional services performed by an employee of a professional corporation for a client.

Subd. 2. Whenever the board shall deem it necessary, in order to carry out the duties imposed by this act, to investigate the books, accounts, practices or activities of any professional corporation, such professional corporation shall pay the expenses reasonably attributable to such investigation. The board shall ascertain such expenses and shall render a bill therefor, by registered mail, to the professional corporation, which bill shall constitute notice of such assessment and demand of payment therefor. The amount of any such bill so rendered by the board shall be paid to the board within 30 days from the date of rendition and shall be for the use of the board.

Subd. 3. Any information obtained by the board as a result of any proceeding authorized by this section shall be confidential except that on request a copy thereof shall be made available to a duly authorized representative of the professional corporation involved, and shall be immune from subpoena and inadmissible as evidence at a trial, hearing or proceeding before any court, board or commission except a proceeding before the board of the type authorized by this act or an appeal of the type authorized by this act.

Sec. 21. **[319.431] REGULATIONS.** The board shall have the power and authority to make reasonable regulations of the type authorized herein necessary to carry out the duties imposed upon it by this act.

Sec. 22. Minnesota Statutes 1969, Section 326.21, is amended to read:

326.21 HOLDER OF CERTIFICATE; HOW STYLED. Any person who has received from the state board of accountancy a certificate of his qualifications to practice as a certified public

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accountant shall be known and styled a certified public accountant; and no other person who has not received such certificate ~~and no corporation~~ shall assume such title or the title of certified accountant, or the abbreviation C.P.A., or any other words, letters, or abbreviations tending to indicate that the person, ~~or corporation~~ so using the same is a certified public accountant. No partnership shall style itself as a firm of certified public accountants unless (1) all partners resident in this state are certified public accountants of this state and (2) all managers in charge of offices maintained in this state are certified public accountants of this state and (3) all partners, wherever situated, are certified public accountants of one of the states or territories or of the District of Columbia and (4) the partnership is duly registered under section 326.20. No corporation, other than one duly registered under the laws of this state shall style itself as certified public accountants, or use the abbreviation C.P.A. in connection with its corporate name.

Approved May 19, 1971.

CHAPTER 400—H.F.No.2263

[Coded]

An act relating to health; providing for the filing of a notice of death and additional information in lieu of a death certificate in certain cases.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [144.205] **VITAL STATISTICS; DEATH IN ARMED FORCES; NOTICE; FILING.** Any person receiving notice from any branch of the armed services of the United States of the death of any person serving as a member of such armed services may file such notice of death with the local registrar of the district in which the deceased last resided. The person filing such notice of death shall submit by sworn affidavit to the local registrar as much additional information relative to the deceased as would be otherwise required on a death certificate as is available to such person. The notice of death together with the additional information, if any, submitted shall be deemed a death certificate and may be recorded and used for any purpose for which a valid death certificate may be used. The term death certificate as used in the Minnesota Statutes shall be deemed to include a notice of death together with the additional information submitted therewith as prescribed by this section.

Approved May 19, 1971.

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