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CHAPTER 19.

 PROFESSIONAL CORPORATION SUPPLEMENT

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 33‑19‑101.** Short title.

This chapter is known and may be cited as the South Carolina Professional Corporation Supplement.

**SECTION 33‑19‑102.** Application of South Carolina Business Corporation Act and Statutory Close Corporation Supplement.

(1) Chapters 1 through 17 apply to professional corporations, both domestic and foreign, to the extent not inconsistent with the provisions of this chapter.

(2) The Statutory Close Corporation Supplement (Chapter 18 of this title) applies to a professional corporation organized under this chapter whose articles of incorporation contain the statement required by Section 33‑18‑103(a), except insofar as this chapter contains inconsistent provisions.

**SECTION 33‑19‑103.** Supplement definitions.

In this chapter:

(1) “Disqualified person” means an individual or entity that for any reason is or becomes ineligible under this chapter 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 33‑19‑630.

(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 chapter.

(7) “Professional service” means a service that may be rendered lawfully 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 chapters 1 through 17 of this title.

(8) “Qualified person” means an individual, general partnership, or professional corporation that is eligible under this chapter to be issued shares by a professional corporation.

ARTICLE 2.

 CREATION

**SECTION 33‑19‑109.** Election of professional corporation status.

(a) A person 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 chapter may elect professional corporation status by amending its articles of incorporation to comply with subsection (a) and Section 33‑19‑150.

**SECTION 33‑19‑110.** Purposes.

(a) Except to the extent authorized by subsection (b), a corporation may elect professional corporation status under Section 33‑19‑109 solely for the rendering of professional services, including services ancillary to them, within a single profession.

(b) A corporation may elect professional corporation status under Section 33‑19‑109 for the rendering of professional services within two or more professions, and for engaging in any lawful business authorized by Section 33‑3‑101, 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 33‑19‑120.** General powers.

(a) Except as provided in subsection (b), a professional corporation has the powers enumerated in Section 33‑3‑102.

(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 33‑19‑130.** 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 required otherwise;

(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 33‑19‑140.** 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 33‑19‑150.** 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 Sections 33‑4‑101 and 33‑15‑106:

(1) must contain the words “professional corporation”, “professional association”, “service corporation”, or “chartered” or the abbreviation “P.C.”, “PC”, or “P.A.”, or “PA”.

(2) may not contain language stating or implying that it is incorporated for a purpose other than that authorized by Section 33‑19‑110 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) Sections 33‑4‑101 and 33‑15‑106 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.

ARTICLE 3.

 SHARES

**SECTION 33‑19‑200.** 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.

(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 by rule may 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 rules promulgated under this section are void.

**SECTION 33‑19‑210.** 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 South Carolina Professional Corporation Supplement, Chapter 19 of Title 33, and may be subject to further restriction imposed by the licensing authority. Shares of a professional corporation are subject also to a statutory 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 33‑19‑220.** 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 33‑19‑200 to be issued shares.

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

**SECTION 33‑19‑221.** Attempted share transfer in breach of prohibition.

(a) An attempt to transfer shares in a professional corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(b) An attempt to transfer shares in a professional corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by Section 33‑19‑210 was not given or because the prohibition is held unenforceable by a court, gives the professional corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within thirty days after they are presented for registration in the transferee’s name. The professional corporation may enforce specifically the transferee’s sale obligation upon exercise of its purchase option.

**SECTION 33‑19‑230.** 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, if and 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 33‑19‑240. If the disqualified person rejects the corporation’s purchase offer, either the person or the corporation may commence a proceeding under Section 33‑19‑250 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 33‑19‑240 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) Unless the shareholders otherwise agree, this section does not apply to a shareholder who dies and by will leaves his shares in the corporation to one or more of the remaining shareholders.

**SECTION 33‑19‑231.** Option to purchase shares of a terminated shareholder.

(a) A professional corporation has a thirty‑day option to purchase the shares of any qualified shareholder whose employment with the corporation is voluntarily or involuntarily terminated unless the shares of the terminated shareholders are required to be purchased upon termination pursuant to an agreement among the shareholders of the corporation.

(b) To be exercised, the option must be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon, excluding votes in respect of the shares owned by the terminated shareholder, and written notice of exercise of the option must be delivered to the terminated shareholder within thirty days after the shareholder’s employment is terminated.

(c) If the option is exercised, the terminated shareholder must sell all his shares to the professional corporation and the sale must be treated in the same manner as a compulsory sale made pursuant to Section 33‑19‑230.

(d) A professional corporation that exercises an option to purchase under this section may allocate some or all of the shares to be purchased to one or more of its shareholders or to other qualified persons if all the shareholders voting in favor of the purchase approve the allocation. If the professional corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the professional corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

**SECTION 33‑19‑240.** Acquisition procedures.

(a) If shares must be acquired under Section 33‑19‑230 or 33‑19‑231, the professional corporation shall deliver a written notice to the executor or administrator of the estate of its deceased shareholder, to the disqualified person or transferee or to the terminated shareholder, as the case may be (the selling shareholder), offering to purchase the shares at a price the corporation believes represents their fair value as of the date of death, disqualification, transfer, or termination. The offer notice must state that interest is paid on the shares from the valuation date until the date of payment, the rate of interest, and an explanation of why that rate was selected. The offer notice must be accompanied by the corporation’s balance sheet for a fiscal year ending not more than sixteen 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, the latest available interim financial statements, if any, and an explanation of how the fair value was calculated.

(b) The selling shareholder has thirty days from the effective date of the notice to accept the corporation’s offer or demand that the corporation commence a proceeding under Section 33‑19‑250 to determine the fair value of the shares. Unless a later date is agreed on, if the offer is accepted, the corporation shall make payment for the shares within sixty days from the effective date of the offer notice upon the selling shareholder’s surrender of his shares to the corporation.

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

**SECTION 33‑19‑250.** Court action to appraise shares.

(a) If the selling shareholder does not accept the professional corporation’s offer under Section 33‑19‑240(b) 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 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 selling shareholder shall commence the proceeding in the circuit 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 selling 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 appraisers to receive evidence and recommend decisions 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 selling 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 or termination together with interest from that date at a rate found by the court to be fair and equitable.

(e) The court may specify the terms of the purchase in the order of judgment including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the corporation’s other creditors, security for a deferred purchase price, a covenant not to compete or other restriction on the selling shareholder, and release or indemnification from any guarantees of obligations of the professional corporation made by the selling shareholder or his predecessor in interest.

(f) The court shall require the selling shareholder to deliver all his shares to the purchaser upon receipt of the purchase price or, if an installment purchase is ordered, upon receipt of the first installment of the purchase price.

(g) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the professional corporation or other purchases to complete the purchase justify a modification.

**SECTION 33‑19‑260.** Court costs and fees of experts.

(a) The court in an appraisal proceeding commenced under Section 33‑19‑250 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. The court may assess costs against the selling 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 assess the fees and expenses of counsel and experts for the selling shareholder against the corporation and in favor of the selling 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 33‑19‑270.** Cancellation of disqualified shares.

If the shares of a disqualified person are not acquired under Section 33‑19‑240 or 33‑19‑250 within ten months after the death of the shareholder or within five months after the disqualification or transfer or, in the case of the exercise of the option to purchase the shares following termination of employment, pursuant to Section 33‑19‑231, the professional corporation shall cancel immediately the shares on its books and the disqualified or terminated 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 33‑19‑240 or 33‑19‑250.

ARTICLE 4.

 GOVERNANCE

**SECTION 33‑19‑300.** 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 33‑19‑310.** 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. 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 months after the date of death or for five months after the disqualification occurred.

**SECTION 33‑19‑320.** 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 employees are rendering professional services is the same as that between the client or patient and the employee.

**SECTION 33‑19‑330.** 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 chapter. 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 33‑19‑340.** 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.

(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 South Carolina Business Corporation Act.

ARTICLE 5.

 REORGANIZATION AND TERMINATION

**SECTION 33‑19‑400.** 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 chapter.

**SECTION 33‑19‑410.** Termination of professional status.

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 33‑4‑101. After the amendment becomes effective, the corporation may continue in existence as a business corporation under Chapters 1 through 17 of this title and it is no longer subject to this chapter.

**SECTION 33‑19‑420.** Judicial dissolution.

The Attorney General may commence a proceeding under Sections 33‑14‑300 through 33‑14‑330 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 Section 33‑1‑300 that it has violated or is violating a provision of this chapter;

(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 sixty days after service of the notice is perfected under Section 33‑1‑300; 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 sixty days after perfection of service of the notice.

ARTICLE 6.

 FOREIGN PROFESSIONAL CORPORATIONS

**SECTION 33‑19‑500.** 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 33‑19‑150;

(2) it is incorporated for one or more of the purposes described in Section 33‑19‑110; 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 33‑19‑510.** 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 33‑15‑103 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 33‑19‑520.** Revocation of certificate of authority.

The Secretary of State administratively may revoke under Sections 33‑15‑300 through 33‑15‑320 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 is in violation of a provision of this chapter and describes the violation in the certificate.

ARTICLE 7.

 MISCELLANEOUS REGULATORY PROVISIONS

**SECTION 33‑19‑600.** Annual report.

The annual report required by Section 33‑16‑220 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 33‑19‑610.** Rulemaking by licensing authority.

Each licensing authority is empowered to promulgate rules expressly authorized by this chapter 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 33‑19‑620.** Licensing authority’s regulatory jurisdiction.

This chapter 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 33‑19‑630.** 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 five hundred dollars.

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

ARTICLE 8.

 TRANSITION PROVISIONS

**SECTION 33‑19‑700.** Application to existing professional corporations.

(a) Except as set forth in subsections (b), (c), (d), and (e), this chapter applies to a professional corporation formed under Act 784 of 1962 in existence on its effective date.

(b) Section 33‑19‑109 does not apply to professional corporations formed prior to the effective date of this chapter unless and until its articles of association are amended.

(c) Section 33‑19‑210 does not apply to any share certificates that are issued and outstanding prior to the effective date of this chapter.

(d) Section 33‑19‑600 does not apply to any professional corporation in existence prior to the effective date of this chapter that was not on that date required to file its articles of association with a licensing authority. Any professional corporation qualifying for this exemption shall file its articles of association with the first annual report required to be filed pursuant to Section 33‑19‑610.

(e) Within thirty days after the effective date of this chapter, the Secretary of State shall send to the president of each professional corporation at the association’s address as shown in the association’s most recent annual report on file in the office of the Secretary of State a written notice stating that:

(1) the association is required to file with the Secretary of State on or before January 1, 1991, a copy of the association’s articles of association and all amendments to the articles;

(2) the articles of association may have to be amended on or before January 1, 1991, in order to comply with Chapter 19 of this title;

(3) all future amendments and restatements of the association’s articles of association must be filed with the Secretary of State and must comply with the requirements of this title; and

(4) no amendment or restatement of the association’s articles after the effective date of this chapter may be filed in the office of the clerks of court.

(f) A professional corporation in existence on the effective date of this chapter is not in violation of this chapter for failure to file its articles of association with the Secretary of State as required by subsection (e) or to make any amendments to its articles of association required by this chapter or Chapters 1 through 17 of the South Carolina Business Corporation Act of 1988 until January 1, 1991. The failure of a professional corporation to file its articles of association and any necessary amendments to its articles of association by that date does not:

(1) impair the validity of any contract or act of the professional corporation;

(2) prevent the professional corporation from maintaining or defending any action, suit, or proceeding in any court in this State; or

(3) result in any shareholder not being governed by Section 33‑19‑340 with respect to liability for professional services.

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