S T A T E O F N E W Y O R K

3792

2011-2012 Regular Sessions

I N A S S E M B L Y

January 27, 2011

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to professional service corporations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1501 of the business corporation law is amended by adding a new paragraph (f) to read as follows:

(F) "ELIGIBLE EMPLOYEE STOCK OWNERSHIP PLAN" MEANS AN EMPLOYEE STOCK OWNERSHIP PLAN AS DEFINED IN SECTION 4975(E)(7) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, SPONSORED BY A PROFESSIONAL SERVICE CORPORATION OR A FOREIGN PROFESSIONAL SERVICE CORPORATION AND WITH RESPECT TO WHICH:

(I) ALL OF THE VOTING TRUSTEES OF THE EMPLOYEE STOCK OWNERSHIP PLAN ARE INDIVIDUALS WHO ARE AUTHORIZED BY LAW TO PRACTICE IN THIS STATE A PROFESSION WHICH SUCH CORPORATION IS AUTHORIZED TO PRACTICE AND WHO ARE OR HAVE BEEN ENGAGED IN THE PRACTICE OF SUCH PROFESSION IN SUCH CORPORATION OR A PREDECESSOR ENTITY, OR WHO WILL ENGAGE IN THE PRACTICE OF SUCH PROFESSION IN SUCH CORPORATION WITHIN THIRTY DAYS OF THE DATE SUCH INDIVIDUAL IS APPOINTED TRUSTEE; HOWEVER, IF A CONFLICT OF INTEREST EXISTS FOR ONE OR MORE TRUSTEES WITH RESPECT TO A SPECIFIC ISSUE OR TRANSACTION, SUCH TRUSTEES MAY APPOINT AN INDEPENDENT TRUSTEE OR SPECIAL FIDUCIARY, WHO IS NOT AUTHORIZED BY LAW TO PRACTICE IN THIS STATE A PROFESSION WHICH SUCH CORPORATION IS AUTHORIZED TO PRACTICE, BUT SUCH INDEPENDENT TRUSTEE OR SPECIAL FIDUCIARY SHALL BE AUTHORIZED TO MAKE DECISIONS ONLY WITH RESPECT TO THE SPECIFIC ISSUE OR TRANSACTION THAT IS THE SUBJECT OF THE CONFLICT; AND

(II) THE EMPLOYEE STOCK OWNERSHIP PLAN PROVIDES THAT NO SHARES, RIGHTS OR OPTIONS TO PURCHASE SHARES OF THE CORPORATION SHALL AT ANY TIME BE ISSUED, SOLD, OR OTHERWISE TRANSFERRED DIRECTLY TO ANYONE OTHER THAN AN INDIVIDUAL DULY AUTHORIZED BY LAW TO PRACTICE IN THIS STATE A PROFESSION

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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WHICH SUCH CORPORATION IS AUTHORIZED TO PRACTICE, UNLESS SUCH SHARES ARE TRANSFERRED AS A PLAN DISTRIBUTION TO A PLAN PARTICIPANT OR BENEFICIARY AND SUBJECT TO IMMEDIATE REPURCHASE BY THE PROFESSIONAL CORPORATION, THE EMPLOYEE STOCK OWNERSHIP PLAN OR ANOTHER PERSON AUTHORIZED UNDER THIS ARTICLE TO HOLD SUCH SHARES.

S 2. Section 1507 of the business corporation law, as amended by chapter 1022 of the laws of 1971, is amended to read as follows:

S 1507. Issuance of shares.

A professional service corporation may issue shares only to AN ELIGIBLE EMPLOYEE STOCK OWNERSHIP PLAN OR TO individuals who are authorized by law to practice in this state a profession which such corporation is authorized to practice and who are or have been engaged in the practice of such profession in such corporation or a predecessor entity, or who will engage in the practice of such profession in such corporation within thirty days of the date such shares are issued. No shareholder of a professional service corporation shall enter into a voting trust agreement, proxy, or any other type agreement vesting in another person, other than another shareholder of the same corporation or a person who would be eligible to become a shareholder if employed by the corporation, the authority to exercise voting power of any or all of his shares. All shares issued, agreements made, or proxies granted in violation of this section shall be void.

S 3. Section 1511 of the business corporation law, as amended by chapter 1022 of the laws of 1971, is amended to read as follows:

S 1511. Transfer of shares.

No shareholder of a professional service corporation may sell or transfer his shares in such corporation except to another individual who is eligible to have shares issued to him by such corporation [or except] in trust to another individual who would be eligible to receive shares if he were employed by the corporation, OR TO AN ELIGIBLE EMPLOYEE STOCK OWNERSHIP PLAN. Nothing herein contained shall be construed to prohibit the transfer of shares by operation of law or by court decree. No transferee of shares by operation of law or court decree may vote the shares for any purpose whatsoever except with respect to corporate action under section nine hundred nine and section one thousand one. The restriction in the preceding sentence shall not apply, however, where such transferee would be eligible to have shares issued to him if he were an employee of the corporation and, if there are other shareholders, a majority of such other shareholders shall fail to redeem the shares so transferred, pursuant to section 1510, within sixty days of receiving written notice of such transfer. Any sale or transfer, except by operation of law or court decree or except for a corporation having only one shareholder, may be made only after the same shall have been approved by the board of directors, or at a shareholders' meeting specially called for such purpose by such proportion, not less than a majority, of the outstanding shares as may be provided in the certificate of incorporation or in the by-laws of such professional service corporation. At such shareholders' meeting the shares held by the shareholder proposing to sell or transfer his shares may not be voted or counted for any purpose, unless all shareholders consent that such shares be voted or counted. The certificate of incorporation or the by-laws of the professional service corporation, or the professional service corporation and the shareholders by private agreement, may provide, in lieu of or in addition to the foregoing provisions, for the alienation of shares and may require the redemption or purchase of such shares by such corporation at prices and in a manner specifically set forth therein. The existence of the

restrictions on the sale or transfer of shares, as contained in this article and, if applicable, in the certificate of incorporation, by-laws, stock purchase or stock redemption agreement, shall be noted conspicuously on the face or back of every certificate for shares issued by a professional service corporation. Any sale or transfer in violation of such restrictions shall be void.

S 4. Paragraph (d) of section 1525 of the business corporation law, as added by chapter 505 of the laws of 1983, is amended to read as follows:

(d) "Foreign professional service corporation" means a professional service corporation, whether or not denominated as such, organized under the laws of a jurisdiction other than this state, all of the shareholders (INCLUDING THE TRUSTEES OF AN ELIGIBLE EMPLOYEE STOCK OWNERSHIP PLAN, IF APPLICABLE), directors and officers of which are authorized and licensed to practice the profession for which such corporation is licensed to do business; except that all shareholders, directors and officers of a foreign professional service corporation which provides health services in this state shall be licensed in this state.

S 5. Section 1531 of the business corporation law, as amended by chapter 538 of the laws of 2001, is amended to read as follows:

S 1531. Annual statement.

Each foreign professional service corporation shall, at least once [of] each year on or before the date prescribed by the licensing authority, furnish a statement to the licensing authority listing the name and residence address of each shareholder (INCLUDING THE TRUSTEES OF AN ELIGIBLE EMPLOYEE STOCK OWNERSHIP PLAN, IF APPLICABLE), director, officer and corporate employee licensed by such licensing authority and certifying that such individuals intending to practice a profession which such foreign professional service corporation is authorized to practice in this state are licensed to practice said profession in this state. In the case of a foreign professional service corporation providing health services, such statement shall also certify that each shareholder, officer and director of the corporation is licensed to practice said profession in this state. The statement shall be signed by the president or any vice-president of the corporation and attested to by the secretary or any assistant secretary of the corporation.

S 6. This act shall take effect immediately.