

Sixty-third  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2144**

Introduced by

Senators Laffen, Grindberg, Klein

Representatives Porter, Zaiser

1 A BILL for an Act to create and enact a new section to chapter 10-31 of the North Dakota  
2 Century Code, relating to ownership of professional organizations; ~~and~~ to amend and reenact  
3 sections 10-31-01, 10-31-02, 10-31-02.1, 10-31-04, and 10-31-13 of the North Dakota Century  
4 Code, relating to nonprofessional ownership of professional organizations; and to provide  
5 legislative intent.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

9 **10-31-01. Definitions.**

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

- 11 1. "Create" means to form an organization by:
- 12 a. Incorporating a professional corporation;
- 13 b. Organizing a professional limited liability company; or
- 14 c. Registering a professional limited liability partnership.
- 15 2. "Executive" means an officer or a director of a professional corporation, a manager or
- 16 a governor of a professional limited liability company, or a partner of a professional
- 17 limited liability partnership.
- 18 3. "Foreign limited liability partnership" has the meaning set forth in section 45-22-01.
- 19 4. "Foreign professional organization" means a professional organization that is created
- 20 under laws other than the laws of this state for purposes for which a professional
- 21 organization may be created under this chapter.
- 22 5. "Minority owner" means an owner of a professional organization:
- 23 a. Who is not licensed or otherwise legally authorized within this state to render the
- 24 same professional service as the organization;

- 1           b. Who provides a service to the organization which is ancillary to the organization's  
2           professional service;  
3           c. Who does not provide that owner's service to the public through the organization;  
4           and  
5           d. Who is expressly authorized under subsection 3 of section 10-31-04.  
6       6. "Owner" means a shareholder of a professional corporation, a member of a  
7       professional limited liability company, or a partner of a limited liability partnership.  
8       6.7. "Professional corporation" or "corporation" means a corporation that is incorporated  
9       under this chapter for the purpose of rendering professional service and which has as  
10      its shareholders only individuals;  
11      a. Individuals who themselves are licensed or otherwise legally authorized within  
12      this state to render the same professional service as the corporation ~~or~~  
13      ~~nonlicensed~~;  
14      b. Nonlicensed employees as provided in section 10-31-07.1; and  
15      c. Minority owners.  
16      7.8. "Professional limited liability company" or "limited liability company" means a limited  
17      liability company that is organized under this chapter for the purpose of rendering  
18      professional service and which has as its members only individuals;  
19      a. Individuals who themselves are licensed or otherwise legally authorized within  
20      this state to render the same professional service as the limited liability company  
21      ~~or nonlicensed~~;  
22      b. Nonlicensed employees as provided in section 10-31-07.2; and  
23      c. Minority owners.  
24      8.9. "Professional limited liability partnership" or "limited liability partnership" means a  
25      limited liability partnership that is registered under this chapter for the purpose of  
26      rendering professional service, is not a foreign limited liability partnership, and has as  
27      its partners only individuals;  
28      a. Individuals who are licensed or otherwise legally authorized within this state to  
29      render the same professional service as the limited liability partnership ~~or~~  
30      ~~nonlicensed~~;  
31      b. Nonlicensed employees as provided in section 10-31-07.1; and

1           c. Minority owners.

2    9.10. "Professional organization" or "organization" means:

3           a. A professional corporation that is incorporated under this chapter;

4           b. A professional limited liability company that is organized under this chapter; or

5           c. A professional limited liability partnership that is registered under this chapter.

6    40.11. "Professional service" means the personal service to the public which requires a  
7           license as a condition precedent to the rendering of such service and which requires  
8           as a condition of licensure an undergraduate or advanced college degree in the  
9           specific field.

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

12       **10-31-02. Articles of incorporation.**

13       1. One or more individuals may incorporate a professional organization in the form of a  
14       corporation for the practice of a profession by filing articles of incorporation with the  
15       secretary of state. The articles of incorporation must meet the requirements of chapter  
16       10-19.1 and contain the following:

17           a. The profession to be practiced through the professional corporation; and

18           b. The names and residence addresses of all of the original shareholders of the  
19           professional corporation who will practice the profession in this state and of the  
20           original shareholders of the professional corporation who are minority owners.

21       2. At the time the articles of incorporation are filed with the secretary of state, the  
22       professional corporation also shall file a:

23           a. A certificate from the regulating board of the profession involved that each of the  
24           directors and shareholders of voting shares who will practice the profession in  
25           this state, if any, is licensed to practice the profession in this state; or

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

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

3       **10-31-02.1. Articles of organization.**

4       1. One or more individuals may organize a professional organization in the form of a  
5 limited liability company for the practice of a profession by filing articles of organization  
6 with the secretary of state. The articles of organization must meet the requirements of  
7 chapter 10-32 and must contain the following:

- 8       a. The profession to be practiced through the professional limited liability company;  
9       and  
10       b. The name and residence address of each original member of the professional  
11 limited liability company who will practice the profession in this state and of each  
12 original member of the professional limited liability company who is a minority  
13 owner.

14       2. At the time the articles of organization are filed with the secretary of state, the  
15 professional limited liability company also shall file a:

- 16       a. A certificate from the regulating board of the profession involved that each of the  
17 governors and members who will practice the profession in this state, if any, is  
18 licensed to practice the profession in this state; or  
19       b. If there is one or more minority owners, a certificate from the regulating board of  
20 the profession of the limited liability company certifying that each of the governors  
21 and members who will practice the profession in this state, if any, is licensed to  
22 practice the profession in this state and a certificate from the limited liability  
23 company identifying the minority owners and the express law authorizing minority  
24 ownership.

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

27       **10-31-04. Purpose for which created - Minority ownership.**

28       1. A professional organization may be created pursuant to this chapter only for the  
29 purpose of rendering one specific type of professional service and services ancillary  
30 thereto or for the purpose of rendering two or more kinds of professional services that  
31 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 theThe 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.

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

1 this state is licensed to render the same specific professional services as those  
2 for which the limited liability partnership was registered. The annual report must  
3 be:

- 4 (1) Made on a form prescribed and furnished by the secretary of state;  
5 (2) Signed by a managing partner of the limited liability partnership; and  
6 (3) Accompanied by the filing fee prescribed in section 45-22-22.

7 c. A copy of the annual report must be filed at the same time with the regulatory  
8 board that licenses the partners described in the annual report providing the  
9 limited liability partnership's professional service. A filing fee may not be charged  
10 by the The regulatory board may not charge a filing fee.

11 d. A regulatory board issuing a license under section 10-31-01 shall issue a  
12 certificate required in section 10-31-02. The certificate must be on a form  
13 prescribed and furnished by the secretary of state. The regulatory board may  
14 charge and collect a fee not exceeding twenty dollars per individual certified to be  
15 licensed by the regulating board.

16 4. If the organization has a minority ~~owners~~ owner, the annual report must include a  
17 statement that:

18 a. Each nonminority owner who practices in this state is licensed to render the  
19 organization's professional service;

20 b. Each minority owner provides a service to the organization which is ancillary to  
21 the organization's professional service;

22 c. Each minority owner does not provide that owner's service to the public through  
23 the organization; and

24 d. The minority owners do not hold a majority interest in the organization.

25 5. In order to help defray the costs associated with regulating organizations that have  
26 minority ownership, the secretary of state may establish fees for filings related to an  
27 organization that has a minority owner. Fees collected by the secretary of state under  
28 this subsection must be deposited in the secretary of state's general services  
29 operating fund.

30 **SECTION 7. LEGISLATIVE INTENT.** It is the intent of the sixty-third legislative assembly:



- 1        1.    That if the secretary of state establishes additional fees under section 6 of this Act,  
2            that the secretary of state take all reasonable efforts to minimize costs associated with  
3            regulating professional organizations that have minority ownership; and
- 4        2.    That if the secretary of state regulates more than a combined total of nine professional  
5            organizations that have minority ownership and, if Senate Bill No. 2152 is approved by  
6            the sixty-third legislative assembly and becomes effective, professional organizations  
7            that have ownership that renders more than one professional service, the secretary of  
8            state not invest in software changes related to regulation of those professional  
9            organizations until after December 31, 2014.