

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 448**

BY SENATORS GAUNCH AND BOSO

[Introduced February 1, 2018; Referred  
to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §47-9B-1, §47-9B-2, §47-9B-3, §47-9B-4, §47-9B-5, §47-9B-6, §47-9B-7,  
 3 §47-9B-8, §47-9B-9, and §47-9B-10, all relating generally to professional associations;  
 4 establishing applicability; establishing who may be owners and officers; establishing duties  
 5 and powers of owners and managerial officers who cease to be licensed; providing for  
 6 preapproval by licensing boards; identifying who may be an authorized person; providing  
 7 for transfer of ownership interests; setting forth liability; providing for joint practice by  
 8 certain professionals; requiring registration; and defining terms.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 9B. PROFESSIONAL ASSOCIATIONS.**

**§47-9B-1. Applicability.**

- 1 (a) This article applies only to domestic and foreign professional associations.
- 2 (b) This article does not affect:
  - 3 (1) The professional or confidential relationship between a person who provides a
  - 4 professional service and the recipient of that service; or
  - 5 (2) A person's legal remedies against another person who commits an error, omission,
  - 6 negligent or incompetent act, or malfeasance while providing a professional service.
- 7 (c) This article does not apply to partnerships, including a limited liability partnership.
- 8 (d) This article does not apply to corporations, including legal, medical, podiatry or other
- 9 lawfully organized professional corporations.
- 10 (e) This article does not apply to limited liability companies, including professional limited
- 11 liability companies.

**§47-9B-2. Definitions.**

1 For the purposes of this article:

2 “Licensed mental health professional” means a person, other than a physician, who is

3 licensed by the state to engage in the practice of psychology or psychiatric nursing or to provide

4 professional therapy or counseling services.

5 “Professional association” means an association, as distinguished from either a  
6 partnership, corporation, or company that is:

7 (A) Formed for the purpose of providing the professional service rendered by a lawyer,  
8 doctor of medicine, doctor of osteopathy, doctor of podiatry, dentist, chiropractor, optometrist,  
9 therapeutic optometrist, veterinarian, or licensed mental health professional; and

10 (B) Governed as a professional entity under this code.

11 “Professional corporation” means a corporation that is:

12 (A) Formed for the purpose of providing a professional service, other than the practice of  
13 law, or medicine by physicians, surgeons, or other doctors of medicine, or a corporation governed  
14 by code is prohibited from rendering; and

15 (B) Governed as a professional entity under this code.

16 “Professional entity” means a professional association, professional corporation, or  
17 professional limited liability company.

18 “Professional individual,” with respect to a professional entity, means an individual who is  
19 licensed to provide in this state or another jurisdiction the same professional service as is  
20 rendered by that professional entity.

21 “Professional limited liability company” means a limited liability company formed for the  
22 purpose of providing a professional service and governed as a professional entity under §30B-  
23 13-1 et seq. of this code.

24 “Professional association,” with respect to a professional corporation or a professional  
25 limited liability company, means a person other than an individual, whether nonprofit, for-profit,  
26 domestic, or foreign and including a nonprofit corporation or nonprofit association, that renders  
27 the same professional service as the professional corporation or professional limited liability  
28 company only through owners, members, managerial officials, employees, or agents, each of  
29 whom is a professional individual or professional organization.

30 “Professional service” means any type of service that requires, as a condition precedent  
31 to the rendering of the service, the obtaining of a license in this state, including the personal  
32 service rendered by an architect, attorney, certified public accountant, dentist, physician, public  
33 accountant, or veterinarian.

**§47-9B-3. Authorized person.**

1 For purposes of this article, a person is an authorized person with respect to:

2 (1) A professional association if the person is a professional individual; and

3 (2) A professional corporation or a professional limited liability company if the person is a  
4 professional individual or professional organization.

**§47-9B-4. Registration of domestic or foreign professional association.**

1 (a) When required elsewhere in this code a foreign professional entity must file an  
2 application for registration to transact business in this state.

3 (b) The secretary of state may accept an application filed under subsection (a) only if:

4 (1) The name and purpose of the foreign professional entity stated in the application  
5 comply with this article and other provisions of this code; and

6 (2) The application states that the jurisdiction of formation of the foreign professional entity  
7 permits reciprocal admission of an entity formed under this code.

**§47-9B-5. Preapproval by licensing board.**

1 (a) A professional association or foreign professional association may provide a  
2 professional service in this state only through owners, managerial officials, employees, or agents,  
3 each of whom:

4 (1) Is a professional individual; and

5 (2) Is licensed in this state to provide the same professional service provided by the entity.

6 (b) A professional entity or foreign professional entity, other than a professional  
7 association or foreign professional association, may provide a professional service in this state  
8 only through owners, managerial officials, employees, or agents, each of whom is an authorized

9 person.

10 (c) An individual may not, under the guise of employment, provide a professional service  
11 in this state unless the individual is licensed to provide the professional service under the laws of  
12 this state.

13 (d) This section may not be construed to prohibit a professional entity or foreign  
14 professional entity from employing nurses or from employing individuals who do not, according to  
15 general custom and practice, ordinarily provide a professional service, including clerks,  
16 secretaries, bookkeepers, technicians, or assistants. To the extent this subsection conflicts with  
17 any other law, this subsection controls.

**§47-9B-6. Owners and officers.**

1 (a) A person may be an owner of a professional entity or a governing person of a  
2 professional limited liability company only if the person is an authorized person.

3 (b) An individual may be an officer of a professional entity or a governing person of a  
4 professional association or professional corporation only if the individual is a professional  
5 individual.

**§47-9B-7. Duties and powers of owner or managerial official who ceases to be licensed;**  
**purchase of ownership interest.**

1 (a) A managerial official of a professional entity who ceases to satisfy the requirements of  
2 §47-9B-6 of this code shall promptly resign the person's position and employment with the entity.

3 (b) An owner of a professional entity who ceases to be an authorized person as required  
4 by §47-9B-6 of this code shall promptly relinquish the person's ownership interest in the entity.

5 (c) A person who succeeds to the ownership interest of an owner shall promptly relinquish  
6 the person's financial interest in the entity if the person is not an authorized person as required  
7 by §47-9B-6 of this code.

8 (d) A professional entity shall purchase or cause to be purchased the ownership interest  
9 in the entity of a person who is required to relinquish the person's financial interest in the entity

10 under this section. The price and terms of a purchase of an ownership interest required under this  
11 subsection may be provided by the governing documents of the entity or an applicable agreement.

12 (e) A person who owns all of the outstanding ownership interests in a professional entity  
13 but is required under this section to relinquish the person's financial interest in the entity may act  
14 as a managerial official or owner of the entity only for the purpose of winding up the affairs of the  
15 entity, including selling the outstanding ownership interests and other assets of the entity.

**§47-9B-8. Transfer of ownership interest.**

1 Except as limited by the governing documents of the professional entity or an applicable  
2 agreement, an ownership interest in a professional entity may be transferred only to:

3 (1) An owner of the entity;

4 (2) The entity itself; or

5 (3) An authorized person.

**§47-9B-9. Liability.**

1 (a) A professional entity is jointly and severally liable for an error, omission, negligent or  
2 incompetent act, or malfeasance committed by a person who:

3 (1) Is an owner, managerial official, employee, or agent of the entity; and

4 (2) While providing a professional service for the entity or during the course of the person's  
5 employment, commits the error, omission, negligent or incompetent act, or malfeasance.

6 (b) An owner, managerial official, employee, or agent of a professional entity other than  
7 an owner, managerial official, employee, or agent liable under subsection (a) of this section is not  
8 subject to the same liability imposed on the professional entity under this section.

9 (c) If a person described by subsection (a) of this section is a professional organization,  
10 the professional organization and the professional entity are jointly and severally liable for the  
11 error, omission, negligent or incompetent act, or malfeasance committed by the person, or the  
12 person's owner, member, managerial official, employee, or agent, while providing a professional  
13 service for the professional entity.

**§47-9B-10. Joint practice by certain professionals.**

1       (a) Persons licensed as doctors of medicine and persons licensed as doctors of  
2 osteopathy by the Texas State Board of Medical Examiners and persons licensed as podiatrists  
3 by the Texas State Board of Podiatric Medical Examiners may jointly form and own a professional  
4 association or a professional limited liability company to perform professional services that fall  
5 within the scope of practice of those practitioners.

6       (b) Persons licensed as physicians and persons licensed as physician assistants pursuant  
7 to this code may form and own a professional association or a professional limited liability  
8 company to perform professional services that fall within the scope of practice of those  
9 practitioners.

10       (c) A physician assistant may not be an officer in the professional association or limited  
11 liability company.

12       (d) A physician assistant may not contract with or employ a physician to be a supervising  
13 physician of the physician assistant or of any physician in the professional association or limited  
14 liability company.

15       (e) The authority of each practitioner is limited by the scope of practice of the respective  
16 practitioner. An organizer of the entity must be a physician and ensure that a physician or  
17 physicians control and manage the entity.

18       (f) Nothing in this section may be construed to allow the practice of medicine by someone  
19 not licensed as a physician chapter 30 of this code, or to allow a person not licensed as a physician  
20 to direct the activities of a physician in the practice of medicine.

21       (g) A physician assistant or combination of physician assistants may have only a minority  
22 ownership interest in an entity created under this section. The ownership interest of an individual  
23 physician assistant may not equal or exceed the ownership interest of any individual physician  
24 owner. A physician assistant or combination of physician assistants may not interfere with the  
25 practice of medicine by a physician owner or the supervision of physician assistants by a physician

26 owner.

27 (h) The Board of Medicine and the Board of Osteopathic Medicine continue to exercise  
28 regulatory authority over their respective license holders according to applicable law.

29 (i) Professionals, other than physicians, engaged in related mental health fields such as  
30 psychology, clinical social work, licensed professional counseling, and licensed marriage and  
31 family therapy may form a professional entity that is jointly owned by those practitioners to perform  
32 professional services that fall within the scope of practice of those practitioners.

33 (j) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy  
34 by the Board of Medicine and the Board of Osteopathic Medicine and persons licensed as  
35 optometrists or therapeutic optometrists by the of Optometry may, subject to the provisions  
36 regulating those professionals, jointly form and own a professional association or a professional  
37 limited liability company to perform professional services that fall within the scope of practice of  
38 those practitioners.

39 (k) Only a physician, optometrist, or therapeutic optometrist may have an ownership  
40 interest in a professional association or professional limited liability company formed under  
41 subsection (i) of this section.

42 (l) An entity formed under subsection (i) of this section is not prohibited from making one  
43 or more payments to an owner's estate following the owner's death under an agreement with the  
44 owner or as otherwise authorized or required by law.

45 (m) When doctors of medicine, osteopathy, and podiatry, or doctors of medicine,  
46 osteopathy, and optometry or therapeutic optometry, or mental health professionals form a  
47 professional entity as provided by subsections (a) through (i) of this section, the authority of each  
48 of the practitioners is limited by the scope of practice of the respective practitioners and none can  
49 exercise control over the other's clinical authority granted by their respective licenses, either  
50 through agreements, bylaws, directives, financial incentives, or other arrangements that would  
51 assert control over treatment decisions made by the practitioner.



- 52            (n) The state agencies exercising regulatory control over professions to which this section  
53 applies continue to exercise regulatory authority over their respective licenses

NOTE: The purpose of this bill concerns generally professional associations. The bill establishes applicability. The bill establishes who may be owners and officers. The bill establishes duties and powers of owners and managerial officers who cease to be licensed. The bill provides for preapproval by licensing boards. The bill identifies who may be an authorized person. The bill provides for transfer of ownership interests. The bill sets forth liability. The bill provides for joint practice by certain professionals. The bill requires registration. The bill defines terms.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.