

2022 South Dakota Legislature

House Bill 1229**AMENDMENT 1229A FOR THE INTRODUCED BILL**

1 **An Act to authorize the formation of corporations and limited liability companies**
2 **by physical therapists, occupational therapists, and speech-language**
3 **pathologists.**

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 **Section 1. That § 47-11F-1 be AMENDED:**

6 **47-11F-1.** Terms used in this chapter mean:

- 7 (1) "Authorized licensee," a natural person licensed as a health care professional under
8 Title 36 and entitled to form a professional corporation pursuant to chapters 47-
9 11, 47-11A, 47-11B, 47-11C, 47-11D, ~~and 47-11E,~~ and 47-11G;
10 (2) "Professional employee," an employee of a professional corporation who is an
11 authorized licensee, but not a shareholder of the corporation.

12 **Section 2. That § 47-11F-18 be AMENDED:**

13 **47-11F-18.** The licensing boards having jurisdiction over professional corporations
14 authorized in chapters 47-11, 47-11A, 47-11B, 47-11C, 47-11D, ~~and 47-11E,~~ and 47-
15 11G, are authorized to promulgate rules pursuant to chapter 1-26 to implement the
16 provisions of this chapter, including the following provisions:

- 17 (1) Definition of terms;
18 (2) Applications for registration and renewed registration as provided by §§ 47-11F-4
19 and 47-11F-5;
20 (3) Procedure for investigations as provided by §§ 47-11F-5 and 47-11F-15;
21 (4) Standards for hearings and summary suspension or revocation as provided by § 47-
22 11F-9; and
23 (5) Interboard consultation and hearings as provided by §§ 47-11F-4, 47-11F-5, 47-
24 11F-7, 47-11F-9, and 47-11F-15.

Section 3. That chapter 47-11G be amended with a NEW SECTION:

Terms used in this chapter mean:

- (1) "Articles of incorporation," the articles of organization of a limited liability company;
- (2) "Corporation," both corporations under the South Dakota Business Corporations Act and limited liability companies under the South Dakota Limited Liability Company Act;
- (3) "Director" or "officer," any manager of a limited liability company or the members of a limited liability company that does not have managers;
- (4) "Incorporation," the ~~inclusion of~~ members of a limited liability company;
- (5) "Shareholders," the ~~inclusion of~~ members of a limited liability company; and
- (6) "Shares," membership interests in a limited liability company.

Section 4. That chapter 47-11G be amended with a NEW SECTION:

One or more physical therapists licensed pursuant to chapter 36-10, occupational therapists licensed pursuant to chapter 36-31, and speech-language pathologists licensed pursuant to chapter 36-37 may form a corporation under the South Dakota Business Corporation Act. The articles of incorporation must contain provisions complying with the requirements of this chapter.

Section 5. - That chapter 47-11G be amended with a NEW SECTION:

A corporation formed pursuant to this chapter may:

- (1) Be organized solely for the purpose of conducting the practice of physical therapy, occupational therapy, and speech-language pathology, by persons qualified to practice such in this state; and
- (2) Exercise the powers and privileges conferred upon corporations by the laws of this state, only in furtherance of and subject to its corporate purpose.

Section 6. That chapter 47-11G be amended with a NEW SECTION:

The name of a corporation formed pursuant to this chapter must contain the words, professional company or professional corporation or abbreviations thereof, such as Prof. Co., Prof. Corp., P.C., or PC.

The name of a limited liability company formed under this chapter must contain the words, professional limited liability company, or the abbreviation, Prof. L.L.C., Prof. LLC, P.L.L.C., or PLLC.

Section 7. That chapter 47-11G be amended with a NEW SECTION:

All shareholders of a corporation formed pursuant to this chapter must be persons duly licensed by this state and actively engaged in the practice of physical therapy, occupational therapy, or speech-language pathology and must, at all times, own their shares in their own right.

A revocable trust may be a shareholder in a corporation organized under this chapter, for so long as the grantor of the revocable trust is living and is eligible to be a shareholder. After the death of the grantor, the shares owned by a revocable trust are subject to any divestiture and redemption provisions of this chapter, as if the shares were directly owned by the grantor of the trust.

Any shareholder who ceases to be an eligible shareholder must dispose of all shares either to the corporation or to a person who is qualified to be a shareholder.

Section 8. That chapter 47-11G be amended with a NEW SECTION:

The president of a corporation formed pursuant to this chapter must be a shareholder and director. To the extent possible, all other directors and officers must be persons having the qualifications set forth in section 2 of this Act. Lay directors and officers may not exercise any authority over professional matters.

Section 9. That chapter 47-11G be amended with a NEW SECTION:

An obligation of a corporation formed pursuant to this chapter, whether arising in contract, tort, or otherwise, is the obligation of the corporation and the individual whose act or omission gives rise to the obligation. No shareholder, director, officer, member, or manager is personally liable, directly or indirectly, by way of contribution or otherwise, for the obligation based solely on the person's capacity as a shareholder, director, officer, member, or manager.

The limitation of liability does not extend to amounts owed to this state or its political subdivisions for any taxes, or any penalty or interest on such taxes.

Section 10. That chapter 47-11G be amended with a NEW SECTION:

A copy of the articles of incorporation, certified by the secretary of state, must be filed with the licensing board of each shareholder, together with a certified copy of any amendments. The corporation shall also file the names and addresses of each shareholder and the names and addresses of all persons who are not shareholders but are employed

1 by the corporation and licensed to practice physical therapy, occupational therapy, or
2 speech-language pathology in this state.

3 The respective licensing board must be notified within ten days if any information
4 required by this section changes.

5 **~~Section 11. That chapter 47-11G be amended with a NEW SECTION:~~**

6 ~~Except as provided in this chapter, corporations may not engage in the practice of~~
7 ~~physical therapy, occupational therapy, or speech language pathology.~~

8 **Section 11. That chapter 47-11G be amended with a NEW SECTION:**

9 A corporation formed pursuant to this chapter may adopt a pension profit-sharing,
10 a health and accident, an insurance, or a welfare plan for all or some of its employees,
11 including lay employees, if the plan does not require or result in the sharing of specific or
12 identifiable fees with lay employees, and if any payments made to lay employees or into
13 any such plan on behalf of lay employees are based on their compensation, their length
14 of service, or both, rather than the amount of fees or income received.

15 **Section 12. That chapter 47-11G be amended with a NEW SECTION:**

16 The corporation may not do anything which, if done by physical therapist,
17 occupational therapist, or speech-language pathologist employed by it, would violate the
18 standards of conduct established for those professions.

19 Nothing in this chapter diminishes or changes the obligation of each physical
20 therapist, occupational therapist, or speech-language pathologist employed by the
21 corporation to conduct his or her practice in accordance with the professional standards
22 established by the respective licensing boards.