

**Senate Bill 775 as passed by the Senate  
First Analysis (3-5-98)**

**Sponsor: Sen. Michael J. Bouchard**  
**Senate Committee: Financial Services**  
**House Committee: Commerce**

***THE APPARENT PROBLEM:***

Current law does not allow professionals (such as physicians and attorneys) to put their professional corporation stock in either a living trust or a charitable remainder trust (sometimes called a split interest trust), although people in regular, non-professional corporations can do so.

Since 1962 when Michigan's Professional Service Corporation act was originally enacted, estate planning has expanded to serve a growing upper middle class. Over the past decade, the attention of this increasingly monied professional class has shifted to more sophisticated (and in some cases, entirely new) investment strategies. For example, the attention and interest of many has shifted from wills to trusts, a financial strategy which had previously seemed within the purview only of the very rich. Among the many different kinds of trusts, there are two types--the living trust, and the charitable remainder trust--of particular interest to some professional estate planners who wish to undertake intelligent estate planning of behalf of their professional clients, some of whom wish to make philanthropic contributions.

A living trust allows a person to transfer ownership of all his or her property to a trust, which he or she then serves as trustee. After the transfer, the trust (and not the trustee) is owner of the property. According to an estate planner who offered committee testimony, the living trust is a method to 1) avoid the costs, delays and publicity of probate; 2) avoid unintentional disinheritance of family members (for example, children born to first marriages); 3) protect assets of surviving spouses; 4) provide for economic needs of surviving spouses; and, 5) minimize estate taxes. These benefits are not currently available for the portion of one's estate represented by ownership in a professional corporation.

Further, people who own professional service corporations are not permitted to dispose of their share holdings by contributing them to a charitable remainder trust (CRT or split interest trust). The CRT has tax

advantages and is designed specifically to help a professional to maximize income during his or her lifetime, since no federal capital gains are paid on stock transactions in these trusts. Again according to an estate planner offering committee testimony, the benefits of CRT to a donor may include 1) enhanced income from sale of assets; 2) increased control over how assets are placed back into the community; 3) current tax deduction; 4) ability to give back in ways that reflect one's own values; and, 5) more economic growth for the state.

The CRT came into existence under section 664 of the Internal Revenue Code of 1969, and has become increasingly popular during the last 10 years as professionals gain awareness of its advantages. Generally, a CRT permits an individual to make a deferred gift to charity and to receive certain current economic benefits during his or her lifetime in order to help foster philanthropy (although not all who create CRTs are motivated by philanthropic ideals).

Some argue that legislation is needed to allow a professional corporation to sell or transfer its shares to these kinds of trusts.

***THE CONTENT OF THE BILL:***

The bill would amend the Professional Service Corporation Act to allow shares of a corporation organized under the act to be sold or transferred to a trust or split interest trust, under certain circumstances.

The act prohibits the sale or transfer of shares of a professional service corporation, except to an individual who is eligible to be a shareholder of the corporation or to the personal representative or estate of a deceased or legally incompetent shareholder. The bill also would make an exception to that prohibition for a sale or transfer to a trust or split interest trust in which the trustee and the current income beneficiary were both licensed persons in a professional corporation.

MCL 450.222 et al.

**BACKGROUND INFORMATION:**

Under the act, "professional service" means a type of personal service to the public that requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization. Professional service includes, but is not limited to, services rendered by certified or other public accountants, chiropractors, dentists, optometrists, veterinarians, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropractists, architects, professional engineers, land surveyors, and attorneys at law.

**FISCAL IMPLICATIONS:**

According to the Senate Fiscal Agency, the bill would have no fiscal impact on state or local government. (10-29-97)

**ARGUMENTS:**

**For:**

Senate Bill 775 would permit professional corporations the same benefits that other non-professional (or regular) corporations enjoy, since the bill would amend the Professional Service Corporation Act to permit an individual with a professional corporation to place his or her stock into a trust (either a Living Trust or a Charitable Remainder Trust), in order to achieve the trust benefits. One state, Indiana, enacted similar legislation in July 1996. Since 1969, section 664 of the Internal Revenue Code has allowed non-professionals to put their corporate stock into charitable remainder trusts. If trusts of these kinds become available to professionals under this legislation, the trusts would be qualified conditionally, since federal and state laws require that all of those responsible for the stock and all income beneficiaries must be licensed professionals in the particular corporate profession, in order to be "qualified persons."

**POSITIONS:**

BFA Family Wealth Planners supports the bill. (2-25-98)

Analyst: J. Hunault

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.