

CHAPTER 189

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 94-1282

BY REPRESENTATIVES May, Foster, Lawrence, Agler, Schauer, Dyer, Friednash, Hernandez, Pierson, and Reeser;
also SENATORS Lacy, Bishop, Feeley, Meiklejohn, Norton, and R. Powers.

AN ACT**CONCERNING THE AUTHORITY OF CERTIFIED PUBLIC ACCOUNTANTS TO ENGAGE IN THE PRACTICE
OF ACCOUNTING AS ENTITIES REGISTERED WITH THE STATE BOARD OF ACCOUNTANCY.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-2-117, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-2-117. Partnerships, professional corporations, and limited liability companies composed of certified public accountants - registration thereof.

(1) A partnership, professional corporation, or limited liability company engaged, in this state, in the practice of public accounting as certified public accountants shall register once every three years with the board as a partnership, professional corporation, or limited liability company of certified public accountants and must meet the following requirements:

(a) At least one partner, shareholder, or member who shall also be a director or manager thereof must be a certified public accountant of this state in good standing.

(b) Each partner, shareholder, or member thereof personally engaged, within this state, in the practice of public accounting as a member or employee thereof must be a certified public accountant of this state in good standing.

(c) Each partner, shareholder, or member thereof must be a certified public accountant of some state, in good standing, who at all times owns such person's partnership interest, corporate share, or membership interest in such person's own right.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(d) Repealed, L. 90, p. 757, § 30, effective July 1, 1990.

(e) Each resident manager in charge of an office of the partnership, professional corporation, or limited liability company in this state must be a certified public accountant of this state in good standing.

(f) ~~The partnership must be a general partnership.~~

(2) (a) Application for such registration must be made upon the affidavit of a partner of such partnership, of a shareholder of such professional corporation, or of a member of such limited liability company who is a certified public accountant of this state in good standing and must provide the names and addresses of the persons who are practicing public accounting for the partnership, professional corporation, or limited liability company and any other information the board may reasonably request. To cover the board's administrative costs, such application shall be accompanied by a registration fee, the amount of which shall be set by the board.

(b) The board shall in each case determine whether the applicant is eligible for registration. A partnership, professional corporation, or limited liability company which is so registered may use the words "certified public accountants" or the abbreviation "C.P.A.'s" in connection with its partnership, professional corporation, or limited liability company name. Notification shall be given the board within one month after the admission to or withdrawal of a partner from any partnership so registered, or after any change in shareholders of any such corporation, or after any change in members of any such limited liability company.

(3) The corporation must be in compliance with the "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 OF TITLE 7, C.R.S., AND, TO THE EXTENT APPLICABLE UNDER SECTION 7-117-103, C.R.S., WITH THE "Colorado Corporation Code", articles 1 to 10 of title 7, C.R.S. The limited liability company must be in compliance with the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S. THE ORGANIZING DOCUMENTS OF ANY PARTNERSHIP, the articles of incorporation of any such corporation, or the articles of organization of any such limited liability company shall contain provisions complying with the following requirements:

(a) The PARTNERSHIP, corporation, or limited liability company shall be organized solely for the purpose of practicing accountancy and such other activities as may from time to time be specifically found by the board to be activities suitable and proper to be performed by certified public accountants only through or under the supervision of at least one person who holds a certificate to practice public accounting as a certified public accountant.

(b) EACH PARTNER WHO IS PERSONALLY ENGAGED WITHIN THIS STATE IN THE PRACTICE OF PUBLIC ACCOUNTING SHALL BE A CERTIFIED PUBLIC ACCOUNTANT OF THIS STATE IN GOOD STANDING, AND EACH PARTNER NOT PERSONALLY ENGAGED WITHIN THIS STATE IN THE PRACTICE OF PUBLIC ACCOUNTING SHALL BE A CERTIFIED PUBLIC ACCOUNTANT OF SOME STATE IN GOOD STANDING. The president of any such corporation shall be a shareholder and a director and one or more of such directors shall be certified public accountants of this state in good standing. The manager or managers of any such limited liability company shall be a member or members and

one or more of such managers shall be certified public accountants of this state in good standing. Lay directors and officers and managers shall not exercise any authority whatsoever over professional matters.

(c) ~~All shareholders of the corporation, or members of the limited liability company shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation, or limited liability company, or all~~ ALL PARTNERS, shareholders of the corporation, or members of the limited liability company shall be jointly and severally liable for all acts, errors, and omissions of the employees of the PARTNERSHIP, corporation, or limited liability company except during periods of time when the PARTNERSHIP, corporation, or limited liability company maintains in good standing professional liability insurance which meets the following minimum standards:

(I) The insurance shall insure the PARTNERSHIP, corporation, or limited liability company against liability imposed upon the PARTNERSHIP, corporation, or limited liability company by law for damages resulting from any claim made against the PARTNERSHIP, corporation, or limited liability company arising out of the performance of professional services for others by those employees of the PARTNERSHIP, corporation, or limited liability company who hold certificates to practice public accounting as certified public accountants.

(II) Such policies shall insure the PARTNERSHIP, corporation, or limited liability company against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all other employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of certified public accountants employed by or members of the PARTNERSHIP, corporation, or limited liability company within this state, and the policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of certified public accountants employed by or members of the PARTNERSHIP, corporation, or limited liability company within this state; except that no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of one million dollars and except that the board, in the public interest, may adopt regulations increasing the minimum amounts of insurance coverage required by this subsection (3).

(IV) (A) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured PARTNERSHIP, corporation, or limited liability company or any PARTNER, stockholder, member, or employee thereof; the conduct of any business enterprise in which the insured PARTNERSHIP, corporation, or limited liability company under this article is not permitted to engage but which nevertheless may be owned by the insured PARTNERSHIP, corporation, or limited liability company or in which the insured PARTNERSHIP, corporation, or limited liability company may be a partner or which may be controlled, operated, or managed by the insured PARTNERSHIP, corporation, or limited liability company in its own or in a fiduciary capacity including the ownership, maintenance, or use of any property in connection therewith; and bodily injury to, or sickness, disease, or death of, any person, or to injury to or destruction

of any tangible property, including the loss of use thereof.

(B) The policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(d) A PARTNERSHIP NAME SHALL BE ENDED BY WORDS OR ABBREVIATIONS PERMITTED PURSUANT TO THE LAW UNDER WHICH THE PARTNERSHIP IS ORGANIZED. The corporate name shall be ended by the word "Corporation" or "Incorporated" or by the words "Professional Corporation" or by the abbreviations "Corp.", "Inc.", or "P.C.". The name of any limited liability company shall be ended by the words "Limited Liability Company" or THE ABBREVIATION "LLC" OR the word limited may be abbreviated as "Ltd.", and the word company may be abbreviated as "Co.". An assumed or trade name may be used if it is not misleading and clearly indicates that the firm is engaged in providing accounting services.

(4) The PARTNERSHIP, corporation, or limited liability company may exercise the powers and privileges conferred upon PARTNERSHIPS, corporations, and limited liability companies by the laws of Colorado in furtherance of and subject to its PARTNERSHIP, corporate, or limited liability company purposes and may invest its funds in a manner not incompatible with the practice of public accounting as certified public accountants. Any stock purchased by the corporation, or membership interest purchased by the limited liability company OR PARTNERSHIP INTEREST PURCHASED BY THE PARTNERSHIP may be made out of capital as well as surplus without regard to the impairment of the PARTNERSHIP CAPITAL, corporation capital, or limited liability company capital.

(5) The PARTNERSHIP, corporation, or limited liability company shall do nothing in this state which, if done by a person who holds a certificate as a certified public accountant within this state and employed by it, would violate the provisions of this article. Any violation by the PARTNERSHIP, corporation, or limited liability company of this article shall be grounds for the board to revoke or suspend its registration.

(6) Nothing in this section shall diminish or change the obligation of each person who holds a certificate of certified public accountant employed by the PARTNERSHIP, corporation, or limited liability company within this state to conduct such person's practice in accordance with the provisions of this article. Any person who holds a certificate to practice public accounting as a certified public accountant who, by act or omission, causes the PARTNERSHIP, corporation, or limited liability company to act or fail to act in a way which violates this article is personally responsible for such act or omission and subject to discipline therefor.

(7) Foreign PARTNERSHIPS, corporations, or limited liability companies may engage in the practice of public accounting in this state as certified public accountants so long as their ORGANIZING DOCUMENTS, articles of incorporation, or articles of organization provide that such PARTNERSHIP, corporation, or limited liability company is organized solely for the purpose of practicing accountancy and such other activities as may from time to time be specifically found by the board to be activities suitable and proper to be performed by certified public accountants and comply with and meet the requirements of subsection (3) of this section.

(8) Except as provided in this section, PARTNERSHIPS, professional corporations,

and limited liability companies shall not practice public accounting as certified public accountants.

(9) Nothing in this section shall modify the accountant-client privilege specified in section 13-90-107 (1) (f), C.R.S.

(10) When any law of this state or any rule or regulation of any agency or other authority established under the constitution or laws of this state requires or authorizes any audit, financial report, or statement to be made, approved, or certified by a certified public accountant, such audit, report, or statement may be made, approved, or certified by a PARTNERSHIP, professional corporation, or limited liability company registered in this state.

SECTION 2. 12-2-120 (2), (5), (6) (a), and (6) (b), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-2-120. Unlawful acts. (2) No partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY shall assume or use the title or designation "certified public accountants" or the abbreviation "C.P.A.'s", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY is composed of certified public accountants unless such partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY is registered as a partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY of certified public accountants under section 12-2-117.

(5) Except as provided in sections 12-2-115 and 12-2-117 (2) (b), no person, partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY shall assume or use any title or designation using the word certified, registered, chartered, enrolled, licensed, independent, or approved in conjunction with the word accountant or auditor or any abbreviation thereof or any title, designation, or abbreviation likely to be confused with certified public accountant or the abbreviation "C.P.A.".

(6) (a) (I) No person, partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY shall issue, author, or publish any opinion or certificate relating to any accounting or financial statement if such opinion or certificate utilizes any title or designation, the use of which is prohibited by law.

(II) No person, partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY shall, without an active certificate of certified public accountant or a valid registration:

(A) As an independent auditor, make or conduct an investigation, examination, or audit of the financial statements or supporting records of any person, organization, or corporation, to determine the accuracy or fairness with which they present the financial position, changes in financial position, or financial results of operations of such person, organization, or corporation;

(B) Attest or express an opinion, as an independent auditor, as to the financial position, changes in financial position, or financial results of the operation of any person, organization, or corporation, or as to the accuracy or reliability of any

financial information contained in any such accounting or financial statement.

(b) The provisions of paragraph (a) of this subsection (6) shall not prohibit any officer or employee of a corporation, partner or employee of a partnership, MEMBER OR EMPLOYEE OF A LIMITED LIABILITY COMPANY, or individual or employee of an individual from:

(I) Making or conducting such investigation, examination, or audit; or

(II) Issuing or authoring any such opinion or certificate utilizing any wording designating the position, title, or office which he holds relating to any statement or report in reference to the financial affairs of such corporation, partnership, LIMITED LIABILITY COMPANY, or individual.

SECTION 3. 12-2-121 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-2-121. Exceptions - acts not prohibited. (1) Nothing in this article shall prohibit any person not a certified public accountant from serving as an employee of or an assistant to a certified public accountant holding an active certificate or serving as an employee or assistant of a validly registered partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY composed of certified public accountants. Such employee or assistant shall not issue any accounting or financial statement over his name.

SECTION 4. 12-2-123 (1) (r), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-2-123. Grounds for disciplinary action - administrative penalties. (1) After notice and hearing as provided in section 12-2-125, the board may deny the issuance of, refuse to renew, revoke, or suspend any certificate of a certified public accountant issued under this article or any prior law of this state or may fine, censure, issue a letter of admonition to or place on probation the holder of any certificate and impose other conditions or limitations for any of the following causes:

(r) Failure of a partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY to register with the board pursuant to section 12-2-117 and to renew such registration once every three years as prescribed by the board.

SECTION 5. 12-2-124, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-2-124. Revocation or suspension of partnership, professional corporation, or limited liability company registration. (1) After notice and hearing as provided in section 12-2-125, the board shall revoke the registration of a partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY if, at the time of such hearing, the partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY does not have all the qualifications prescribed by the section of this article under which it qualified for registration.

(2) After notice and hearing as provided in section 12-2-125, the board may revoke

or suspend the registration of a partnership, ~~or~~ professional corporation, OR LIMITED LIABILITY COMPANY for any of the causes enumerated in section 12-2-123 or for the following additional causes:

(a) The revocation, suspension, or refusal to renew the certificate of any partner, ~~or~~ shareholder, OR MEMBER;

(b) The cancellation, revocation, suspension, or refusal to renew the authority of the partnership or any partner thereof to practice public accounting in any other state;

(c) The cancellation, revocation, suspension, or refusal to renew the authority of the professional corporation, LIMITED LIABILITY COMPANY, or foreign corporation OR LIMITED LIABILITY COMPANY or any shareholder OR MEMBER thereof to practice public accounting in any other state.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 4, 1994