

CHAPTER 329

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 00-1258

BY REPRESENTATIVES Tate, Coleman, Kester, Larson, May, Taylor, Gagliardi, Grossman, Kaufman, Saliman, Tapia, Vigil, Webster, T. Williams, and Zimmerman;
also SENATOR Phillips.

AN ACT

CONCERNING THE REGULATION OF BUSINESSES THAT PERFORM ACCOUNTING SERVICES, AND, IN CONNECTION THEREWITH, CONTINUING THE AUTHORITY OF THE STATE BOARD OF ACCOUNTANCY.

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

SECTION 1. 12-2-101, Colorado Revised Statutes, is amended to read:

12-2-101. Legislative declaration. (1) It is declared to be in the interest of the citizens of the state of Colorado and a proper exercise of the police power of the state of Colorado to provide for the licensing and registration of certified public accountants, to ~~insure~~ ENSURE that persons who hold themselves out as possessing professional qualifications as certified public accountants are, in fact, qualified to render accounting services of a professional nature, and to provide for REGULATION OF CERTIFIED PUBLIC ACCOUNTANTS EMPLOYED, SERVING CLIENTS, OR DOING BUSINESS IN COLORADO AND the maintenance of high standards of professional conduct by those so licensed and registered as certified public accountants. Because of the customary reliance by the public upon audited financial statements and upon financial information presented with the opinion or certificate of persons purporting to possess expert knowledge in accounting or auditing, it is further declared to be in the interest of such citizens to limit and restrict, under the circumstances set forth in this article, the issuance of opinions or certificates relating to accounting or financial statements which utilize or contain wording indicating that the author has expert knowledge in accounting or auditing or which purport to express an independent auditor's opinion as to financial position, financial results of operations, changes in financial position, reliability of financial information, or compliance with conditions established by law or contract to persons so licensed or registered.

(2) It is ~~further~~ declared that the state board of accountancy may invoke discipline

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

proactively WITH REGARD TO CERTIFIED PUBLIC ACCOUNTANTS EMPLOYED, SERVING CLIENTS, OR DOING BUSINESS IN COLORADO when required for the protection of the public health, safety, and welfare of the citizens of this state.

SECTION 2. 12-2-103 (1), Colorado Revised Statutes, is amended to read:

12-2-103. State board of accountancy - subject to termination. (1) The state board of accountancy shall consist of seven members appointed by the governor. Each member of the board shall be a citizen of the United States and a resident of this state. Five members of the board shall be holders of valid certified public accountant certificates issued under the laws of this state, a majority of whom are engaged in active practice as certified public accountants. Two members of the board shall be members of the public sector who do not hold a certified public accountant certificate. Members shall be appointed for terms of four years each. Any vacancy occurring during a term shall be filled by appointment by the governor for the unexpired term. Upon the expiration of ~~his~~ A MEMBER'S term of office, ~~a~~ SUCH member shall continue to serve until ~~his~~ A successor is appointed. IN NO EVENT SHALL A MEMBER OF THE BOARD SERVE MORE THAN TWO CONSECUTIVE TERMS. The governor shall remove from the board any member whose certificate has become void or has been revoked or suspended and may remove any member of the board for neglect of duty, misconduct, or incompetence.

SECTION 3. Repeal. 12-2-104 (1) (m), Colorado Revised Statutes, is repealed as follows:

12-2-104. Powers and duties of board. (1) The board has the power and duty to:

~~(m) Make rules consistent with this article to determine educational requirements, in addition to those set forth in section 12-2-109, as may be necessary to comply with uniform educational standards set by the American institute of certified public accountants, national association of state boards of accountancy, or other nationally recognized programs approved by the board, to take the certified public accountant examination or for the issuance of the certificate of certified public accountant.~~

SECTION 4. 12-2-108 (1) (c), (1) (d), and (5), Colorado Revised Statutes, are amended, and the said 12-2-108 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-2-108. Certificate of certified public accountant - issuance - renewal - reactivation - reinstatement. (1) A certificate of certified public accountant shall be granted by the board to any applicant:

(c) Who meets the further requirements of section 12-2-109 (1) (b) and (1) (c) or who meets the further requirements of section 12-2-109 (1) (a) and (1) (b); ~~and~~

(d) Who meets the requirements of section 12-2-113; OR

(e) WHO OTHERWISE SATISFIES THE BOARD OF THE APPLICANT'S CONTINUED COMPETENCE.

(5) In the event that a person fails to reactivate ~~his~~ THE PERSON'S certificate within the two-year grace period specified in subsection (4) of this section, a person may reinstate such certificate within four years after the date of the expiration of such grace period by making written application for reinstatement, complying with all continuing education requirements imposed by the board, paying a reinstatement fee, and providing proof to the board of ~~his~~ THE PERSON'S continued professional competence as required by the board. Thereafter, a person shall not be reinstated unless ~~he~~ THE PERSON fulfills and meets the requirements and conditions required of an applicant applying for the issuance of an original certificate, which requirements shall include EITHER retaking and passing the uniform certified public accountant examination OR OTHERWISE SATISFYING THE BOARD OF THE PERSON'S CONTINUED COMPETENCE.

SECTION 5. 12-2-117 (1), (2), (2.5), (3.5), and (7), Colorado Revised Statutes, are 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; and, as used in this article, "partnership" includes a registered LIMITED PARTNERSHIP, limited liability partnership, AND LIMITED LIABILITY LIMITED PARTNERSHIP and a foreign LIMITED PARTNERSHIP, limited liability partnership, AND LIMITED LIABILITY LIMITED PARTNERSHIP:

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

(b) (I) ~~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.~~ NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A SIMPLE MAJORITY OF THE OWNERSHIP OF A CERTIFIED PUBLIC ACCOUNTING FIRM DOING BUSINESS AS A PUBLIC ACCOUNTING FIRM IN COLORADO, IN TERMS OF FINANCIAL INTERESTS AND VOTING RIGHTS OF ALL PARTNERS, OFFICERS, SHAREHOLDERS, MEMBERS, OR MANAGERS, SHALL BE LICENSED CERTIFIED PUBLIC ACCOUNTANTS IN THIS STATE IN GOOD STANDING.

(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A SIMPLE MAJORITY OF THE OWNERSHIP OF THE REGISTRANT, IN TERMS OF FINANCIAL INTERESTS AND VOTING RIGHTS OF ALL PARTNERS, OFFICERS, SHAREHOLDERS, MEMBERS, OR MANAGERS, BELONGS TO HOLDERS OF A CERTIFICATE WHO ARE LICENSED IN SOME STATE. SUCH PARTNERS, OFFICERS, SHAREHOLDERS, MEMBERS, OR MANAGERS WHOSE PRINCIPAL PLACE OF BUSINESS IS IN COLORADO AND WHO PERFORM PROFESSIONAL SERVICES IN COLORADO SHALL HOLD A VALID CERTIFICATE ISSUED PURSUANT TO SECTION 12-2-108. THE REGISTRANT AND ITS OWNERSHIP, LICENSED OR OTHERWISE, SHALL COMPLY WITH RULES PROMULGATED BY THE BOARD.

(c) ~~Each~~ ANY OTHER partner, shareholder, or member thereof ~~must~~ MAY, BUT NEED NOT, be a certified public accountant of some state, in good standing, OR REGISTERED FIRM IN THIS STATE who at all times owns such person's partnership interest, corporate share, or membership interest in such person's own right.

(2) (a) (I) Application for such registration ~~must~~ SHALL 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~~ SHALL provide:

(A) The names and addresses of the persons who are practicing public accounting for the partnership, professional corporation, or limited liability company;

(B) THE NAMES AND ADDRESSES OF THE PERSONS WHO ARE NOT CERTIFIED PUBLIC ACCOUNTANTS, BUT WHO ARE PARTNERS OF A PARTNERSHIP, SHAREHOLDERS OF A PROFESSIONAL CORPORATION, OR MEMBERS OF A LIMITED LIABILITY COMPANY;

(C) DISCLOSURE OF ALL OF THE STATES IN WHICH THE PARTNERSHIP, PROFESSIONAL CORPORATION, OR LIMITED LIABILITY COMPANY IS LICENSED, REGISTERED, OR PERMITTED TO PRACTICE. THE APPLICATION SHALL ALSO DISCLOSE ALL OF THE STATES IN WHICH LICENSURE, REGISTRATION, OR PERMISSION TO PRACTICE HAS BEEN DENIED, SUSPENDED, OR REVOKED.

(D) ~~and~~ Any other information the board may reasonably request; AND

(E) ~~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, TO COVER THE BOARD'S ADMINISTRATIVE COSTS.

(II) EACH MEMBER OF THE PARTNERSHIP, PROFESSIONAL CORPORATION, OR LIMITED LIABILITY COMPANY MAY RECEIVE A COPY OF THE APPLICATION.

(III) THE PARTNER, SHAREHOLDER, OR MEMBER DESIGNATED BY THE FIRM SHALL NOTIFY THE BOARD IN WRITING WITHIN THIRTY DAYS AFTER ANY CHANGE IN THE PARTNERSHIP, PROFESSIONAL CORPORATION, OR LIMITED LIABILITY COMPANY, INCLUDING:

(A) IDENTITIES AND NUMBERS OF PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OR OFFICERS; AND

(B) LOCATION OF PLACES OF BUSINESS OF THE PARTNERSHIP, PROFESSIONAL CORPORATION, OR LIMITED LIABILITY COMPANY.

(IV) THE BOARD MAY SUSPEND OR REVOKE REGISTRATION OF OR IMPOSE ANY OTHER DISCIPLINE THE BOARD SEES FIT TO ADMINISTER TO A PARTNERSHIP, PROFESSIONAL CORPORATION, OR LIMITED LIABILITY COMPANY THAT FAILS TO NOTIFY THE BOARD OF ANY CHANGES OUTLINED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (a).

(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.~~

(2.5) As used in subsections (3) and (3.5) of this section, "employee" includes a member of a limited liability company and a partner in a ~~registered~~ LIMITED PARTNERSHIP, limited liability partnership, OR LIMITED LIABILITY LIMITED PARTNERSHIP or foreign LIMITED PARTNERSHIP, limited liability partnership, OR LIMITED LIABILITY LIMITED PARTNERSHIP.

(3.5) No limited liability company, ~~registered~~ limited liability partnership, LIMITED PARTNERSHIP, OR LIMITED LIABILITY LIMITED PARTNERSHIP, or foreign LIMITED PARTNERSHIP, limited liability partnership, OR LIMITED LIABILITY LIMITED PARTNERSHIP engaged in the practice of public accounting in this state and in one or more other jurisdictions shall be required to include a provision in its articles of organization or organizing documents as otherwise required by subsection (3) of this section, but shall be subject, with respect to the practice of public accounting within this state, to the requirements of paragraphs (a), (b), (c), and (d) of subsection (3) of this section.

(7) Foreign partnerships, corporations, LIMITED PARTNERSHIPS, LIMITED LIABILITY LIMITED PARTNERSHIPS, 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, LIMITED PARTNERSHIP, LIMITED LIABILITY LIMITED PARTNERSHIP, 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.

SECTION 6. 12-2-122.5 (1), Colorado Revised Statutes, is amended to read:

12-2-122.5. Inactive certificant. (1) The holder of a certificate of certified public accountant, upon written notice by first class mail to the board, shall have his OR HER name transferred to an inactive list and shall not be required to comply with the continuing education requirements for certificate renewal pursuant to section 12-2-119 so long as he OR SHE remains inactive. Each inactive certificant shall register once every ~~three~~ TWO years with the board in the same manner as ~~partnerships and corporations pursuant to section 12-2-117~~ ACTIVE CERTIFICATE HOLDERS AND PAY A FEE PURSUANT TO SECTION 12-2-108 (3). At such time as an inactive certificant wishes to resume the practice of public accounting as a certified public accountant, he OR SHE shall file an application therefor, meet any education requirements imposed by the board, and pay a fee as established by the board.

SECTION 7. 12-2-123 (1) (j), Colorado Revised Statutes, 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:

(j) Providing public accounting services to the public for a fee without an active certificate of certified public accountant or a valid registration ~~or, without an active certificate, acting as an employee of a holder of a certificate of certified public accountant,~~ or acting as ~~an employee,~~ A MEMBER, partner, or shareholder of a partnership or professional corporation registered pursuant to section 12-2-117;

SECTION 8. 12-2-126 (1), Colorado Revised Statutes, is amended to read:

12-2-126. Investigations, examinations, and cease and desist orders against unlawful act. (1) (a) The board, on its own motion BASED ON REASONABLE GROUNDS or on the SIGNED, WRITTEN complaint of any person, may investigate any person who has engaged, is engaging, or threatens to engage in any act or practice which constitutes a violation of any provision of this article. The board or any member thereof may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with any investigation under this section. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(b) (I) ~~Complaints of record on file with THAT ARE DISMISSED BY the board and the results of investigation OF SUCH COMPLAINTS shall be closed to public inspection. during the investigatory period and until dismissed or until notice of hearing and charges are served on an applicant or certificant. The board's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204, C.R.S., regarding public records and confidentiality.~~

(II) IF THE INVESTIGATION DISCLOSES AN INSTANCE OF CONDUCT WHICH, IN THE OPINION OF THE BOARD, DOES NOT WARRANT FORMAL ACTION BUT IN WHICH THE BOARD HAS NOTICED INDICATIONS OF POSSIBLE ERRANT CONDUCT BY THE CERTIFICATE HOLDER THAT COULD LEAD TO SERIOUS CONSEQUENCES IF NOT CORRECTED, A CONFIDENTIAL LETTER OF CONCERN SHALL BE SENT TO THE CERTIFICATE HOLDER AGAINST WHOM A COMPLAINT WAS MADE. IF THE BOARD LEARNS OF SECOND OR SUBSEQUENT ACTIONS OF THE SAME OR SIMILAR NATURE BY THE CERTIFICATE HOLDER, THE BOARD SHALL NOT ISSUE A CONFIDENTIAL LETTER OF CONCERN BUT SHALL TAKE SUCH OTHER COURSE OF ACTION AS IT DEEMS APPROPRIATE.

(c) COMPLAINTS OF RECORD THAT ARE NOT DISMISSED BY THE BOARD AND ARE THE RESULTS OF INVESTIGATIONS OF SUCH COMPLAINTS SHALL BE CLOSED TO PUBLIC INSPECTION DURING THE INVESTIGATORY PERIOD AND UNTIL A STIPULATED AGREEMENT IS REACHED BETWEEN THE APPLICANT OR CERTIFICATE HOLDER AND THE BOARD OR UNTIL NOTICE OF HEARING AND CHARGES ARE FILED AND SERVED ON AN APPLICANT OR CERTIFICATE HOLDER. EXCEPT FOR CONFIDENTIAL BOOKS OF ACCOUNT, FINANCIAL RECORDS, ADVICE, REPORTS, OR WORKING PAPERS PROVIDED

BY THE CLIENT, THE CERTIFIED PUBLIC ACCOUNTANT OR THE CERTIFIED PUBLIC ACCOUNTING FIRM, THE BOARD'S RECORDS AND PAPERS SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS 24-72-203 AND 24-72-204, C.R.S., REGARDING PUBLIC RECORDS AND CONFIDENTIALITY.

SECTION 9. Article 2 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-2-132. Repeal of article. (1) THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2005.

(2) PRIOR TO SUCH REPEAL, THE STATE BOARD OF ACCOUNTANCY SHALL BE REVIEWED AS PROVIDED IN SECTION 24-34-104, C.R.S.

SECTION 10. Repeal. Rule 2.4:4 of the Department of Regulatory Agencies (3 CCR 705-1), concerning concentration in accounting or the equivalent under section 12-2-109 (1) (a) (I), Colorado Revised Statutes, is repealed.

SECTION 11. Repeal. 24-34-104 (29) (a), Colorado Revised Statutes, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (29) The following boards shall terminate on July 1, 2000:

- (a) ~~The state board of accountancy, created by article 2 of title 12, C.R.S.;~~

SECTION 12. 24-34-104 (36), Colorado Revised Statutes, is amended to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (36) The following agencies, functions, or both, shall terminate on July 1, 2005:

(a) The fire suppression program of the division of fire safety created pursuant to sections 24-33.5-1204.5, 24-33.5-1206.1, 24-33.5-1206.2, 24-33.5-1206.3, 24-33.5-1206.4, 24-33.5-1206.5, 24-33.5-1206.6, and 24-33.5-1207.6; ~~C.R.S.~~

(b) THE STATE BOARD OF ACCOUNTANCY, CREATED BY ARTICLE 2 OF TITLE 12, C.R.S.

SECTION 13. Effective date - applicability. This act shall take effect July 1, 2000, and shall apply to applications for certification as a certified public accountant, registration of a person, partnership, professional corporation, or limited liability company for the purposes of this act, and any conduct of a certified public accountant within Colorado on or after said date.

SECTION 14. 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: June 1, 2000