

## CHAPTER 195

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**COURTS**

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**HOUSE BILL 03-1197**

BY REPRESENTATIVE(S) May M., Judd, Frangas, Veiga, and Weddig;  
also SENATOR(S) Taylor, Anderson, Evans, and Phillips.

**AN ACT**

**CONCERNING THE USE OF CONFIDENTIAL COMMUNICATIONS BETWEEN CERTIFIED PUBLIC ACCOUNTANTS AND CLIENTS IN PROCEEDINGS RELATING TO THE ATTEST ACTIVITIES OF CERTIFIED PUBLIC ACCOUNTANTS, AND, IN CONNECTION THEREWITH, CREATING AN EXCEPTION TO THE COLORADO ACCOUNTANT-CLIENT PRIVILEGE FOR PURPOSES OF DISCIPLINARY FUNCTIONS OF THE STATE BOARD OF ACCOUNTANCY RELATED TO ATTEST SERVICES.**

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

**SECTION 1.** 13-90-107 (1) (f), Colorado Revised Statutes, is amended to read:

**13-90-107. Who may not testify without consent.** (1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(f) (I) A certified public accountant shall not be examined without the consent of his OR HER client as to any communication made by the client to him OR HER in person or through the media of books of account and financial records or his OR HER advice, reports, or working papers given or made thereon in the course of professional employment; nor shall a secretary, stenographer, clerk, or assistant of a certified public accountant be examined without the consent of the client concerned concerning any fact, the knowledge of which he OR SHE has acquired in such capacity.

(II) No certified public accountant in the employ of the state auditor's office shall be examined as to any communication made in the course of professional service to the legislative audit committee either in person or through the media of books of account and financial records or advice, reports, or working papers given or made thereon; nor shall a secretary, clerk, or assistant of a certified public accountant who is in the employ of the state auditor's office be examined concerning any fact, the

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

knowledge of which such secretary, clerk, or assistant acquired in such capacity, unless such information has been made open to public inspection by a majority vote of the members of the legislative audit committee.

**(III) (A) Subpoena powers for public entity audit and reviews.**

SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) SHALL NOT APPLY TO THE COLORADO STATE BOARD OF ACCOUNTANCY, NOR TO A PERSON OR GROUP AUTHORIZED BY THE BOARD TO MAKE AN INVESTIGATION ON THE BOARD'S BEHALF, CONCERNING AN ACCOUNTANT'S REPORTS, WORKING PAPERS, OR ADVICE TO A PUBLIC ENTITY THAT RELATE TO AUDIT OR REVIEW ACCOUNTING ACTIVITIES OF THE CERTIFIED PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTING FIRM BEING INVESTIGATED.

(B) FOR THE PURPOSES OF THIS SUBPARAGRAPH (III), A "PUBLIC ENTITY" SHALL INCLUDE A GOVERNMENTAL AGENCY OR ENTITY; QUASI-GOVERNMENTAL ENTITY; NONPROFIT ENTITY; OR PUBLIC COMPANY THAT IS CONSIDERED AN "ISSUER", AS DEFINED IN SECTION 2 OF THE FEDERAL "SARBANES-OXLEY ACT OF 2002", 15 U.S.C. SEC. 7201.

**(IV) (A) Subpoena powers for private entity audit and reviews.**

SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) SHALL NOT APPLY TO THE COLORADO STATE BOARD OF ACCOUNTANCY, NOR TO A PERSON OR GROUP AUTHORIZED BY THE BOARD TO MAKE AN INVESTIGATION ON THE BOARD'S BEHALF, CONCERNING AN ACCOUNTANT'S REPORTS OR WORKING PAPERS OF A PRIVATE ENTITY THAT IS NOT PUBLICLY TRADED AND RELATE TO AUDIT OR REVIEW ATTEST ACTIVITIES OF THE CERTIFIED PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTING FIRM BEING INVESTIGATED. THIS SUBPARAGRAPH (IV) SHALL NOT BE CONSTRUED TO AUTHORIZE THE COLORADO STATE BOARD OF ACCOUNTANCY OR ITS AGENT TO SUBPOENA OR EXAMINE INCOME TAX RETURNS.

(B) AT THE REQUEST OF EITHER THE CLIENT OF THE CERTIFIED PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTING FIRM OR THE CERTIFIED PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTING FIRM SUBJECT TO THE SUBPOENA PURSUANT TO THIS SUBPARAGRAPH (IV), A SECOND CERTIFIED PUBLIC ACCOUNTING FIRM OR CERTIFIED PUBLIC ACCOUNTANT WITH NO INTEREST IN THE MATTER MAY REVIEW THE REPORT OR WORKING PAPERS FOR COMPLIANCE WITH THE PROVISIONS OF ARTICLE 2 OF TITLE 12, C.R.S. THE SECOND CERTIFIED PUBLIC ACCOUNTING FIRM OR CERTIFIED PUBLIC ACCOUNTANT CONDUCTING THE REVIEW MUST BE APPROVED BY THE BOARD PRIOR TO BEGINNING ITS REVIEW. THE APPROVAL OF THE SECOND CERTIFIED PUBLIC ACCOUNTING FIRM OR CERTIFIED PUBLIC ACCOUNTANT SHALL BE IN GOOD FAITH. THE WRITTEN REPORT ISSUED BY A SECOND CERTIFIED PUBLIC ACCOUNTING FIRM OR CERTIFIED PUBLIC ACCOUNTANT SHALL BE IN LIEU OF A REVIEW BY THE BOARD. SUCH REPORT SHALL BE LIMITED TO MATTERS DIRECTLY RELATED TO THE WORK PERFORMED BY THE CERTIFIED PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTING FIRM BEING INVESTIGATED AND SHOULD EXCLUDE SPECIFIC REFERENCES TO CLIENT FINANCIAL INFORMATION. THE PARTY REQUESTING THAT A SECOND CERTIFIED PUBLIC ACCOUNTING FIRM OR CERTIFIED PUBLIC ACCOUNTANT REVIEW THE REPORTS AND WORKING PAPERS SHALL PAY ANY ADDITIONAL EXPENSES RELATED TO RETAINING THE SECOND CERTIFIED PUBLIC ACCOUNTING FIRM OR CERTIFIED PUBLIC ACCOUNTANT BY THE PARTY WHO MADE THE REQUEST. THE WRITTEN REPORT OF THE SECOND CERTIFIED PUBLIC ACCOUNTING FIRM OR CERTIFIED PUBLIC ACCOUNTANT SHALL BE SUBMITTED TO THE BOARD. THE BOARD MAY USE THE FINDINGS OF THE

SECOND CERTIFIED PUBLIC ACCOUNTING FIRM OR CERTIFIED PUBLIC ACCOUNTANT AS GROUNDS FOR DISCIPLINE PURSUANT TO ARTICLE 2 OF TITLE 12, C.R.S.

(V) DISCLOSURE OF INFORMATION UNDER SUBPARAGRAPH (III) OR (IV) OF THIS PARAGRAPH (f) SHALL NOT WAIVE OR OTHERWISE LIMIT THE CONFIDENTIALITY AND PRIVILEGE OF SUCH INFORMATION NOR RELIEVE ANY CERTIFIED PUBLIC ACCOUNTANT, ANY CERTIFIED PUBLIC ACCOUNTING FIRM, THE COLORADO STATE BOARD OF ACCOUNTANCY, OR A PERSON OR GROUP AUTHORIZED BY SUCH BOARD, OF THE OBLIGATION OF CONFIDENTIALITY. DISCLOSURE WHICH IS NOT IN GOOD FAITH OF SUCH INFORMATION SHALL SUBJECT THE BOARD, A MEMBER THEREOF, OR ITS AGENT TO CIVIL LIABILITY PURSUANT TO SECTION 12-2-103 (6), C.R.S.

(VI) ANY CERTIFIED PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTING FIRM THAT RECEIVES A SUBPOENA FOR REPORTS OR ACCOUNTANT'S WORKING PAPERS RELATED TO THE AUDIT OR REVIEW ATTEST ACTIVITIES OF THE ACCOUNTANT OR ACCOUNTING FIRM PURSUANT TO SUBPARAGRAPH (III) OR (IV) OF THIS PARAGRAPH (f) SHALL NOTIFY HIS OR HER CLIENT OF THE SUBPOENA WITHIN THREE BUSINESS DAYS AFTER THE DATE OF SERVICE OF THE SUBPOENA.

(VII) SUBPARAGRAPH (III) OR (IV) OF THIS PARAGRAPH (f) SHALL NOT OPERATE AS A WAIVER, ON BEHALF OF ANY THIRD PARTY OR THE CERTIFIED PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTING FIRM, OF DUE PROCESS REMEDIES AVAILABLE UNDER THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., THE OPEN RECORDS LAWS, ARTICLE 72 OF TITLE 24, C.R.S., OR ANY OTHER PROVISION OF LAW.

(VIII) PRIOR TO THE DISCLOSURE OF INFORMATION PURSUANT TO SUBPARAGRAPH (III) OR (IV) OF THIS PARAGRAPH (f), THE CERTIFIED PUBLIC ACCOUNTANT, CERTIFIED PUBLIC ACCOUNTING FIRM, OR CLIENT THEREOF SHALL HAVE THE OPPORTUNITY TO DESIGNATE REPORTS OR WORKING PAPERS RELATED TO THE ATTEST FUNCTION UNDER SUBPOENA AS PRIVILEGED AND CONFIDENTIAL PURSUANT TO THIS PARAGRAPH (f) OR THE OPEN RECORDS LAWS, ARTICLE 72 OF TITLE 24, C.R.S., IN ORDER TO ASSURE THAT THE REPORT OR WORKING PAPERS SHALL NOT BE DISSEMINATED OR OTHERWISE REPUBLISHED AND SHALL ONLY BE REVIEWED PURSUANT TO LIMITED AUTHORITY GRANTED TO THE BOARD UNDER SUBPARAGRAPH (III) OR (IV) OF THIS PARAGRAPH (f).

(IX) NO LATER THAN THIRTY DAYS AFTER THE BOARD OF ACCOUNTANCY COMPLETES THE INVESTIGATION FOR WHICH RECORDS OR WORKING PAPERS ARE SUBPOENAED PURSUANT TO SUBPARAGRAPH (III) OR (IV) OF THIS PARAGRAPH (f), THE BOARD SHALL RETURN ALL ORIGINAL RECORDS, WORKING PAPERS, OR COPIES THEREOF TO THE CERTIFIED PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTING FIRM.

(X) NOTHING IN SUBPARAGRAPHS (III) AND (IV) OF THIS PARAGRAPH (f) SHALL CAUSE THE ACCOUNTANT-CLIENT PRIVILEGE TO BE WAIVED AS TO CUSTOMER FINANCIAL AND ACCOUNT INFORMATION OF DEPOSITORY INSTITUTIONS OR TO THE REGULATORY EXAMINATIONS AND OTHER REGULATORY INFORMATION RELATING TO DEPOSITORY INSTITUTIONS.

(XI) FOR THE PURPOSES OF SUBPARAGRAPHS (III) TO (X) OF THIS PARAGRAPH (f), "ENTITY" SHALL HAVE THE SAME MEANING AS IN SECTION 7-90-102 (20), C.R.S.

**SECTION 2.** 12-2-103 (6), Colorado Revised Statutes, is amended to read:

**12-2-103. State board of accountancy - subject to termination.** (6) (a) Any member of the board, any person acting as a consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him OR HER for acts occurring while acting in his OR HER capacity as a board member, consultant, witness, or complainant, respectively, if such individual was acting in good faith within the scope of his OR HER respective capacity, made a reasonable effort to obtain the facts of the matter as to which he OR SHE acted, and acted in the reasonable belief that the action taken by him OR HER was warranted by the facts.

(b) THE DISCLOSURE OF REPORTS OR WORKING PAPERS SUBPOENAED BY THE BOARD OR ANY PERSON OR GROUP AUTHORIZED BY THE BOARD TO CONDUCT AN INVESTIGATION INTO AUDIT OR REVIEW ATTEST ACTIVITIES OF A CERTIFIED PUBLIC ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNTING FIRM PURSUANT TO SECTION 13-90-107 (1) (f) (III) OR (1) (f) (IV), C.R.S., WHICH IS NOT IN GOOD FAITH SHALL SUBJECT THE MEMBER OF THE BOARD, PERSON, OR GROUP TO CIVIL LIABILITY FOR DAMAGES TO BE DETERMINED BY A COURT OF COMPETENT JURISDICTION.

**SECTION 3. Effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to attest functions completed on or after the applicable effective date of this act.

Approved: April 29, 2003