

SECOND REGULAR SESSION

SENATE BILL NO. 952

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time January 15, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

3979S.021

AN ACT

To repeal sections 326.256, 326.283, 326.289, and 326.292, RSMo, and to enact in lieu thereof four new sections relating to certified public accountants, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 326.256, 326.283, 326.289, and 326.292, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 326.256, 326.283, 326.289, and 326.292, to read as follows:

326.256. 1. As used in this chapter, the following terms mean:

- 2 (1) "AICPA", the American Institute of Certified Public Accountants;
3 (2) "Attest" **or "attest services"**, providing the following financial
4 statement services:
5 (a) Any audit or other engagement to be performed in accordance with the
6 Statements on Auditing Standards (SAS);
7 (b) Any examination of prospective financial information to be performed
8 in accordance with the Statements on Standards for Attestation Engagements
9 (SSAE); **or**
10 (c) **Any engagement to be performed in accordance with the**
11 **auditing standards and rules of the Public Company Accounting**
12 **Oversight Board (PCAOB);**
13 (3) "Board", the Missouri state board of accountancy established [pursuant
14 to] **under** section 326.259 or its predecessor pursuant to prior law;
15 (4) "Certificate", a certificate issued [pursuant to] **under** section 326.060
16 prior to August 28, 2001;
17 (5) "Certified public accountant" or "CPA", the holder of a certificate or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 license as defined in this section;

19 (6) "Certified public accountant firm", "CPA firm" or "firm", a sole
20 proprietorship, a corporation, a partnership or any other form of organization
21 issued a permit [pursuant to] **under** section 326.289;

22 (7) "Client", a person or entity that agrees with a licensee or licensee's
23 employer to receive any professional service;

24 (8) "Compilation", providing a service to be performed in accordance with
25 Statements on Standards for Accounting and Review Services (SSARS) that is
26 presented in the form of financial statements information that is the
27 representation of management (owners) without undertaking to express any
28 assurance on the statements;

29 (9) "License", a license issued [pursuant to] **under** section 326.280, or [a
30 provisional license issued pursuant to] **privilege to practice under** section
31 326.283; or, in each case, an individual license or permit issued pursuant to
32 corresponding provisions of prior law;

33 (10) "Licensee", the holder of a license as defined in this section;

34 (11) "Manager", a manager of a limited liability company;

35 (12) "Member", a member of a limited liability company;

36 (13) "NASBA", the National Association of State Boards of Accountancy;

37 (14) "Peer review", a study, appraisal or review of one or more aspects of
38 the professional work of a licensee or certified public accountant firm that
39 performs attest, review or compilation services, by licensees who are not affiliated
40 either personally or through their certified public accountant firm being reviewed
41 pursuant to the Standards for Performing and Reporting on Peer Reviews
42 promulgated by the AICPA or such other standard adopted by regulation of the
43 board which meets or exceeds the AICPA standards;

44 (15) "Permit", a permit to practice as a certified public accountant firm
45 issued [pursuant to] **under** section 326.289 or corresponding provisions of prior
46 law or pursuant to corresponding provisions of the laws of other states;

47 (16) "Professional", arising out of or related to the specialized knowledge
48 or skills associated with certified public accountants;

49 (17) "Public accounting":

50 (a) Performing or offering to perform for an enterprise, client or potential
51 client one or more services involving the use of accounting or auditing skills, or
52 one or more management advisory or consulting services, or the preparation of
53 tax returns or the furnishing of advice on tax matters by a person, firm, limited

54 liability company or professional corporation using the title "C.P.A." or "P.A." in
55 signs, advertising, directory listing, business cards, letterheads or other public
56 representations;

57 (b) Signing or affixing a name, with any wording indicating the person or
58 entity has expert knowledge in accounting or auditing to any opinion or certificate
59 attesting to the reliability of any representation or estimate in regard to any
60 person or organization embracing financial information or facts respecting
61 compliance with conditions established by law or contract, including but not
62 limited to statutes, ordinances, rules, grants, loans and appropriations; or

63 (c) Offering to the public or to prospective clients to perform, or actually
64 performing on behalf of clients, professional services that involve or require an
65 audit or examination of financial records leading to the expression of a written
66 attestation or opinion concerning these records;

67 (18) "Report", when used with reference to financial statements, means
68 an opinion, report or other form of language that states or implies assurance as
69 to the reliability of any financial statements, and that also includes or is
70 accompanied by any statement or implication that the person or firm issuing it
71 has special knowledge or competence in accounting or auditing. Such a statement
72 or implication of special knowledge or competence may arise from use by the
73 issuer of the report of names or titles indicating that the person or firm is an
74 accountant or auditor, or from the language of the report itself. The term report
75 includes any form of language which disclaims an opinion when such form of
76 language is conventionally understood to imply any positive assurance as to the
77 reliability of the financial statements referred to or special competence on the
78 part of the person or firm issuing such language, or both, and includes any other
79 form of language that is conventionally understood to imply such assurance or
80 such special knowledge or competence, or both;

81 (19) "Review", providing a service to be performed in accordance with
82 Statements on Standards for Accounting and Review Services (SSARS) that is
83 performing inquiry and analytical procedures that provide the accountant with
84 a reasonable basis for expressing limited assurance that there are no material
85 modifications that should be made to the statements for them to be in conformity
86 with generally accepted accounting principles or, if applicable, with another
87 comprehensive basis of accounting;

88 (20) "State", any state of the United States, the District of Columbia,
89 Puerto Rico, the U.S. Virgin Islands and Guam; except that "this state" means the

90 state of Missouri;

91 (21) "Substantial equivalency" or "**substantially equivalent**", a
92 determination by the board of accountancy or its designee that the education,
93 examination and experience requirements contained in the statutes and
94 administrative rules of another jurisdiction are comparable to or exceed the
95 education, examination and experience requirements contained in this chapter or
96 that an individual certified public accountant's education, examination and
97 experience qualifications are comparable to or exceed the education, examination
98 and experience requirements contained in this chapter;

99 (22) "Transmittal", any transmission of information in any form, including
100 but not limited to any and all documents, records, minutes, computer files, disks
101 or information.

102 2. The statements on standards specified in this section shall be adopted
103 by reference by the board pursuant to rulemaking and shall be those developed
104 for general application by the AICPA or other recognized national accountancy
105 organization as prescribed by board rule.

326.283. 1. (1) An individual whose principal place of business,
2 **domicile, or residency** is not in this state and [has] **who holds** a valid
3 [designation] **and unrestricted license** to practice public accounting from any
4 state which the board **or its designee** has determined by rule to be in
5 substantial equivalence with the licensure requirements of [sections 326.250 to
6 326.331] **this chapter**, or if the individual's qualifications are substantially
7 equivalent to the licensure requirements of [sections 326.250 to 326.331] **this**
8 **chapter**, shall be presumed to have qualifications substantially equivalent to
9 this state's requirements and shall have all the privileges of licensees of this
10 state[, provided the individual shall notify the board of his or her intent to
11 engage in the practice of accounting with a client within this state whether in
12 person, by electronic or technological means, or any other manner. The board by
13 rule may require individuals to obtain a license] **without the need to obtain**
14 **a license or to otherwise notify or register with the board or pay any**
15 **fee. Provided, however, the board may by rule require individuals with**
16 **a valid but restricted license to obtain a license.**

17 (2) [Any] **An individual who qualifies for the privilege to practice**
18 **under this section, may offer or render professional services in this**
19 **state, whether in person, by mail, telephone, or electronic means, and**
20 **no notice or other submission shall be required of any such individual.**

21 **(3) An individual licensee** of another state exercising the privilege
22 afforded [pursuant to] **under** this section [consents] **and the firm which**
23 **employs such licensee hereby simultaneously consent**, as a condition of
24 the grant of this privilege [to]:

25 (a) **To** the personal and subject matter jurisdiction and disciplinary
26 authority of the board;

27 (b) **To** comply with this chapter and the board's rules; [and]

28 (c) **That in the event the license from any state is no longer valid**
29 **or unrestricted, the individual shall cease offering or rendering**
30 **professional services in this state individually and on behalf of a firm;**
31 **and**

32 (d) **To** the appointment of the state board [which] **that** issued the
33 individual's license as his or her agent upon whom process may be served in any
34 action or proceeding by this board against the individual.

35 **(4) An individual who has been granted the privilege to practice**
36 **under this section who performs attest services for an entity with an**
37 **office in this state, shall only do so through a firm which has obtained**
38 **a permit issued under section 326.289.**

39 [(3)] **(5)** Nothing in this [section] **chapter** shall prohibit temporary
40 practice in this state for professional business incidental to a CPA's regular
41 practice outside this state. "Temporary practice" means that practice [which is
42 a continuation or extension] **related to the direct purpose** of an engagement
43 for a client located outside this state, which engagement began outside this state
44 and extends into this state through common ownership, existence of a subsidiary,
45 assets or other operations located within this state.

46 2. A licensee of this state offering or rendering services or using his or her
47 certified public accountant title in another state shall be subject to disciplinary
48 action in this state for an act committed in another state for which the licensee
49 would be subject to discipline for an act committed in the other
50 state. Notwithstanding the provisions of section 326.274 to the contrary, the
51 board may investigate any complaint made by the board of accountancy of another
52 state.

326.289. 1. The board may grant or renew permits to practice as a
2 certified public accounting firm to [entities] **applicants** that [make application
3 and] demonstrate their qualifications in accordance with this [section or to
4 certified public accounting firms originally licensed in another state that

5 establish an office in this state. A firm shall hold a permit issued pursuant to
6 this section to provide attest, review or compilation services or to use the title
7 certified public accountant or certified public accounting firm] **chapter.**

8 **(1) The following shall hold a permit issued under this chapter:**

9 **(a) Any firm with an office in this state, as defined by the board**
10 **by rule, performing attest services;**

11 **(b) Any firm with an office in this state that uses the title "CPA"**
12 **or "CPA firm"; and**

13 **(c) Any firm that does not have an office in this state performing**
14 **attest services for a client having an office in this state.**

15 **(2) A firm which does not have an office in this state may**
16 **perform compilation and review services for a client having an office**
17 **in this state and may use the title "CPA" or "CPA firm" without a permit**
18 **issued under this section only if it:**

19 **(a) Has the qualifications described in subsections 4 and 9 of this**
20 **section; and**

21 **(b) Performs such services through an individual with the**
22 **privilege to practice under subsection 1 of section 326.283.**

23 **(3) A firm which is not subject to the requirements of**
24 **subdivisions (1) or (2) of this subsection may perform other professional**
25 **services while using the title "CPA" or "CPA firm" in this state without**
26 **a permit issued under this section only if it:**

27 **(a) Has qualifications described in subsection 4 of this section;**

28 **(b) Performs such services through an individual with the**
29 **privilege to practice under section 326.283; and**

30 **(c) Can lawfully do so in the state where said individual with**
31 **privilege to practice has his or her principal place of business.**

32 2. Permits shall be initially issued and renewed for periods of not more
33 than three years or for a specific period as prescribed by board rule following
34 issuance or renewal.

35 3. The board shall determine by rule the form for application and renewal
36 of permits and shall annually determine the fees for permits and their renewals.

37 4. An applicant for initial issuance or renewal of a permit to practice
38 [pursuant to] **under** this section shall be required to show that:

39 (1) [Notwithstanding any other provision of law to the contrary,] A simple
40 majority of the ownership of the firm, in terms of financial interests and voting
41 rights of all partners, officers, principals, shareholders, members or managers,

42 belongs to licensees who are licensed in some state, and the partners, officers,
43 principals, shareholders, members or managers, whose principal place of business
44 is in this state and who perform professional services in this state are licensees
45 [pursuant to] **under** section 326.280 or the corresponding provision of prior
46 law. Although firms may include nonlicensee owners, the firm and its ownership
47 shall comply with rules promulgated by the board;

48 (2) Any certified public accounting firm may include owners who are not
49 licensees[,] provided that:

50 (a) The firm designates a licensee of this state, **or in the case of a firm**
51 **which must have a permit under this section designates a licensee of**
52 **another state who meets the requirements of section 326.283**, who is
53 responsible for the proper registration of the firm and identifies that individual
54 to the board;

55 (b) All nonlicensee owners are active individual participants in the
56 certified public accounting firm or affiliated entities;

57 (c) **All owners are of good moral character; and**

58 (d) The firm complies with other requirements as the board may impose
59 by rule;

60 (3) Any licensee, initially licensed on or after August 28, 2001, who is
61 responsible for supervising attest services, or signs or authorizes someone to sign
62 the licensee's report on the financial statements on behalf of the firm, shall meet
63 competency requirements as determined by the board by rule which shall include
64 one year of experience in addition to the experience required [pursuant to] **under**
65 subdivision (6) of subsection 1 of section 326.280 and shall be verified by a
66 licensee. The additional experience required by this subsection shall include
67 experience in attest work supervised by a licensee;

68 (4) Any licensee who is responsible for supervising review services or
69 signs or authorizes someone to sign review reports shall meet the competency
70 requirements as determined by board by rule which shall include experience in
71 review services.

72 5. An applicant for initial issuance or renewal of a permit to practice shall
73 register each office of the firm within this state with the board and show that all
74 attest, review and compilation services rendered in this state are under the
75 charge of a licensee.

76 6. No licensee or firm holding a permit [pursuant to] **under** this chapter
77 shall use a professional or firm name or designation that is misleading as to:

78 (1) The legal form of the firm;

79 (2) The persons who are partners, officers, members, managers or
80 shareholders of the firm; or

81 (3) Any other matter.

82 The names of one or more former partners, members or shareholders may be
83 included in the name of a firm or its successor unless the firm becomes a sole
84 proprietorship because of the death or withdrawal of all other partners, officers,
85 members or shareholders. A firm may use a fictitious name if the fictitious name
86 is registered with the board and is not otherwise misleading. The name of a firm
87 shall not include the name or initials of an individual who is not a present or a
88 past partner, member or shareholder of the firm or its predecessor. The name of
89 the firm shall not include the name of an individual who is not a licensee.

90 7. Applicants for initial issuance or renewal of permits shall list in their
91 application all states in which they have applied for or hold permits as certified
92 public accounting firms and list any past denial, revocation, suspension or any
93 discipline of a permit by any other state. Each holder of or applicant for a permit
94 [pursuant to] **under** this section shall notify the board in writing within thirty
95 days after its occurrence of any change in the identities of partners, principals,
96 officers, shareholders, members or managers whose principal place of business is
97 in this state; any change in the number or location of offices within this state; any
98 change in the identity of the persons in charge of such offices; and any issuance,
99 denial, revocation, suspension or any discipline of a permit by any other state.

100 8. Firms which fall out of compliance with the provisions of this section
101 due to changes in firm ownership or personnel after receiving or renewing a
102 permit shall take corrective action to bring the firm back into compliance as
103 quickly as possible. The board may grant a reasonable period of time for a firm
104 to take such corrective action. Failure to bring the firm back into compliance
105 within a reasonable period as defined by the board may result in the suspension
106 or revocation of the firm permit.

107 9. The board shall require by rule, as a condition to the renewal of
108 permits, that firms undergo, no more frequently than once every three years, peer
109 reviews conducted in a manner as the board shall specify. The review shall
110 include a verification that individuals in the firm who are responsible for
111 supervising attest, review and compilation services or sign or authorize someone
112 to sign the accountant's report on the financial statements on behalf of the firm
113 meet the competency requirements set out in the professional standards for such

114 services, provided that any such rule:

115 (1) Shall include reasonable provision for compliance by a firm showing
116 that it has within the preceding three years undergone a peer review that is a
117 satisfactory equivalent to peer review generally required [pursuant to] **under**
118 this subsection;

119 (2) May require, with respect to peer reviews, that peer reviews be subject
120 to oversight by an oversight body established or sanctioned by board rule, which
121 shall periodically report to the board on the effectiveness of the review program
122 under its charge and provide to the board a listing of firms that have participated
123 in a peer review program that is satisfactory to the board; and

124 (3) Shall require, with respect to peer reviews, that the peer review
125 processes be operated and documents maintained in a manner designed to
126 preserve confidentiality, and that the board or any third party other than the
127 oversight body shall not have access to documents furnished or generated in the
128 course of the peer review of the firm except as provided in subdivision (2) of this
129 subsection.

130 10. Prior to January 1, 2008, licensees who perform fewer than three
131 attest services during each calendar year shall be exempt from the requirements
132 of subsection 9 of this section.

133 11. The board may, by rule, charge a fee for oversight of peer reviews,
134 provided that the fee charged shall be substantially equivalent to the cost of
135 oversight.

136 12. In connection with proceedings before the board or upon receipt of a
137 complaint involving the licensee performing peer reviews, the board shall not
138 have access to any documents furnished or generated in the course of the
139 performance of the peer reviews except for peer review reports, letters of comment
140 and summary review memoranda. The documents shall be furnished to the board
141 only in a redacted manner that does not specifically identify any firm or licensee
142 being peer reviewed or any of their clients.

143 13. The peer review processes shall be operated and the documents
144 generated thereby be maintained in a manner designed to preserve their
145 confidentiality. No third party, other than the oversight body, the board, subject
146 to the provisions of subsection 12 of this section, or the organization performing
147 peer review shall have access to documents furnished or generated in the course
148 of the review. All documents shall be privileged and closed records for all
149 purposes and all meetings at which the documents are discussed shall be

150 considered closed meetings [pursuant to] **under** subdivision (1) of section
151 610.021, RSMo. The proceedings, records and workpapers of the board and any
152 peer review subjected to the board process shall be privileged and shall not be
153 subject to discovery, subpoena or other means of legal process or introduction into
154 evidence at any civil action, arbitration, administrative proceeding or board
155 proceeding. No member of the board or person who is involved in the peer review
156 process shall be permitted or required to testify in any civil action, arbitration,
157 administrative proceeding or board proceeding as to any matters produced,
158 presented, disclosed or discussed during or in connection with the peer review
159 process or as to any findings, recommendations, evaluations, opinions or other
160 actions of such committees or any of its members; provided, however, that
161 information, documents or records that are publicly available shall not be subject
162 to discovery or use in any civil action, arbitration, administrative proceeding or
163 board proceeding merely because they were presented or considered in connection
164 with the peer review process.

326.292. 1. Only licensees may issue a report on financial statements of
2 any person, firm, organization or governmental unit or offer to render or render
3 any attest service. Such restriction shall not prohibit any act of a public official
4 or public employee in the performance of the person's duties as such; nor prohibit
5 the performance by any nonlicensee of other services involving the use of
6 accounting skills, including the preparation of tax returns, management advisory
7 services and the preparation of nonattest financial statements. Nonlicensees may
8 prepare financial statements and issue nonattest transmittals or information
9 thereon which do not purport to be in compliance with the Statements on
10 Standards for Accounting and Review Services (SSARS).

11 2. Only certified public accountants shall use or assume the title certified
12 public accountant, or the abbreviation CPA or any other title, designation, words,
13 letters, abbreviation, sign, card or device tending to indicate that such person is
14 a certified public accountant. Nothing in this section shall prohibit:

15 (1) A certified public accountant whose certificate was in full force and
16 effect, issued pursuant to the laws of this state prior to August 28, 2001, and who
17 does not engage in the practice of public accounting, auditing, bookkeeping or any
18 similar occupation, from using the title certified public accountant or abbreviation
19 CPA;

20 (2) A person who holds a certificate, then in force and effect, issued
21 pursuant to the laws of this state prior to August 28, 2001, and who is regularly

22 employed by or is a director or officer of a corporation, partnership, association
23 or business trust, in his or her capacity as such, from signing, delivering or
24 issuing any financial, accounting or related statement, or report thereon relating
25 to such corporation, partnership, association or business trust provided the
26 capacity is so designated, and provided in the signature line the title CPA or
27 certified public accountant is not designated.

28 3. No firm shall provide attest services or assume or use the title certified
29 public accountants or the abbreviation CPAs, or any other title, designation,
30 words, letters, abbreviation, sign, card or device tending to indicate that such
31 firm is a certified public accounting firm unless:

32 (1) The firm holds a valid permit issued [pursuant to] **under** section
33 326.289 **or is a firm exempt from the permit requirement under**
34 **subdivisions (2) and (3) of subsection 1 of section 326.289 and complies**
35 **with all other applicable provisions of that section;** and

36 (2) Ownership of the firm is in accord with section 326.289 and rules
37 promulgated by the board.

38 4. Only persons holding a valid license or permit issued [pursuant to]
39 **under** section 326.280 or 326.289, **or persons qualifying for the privilege**
40 **to practice under section 326.283, and firms exempt from the permit**
41 **requirement under subsection 1 of section 326.289,** shall assume or use the
42 title certified accountant, chartered accountant, enrolled accountant, licensed
43 accountant, registered accountant, accredited accountant or any other title or
44 designation likely to be confused with the titles certified public accountant or
45 public accountant, or use any of the abbreviations CA, LA, RA, AA or similar
46 abbreviation likely to be confused with the abbreviation CPA or PA. The title
47 enrolled agent or EA shall only be used by individuals so designated by the
48 Internal Revenue Service. Nothing in this section shall prohibit the use or
49 issuance of a title for nonattest services provided that the organization and the
50 title issued by the organization existed prior to August 28, 2001.

51 5. (1) Nonlicensees shall not use language in any statement relating to
52 the financial affairs of a person or entity that is conventionally used by certified
53 public accountants in reports on financial statements. Nonlicensees may use the
54 following safe harbor language:

55 (a) For compilations:

56 "I (We) have prepared the accompanying (financial statements) of (name of entity)
57 as of (time period) for the (period) then ended. This presentation is limited to

58 preparing in the form of a financial statement information that is the
59 representation of management (owners). I (We) have not audited or reviewed the
60 accompanying financial statements and accordingly do not express an opinion or
61 any other form of assurance on them.";

62 (b) For reviews:

63 "I (We) reviewed the accompanying (financial statements) of (name of entity) as
64 of (time period) for the (period) then ended. These financial statements
65 (information) are (is) the responsibility of the company's management. I (We)
66 have not audited the accompanying financial statements and accordingly do not
67 express an opinion or any other form of assurance on them."

68 (2) Only persons or firms holding a valid license or permit issued
69 [pursuant to] **under** section 326.280 or 326.289 shall assume or use any title or
70 designation that includes the words accountant or accounting in connection with
71 any other language, including the language of a report, that implies that the
72 person or firm holds a license or permit or has special competence as an
73 accountant or auditor; provided, however, that this subsection shall not prohibit
74 any officer, partner, principal, member, manager or employee of any firm or
75 organization from affixing such person's own signature to any statement in
76 reference to the financial affairs of the firm or organization with any wording
77 designating the position, title or office that the person holds therein nor prohibit
78 any act of a public official or employee in the performance of the person's duties
79 as such. Nothing in this subsection shall prohibit the singular use of
80 "accountant" or "accounting" for nonattest purposes.

81 6. Licensees signing or authorizing someone to sign reports on financial
82 statements when performing attest, review or compilation services shall provide
83 those services in accordance with professional standards as determined by the
84 board by rule.

85 7. No licensee [or holder of a provisional license] or firm holding a permit
86 [pursuant to] **under** sections 326.280 to 326.289 shall use a professional or firm
87 name or designation that is misleading about the legal form of the firm, or about
88 the persons who are partners, principals, officers, members, managers or
89 shareholders of the firm, or about any other matter.

90 8. None of the foregoing provisions of this section shall apply to a person
91 or firm holding a certification, designation, degree or license granted in a foreign
92 country entitling the holder to engage in the practice of public accounting or its
93 equivalent in the country whose activities in this state are limited to the

94 provision of professional services to persons or firms who are residents of,
95 governments of, or business entities of the country in which the person holds the
96 entitlement, who performs no attest, review or compilation services and who
97 issues no reports with respect to the financial statements of any other persons,
98 firms or governmental units in this state, and who does not use in this state any
99 title or designation other than the one under which the person practices in such
100 country, followed by a translation of such title or designation into the English
101 language, if it is in a different language, and by the name of such country.

102 9. No licensee whose license is issued [pursuant to] **under** section
103 326.280 or issued pursuant to prior law shall perform attest services through any
104 certified public accounting firm that does not hold a valid permit issued
105 [pursuant to] **under** section 326.289.

106 10. Nothing herein shall prohibit a practicing attorney or firm of attorneys
107 from preparing or presenting records or documents customarily prepared by an
108 attorney or firm of attorneys in connection with the attorney's professional work
109 in the practice of law.

110 11. Nothing herein shall prohibit any trustee, executor, administrator,
111 referee or commissioner from signing and certifying financial reports incident to
112 his or her duties in that capacity.

113 12. Nothing herein shall prohibit any director or officer of a corporation,
114 partner or a partnership, sole proprietor of a business enterprise, member of a
115 joint venture, member of a committee appointed by stockholders, creditors or
116 courts, or an employee of any of the foregoing, in his or her capacity as such, from
117 signing, delivering or issuing any financial, accounting or related statement, or
118 report thereon, relating to the corporation, partnership, business enterprise, joint
119 venture or committee, provided the capacity is designated on the statement or
120 report.

121 13. (1) A licensee shall not for a commission recommend or refer to a
122 client any product or service, or for a commission recommend or refer any product
123 or service to be supplied by a client, or receive a commission, when the licensee
124 also performs for that client:

125 (a) An audit or review of a financial statement; or

126 (b) A compilation of a financial statement when the licensee expects, or
127 reasonably may expect, that a third party will use the financial statement and
128 the licensee's compilation report does not disclose a lack of independence; or

129 (c) An examination of prospective financial information.

130 Such prohibition applies during the period in which the licensee is engaged to
131 perform any of the services listed above and the period covered by any historical
132 financial statements involved in such listed services.

133 (2) A licensee who is not prohibited by this section from performing
134 services for or receiving a commission and who is paid or expects to be paid a
135 commission shall disclose in writing that fact to any person or entity to whom the
136 licensee recommends or refers a product or service to which the commission
137 relates.

138 (3) Any licensee who accepts a referral fee for recommending or referring
139 any service of a licensee to any person or entity or who pays a referral fee to
140 obtain a client shall disclose in writing the acceptance or payment to the client.

141 14. (1) A licensee shall not:

142 (a) Perform for a contingent fee any professional services for, or receive
143 a fee from, a client for whom the licensee or the licensee's firm performs:

144 a. An audit or review of a financial statement; or

145 b. A compilation of a financial statement when the licensee expects, or
146 reasonably might expect, that a third party will use the financial statement and
147 the licensee's compilation report does not disclose a lack of independence; or

148 c. An examination of prospective financial information;

149 (b) Prepare an original tax return or claim for a tax refund for a
150 contingent fee for any client; or

151 (c) Prepare an amended tax return or claim for a tax refund for a
152 contingent fee for any client, unless permitted by board rule.

153 (2) The prohibition in subdivision (1) of this subsection applies during the
154 period in which the licensee is engaged to perform any of those services and the
155 period covered by any historical financial statements involved in any services.

156 (3) A contingent fee is a fee established for the performance of any service
157 pursuant to an arrangement in which no fee will be charged unless a specified
158 finding or result is attained, or in which the amount of the fee is otherwise
159 dependent upon the finding or result of the service. Solely for purposes of this
160 section, fees are not regarded as being contingent if fixed by courts or other public
161 authorities, or, in tax matters, if determined based on the results of judicial
162 proceedings or the findings of governmental agencies. A licensee's fees may vary
163 depending, for example, on the complexity of services rendered.

164 15. Any person who violates any provision of subsections 1 to 5 of this
165 section shall be guilty of a class A misdemeanor. Whenever the board has reason

166 to believe that any person has violated this section it may certify the facts to the
167 attorney general of this state or bring other appropriate proceedings.

✓

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