

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 219
100TH GENERAL ASSEMBLY

Reported from the Committee on Professional Registration, February 28, 2019, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 219, adopted March 27, 2019.

Taken up for Perfection March 27, 2019. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

1118S.02P

AN ACT

To repeal section 326.289, RSMo, and to enact in lieu thereof two new sections relating to consumer protections for preparation of financial documents.

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

Section A. Section 326.289, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 143.980 and 326.289, to read as follows:

143.980. 1. This section shall be known as the "Taxpayer Protection Act".

2. For the purposes of this section, the following terms shall mean:

(1) "Department", the Missouri department of revenue;

(2) "Paid tax return preparer", a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any income tax return or claim for refund required to be filed under this chapter. The preparation of a substantial portion of a return or claim for refund shall be treated as the preparation of such return or claim for refund. A paid tax return preparer shall not include any certified public accountant who holds an active license issued by any state and the employees of such certified public accountant or certified public accounting firm or an enrolled agent enrolled to practice before the federal Internal Revenue Service

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

16 pursuant to 31 C.F.R. Section 10.4;

17 (3) "Willful or reckless conduct", the same meaning as defined
18 under 26 U.S.C. Section 6694;

19 3. For all tax years beginning on or after January 1, 2020, any
20 income tax return or claim for refund prepared by a paid tax return
21 preparer shall be signed by the paid tax return preparer and shall bear
22 the paid tax return preparer's Internal Revenue Service preparer tax
23 identification number. Any person who is the paid tax return preparer
24 with respect to any income tax return or claim for refund and who fails
25 to sign the return or claim for refund, or who fails to provide his or her
26 preparer tax identification number, shall pay a penalty of fifty dollars
27 for each such failure, unless it can be shown that the failure was due
28 to reasonable cause and not willful or reckless conduct. The aggregate
29 penalty that may be imposed by the department on any paid tax return
30 preparer with respect to returns or claims for refund filed during any
31 calendar year shall not exceed twenty-five thousand dollars per paid
32 tax return preparer.

33 4. (1) In a court of competent jurisdiction, the director of
34 revenue may commence suit to enjoin any paid tax return preparer
35 from further engaging in any conduct described in subdivision (2) of
36 this subsection, or from further action as a paid tax return preparer.

37 (2) In any action under subdivision (1) of this subsection, if the
38 court finds that injunctive relief is appropriate to prevent the
39 recurrence of willful or reckless conduct, the court may enjoin the paid
40 tax return preparer from further engaging in any conduct specified in
41 the action. The court may enjoin conduct when a paid tax return
42 preparer has done any of the following:

43 (a) Prepared any income tax return or claim for refund that
44 includes an understatement of a taxpayer's liability due to an
45 unreasonable position. For purposes of this subdivision, the term
46 "unreasonable position" shall have the same meaning as defined under
47 26 U.S.C. Section 6694;

48 (b) Prepared any income tax return or claim for refund that
49 includes an understatement of a taxpayer's liability due to the paid tax
50 return preparer's willful or reckless conduct;

51 (c) Where required, failed to sign an income tax return or claim
52 for refund;

53 (d) Where required, failed to furnish his or her preparer tax
54 identification number;

55 (e) Where required, failed to retain a copy of an income tax
56 return;

57 (f) Where required by due diligence requirements imposed by
58 department rules and regulations, failed to be diligent in determining
59 a taxpayer's eligibility for tax benefits;

60 (g) Negotiated a check issued to a taxpayer by the department
61 without the permission of the taxpayer;

62 (h) Engaged in any conduct subject to any criminal penalty
63 provided under chapters 135 to 155;

64 (i) Misrepresented to the department the paid tax return
65 preparer's eligibility to practice or otherwise misrepresented the paid
66 tax return preparer's experience or education;

67 (j) Guaranteed the payment of any income tax refund or the
68 allowance of any income tax credit; or

69 (k) Engaged in any other fraudulent or deceptive conduct that
70 substantially interferes with the proper administration of the laws of
71 this state.

72 (3) (a) If the court finds that a paid tax return preparer has
73 continually or repeatedly engaged in any conduct described in
74 subdivision (2) of this subsection and that an injunction prohibiting the
75 conduct would not be sufficient to prevent the paid tax return
76 preparer's interference with the proper administration of the laws of
77 this state, the court may enjoin the paid tax return preparer from
78 acting as a paid tax return preparer in Missouri.

79 (b) Being enjoined from preparing tax returns or claims for
80 refund for the United States or any other state in the five years
81 preceding the petition for an injunction under this section shall
82 establish a prima facie case for an injunction to be issued under this
83 section. For purposes of this paragraph, the term "state" shall mean a
84 state of the United States, the District of Columbia, Puerto Rico, United
85 States Virgin Islands, or any territory or insular possession subject to
86 the jurisdiction of the United States.

326.289. 1. The board may grant or renew permits to practice as a
2 certified public accounting firm to applicants that demonstrate their
3 qualifications in accordance with this chapter.

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

5 (a) Any firm with an office in this state, as defined by the board by rule,
6 offering or performing attest or compilation services; or

7 (b) Any firm with an office in this state that uses the title "CPA" or "CPA
8 firm".

9 (2) Any firm that does not have an office in this state may offer or perform
10 attest or compilation services in this state without a valid permit only if it meets
11 each of the following requirements:

12 (a) It complies with the qualifications described in subdivision (1) of
13 subsection 4 of this section;

14 (b) It complies with the requirements of peer review as set forth in this
15 chapter and the board's promulgated regulations;

16 (c) It performs such services through an individual with practice
17 privileges under section 326.283; and

18 (d) It can lawfully do so in the state where said individual with the
19 privilege to practice has his or her principal place of business.

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

24 (a) Performs such services through an individual with the privilege to
25 practice under section 326.283; and

26 (b) Can lawfully do so in the state where said individual with privilege to
27 practice has his or her principal place of business.

28 (4) (a) All firms practicing public accounting in this state shall register
29 with the secretary of state.

30 (b) Firms which may be exempt from this requirement include:

31 a. Sole proprietorships;

32 b. Trusts created pursuant to revocable trust agreements, of which the
33 trustee is a natural person who holds a license or privilege to practice as set forth
34 in section 326.280, 326.283, or 326.286;

35 c. General partnerships not operating as a limited liability partnership;
36 or

37 d. Foreign professional corporations which do not meet criteria of chapter
38 356 due to name or ownership, shall obtain a certificate of authority as a general
39 corporation. Notwithstanding the provisions of chapter 356, the secretary of state

40 may issue a certificate of authority to a foreign professional corporation which
41 does not meet the criteria of chapter 356 due to name or ownership, if the
42 corporation meets the requirements of this section and the rules of the board.

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

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

48 4. An applicant for initial issuance or renewal of a permit to practice
49 under this section shall be required to show that:

50 (1) A simple majority of the ownership of the firm, in terms of financial
51 interests and voting rights of all partners, officers, principals, shareholders,
52 members or managers, belongs to licensees who are licensed in some state, and
53 the partners, officers, principals, shareholders, members or managers, whose
54 principal place of business is in this state and who perform professional services
55 in this state are licensees under section 326.280 or the corresponding provision
56 of prior law. Although firms may include nonlicensee owners, the firm and its
57 ownership shall comply with rules promulgated by the board;

58 (2) Any certified public accounting firm may include owners who are not
59 licensees provided that:

60 (a) The firm designates a licensee of this state, or in the case of a firm
61 which must have a permit under this section designates a licensee of another
62 state who meets the requirements of section 326.283, who is responsible for the
63 proper registration of the firm and identifies that individual to the board;

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

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

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

69 (3) Any licensee who is responsible for supervising attest services, or signs
70 or authorizes someone to sign the licensee's report on the financial statements on
71 behalf of the firm, shall meet competency requirements as determined by the
72 board by rule which shall include one year of experience in addition to the
73 experience required under subdivision (6) of subsection 1 of section 326.280 and
74 shall be verified by a licensee. The additional experience required by this
75 subsection shall include experience in attest work supervised by a licensee.

76 5. An applicant for initial issuance or renewal of a permit to practice shall
77 register each office of the firm within this state with the board and show that all
78 attest and compilation services rendered in this state are under the charge of a
79 licensee.

80 6. No licensee or firm holding a permit under this chapter shall use a
81 professional or firm name or designation that is misleading as to:

82 (1) The legal form of the firm;

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

85 (3) Any other matter.

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

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

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

111 9. The board shall require by rule, as a condition to the renewal of

112 permits, that firms undergo, no more frequently than once every three years, peer
113 reviews conducted in a manner as the board shall specify. The review shall
114 include a verification that individuals in the firm who are responsible for
115 supervising attest and compilation services or sign or authorize someone to sign
116 the accountant's report on the financial statements on behalf of the firm meet the
117 competency requirements set out in the professional standards for such services,
118 provided that any such rule:

119 (1) Shall include reasonable provision for compliance by a firm showing
120 that it has within the preceding three years undergone a peer review that is a
121 satisfactory equivalent to peer review generally required under this subsection;

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

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

133 10. 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 11. **Notwithstanding any other provision in this section, the**
137 **board may obtain the following information regarding peer review from**
138 **any approved American Institute for Certified Public Accountants peer**
139 **review program:**

140 (1) **The firm's name and address;**

141 (2) **The firm's dates of enrollment in the program;**

142 (3) **The date of acceptance and the period covered by the firm's**
143 **most recently accepted peer review; and**

144 (4) **If applicable, whether the firm's enrollment in the program**
145 **has been dropped or terminated.**

146 12. In connection with proceedings before the board or upon receipt of a
147 complaint involving the licensee performing peer reviews, the board shall not

148 have access to any documents furnished or generated in the course of the
149 performance of the peer reviews except for peer review reports, letters of comment
150 and summary review memoranda. The documents shall be furnished to the board
151 only in a redacted manner that does not specifically identify any firm or licensee
152 being peer reviewed or any of their clients.

153 **[12.] 13.** The peer review processes shall be operated and the documents
154 generated thereby be maintained in a manner designed to preserve their
155 confidentiality. No third party, other than the oversight body, the board, subject
156 to the provisions of subsection **[11] 12** of this section, or the organization
157 performing peer review shall have access to documents furnished or generated in
158 the course of the review. All documents shall be privileged and closed records for
159 all purposes and all meetings at which the documents are discussed shall be
160 considered closed meetings under subdivision (1) of section 610.021. The
161 proceedings, records and workpapers of the board and any peer review subjected
162 to the board process shall be privileged and shall not be subject to discovery,
163 subpoena or other means of legal process or introduction into evidence at any civil
164 action, arbitration, administrative proceeding or board proceeding. No member
165 of the board or person who is involved in the peer review process shall be
166 permitted or required to testify in any civil action, arbitration, administrative
167 proceeding or board proceeding as to any matters produced, presented, disclosed
168 or discussed during or in connection with the peer review process or as to any
169 findings, recommendations, evaluations, opinions or other actions of such
170 committees or any of its members; provided, however, that information,
171 documents or records that are publicly available shall not be subject to discovery
172 or use in any civil action, arbitration, administrative proceeding or board
173 proceeding merely because they were presented or considered in connection with
174 the peer review process.

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