

SECOND REGULAR SESSION

[PERFECTED]

SENATE BILL NO. 896

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR YECKEL.

Read 1st time January 9, 2002, and 1,000 copies ordered printed.

Read 2nd time January 14, 2002, and referred to the Committee on Financial and Governmental Organization, Veterans' Affairs and Elections.

Reported from the Committee January 28, 2002, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up February 13, 2002. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

3449S.02P

AN ACT

To repeal sections 326.256, 326.271, 326.280, 326.283, 326.286, 326.289 and 326.292, RSMo, relating to public accountants, and to enact in lieu thereof seven new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 326.256, 326.271, 326.280, 326.283, 326.286, 326.289 and 326.292, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 326.256, 326.271, 326.280, 326.283, 326.286, 326.289 and 326.292, to read as follows:

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

- (1) "AICPA", the American Institute of Certified Public Accountants;
- (2) "Attest", providing the following financial statement services:
 - (a) Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

- (b) Any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE);

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

(3) "Board", the Missouri state board of accountancy established pursuant to section 326.259 or its predecessor pursuant to prior law;

(4) "Certificate", a certificate issued pursuant to section 326.060 prior to August 28, 2001;

(5) "Certified public accountant" or "CPA", the holder of a certificate or license as defined in this section;

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

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

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

(9) "License", a license issued pursuant to section 326.280, or a provisional license issued pursuant to section 326.283; or, in each case, an individual license or permit issued pursuant to corresponding provisions of prior law;

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

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

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

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

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

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

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

(17) "Public [accountancy] **accounting**":

(a) Performing or offering to perform for an enterprise, client or potential client one or more services involving the use of accounting or auditing skills, or one or more management advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters by a person, firm, limited liability company or professional corporation using the title

"C.P.A." or "P.A." in signs, advertising, directory listing, business cards, letterheads or other public representations;

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

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

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

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

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

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

(22) "Transmittal", any transmission of information in any form, including but not limited

to any and all documents, records, minutes, computer files, disks or information.

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

326.271. 1. The board shall promulgate rules of procedure for governing the conduct of matters before the board.

2. The board shall promulgate rules of professional conduct for establishing and maintaining high standards of competence and integrity in the profession of public [accountancy] **accounting**.

3. In promulgating rules and regulations regarding the requirements of continuing education, the board:

(1) May use and rely upon guidelines and pronouncements of recognized educational and professional associations;

(2) May prescribe for content, duration and organization of courses;

(3) Shall consider accessibility to continuing education as required by the board, and any impediments to the interstate practice of public [accountancy] **accounting** which may result from differences in requirements in states;

(4) May in its discretion relax or suspend continuing education requirements for instances of individual hardship;

(5) Shall not require the completion of more than one hundred twenty hours of continuing education or its equivalent in any three-year period, not more than one-third of which shall be required in any one year. The continuing education requirements must be capable of being fulfilled in programs or courses reasonably available to licensees within the state.

4. The board may require by rule licensees to submit any continuing education reporting as the board deems necessary.

5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this chapter shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This chapter and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

326.280. 1. A license shall be granted by the board to any person who meets the requirements of this chapter and who:

(1) Is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state;

(2) Has attained the age of twenty-one years;

(3) Is of good moral character;

(4) Either:

(a) Applied for the initial examination prior to June 30, 1999, and holds a baccalaureate degree conferred by an accredited college or university recognized by the board, with a concentration in accounting or the substantial equivalent of a concentration in accounting as determined by the board; or

(b) Applied for the initial examination on or after June 30, 1999, and has at least one hundred fifty semester hours of college education, including a baccalaureate or higher degree conferred by an accredited college or university recognized by the board, with the total educational program including an accounting concentration or equivalent as determined by board rule to be appropriate;

(5) Has passed an examination in accounting, auditing and such other related subjects as the board shall determine is appropriate; and

(6) Has had one year of experience. Experience shall be verified by a licensee and shall include any type of service or advice involving the use of accounting, attest, review, compilation, management advisory, financial advisory, tax or consulting skills including governmental accounting, budgeting or auditing. The board shall promulgate rules and regulations concerning the verifying licensee's review of the applicant's experience.

2. The board [shall] **may** prescribe by rule the terms and conditions for reexaminations and fees to be paid for reexaminations.

3. A person who, on August 28, 2001, holds an individual permit issued pursuant to the laws of this state shall not be required to obtain additional licenses pursuant to sections 326.280 to 326.286, and the licenses issued shall be considered licenses issued pursuant to sections 326.280 to 326.286. However, such persons shall be subject to the provisions of section 326.286 for renewal of licenses.

4. Upon application, the board may issue a temporary license to an applicant pursuant to this subsection for a person who has made a prima facie showing that the applicant meets all of the requirements for a license and possesses the experience required. The temporary license shall be effective only until the board has had the opportunity to investigate the applicant's qualifications for licensure pursuant to subsection 1 of this section and notify the applicant that the applicant's application for a license has been granted or rejected. In no event shall a temporary license be in effect for more than twelve months after the date of issuance nor shall a temporary license be reissued to the same applicant. No fee shall be charged for a temporary license. The holder of a temporary license which has not expired, been suspended or revoked shall be deemed to be the holder of a license issued pursuant to this section until the temporary license expires, is terminated, suspended or revoked.

5. An applicant for an examination who meets the educational requirements of subdivision (4) of subsection 1 of this section or who reasonably expects to meet those requirements within sixty days after the examination shall be eligible for examination if the applicant also meets the requirements of subdivisions (1), (2) and (3) of subsection 1 of this section. For an applicant admitted to examination on the reasonable expectation that the applicant will meet the educational requirements within sixty days, no license shall be issued nor credit for the examination or any part thereof given unless the educational requirement is in fact met within the sixty-day period.

326.283. 1. (1) An individual whose principal place of business is not in this state and has a valid designation to practice public [accountancy] **accounting** from any state which the board has determined by rule to be in substantial equivalence with the licensure requirements of sections 326.250 to 326.331, or if the individual's qualifications are substantially equivalent to the licensure requirements of sections 326.250 to 326.331, shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of licensees of this state, provided the individual shall notify the board of his or her intent to engage in the practice of accounting with a client within this state whether in person, by electronic or technological means, or any other manner. The board by rule may require individuals to obtain a license.

(2) Any individual of another state exercising the privilege afforded pursuant to this section consents as a condition of the grant of this privilege to:

- (a) The personal and subject matter jurisdiction and disciplinary authority of the board;
- (b) Comply with this chapter and the board's rules; and
- (c) The appointment of the state board which issued the individual's license as his or her agent upon whom process may be served in any action or proceeding by this board against the individual.

(3) Nothing in this section shall prohibit temporary practice in this state for professional business incidental to a CPA's regular practice outside this state. "Temporary practice" means that practice which is a continuation or extension of an engagement for a client located outside this state, which engagement began outside this state and extends into this state through common ownership, existence of a subsidiary, assets or other operations located within this state.

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

326.286. 1. The board may grant or renew licenses to persons who make application and

demonstrate that[:

(1)] their qualifications, including the qualifications prescribed by section 326.280, are in accordance with this section]; or

(2) They are eligible under the substantial equivalency standard pursuant to subsection 1 of section 326.283].

2. Licenses shall be initially issued and renewed for periods of not more than three years and shall expire on the renewal date following issuance or renewal. Applications for licenses shall be made in such form, and in the case of applications for renewal, between such dates, as the board by rule shall specify. Application and renewal fees shall be determined by the board by rule.

3. With regard to applicants that do not qualify for reciprocity [under] **pursuant to subsection 1 of this section, or a provisional license through** the substantial equivalency standard set out in subsection 1 of section 326.283, the board may issue a license to an applicant upon a showing that:

(1) The applicant passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in this state;

(2) The applicant had four years of experience outside of this state of the type described in subdivision (6) of subsection 1 of section 326.280 or meets equivalent requirements prescribed by the board by rule, after passing the examination upon which the applicant's license was based and within the ten years immediately preceding the application; and

(3) If the applicant's certificate, license or permit was issued more than four years prior to the application for issuance of a license pursuant to this section, the applicant has fulfilled the requirements of continuing professional education that would have been applicable pursuant to subsection 6 of this section.

4. As an alternative to the requirements of subsection 3 of this section, a certified public accountant licensed by another state who establishes a principal place of business in this state shall request the issuance of a license from the board prior to establishing the principal place of business. The board may issue a license to the person who obtains verification from the NASBA National Qualification Appraisal Service that the individual's qualifications are substantially equivalent to the licensure requirements of sections 326.250 to 326.331.

5. An application pursuant to this section may be made through the NASBA Qualification Appraisal Service.

6. For renewal of a license pursuant to this section, each licensee shall participate in a program of learning designed to maintain professional competency. The program of learning shall comply with rules adopted by the board. The board may create by rule an exception to such requirement for licensees who do not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports

on financial statements or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Licensees granted an exception by the board shall place the word "inactive" adjacent to their certified public accountant title on any business card, letterhead or any other document or device, except their certified public accountant certificate, on which their certified public accountant title appears.

7. Applicants for initial issuance or renewal of licenses pursuant to this section shall list all states in which they have applied for or hold certificates, licenses or permits and list any past denial, revocation or suspension or any discipline of a certificate, license or permit. Each holder of or applicant for a license shall notify the board in writing within thirty days after its occurrence of any issuance, denial, revocation or suspension or any discipline of a certificate, license or permit by another state.

8. The board may issue a license to a holder of a substantially equivalent foreign designation, provided that:

(1) The foreign authority which granted the designation makes similar provisions to allow a person who holds a valid license issued by this state to obtain such foreign authority's comparable designation; and

(2) The foreign designation:

(a) Was duly issued by a foreign authority that regulates the practice of public [accountancy] **accounting** and the foreign designation has not expired or been revoked or suspended;

(b) Entitles the holder to issue reports upon financial statements; and

(c) Was issued upon the basis of educational, examination and experience requirements established by the foreign authority or by law; and

(3) The applicant:

(a) Received the designation based on educational and examination standards substantially equivalent to those in effect in this state at the time the foreign designation was granted;

(b) Completed an experience requirement substantially equivalent to the requirement set out in subdivision (6) of subsection 1 of section 326.280 in the jurisdiction which granted the foreign designation or has completed four years of professional experience in this state, or meets equivalent requirements prescribed by the board by rule within the ten years immediately preceding the application; and

(c) Passed a uniform qualifying examination in national standards and an examination on the laws, regulations and code of ethical conduct in effect in this state acceptable to the board.

9. An applicant pursuant to subsection 8 of this section shall list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public

[accountancy] accounting. Each holder of a license issued pursuant to this subsection shall notify the board in writing within thirty days after its occurrence of any issuance, denial, revocation, suspension or any discipline of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

10. The board has the sole authority to interpret the application of the provisions of subsections 8 and 9 of this section.

[11. The board shall require by rule as a condition for renewal of a license by any licensee who performs review or compilation services for the public other than through a certified public accountant firm that the individual undergo, no more frequently than once every three years, a peer review conducted in a manner as the board by rule shall specify, and the review shall include verification that the individual has met the competency requirements set out in professional standards for such services.]

326.289. 1. The board may grant or renew permits to practice as a certified public accounting firm to entities that make application and demonstrate their qualifications in accordance with this section or to certified public accounting firms originally licensed in another state that establish an office in this state. A firm shall hold a permit issued pursuant to this section to provide attest, review or compilation services or to use the title certified public accountant or certified public accounting firm.

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

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

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

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

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

(a) The firm designates a licensee of this state who is responsible for the proper registration of the firm and identifies that individual to the board;

(b) All nonlicensee owners are active individual participants in the certified public

accounting firm or affiliated entities;

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

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

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

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

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

(1) The legal form of the firm;

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

(3) Any other matter.

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

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

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

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

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

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

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

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

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

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

13. The peer review processes shall be operated and the documents generated thereby

be maintained in a manner designed to preserve their confidentiality. No third party, other than the oversight body, the board, subject to the provisions of subsection 12 of this section, or the organization performing peer review shall have access to documents furnished or generated in the course of the review. All documents shall be privileged and closed records for all purposes and all meetings at which the documents are discussed shall be considered closed meetings pursuant to subdivision (1) of section 610.021, RSMo. The proceedings, records and workpapers of the board and any peer review subjected to the board process shall be privileged and shall not be subject to discovery, subpoena or other means of legal process or introduction into evidence at any civil action, arbitration, administrative proceeding or board proceeding. No member of the board or person who is involved in the peer review process shall be permitted or required to testify in any civil action, arbitration, administrative proceeding or board proceeding as to any matters produced, presented, disclosed or discussed during or in connection with the peer review process or as to any findings, recommendations, evaluations, opinions or other actions of such committees or any of its members; provided, however, that information, documents or records that are publicly available shall not be subject to discovery or use in any civil action, arbitration, administrative proceeding or board proceeding merely because they were presented or considered in connection with the peer review process.

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

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

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

(2) A person who holds a certificate, then in force and effect, issued pursuant to the laws of this state prior to August 28, 2001, and who is regularly employed by or is a director or officer of a corporation, partnership, association or business trust, in his or her capacity as such, from

signing, delivering or issuing any financial, accounting or related statement, or report thereon relating to such corporation, partnership, association or business trust provided the capacity is so designated, and provided in the signature line the title CPA or certified public accountant is not designated.

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

- (1) The firm holds a valid permit issued pursuant to section 326.289; and
- (2) Ownership of the firm is in accord with section 326.289 and rules promulgated by the board.

4. Only persons holding a valid license or permit issued pursuant to section 326.280 or 326.289 shall assume or use the title certified accountant, chartered accountant, enrolled accountant, licensed accountant, registered accountant, accredited accountant or any other title or designation likely to be confused with the titles certified public accountant or public accountant, or use any of the abbreviations CA, LA, RA, AA or similar abbreviation likely to be confused with the abbreviation CPA or PA. The title enrolled agent or EA shall only be used by individuals so designated by the Internal Revenue Service. Nothing in this section shall prohibit the use or issuance of a title for nonattest services provided that the organization and the title issued by the organization existed prior to August 28, 2001.

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

- (a) For compilations:

"I (We) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of a financial statement information that is the representation of management (owners). I (We) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.";

- (b) For reviews:

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

(2) Only persons or firms holding a valid license or permit issued pursuant to section 326.280 or 326.289 shall assume or use any title or designation that includes the words accountant or accounting in connection with any other language, including the language of a report, that implies that the person or firm holds a license or permit or has special competence

as an accountant or auditor; provided, however, that this subsection shall not prohibit any officer, partner, principal, member, manager or employee of any firm or organization from affixing such person's own signature to any statement in reference to the financial affairs of the firm or organization with any wording designating the position, title or office that the person holds therein nor prohibit any act of a public official or employee in the performance of the person's duties as such. Nothing in this subsection shall prohibit the singular use of "accountant" or "accounting" for nonattest purposes.

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

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

8. None of the foregoing provisions of this section shall apply to a person or firm holding a certification, designation, degree or license granted in a foreign country entitling the holder to engage in the practice of public [accountancy] **accounting** or its equivalent in the country whose activities in this state are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds the entitlement, who performs no attest, review or compilation services and who issues no reports with respect to the financial statements of any other persons, firms or governmental units in this state, and who does not use in this state any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

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

10. [No individual licensee shall issue a report in standard form upon a compilation or review of financial information through any form of business that does not hold a valid permit issued pursuant to section 326.289 unless the report discloses the name of the business through which the individual is issuing the report, and the individual:

- (1) Signs the compilation or review report identifying the individual as a licensee;
- (2) Meets the competency requirement provided in applicable standards; and
- (3) Undergoes, no less frequently than once every three years, a peer review conducted in a manner as the board by rule shall specify, and the review shall include verification that the individual has met the competency requirements set out in professional standards for such

services.

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

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

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

[14.] **13.** (1) A licensee shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client:

- (a) An audit or review of a financial statement; or
- (b) A compilation of a financial statement when the licensee expects, or reasonably may expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
- (c) An examination of prospective financial information.

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

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

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

[15.] **14.** (1) A licensee shall not:

- (a) Perform for a contingent fee any professional services for, or receive a fee from, a client for whom the licensee or the licensee's firm performs:
 - a. An audit or review of a financial statement; or
 - b. A compilation of a financial statement when the licensee expects, or reasonably might

expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

c. An examination of prospective financial information; [or]

(b) Prepare an original [or amended] tax return or claim for a tax refund for a contingent fee for any client; **or**

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

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

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

[16.] **15.** Any person who violates any provision of subsections 1 to 5 of this section shall be guilty of a class A misdemeanor. Whenever the board has reason to believe that any person has violated this section it may certify the facts to the attorney general of this state or bring other appropriate proceedings.

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