

58-26a-502 Unprofessional conduct.

(1) "Unprofessional conduct" includes:

- (a) undertaking an engagement when the licensee knows or should know that the licensee could not reasonably expect to complete it with professional competence;
- (b) making unauthorized disclosures of confidential information obtained in the practice of public accountancy;
- (c) engaging in any business or activity that creates a conflict of interest with a licensee's practice in the profession when the licensee knows or should know that it is a conflict of interest and the licensee does not fully disclose the conflict of interest in writing to all affected parties;
- (d) failing to meet the requirements for continuing professional education or peer review required under this chapter; or
- (e) issuing a report on financial statements of a client, other than a report in which a lack of independence is disclosed, or performing an attest engagement subject to the attestation standards of the American Institute of Certified Public Accountants when the licensee is not independent, in fact and appearance, to the client.

(2)

- (a) A licensee may not, for a commission, recommend or refer to a client a product or service, or for a commission recommend or refer a product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client:
 - (i) an audit or review of a financial statement;
 - (ii) 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
 - (iii) an examination of prospective financial information.
- (b) The prohibition under Subsection (2)(a) applies during:
 - (i) the period in which the licensee is engaged to perform any of the services listed in Subsection (2)(a); and
 - (ii) the period covered by any historical financial statements involved in any such listed services.
- (c) A licensee who is not prohibited under Subsection (2)(a) from performing services or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.
- (d) A licensee who accepts a referral fee for recommending or referring a service of a licensee to a person or entity or who pays a referral fee to obtain a client shall disclose the acceptance or payment to the client.

(3)

- (a) A licensee may not:
 - (i) perform for a contingent fee a professional service for, or receive a contingent fee from a client for whom the licensee or the licensee's firm performs:
 - (A) an audit or review of a financial statement;
 - (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
 - (ii) prepare an original or amended tax return or claim for a tax refund for a contingent fee for a client.
- (b) The prohibition in Subsection (3)(a) applies during:

- (i) the period in which the licensee is engaged to perform any of the services listed in Subsection (3)(a); and
- (ii) the period covered by any historical financial statements involved in the listed services.
- (c) Except as stated in Subsections (3)(d) and (e), a contingent fee is a fee established for the performance of a 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.
- (d) Solely for the purposes of this Subsection (3), 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 a governmental agency.
- (e) A licensee's fee may vary depending, for example, on the complexity of service rendered.

Amended by Chapter 265, 2008 General Session