

Part 5

Unlawful and Unprofessional Conduct

58-26a-501 Unlawful conduct.

- (1) "Unlawful conduct" includes:
- (a) using "certified public accountant," "public accountant," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the individual is a certified public accountant, unless that individual:
 - (i) has a current license as a certified public accountant issued under this chapter; or
 - (ii) is exempt from licensure under Subsection 58-26a-305(1)(a);
 - (b) a firm assuming or using "certified public accountant," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants unless each office of the firm in this state:
 - (i) is registered with the division; and
 - (ii) meets the requirements of Subsections 58-26a-302(3)(a)(iii) and (iv);
 - (c) signing or affixing to any accounting or financial statement the person's name or any trade or assumed name used in that person's profession or business, with any wording indicating that the person is an auditor, or with any wording indicating that the person has expert knowledge in accounting or auditing, unless that person is licensed under this chapter and all of the person's offices in this state for the practice of public accountancy are maintained and registered as provided in this chapter; and
 - (d) except as provided in Section 58-26a-305, engaging in the following conduct if not licensed under this chapter to practice public accountancy:
 - (i) issuing a report on financial statements of any other person, firm, organization, or governmental unit; or
 - (ii) issuing a report using any form of language substantially similar to conventional language used by licensees respecting:
 - (A) a review of financial statements; or
 - (B) a compilation of financial statements.
- (2)
- (a) Except as provided in Subsection (2)(c), if, upon inspection or investigation, the division concludes that a person has engaged in unlawful conduct and that disciplinary action is appropriate, the division shall promptly issue a citation to the person in accordance with this chapter and any pertinent division rules.
 - (b) A citation issued under Subsection (2)(a) shall:
 - (i) be in writing;
 - (ii) describe with particularity the nature of the violation, including a reference to the statute or rule alleged to have been violated;
 - (iii) state that the recipient must notify the division in writing within 20 calendar days from the day on which the recipient receives the citation if the recipient intends to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
 - (iv) explain the consequences of failure to timely contest the citation or make payment of any fine assessed by citation within the time specified by the citation.
 - (c) The division may issue a notice instead of a citation.
 - (d) A citation issued as described in Subsection (2)(a) may be served:
 - (i)

- (A) upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure; and
- (B) may be made personally or upon the person's agent by a division investigator or by any person designated by the director; or
- (ii) by mail.
- (e) If, within 20 calendar days from the date of the service of the citation described in Subsection (2)(a), the recipient of the citation fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.
- (f) The division may extend the time period described in Subsection (2)(e) for cause.
- (g) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after the citation becomes final.
- (h) The failure of an applicant for licensure to comply with a citation after the citation becomes final is grounds for denial of a license.
- (i) The division may not issue a citation more than one year after the day on which the violation that is the subject of the citation is reported to the division.
- (3)
 - (a) The division shall assess a fine under Subsection (2) according to the following:
 - (i) for a first offense, a fine of up to \$1,000;
 - (ii) for a second offense, a fine of up to \$2,000; and
 - (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued offense.
 - (b) An action the division initiates for a first or second offense that has not resulted in a final order of the division may not preclude the initiation of any subsequent action for a second or subsequent offense during the pendency of the preceding action.
- (4)
 - (a) The division may collect a fine that is not paid by:
 - (i) referring the matter to a collection agency; or
 - (ii) bringing an action in a court with jurisdiction.
 - (b) A county attorney or the attorney general shall provide legal assistance and advice to the director in an action to collect a fine.
 - (c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a fine.

Amended by Chapter 283, 2025 General Session

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

