

ACCOUNTANCY PRACTICE ACT

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

AN ACT RELATING TO OCCUPATIONAL AND PROFESSIONAL LICENSING, CORPORATIONS, AND PARTNERSHIPS; RECODIFYING THE CERTIFIED PUBLIC ACCOUNTANT LICENSING ACT; AMENDING PROVISIONS RELATING TO PROFESSIONAL CORPORATIONS, LIMITED LIABILITY COMPANIES, AND LIMITED PARTNERSHIPS TO INTERFACE WITH PROFESSIONAL LICENSING PROVISIONS; MAKING TECHNICAL CHANGES; AND PROVIDING A COORDINATION CLAUSE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 16-11-7**, as enacted by Chapter 20, Laws of Utah 1963
- 16-11-8**, as enacted by Chapter 20, Laws of Utah 1963
- 16-11-13**, as last amended by Chapter 6, Laws of Utah 1992, Third Special Session
- 16-11-14**, as last amended by Chapter 277, Laws of Utah 1992
- 48-1-48**, as enacted by Chapter 61, Laws of Utah 1994
- 48-2b-105**, as enacted by Chapter 258, Laws of Utah 1991

ENACTS:

- 58-26a-101**, Utah Code Annotated 1953
- 58-26a-102**, Utah Code Annotated 1953
- 58-26a-201**, Utah Code Annotated 1953
- 58-26a-301**, Utah Code Annotated 1953
- 58-26a-302**, Utah Code Annotated 1953
- 58-26a-303**, Utah Code Annotated 1953
- 58-26a-304**, Utah Code Annotated 1953
- 58-26a-305**, Utah Code Annotated 1953
- 58-26a-306**, Utah Code Annotated 1953
- 58-26a-307**, Utah Code Annotated 1953

- 58-26a-401, Utah Code Annotated 1953
- 58-26a-501, Utah Code Annotated 1953
- 58-26a-502, Utah Code Annotated 1953
- 58-26a-601, Utah Code Annotated 1953
- 58-26a-602, Utah Code Annotated 1953

REPEALS:

- 58-26-1, as repealed and reenacted by Chapter 242, Laws of Utah 1990
- 58-26-2, as last amended by Chapter 297, Laws of Utah 1993
- 58-26-3, as last amended by Chapter 297, Laws of Utah 1993
- 58-26-4, as last amended by Chapter 10, Laws of Utah 1997
- 58-26-5, as last amended by Chapter 313, Laws of Utah 1994
- 58-26-6, as last amended by Chapter 313, Laws of Utah 1994
- 58-26-7, as last amended by Chapter 297, Laws of Utah 1993
- 58-26-8, as last amended by Chapter 313, Laws of Utah 1994
- 58-26-9, as last amended by Chapter 297, Laws of Utah 1993
- 58-26-10, as repealed and reenacted by Chapter 242, Laws of Utah 1990
- 58-26-11, as last amended by Chapter 313, Laws of Utah 1994
- 58-26-12, as repealed and reenacted by Chapter 242, Laws of Utah 1990
- 58-26-13, as last amended by Chapter 297, Laws of Utah 1993
- 58-26-14, as last amended by Chapter 313, Laws of Utah 1994
- 58-26-15, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 58-26-18, as repealed and reenacted by Chapter 242, Laws of Utah 1990

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **16-11-7** is amended to read:

16-11-7. Issuance of shares of capital stock -- Restrictions.

(1) A professional corporation may issue the shares of its capital stock and a shareholder may voluntarily transfer shares of capital stock in a professional corporation only to:

(a) persons who are duly licensed to render the same specific professional services as those

for which the corporation was organized[~~-. A shareholder may voluntarily transfer his shares in a professional corporation only to a person who is duly licensed to render the same specific professional services as those for which the corporation was organized.]; or~~

(b) persons other than those meeting the requirements of Subsection (1)(a) to the extent and in the proportions allowed by the applicable licensing act for the profession for which the corporation is organized.

(2) Any shares issued in violation of this section are void.

Section 2. Section **16-11-8** is amended to read:

16-11-8. Requirement to be an officer, director, or shareholder.

(1) No person may be an officer, director, or shareholder of a professional corporation [~~who is not~~] unless that person is:

(a) an individual duly licensed to render the same specific professional services as those for which the corporation was organized; [~~provided, however, a~~] or

(b) qualified to be an officer, director, or shareholder under the applicable licensing act for the profession for which the corporation is organized.

(2) Notwithstanding the provisions of Subsection (1), a nonlicensed person may serve as secretary or treasurer.

Section 3. Section **16-11-13** is amended to read:

16-11-13. Purchase or redemption of shares of disqualified shareholder.

(1) The articles of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the [~~death~~] failure to qualify or disqualification of [~~such~~] that shareholder, or the same may be provided in the bylaws or by private agreement. In the absence of such a provision in the articles of incorporation, the bylaws, or by private agreement, the professional corporation shall purchase the shares of [~~a deceased shareholder or~~] a shareholder [~~no longer~~] who is not qualified to own shares in [~~such~~] the corporation within 90 days after the [~~death of the shareholder~~] failure to qualify or disqualification of the shareholder[~~, as the case may be~~].

(2) The price for [~~such~~] shares purchased under this section shall be their reasonable fair value as of the date of [~~death~~] failure to qualify or disqualification of the shareholder.

(3) If the corporation ~~[shall fail]~~ fails to purchase ~~[said]~~ shares ~~[by the end of said 90 days, then the executor or administrator or other personal representative of a deceased shareholder or]~~ as required by Subsection (1), any disqualified shareholder or personal representative of a disqualified shareholder may bring an action in the district court of the county in which the principal office or place of practice of the professional corporation is located for the enforcement of this ~~[provision]~~ section. The court shall have power to award the plaintiff the reasonable fair value of his shares, or within its jurisdiction, may order the liquidation of the corporation. Further, if the plaintiff is successful in ~~[such]~~ the action, he shall be entitled to recover a reasonable attorney's fee and costs.

(4) The professional corporation shall repurchase ~~[such]~~ shares as required by this section without regard to restrictions upon the repurchase of shares provided by Title 16, Chapter 10a, Utah Revised Business Corporation Act.

Section 4. Section **16-11-14** is amended to read:

16-11-14. Annual certificate -- Filing -- Contents -- Filing fee.

During the month of the anniversary date of incorporation, each professional corporation shall file with the division an annual report as specified by Section 16-10a-1607, giving the names and residence addresses of all shareholders of the professional corporation as of its anniversary date of incorporation next preceding, and certifying that all of ~~[such]~~ the shareholders are duly licensed to render the same specific professional services as those for which the corporation was organized or otherwise qualify to be shareholders pursuant to the applicable licensing act for the profession for which the corporation was organized.

Section 5. Section **48-1-48** is amended to read:

48-1-48. Limited liability partnerships providing professional services.

(1) A limited liability partnership organized under Sections 48-1-41 through 48-1-48 to render professional services may render only one specific type of professional service, and services ancillary to that type of professional service, and may not engage in any business other than rendering the professional service that it was organized to render and services ancillary to those services.

(2) A limited liability partnership organized to render professional services:

(a) may include partners and employees authorized under the laws of the jurisdiction where

they reside to provide similar services; ~~and~~

(b) may include partners who are not licensed or registered by the state to render those professional services to the extent allowed by the applicable licensing act relating to those professional services; and

~~(b)~~ (c) may render professional services in Utah only through its partners and employees who are licensed or registered by the state to render those professional services.

(3) A limited liability partnership organized to render professional services shall have the powers provided a limited liability partnership under this chapter.

Section 6. Section **48-2b-105** is amended to read:

48-2b-105. Powers.

(1) Each limited liability company organized and existing under this chapter may:

(a) sue or be sued, or institute or defend any action, arbitration, or proceeding, whether judicial, administrative, or otherwise, in its own name;

(b) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated;

(c) sell, convey, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets;

(d) lend money to and otherwise assist its employees and managers;

(e) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, otherwise dispose of, or otherwise use or deal in or with:

(i) shares or other interests in or obligations of other foreign or domestic limited liability companies, domestic or foreign corporations, associations, general or limited partnerships, or individuals; or

(ii) direct or indirect obligations of the United States or any other government, state, territory, governmental district, or municipality or of any instrumentality of them;

(f) make contracts or guarantees or incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, or other obligations, or secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;

- (g) lend money for any lawful purpose, invest or reinvest its funds, or take and hold real or personal property as security for the payment of funds so loaned or invested;
- (h) conduct its business and maintain offices and exercise the powers granted by this chapter within or without this state, in any state, territory, district, or possession of the United States or in any foreign country;
- (i) elect or appoint managers and agents of the limited liability company, define their duties, and fix their compensation;
- (j) make and alter an operating agreement, not inconsistent with its articles of organization or with the laws of this state, for the administration and regulation of its affairs;
- (k) make donations for the public welfare or for charitable, scientific, religious, or educational purposes;
- (l) indemnify a member or manager or any other person to the same extent that a partnership may indemnify any of the partners, managers, employees, or agents of the partnership against expenses actually and reasonably incurred by the member or manager in connection with the defense of an action, suit, or proceeding, whether civil or criminal, in which the member or manager is made a party;
- (m) cease its activities and surrender its certificate of organization;
- (n) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the company is organized;
- (o) transact any lawful business which the members or the managers find to be in aid of governmental policy;
- (p) pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its managers and employees;
- (q) be a promoter, incorporator, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, limited liability company, joint venture, trust, or other enterprise; and
- (r) render professional services, if each member of a limited liability company who renders professional services in Utah is licensed or registered to render those professional services pursuant

to applicable Utah law.

(2) A limited liability company organized to render professional services under this chapter may render only one specific type of professional services, and services ancillary to them, and may not engage in any business other than rendering the professional services which it was organized to render, and services ancillary to them.

(3) A limited liability company organized to render professional services:

(a) may include members, managers, and employees authorized under the laws of the jurisdiction where they reside to provide similar services;

(b) may include members who are not licensed or registered by the state to render those professional services to the extent allowed by the applicable licensing act relating to those professional services;

~~(b)~~ (c) may render professional services in ~~[Utah]~~ this state only through its members, managers, and employees who are licensed or registered by ~~[the]~~ this state ~~[of Utah]~~ to render those professional services; and

~~(c)~~ (d) shall have all of the other powers provided under this section.

Section 7. Section **58-26a-101** is enacted to read:

CHAPTER 26a. CERTIFIED PUBLIC ACCOUNTANT LICENSING ACT

Part 1. General Provisions

58-26a-101. Title.

This chapter is known as the "Certified Public Accountant Licensing Act."

Section 8. Section **58-26a-102** is enacted to read:

58-26a-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Accounting experience" means applying accounting and auditing skills and principles that are taught as a part of the professional education qualifying a person for licensure under this chapter and generally accepted by the profession, under the supervision of a licensed certified public accountant.

(2) "Board" means the Utah Board of Accountancy created in Section 58-26a-201.

(3) "Certified Public Accountant" or "CPA" means an individual currently licensed by this state or any other state to practice public accountancy or who has been granted a certificate as a certified public accountant under prior law or this chapter.

(4) "Certified Public Accountant firm" or "CPA firm" means a qualified business entity holding a valid registration as a Certified Public Accountant firm under this chapter.

(5) "Client" means the person who retains a licensee for the performance of one or more of the services included in the definition of the practice of public accountancy. "Client" does not include a CPA's employer when the licensee works in a salaried or hourly rate position.

(6) "Compilation of financial statements" means the presentation in the form of financial statements of information that is the representation of management or owners accompanied by a report stating the compilation has been performed in accordance with standards established by the American Institute of Certified Public Accountants.

(7) "Experience" means:

(a) accounting experience;

(b) professional experience; or

(c) qualifying experience.

(8) "Licensee" means the holder of a current valid license issued under this chapter.

(9) "Practice of public accounting" means the offer to perform or the performance by a person holding himself out as a certified public accountant of one or more kinds of services involving the use of auditing or accounting skills including the issuance of reports or opinions on financial statements, performing attestation engagements, the performance of one or more kinds of advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters for a client.

(10) "Peer review" means a study, appraisal, or review of one or more aspects of the professional work of a person or qualified business entity in the practice of public accountancy, by a licensee or any other qualified person in accordance with rules adopted pursuant to this chapter and who is not affiliated with the person or qualified business entity being reviewed.

(11) "Professional experience" means experience lawfully obtained while licensed as a

certified public accountant in another jurisdiction, recognized by rule, in the practice of public accountancy performed for a client, which includes expression of assurance or opinion, for at least 300 hours collectively in the following areas:

(a) applying Generally Accepted Auditing Standards (GAAS) to the usual and customary financial transactions recorded in the accounting records;

(b) preparing audit working papers in accordance with GAAS covering the examination of the accounts usually found in accounting records;

(c) planning the audit scope in accordance with GAAS, including the audit program to be followed;

(d) preparing written explanations and comments on the findings of the examination and on the content of the accounting records; and

(e) preparing and analyzing financial statements in accordance with GAAS.

(12) "Qualified business entity" means a sole proprietorship, corporation, limited liability company, or partnership engaged in the practice of public accountancy.

(13) "Qualified continuing professional education" means a formal program of education that contributes directly to the professional competence of a certified public accountant.

(14) "Qualifying examinations" means:

(a) the AICPA Uniform CPA Examination;

(b) the AICPA Examination of Professional Ethics for CPAs;

(c) the Utah Laws and Rules Examination; and

(d) any other examination approved by the board and adopted by the division by rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(15) "Qualifying experience" means experience in the practice of public accountancy under the direction and supervision of a licensed certified public accountant performed for a client, which includes expression of assurance or opinion, for at least 300 hours collectively in the following areas:

(a) applying Generally Accepted Auditing Standards (GAAS) to the usual and customary financial transactions recorded in the accounting records;

(b) preparing audit working papers in accordance with GAAS covering the examination of

the accounts usually found in accounting records;

(c) planning the audit scope in accordance with GAAS, including the audit program to be followed;

(d) preparing written explanations and comments on the findings of the examination and on the content of the accounting records; and

(e) preparing and analyzing financial statements in accordance with GAAS.

(16) (a) "Report" means:

(i) when used with reference to financial statements, an opinion, report or other form of language that:

(A) states or implies assurance as to the reliability of any financial statements; or

(B) implies that the person or firm issuing it has special knowledge or competence in accounting or auditing and specifically includes compilations and reviews; such an 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 a public accountant or auditor, or from the language of the report itself; or

(ii) any disclaimer of opinion when it is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or language suggesting special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

(b) "Report" does not include a financial statement prepared by an unlicensed person if:

(i) that financial statement has a cover page which includes essentially the following language: "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 financial statements, 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."; and

(ii) the cover page and any related footnotes do not use the terms "compilation," "review,"

"audit," "generally accepted auditing standards," "generally accepted accounting principles," or other similar terms.

(17) "Review of financial statements" means performing inquiry and analytical procedures which provide a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting; and, the issuance of a report on the financial statements stating that a review was performed in accordance with the standards established by the American Institute of Certified Public Accountants.

(18) (a) "Substantial equivalency" means that the education, examination, and experience required by another jurisdiction are comparable to or exceed the education, examination, and experience requirements of this chapter, or that an individual's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements of this chapter.

(b) "Substantial equivalency" is determined by the board in accordance with rules made by the division in collaboration with the board.

(19) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-26a-501.

(20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-26a-502 and as may be further defined by rule.

(21) "Year of experience" means 2,000 hours of cumulative experience.

Section 9. Section **58-26a-201** is enacted to read:

Part 2. Board

58-26a-201. Board.

(1) There is created the Utah Board of Accountancy consisting of four licensed certified public accountants and one member of the general public.

(2) The board shall be appointed and shall serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating

basis to:

(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(b) advise the division in its investigation of these complaints.

(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Section 10. Section **58-26a-301** is enacted to read:

Part 3. Licensing

58-26a-301. Licensure or registration required -- License and registration classifications.

(1) (a) A license is required for an individual to engage in the practice of public accounting, except as specifically provided in Section 58-26a-305 or 58-1-307.

(b) Registration with the division is required for a qualified business entity to engage in the practice of public accounting, except as specifically provided in Section 58-26a-305 or 58-1-307.

(2) (a) The division shall issue to an individual who qualifies under this chapter a license in the classification of Certified Public Accountant.

(b) The division shall issue to a qualified business entity which qualifies under this chapter a registration in the classification of Certified Public Accountant Firm.

Section 11. Section **58-26a-302** is enacted to read:

58-26a-302. Qualifications for licensure and registration -- Licensure by endorsement -- Transitional provisions.

(1) Each applicant for licensure under this chapter as a certified public accountant shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) show evidence of good moral character;

(d) submit a certified transcript of credits from an accredited institution acceptable to the board showing:

(i) successful completion of a total of 150 semester hours or 225 quarter hours of collegiate level education with a concentration in accounting, auditing, and business;

(ii) a baccalaureate degree or its equivalent at a college or university approved by the board;
and

(iii) compliance with any other education requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(e) submit evidence of one year of accounting experience in a form prescribed by the division;

(f) submit evidence of having successfully completed the qualifying examinations in accordance with Section 58-26a-306; and

(g) submit to an interview by the board, if requested, for the purpose of examining the applicant's competence and qualifications for licensure.

(2) The division may issue a license under this chapter to a person who holds a license as a certified public accountant issued by any other jurisdiction of the United States if the applicant for licensure by endorsement:

(a) submits an application in a form prescribed by the division;

(b) pays a fee determined by the department under Section 63-38-3.2;

(c) shows evidence of good moral character;

(d) submits to an interview by the board, if requested, for the purpose of examining the applicant's competence and qualifications for licensure; and

(e) (i) (A) shows evidence of having passed the qualifying examinations; and

(B) (I) meets the requirements for licensure which were applicable in this state at the time of the issuance of the applicant's license by the jurisdiction from which the original licensure by satisfactorily passing the AICPA Uniform CPA Examination was issued; or

(II) had five years of professional experience after passing the AICPA Uniform CPA Examination upon which the original license was based, within the ten years immediately preceding the application for licensure by endorsement; or

(ii) shows evidence that the applicant's education, examination record, and experience are

substantially equivalent to the requirements of Subsection (1), as provided by rule.

(3) (a) Each applicant for registration as a Certified Public Accountant firm shall:

(i) submit an application in a form prescribed by the division;

(ii) pay a fee determined by the department under Section 63-38-3.2;

(iii) have a CPA license under this chapter held by:

(A) its proprietor, in the case of a sole proprietorship;

(B) one of its general partners, managers, or members, in the case of a partnership or limited liability company;

(C) one of its officers or shareholders, in the case of a corporation; or

(D) one of its owners, in the case of any other type of qualified business entity;

(iv) designate a CPA licensee who is responsible for on site supervision of operations of the CPA firm; and

(v) meet any other requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) Each separate location of a qualified business entity within the state seeking registration as a Certified Public Accountant firm shall register separately.

(c) A Certified Public Accountant firm may include owners who are not licensed under this chapter provided that:

(i) more than 50% of the ownership of the Certified Public Accountant firm, including financial interest and voting rights in the firm, is held by individuals who are Certified Public Accountants, licensed under this chapter or another jurisdiction of the United States; and

(ii) all nonlicensed owners are active individual participants in the CPA firm.

(4) An individual shall have until July 1, 2004, to obtain three years of qualifying experience for licensure without being required to complete the education requirement if that individual:

(a) was approved to take the qualifying examinations prior to July 1, 1994, under prior law without completion of the education requirement; and

(b) (i) passed the AICPA Uniform CPA Examination prior to July 1, 1994; or

(ii) received conditional credits on the AICPA Uniform CPA Examination prior to July 1,

1994, and subsequently passed all parts of the AICPA Uniform CPA Examination within six immediately successive examination administrations.

Section 12. Section **58-26a-303** is enacted to read:

58-26a-303. Term of license and registration -- Expiration -- Renewal.

(1) The division shall issue each license and registration under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal a licensee shall show satisfactory evidence of each of the following renewal requirements:

(a) completion of qualified continuing education as required under Section 58-26a-304; and

(b) successful completion of a peer review meeting the requirements established by rule by the division in collaboration with the board.

(3) Each license or registration automatically expires on the date shown on the license or registration unless it is renewed in accordance with Section 58-1-308.

Section 13. Section **58-26a-304** is enacted to read:

58-26a-304. Continuing education.

(1) As a condition precedent for a license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by rule, complete 80 hours of qualified continuing professional education in accordance with standards defined by rule.

(2) If a renewal cycle is extended or shortened under Section 58-26a-303, the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.

(3) (a) A licensee may request a waiver of the requirements of Subsection (1) for a period not exceeding three years by:

(i) submitting an application for waiver in a form approved by the division; and

(ii) demonstrating that the licensee will be engaged in activities or be subject to circumstances which prevent the licensee from meeting the requirements of Subsection (1) during the period of the waiver.

(b) An application for waiver shall be granted upon a showing of good cause.

(c) A licensee who is granted a waiver under this section shall complete 30 hours of continuing professional education within the six months immediately following the expiration of the waiver than includes at least 16 hours of continuing professional education focusing on auditing.

Section 14. Section **58-26a-305** is enacted to read:

58-26a-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following may engage in acts included within the definition of the practice of public accountancy, subject to the stated circumstances and limitations, without being licensed under this chapter:

(1) a person licensed by any other state, district, or territory of the United States or any foreign country as a certified public accountant or its equivalent under any other title while temporarily practicing in this state if:

(a) the practice is incidental to that person's regular practice outside of this state; and

(b) if that person's temporary practice within this state is in conformity with this chapter and rules established under this chapter;

(2) an officer, member, partner, or employee of any entity or organization who signs any statement or report in reference to the financial affairs of the entity or organization with a designation of that person's position within the entity or organization;

(3) a public official or employee while performing his official duties;

(4) a person using accounting or auditing skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports;

(5) an employee of a CPA firm registered under this chapter or an assistant to a person licensed under this chapter, working under the supervision of a licensee, if:

(a) neither the employee or assistant nor the licensed employer or registered CPA firm represents that the unlicensed person is a certified public accountant; and

(b) no accounting or financial statements are issued over the unlicensed person's name; and

(6) a person licensed as a public accountant for a period of not less than 20 years as of July

1, 1981, if that person's license was current as of April 23, 1990.

Section 15. Section **58-26a-306** is enacted to read:

58-26a-306. Examination requirements.

(1) Before taking the qualifying examinations, an applicant shall:

(a) submit an application in a form approved by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) demonstrate completion of the education requirement in Subsection 58-26a-302(1)(d);

and

(d) be approved by the board to take the qualifying examinations.

(2) (a) A person must sit for all parts of the AICPA Uniform CPA Examination upon that person's first sitting, and all subsequent sittings, for the examination, unless that person has currently valid conditional credits under Subsection (2)(b).

(b) An examinee who successfully passes two or more parts and receives a score of at least 50% in each part not passed, on the AICPA Uniform CPA Examination, shall receive conditional credits for those parts passed which may be applied to subsequent examinations. At any of the next six examinations, the examinee is required to take only those parts of the examination for which the examinee has not received conditional credits and shall receive additional conditional credits for any other parts passed. If conditional credits in all remaining parts are not received within six successive examinations after the original conditional credits were received, all credits terminate and a new application for the entire examination must be submitted. Passing the ethics section of the examination does not qualify as a part of the examination which will qualify the examinee for conditional credit.

Section 16. Section **58-26a-307** is enacted to read:

58-26a-307. CPA emeritus status -- Renewal of license.

(1) A person currently licensed as a certified public accountant may, on any renewal date of that license, apply for and obtain a transfer of that license to a status of CPA emeritus registration if:

(a) (i) the licensee is at least 60 years of age as of the date of renewal;

(ii) the licensee is disabled; or

(iii) the board finds other good cause for believing that the licensee will not return to the practice of public accountancy;

(b) the licensee makes an application for transfer of status and registration and pays a registration fee determined by the department under Section 63-38-3.2;

(c) the licensee, on application for transfer, certifies that he will not engage in the practice of public accountancy while in the status of CPA emeritus registration; and

(d) the licensee is in good standing as a CPA and not subject to any order of revocation, suspension, or probation.

(2) Each CPA emeritus registration shall be issued in accordance with a two-year renewal cycle established by rule.

(3) CPA emeritus registrants may not engage in the practice of public accountancy.

(4) CPA emeritus registrants are not required to fulfill the continuing professional education or peer review provisions of this chapter.

(5) Each CPA emeritus registrant is responsible for renewing his registration, according to procedures that the division establishes by rule in collaboration with the board in accordance with Section 58-1-308.

(6) A CPA emeritus registrant may reinstate his CPA license by:

(a) submitting an application in a form prescribed by the division;

(b) paying a fee determined by the department under Section 63-38-3.2; and

(c) showing evidence of having completed the continuing professional education requirement established by rule.

Section 17. Section **58-26a-401** is enacted to read:

Part 4. License Denial and Discipline

58-26a-401. Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Section 18. Section **58-26a-501** is enacted to read:

Part 5. Unlawful and Unprofessional Conduct

58-26a-501. Unlawful conduct.

"Unlawful conduct" includes:

(1) using "certified public accountant," "public accountant," "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless that person has:

(a) a current license as a certified public accountant issued under this chapter; or

(b) (i) a current license or certificate as a certified public accountant issued by any jurisdiction of the United States; and

(ii) (A) the use in this state is incidental to primary services being lawfully performed outside of this state; or

(B) the division has entered into a reciprocal agreement with that jurisdiction to recognize the license issued by that jurisdiction;

(2) 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:

(a) is registered with the division; and

(b) meets the requirements of Subsections 58-26a-302(3)(a)(iii), (iv), and (v);

(3) 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

(4) except as provided in Section 58-26a-305, engaging in the following conduct if not licensed under this chapter to practice public accountancy:

(a) issuing a report on financial statements of any other person, firm, organization, or

governmental unit; or

(b) issuing a report using any form of language substantially similar to conventional language used by licensees respecting:

(i) a review of financial statements; or

(ii) a compilation of financial statements.

Section 19. Section **58-26a-502** is enacted to read:

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;

(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; or

(f) receiving compensation, including a commission, for referring or selling services or products of others to a client during the period:

(i) that the licensee or CPA firm is engaged by the client for purposes of:

(A) an audit or review of a financial statement;

(B) a compilation of a financial statement when the licensee or his firm expects, or reasonably might expect, that a third party will use the financial statement and the compilation report and the report does not describe a lack of independence; or

(C) an examination of prospective financial information; or
(ii) covered by any historical financial statements involved with any of the services listed in Subsection (1)(f)(i).

(2) (a) Notwithstanding the provisions of Subsection (1)(f), a licensee or CPA firm that is not prohibited by Subsection (1)(f) from receiving other compensation, including a commission, may receive or agree to receive that other compensation for referral or sale of services or products of others to another person if:

(i) he discloses in writing the nature, source, and amount of all other compensation prior to making the referral or sale by the licensee or CPA firm; and

(ii) the receipt of the compensation complies with all of the other requirements of this section.

(b) Subsection (1)(f) does not apply to payments received from the sale of an accounting practice or to retirement payments to persons formerly engaged in the practice of public accountancy.

Section 20. Section **58-26a-601** is enacted to read:

Part 6. Regulatory and Operating Standards

58-26a-601. Ownership of statements, records, schedules, working papers, and memoranda made by licensee.

(1) All statements, records, schedules, working papers, and memoranda made by a licensee under this chapter, incident to or in the course of professional service to a client, are the property of the licensee, in the absence of any express agreement between the licensee and the client to the contrary.

(2) A licensee may not sell, trade, or bequeath statements, records, schedules, working papers, or memoranda without the consent of the client or the client's personal representative or assignee to anyone other than another licensee or one or more surviving partners or shareholders or new partners or shareholders of the licensee or any combined or merged CPA firm or successors-in-interest to the CPA firm.

Section 21. Section **58-26a-602** is enacted to read:

58-26a-602. Privity.

A licensee, a CPA firm registered under this chapter, and any employee, partner, member,

officer, or shareholder of a licensee or CPA firm are not liable to persons with whom they are not in privity of contract for civil damages resulting from acts, omissions, decisions, or other conduct in connection with professional services performed by that person, except for:

(1) acts, omissions, decisions, or conduct that constitute fraud or intentional misrepresentations; or

(2) other acts, omissions, decisions, or conduct, if the person performing the professional services:

(a) knew that a primary intent of the client was for the professional services to benefit or influence the particular person seeking to establish liability; and

(b) identified in writing to the client that the professional services performed on behalf of the client were intended to be relied upon by the particular person seeking to establish liability.

Section 22. Repealer.

This act repeals:

Section 58-26-1, Short title.

Section 58-26-2, Definitions.

Section 58-26-3, Utah Board of Accountancy.

Section 58-26-4, Requirements for licensure.

Section 58-26-5, Requirements for examination -- Conditioning on the examination.

Section 58-26-6, Licensure by endorsement.

Section 58-26-7, Conditions for issuance and renewal of licenses -- Quality review -- Continuing professional education.

Section 58-26-8, Reinstatement of license or certificate suspended for failure to renew or nonpayment of fees.

Section 58-26-9, Exemptions from licensure.

Section 58-26-10, Exemption from educational and examination requirements.

Section 58-26-11, CPA emeritus status and registration.

Section 58-26-12, Privity.

Section 58-26-13, Certificates or licenses held on April 23, 1990 -- Expiration of

certificates.

Section 58-26-14, Registration and requirements for firms.

Section 58-26-15, Grounds for denial of license -- Disciplinary proceedings.

Section 58-26-18, Ownership of statements, records, schedules, working papers, and memoranda made by licensee.

Section 23. Coordination clause.

If this bill and S.B. 107, Professional Corporation Act Amendments, both pass, it is the intent of the Legislature that Section 16-11-8 read as provided in S.B. 107 with the following amendments:

(1) on page 1, line 16, of S.B. 107 delete "if" and insert "unless";

(2) on page 1, line 16, of S.B. 107 bracket "not" and insert "; or (ii) qualified to be an officer, director, or shareholder under the applicable licensing act for the profession for which the corporation is organized."