

**CERTIFIED PUBLIC ACCOUNTANT
LICENSING ACT AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Ron Bigelow

LONG TITLE

General Description:

This bill modifies provisions of the Certified Public Accountant Licensing Act related to exemptions from licensure to practice public accountancy in this state.

Highlighted Provisions:

This bill:

▶ modifies the licensure by endorsement provisions for a certified public accountant by limiting its application to only those persons seeking to obtain a license issued by the state;

▶ provides a mobility provision for licensed certified public accountants by creating an exemption from licensure for a person licensed as a certified public accountant by any other state, district, or territory of the United States whose principal place of business is not in Utah, and:

- who is licensed from a state which the National Association of State Boards of Accountancy National Qualification Appraisal Service has verified to be substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act; or

- is from a state not verified by the National Qualification Appraisal Service, but the person is able to obtain that verification from the service and meet other requirements as a condition for receiving the exemption;



- 28 ▶ modifies certified public accountancy unlawful conduct and unprofessional conduct
- 29 provisions;
- 30 ▶ eliminates obsolete transition provisions for education and licensure and updates
- 31 professional and technical definitions; and
- 32 ▶ makes certain technical changes.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 **58-26a-102**, as enacted by Laws of Utah 2000, Chapter 261
- 40 **58-26a-302**, as enacted by Laws of Utah 2000, Chapter 261
- 41 **58-26a-304**, as enacted by Laws of Utah 2000, Chapter 261
- 42 **58-26a-305**, as enacted by Laws of Utah 2000, Chapter 261
- 43 **58-26a-501**, as enacted by Laws of Utah 2000, Chapter 261
- 44 **58-26a-502**, as enacted by Laws of Utah 2000, Chapter 261



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

47 Section 1. Section **58-26a-102** is amended to read:

48 **58-26a-102. Definitions.**

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

50 (1) "Accounting experience" means applying accounting and auditing skills and

51 principles that are taught as a part of the professional education qualifying a person for

52 licensure under this chapter and generally accepted by the profession, under the supervision of

53 a licensed certified public accountant.

54 (2) "AICPA" means the American Institute of Certified Public Accountants.

55 (3) (a) "Attest and attestation engagement" means providing any or all of the following

56 financial statement services:

57 (i) an audit or other engagement to be performed in accordance with the Statements on

58 Auditing Standards (SAS);

59 (ii) a review of a financial statement to be performed in accordance with the Statements
 60 on Standards for Accounting and Review Services (SSARS);

61 (iii) an examination of prospective financial information to be performed in accordance
 62 with the Statements on Standards for Attestation Engagements (SSAE); or

63 (iv) an engagement to be performed in accordance with the standards of the PCAOB.

64 (b) The standards specified in this definition shall be adopted by reference by the
 65 division under its rulemaking authority in accordance with Title 63, Chapter 46a, Utah
 66 Administrative Rulemaking Act, and shall be those developed for general application by
 67 recognized national accountancy organizations such as the AICPA and the PCAOB.

68 [~~2~~] (4) "Board" means the Utah Board of Accountancy created in Section 58-26a-201.

69 [~~3~~] (5) "Certified Public Accountant" or "CPA" means an individual currently
 70 licensed by this state or any other state, district, or territory of the United States of America to
 71 practice public accountancy or who has been granted a [~~certificate~~] license as a certified public
 72 accountant under prior law or this chapter.

73 [~~4~~] (6) "Certified Public Accountant firm" or "CPA firm" means a qualified business
 74 entity holding a valid registration as a Certified Public Accountant firm under this chapter.

75 [~~5~~] (7) "Client" means the person who retains a licensee for the performance of one or
 76 more of the services included in the definition of the practice of public accountancy. "Client"
 77 does not include a CPA's employer when the licensee works in a salaried or hourly rate
 78 position.

79 [~~6~~] (8) "Compilation [~~of financial statements~~]" means [~~the presentation in the form of~~
 80 ~~financial statements of information that is the representation of management or owners~~
 81 ~~accompanied by a report stating the compilation has been performed in accordance with~~
 82 ~~standards established by the American Institute of Certified Public Accountants] providing a
 83 service to be performed in accordance with Statements on Standards for Accounting and
 84 Review Services (SSARS) that is presenting in the form of financial statements, information
 85 that is the representation of management or owners, without undertaking to express any
 86 assurance on the statements.~~

87 [~~7~~] (9) "Experience" means:

88 (a) accounting experience; or

89 (b) professional experience[~~; or~~].

90 ~~[(c) qualifying experience.]~~

91 ~~[(8)]~~ (10) "Licensee" means the holder of a current valid license issued under this
92 chapter.

93 (11) "NASBA" means the National Association of State Boards of Accountancy.

94 (12) "PCAOB" means the Public Company Accounting Oversight Board.

95 ~~[(9)]~~ (13) "Practice of public accounting" means the offer to perform or the
96 performance by a person holding himself out as a certified public accountant of one or more
97 kinds of services involving the use of auditing or accounting skills including the issuance of
98 reports or opinions on financial statements, performing attestation engagements, the
99 performance of one or more kinds of advisory or consulting services, or the preparation of tax
100 returns or the furnishing of advice on tax matters for a client.

101 ~~[(10)]~~ (14) "Peer review" means a study, appraisal, or review of one or more aspects of
102 the professional work of a person or qualified business entity in the practice of public
103 accountancy, by a licensee or any other qualified person in accordance with rules adopted
104 pursuant to this chapter and who is not affiliated with the person or qualified business entity
105 being reviewed.

106 (15) "Principal place of business" means the office location designated by the licensee
107 for purposes of substantial equivalency and licensure by endorsement.

108 ~~[(11)]~~ (16) "Professional experience" means experience lawfully obtained while
109 licensed as a certified public accountant in another jurisdiction, recognized by rule, in the
110 practice of public accountancy performed for a client, which includes expression of assurance
111 or opinion~~[- for at least 300 hours collectively in the following areas:]~~.

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

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

116 ~~[(c) planning the audit scope in accordance with GAAS, including the audit program to~~
117 ~~be followed;]~~

118 ~~[(d) preparing written explanations and comments on the findings of the examination~~
119 ~~and on the content of the accounting records; and]~~

120 ~~[(e) preparing and analyzing financial statements in accordance with GAAS.]~~

121 ~~[(12)]~~ (17) "Qualified business entity" means a sole proprietorship, corporation, limited
122 liability company, or partnership engaged in the practice of public accountancy.

123 ~~[(13)]~~ (18) "Qualified continuing professional education" means a formal program of
124 education that contributes directly to the professional competence of a certified public
125 accountant.

126 ~~[(14)]~~ (19) "Qualifying examinations" means:

127 (a) the AICPA Uniform CPA Examination;

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

129 (c) the Utah Laws and Rules Examination; and

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

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

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

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

140 ~~[(c) planning the audit scope in accordance with GAAS, including the audit program to
141 be followed;]~~

142 ~~[(d) preparing written explanations and comments on the findings of the examination
143 and on the content of the accounting records; and]~~

144 ~~[(e) preparing and analyzing financial statements in accordance with GAAS;]~~

145 ~~[(16)]~~ (20) (a) "Report" means:

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

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

149 (B) implies that the person or firm issuing it has special knowledge or competence in
150 accounting or auditing and specifically includes compilations and reviews; such an implication
151 of special knowledge or competence may arise from use by the issuer of the report of names or

152 titles indicating that the person or firm is a public accountant or auditor, or from the language
153 of the report itself; or

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

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

160 (i) that financial statement has a cover page which includes essentially the following
161 language: "I (we) have prepared the accompanying financial statements of (name of entity) as
162 of (time period) for the (period) then ended. This presentation is limited to preparing, in the
163 form of financial statements, information that is the representation of management (owners). I
164 (we) have not audited or reviewed the accompanying financial statements and accordingly do
165 not express an opinion or any other form of assurance on them."; and

166 (ii) the cover page and any related footnotes do not use the terms "compilation,"
167 "review," "audit," "generally accepted auditing standards," "generally accepted accounting
168 principles," or other similar terms.

169 [(17)] (21) "Review of financial statements" means performing inquiry and analytical
170 procedures which provide a reasonable basis for expressing limited assurance that there are no
171 material modifications that should be made to the statements in order for them to be in
172 conformity with generally accepted accounting principles or, if applicable, with another
173 comprehensive basis of accounting; and, the issuance of a report on the financial statements
174 stating that a review was performed in accordance with the standards established by the
175 American Institute of Certified Public Accountants.

176 [(18)] (22) (a) "Substantial equivalency" means [~~that the education, examination, and~~
177 ~~experience required by another jurisdiction are comparable to or exceed the education,~~
178 ~~examination, and experience requirements of this chapter, or that an individual's education,~~
179 ~~examination, and experience qualifications are comparable to or exceed the education,~~
180 ~~examination, and experience requirements of this chapter.] a determination by the division in
181 collaboration with the board or its designee that:~~

182 (i) the education, examination, and experience requirements set forth in the statutes and

183 administrative rules of another jurisdiction are comparable to or exceed the education,
184 examination, and experience requirements set forth in the Uniform Accountancy Act; or
185 (ii) an individual CPA's education, examination, and experience qualifications are
186 comparable to or exceed the education, examination, and experience requirements set forth in
187 the Uniform Accountancy Act.

188 (b) In ascertaining whether an individual's qualifications are substantially equivalent as
189 used in this chapter, the division in collaboration with the board shall take into account the
190 qualifications without regard to the sequence in which the education, examination, and
191 experience requirements were attained.

192 ~~[(b) "Substantial equivalency" is determined by the board in accordance with rules~~
193 ~~made by the division in collaboration with the board.]~~

194 (23) "Uniform Accountancy Act" means the model public accountancy legislation
195 developed and promulgated by national accounting and regulatory associations that contains
196 standardized definitions and regulations for the practice of public accounting as recognized by
197 the division in collaboration with the board.

198 ~~[(19)]~~ (24) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-26a-501.

199 ~~[(20)]~~ (25) "Unprofessional conduct" is as defined in Sections 58-1-501 and
200 58-26a-502 and as may be further defined by rule.

201 ~~[(21)]~~ (26) "Year of experience" means 2,000 hours of cumulative experience.

202 Section 2. Section **58-26a-302** is amended to read:

203 **58-26a-302. Qualifications for licensure and registration -- Licensure by**
204 **endorsement -- Transitional provisions.**

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

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

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

209 (c) show evidence of good moral character;

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

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

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

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

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

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

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

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

228 [~~(a)~~] (i) submits an application in a form prescribed by the division;

229 [~~(b)~~] (ii) pays a fee determined by the department under Section 63-38-3.2;

230 [~~(c)~~] (iii) shows evidence of good moral character;

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

233 [~~(e)-(i)-(A)~~] (v) (A) (I) shows evidence of having passed the qualifying examinations;

234 and

235 [~~(B)-(F)~~] (II) (Aa) meets the requirements for licensure which were applicable in this
236 state at the time of the issuance of the applicant's license by the jurisdiction from which the
237 original licensure by satisfactorily passing the AICPA Uniform CPA Examination was issued;
238 or

239 [~~(H)~~] (Bb) had [~~five~~] four years of professional experience after passing the AICPA
240 Uniform CPA Examination upon which the original license was based, within the ten years
241 immediately preceding the application for licensure by endorsement; or

242 [~~(i)~~] (B) shows evidence that the applicant's education, examination record, and
243 experience are substantially equivalent to the requirements of Subsection (1), as provided by
244 rule.

245 (b) This Subsection (2) applies only to a person seeking to obtain a license issued by
 246 this state and does not apply to a person practicing as a certified public accountant in the state
 247 under Subsection 58-26a-305(1).

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

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

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

251 [~~(iii) have a CPA license under this chapter held by:~~]

252 [~~(A) its proprietor, in the case of a sole proprietorship;~~]

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

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

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

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

259 (iii) have, notwithstanding any other provision of law, a simple majority of the
 260 ownership of the Certified Public Accountant firm, in terms of financial interests and voting
 261 rights of all partners, officers, shareholders, members, or managers, held by individuals who
 262 are certified public accountants, licensed under this chapter or another jurisdiction of the
 263 United States of America, and the partners, officers, shareholders, members, or managers,
 264 whose principal place of business is in this state, and who perform professional services in this
 265 state hold a valid license issued under Subsection 58-26a-301(2) or the corresponding
 266 provisions of prior law; and

267 [~~(v)~~] (iv) meet any other requirements established by rule by the division in
 268 collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative
 269 Rulemaking Act[;].

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

272 (c) A Certified Public Accountant firm may include owners who are not licensed under
 273 this chapter as outlined in Subsection (3)(a)(iii), provided that:

274 [~~(i) more than 50% of the ownership of the Certified Public Accountant firm, including~~
 275 ~~financial interest and voting rights in the firm, is held by individuals who are Certified Public~~

276 ~~Accountants, licensed under this chapter or another jurisdiction of the United States; and]~~

277 (i) the firm designates a licensee of this state who is responsible for the proper
278 registration of the Certified Public Accountant firm and identifies that individual to the
279 division; and

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

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

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

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

287 ~~[(ii) received conditional credits on the AICPA Uniform CPA Examination prior to~~
288 ~~July 1, 1994, and subsequently passed all parts of the AICPA Uniform CPA Examination~~
289 ~~within six immediately successive examination administrations:]~~

290 Section 3. Section **58-26a-304** is amended to read:

291 **58-26a-304. Continuing education.**

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

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

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

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

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

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

305 (c) A licensee who is granted a waiver under this section shall complete 30 hours of
306 continuing professional education within the six months immediately following the expiration

307 of the waiver than includes at least 16 hours of continuing professional education focusing on
308 auditing and accounting.

309 Section 4. Section **58-26a-305** is amended to read:

310 **58-26a-305. Exemptions from licensure.**

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

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

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

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

320 (i) the person's principal place of business is not in this state; and

321 (A) the person's license as a certified public accountant is from any state which the
322 National Association of State Boards of Accountancy (NASBA) National Qualification
323 Appraisal Service has verified to be substantially equivalent to the CPA licensure requirements
324 of the Uniform Accountancy Act; or

325 (B) the person's license as a certified public accountant is from a state which the
326 NASBA National Qualification Appraisal Service has not verified to be substantially
327 equivalent to the CPA licensure requirements of the Uniform Accountancy Act and the person
328 obtains from the NASBA National Qualification Appraisal Service verification that the
329 person's CPA qualifications are substantially equivalent to the CPA licensure requirements of
330 the Uniform Accountancy Act and Subsection 58-26a-302(1)(d)(i); and

331 (ii) the person consents, as a condition of the grant of this privilege:

332 (A) to personal and subject matter jurisdiction and disciplinary authority of the
333 division;

334 (B) to comply with this chapter and the rules made under this chapter;

335 (C) that in the event the license from the state of the person's principal place of
336 business becomes invalid, the person shall cease offering or rendering professional services in
337 this state both individually and on behalf of the firm; and

338 (D) to the appointment of the state board which issued the person's license as the
339 person's agent upon whom process may be served in an action or proceeding brought by the
340 division against the licensee;

341 (b) through December 31, 2012, a person licensed by any other state, district, or
342 territory of the United States as a certified public accountant or its equivalent under another
343 title while practicing in this state if:

344 (i) the person does not qualify for a practice privilege under Subsection (1)(a);

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

346 (iii) the person's temporary practice within the state is in conformity with this chapter
347 and the rules established under this chapter;

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

351 ~~[(3)]~~ (d) a public official or employee while performing his official duties;

352 ~~[(4)]~~ (e) a person using accounting or auditing skills, including the preparation of tax
353 returns, management advisory services, and the preparation of financial statements without the
354 issuance of reports; or

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

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

359 ~~[(b)]~~ (ii) no accounting or financial statements are issued over the unlicensed person's
360 name~~;~~ and].

361 ~~[(6) a person licensed as a public accountant for a period of not less than 20 years as of~~
362 ~~July 1, 1981, if that person's license was current as of April 23, 1990.]~~

363 (2) (a) Notwithstanding any other provision of law, a person who qualifies under
364 Subsection (1)(a) has all the privileges of a licensee of this state and may engage in acts
365 included within the definition of the practice of public accountancy, whether in person or by
366 mail, telephone, or electronic means, based on a practice privilege in this state, and no notice,
367 fee, or other submission shall be provided by that person.

368 (b) The division may revoke, suspend, or restrict an exemption granted under

369 Subsection (1)(a) or (b), or place on probation or issue a public or private reprimand to a
370 person exempted under those subsections for the reasons set forth in Subsection 58-1-401(2).

371 Section 5. Section **58-26a-501** is amended to read:

372 **58-26a-501. Unlawful conduct.**

373 "Unlawful conduct" includes:

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

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

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

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

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

384 (b) qualifies for a practice privilege as provided for in Subsection 58-26a-305(1);

385 (2) a firm assuming or using "certified public accountant," "CPA," or any other title,
386 designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm
387 is composed of certified public accountants unless each office of the firm in this state:

388 (a) is registered with the division; and

389 (b) meets the requirements of Subsections 58-26a-302(3)(a)(iii)~~[(iv);]~~ and ~~[(iv)]~~ (iv);

390 (3) signing or affixing to any accounting or financial statement the person's name or
391 any trade or assumed name used in that person's profession or business, with any wording
392 indicating that the person is an auditor, or with any wording indicating that the person has
393 expert knowledge in accounting or auditing, unless that person is licensed under this chapter
394 and all of the person's offices in this state for the practice of public accountancy are maintained
395 and registered as provided in this chapter; and

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

398 (a) issuing a report on financial statements of any other person, firm, organization, or
399 governmental unit; or

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

- 402 (i) a review of financial statements; or
- 403 (ii) a compilation of financial statements.

404 Section 6. Section **58-26a-502** is amended to read:

405 **58-26a-502. Unprofessional conduct.**

406 (1) "Unprofessional conduct" includes:

407 (a) undertaking an engagement when the licensee knows or should know that the
408 licensee could not reasonably expect to complete it with professional competence;

409 (b) making unauthorized disclosures of confidential information obtained in the
410 practice of public accountancy;

411 (c) engaging in any business or activity that creates a conflict of interest with a
412 licensee's practice in the profession when the licensee knows or should know that it is a conflict
413 of interest and the licensee does not fully disclose the conflict of interest in writing to all
414 affected parties;

415 (d) failing to meet the requirements for continuing professional education or peer
416 review required under this chapter; or

417 (e) issuing a report on financial statements of a client, other than a report in which a
418 lack of independence is disclosed, or performing an attest engagement subject to the attestation
419 standards of the American Institute of Certified Public Accountants when the licensee is not
420 independent, in fact and appearance, to the client~~[, or]~~.

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

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

424 ~~[(A) an audit or review of a financial statement;]~~

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

428 ~~[(C) an examination of prospective financial information; or]~~

429 ~~[(ii) covered by any historical financial statements involved with any of the services
430 listed in Subsection (1)(f)(i).]~~

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

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

437 ~~[(ii) the receipt of the compensation complies with all of the other requirements of this~~
438 ~~section.]~~

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

442 (2) (a) A licensee may not, for a commission, recommend or refer to a client a product
443 or service, or for a commission recommend or refer a product or service to be supplied by a
444 client, or receive a commission, when the licensee also performs for that client:

445 (i) an audit or review of a financial statement;

446 (ii) a compilation of a financial statement when the licensee expects, or reasonably
447 might expect, that a third party will use the financial statement and the licensee's compilation
448 report does not disclose a lack of independence; or

449 (iii) an examination of prospective financial information.

450 (b) The prohibition under Subsection (2)(a) applies during:

451 (i) the period in which the licensee is engaged to perform any of the services listed in
452 Subsection (2)(a); and

453 (ii) the period covered by any historical financial statements involved in any such listed
454 services.

455 (c) A licensee who is not prohibited under Subsection (2)(a) from performing services
456 or receiving a commission and who is paid or expects to be paid a commission shall disclose
457 that fact to any person or entity to whom the licensee recommends or refers a product or service
458 to which the commission relates.

459 (d) A licensee who accepts a referral fee for recommending or referring a service of a
460 licensee to a person or entity or who pays a referral fee to obtain a client shall disclose the
461 acceptance or payment to the client.

462 (3) (a) A licensee may not:
463 (i) perform for a contingent fee a professional service for, or receive a contingent fee
464 from a client for whom the licensee or the licensee's firm performs:
465 (A) an audit or review of a financial statement;
466 (B) a compilation of a financial statement when the licensee expects, or reasonably
467 might expect, that a third party will use the financial statement and the licensee's compilation
468 report does not disclose a lack of independence; or
469 (C) an examination of prospective financial information; or
470 (ii) prepare an original or amended tax return or claim for a tax refund for a contingent
471 fee for a client.
472 (b) The prohibition in Subsection (3)(a) applies during:
473 (i) the period in which the licensee is engaged to perform any of the services listed in
474 Subsection (3)(a); and
475 (ii) the period covered by any historical financial statements involved in the listed
476 services.
477 (c) Except as stated in Subsections (3)(d) and (e), a contingent fee is a fee established
478 for the performance of a service pursuant to an arrangement in which no fee will be charged
479 unless a specified finding or result is attained, or in which the amount of the fee is otherwise
480 dependent upon the finding or result of the service.
481 (d) Solely for the purposes of this Subsection (3), fees are not regarded as being
482 contingent if fixed by courts or other public authorities, or in tax matters, if determined based
483 on the results of judicial proceedings or the findings of a governmental agency.
484 (e) A licensee's fee may vary depending, for example, on the complexity of service
485 rendered.

Legislative Review Note
as of 1-24-08 3:23 PM

Office of Legislative Research and General Counsel

S.B. 163 - Certified Public Accountant Licensing Act Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
