

No. 254

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989




ENROLLED

Committee Substitute for
SENATE BILL NO. 254

(By Senator *Tucker, M. President, et al.*)



PASSED *March 24,* 1989

In Effect *July 1, 1989* 

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 254

(SENATORS TUCKER (Mr. PRESIDENT) AND JACKSON,
Original Sponsors)

[Passed March 24, 1989; to take effect July 1, 1989.]

AN ACT to amend and reenact article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the practice and regulation of public accounting; setting forth findings and declarations; providing definitions; continuing and reorganizing the state board of accountancy; providing for the appointment, terms, qualifications, removal and compensation of members thereof; providing for the funding of said board; enabling and directing said board to promulgate rules; providing for the certification of qualified persons in the practice of public accounting and the continuing regulation of those previously certified or registered as public accountants under prior law; providing for the annual licensure of certified persons and registrants and enabling the board to promulgate the requirements therefor; prohibiting and providing for the criminal punishment of those engaged in the uncertified, unlicensed or unregistered practice of public accounting and other unlawful acts; providing for the enjoinder

of such acts and evidence thereof for purposes of such injunctive relief; exempting certain activity from regulation; providing for the ownership of working papers; providing for the practice of accountancy by accounting corporations; providing for board revocation and suspension of certificates, registrations and licenses; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-1. Findings and statement of purpose.

1 The Legislature hereby finds and declares that the
2 public interest requires the certification and licensure
3 of those persons engaged in the practice of public
4 accounting as herein defined in order to aid the
5 citizens of this state in determining the qualifications
6 of such persons; that this function is best served by a
7 state board of accountancy subject to legislative
8 control; and that this article is enacted to further the
9 aforesaid public interest.

§30-9-2. Definitions.

1 As used in this article, the following words and
2 terms shall have the following meanings, unless the
3 context clearly indicates otherwise:

4 "Assurance" means any act or action, whether
5 written or oral, expressing an opinion or conclusion
6 about the reliability of a financial statement or about
7 its conformity with any financial accounting principles
8 or standards.

9 "Board" means the state board of accountancy,
10 known as the "West Virginia board of accountancy,"
11 continued by the provisions of this article and estab-
12 lished under prior law.

13 "Certificate" means a certificate as a certified public
14 accountant issued by the board pursuant to this article

15 or corresponding provisions of prior law or a corres-
16 ponding certificate as a certified public accountant
17 issued after examination under the laws of any other
18 state.

19 “Financial statement” means a writing or other
20 presentation, including accompanying notes, which
21 presents, in whole or in part, historical or prospective
22 financial position, results of operations or changes in
23 financial position of any person, corporation, partner-
24 ship or other entity.

25 “License” means a license to practice public
26 accounting issued annually under the provisions of
27 this article and “licensee” means a person holding
28 such license.

29 “Practice of public accountancy” or “public account-
30 ing” means: (i) The giving of an assurance, in a report
31 or otherwise, whether expressly or implicitly; or (ii) in
32 the case of a person holding himself out as a certificate
33 holder, the performance of or offering to perform any
34 service involving the use of accounting or auditing
35 skills, including, but not limited to, management
36 advisory or consulting services, the preparation of tax
37 returns, the rendering of tax services, the keeping of
38 books of account and related accounting records and
39 the preparation of financial statements without the
40 expression of an assurance: *Provided*, That an
41 employee giving assurances to or performing such
42 services for an employer shall not be deemed to be
43 practicing public accountancy.

44 “Registered” or “registrant” refers to or means a
45 person registered, but not certified, by the board
46 under prior law as a public accountant before the first
47 day of January, one thousand nine hundred sixty-
48 seven, and “registration” means such registration.

49 “Report” or “reports” when used with reference to
50 financial statements, means an opinion or disclaimer
51 of opinion or other form of language or representation
52 which states or implies any form of assurance or
53 denial of assurance.

54 "State" means any state of the United States, the
55 District of Columbia, Puerto Rico, the U. S. Virgin
56 Islands or Guam.

57 As used in this article, the singular and plural and
58 the masculine and feminine are interchangeable
59 unless the context clearly indicates otherwise.

**§30-9-3. Board of accountancy; appointment, terms, qualifi-
cations, removal and compensation of
members; funds; rules and regulations.**

1 The state board of accountancy, known as the "West
2 Virginia board of accountancy," is hereby continued.
3 The board consists of five members appointed by the
4 governor with the advice and consent of the Senate for
5 terms of three years. Any vacancy on the board
6 occurring during a three-year term shall be filled by
7 appointment of the governor for the remainder of the
8 unexpired term. No member may serve more than
9 two consecutive full terms, and any member having
10 served two full terms may not be appointed or reap-
11 pointed for one year after completion of his second full
12 term.

13 The members composing the board on and after the
14 effective date of this article shall be appointed by the
15 governor to serve as follows: Two for a term of three
16 years; two for a term of two years; and one for a term
17 of one year. Thereafter, as the terms of office of the
18 members respectively expire, the governor shall
19 appoint, to fill the vacancies so occasioned, members
20 whose terms shall be for three years from the day on
21 which that of their immediate predecessors expired.

22 Every member of the board shall hold a certificate:
23 *Provided*, That the governor shall appoint as a mem-
24 ber no more than one noncertificated, licensed regis-
25 trant under prior law. At the time of any appointment
26 at least three members of the board shall hold a
27 certificate and a current license.

28 Notwithstanding the foregoing, for the first five
29 years after the effective date of this article the board
30 shall further consist of two additional members, and

31 for the second five years after the effective date of this
32 article the board shall further consist of one additional
33 member, each of whom shall be a noncertificated,
34 licensed registrant. One of such two additional
35 members shall be appointed for an initial term of one
36 year, and the second of such two additional members
37 shall be appointed for an initial term of two years.
38 Thereafter, and subject to the expiration of such five
39 year periods, as the terms of office of such additional
40 members respectively expire, the governor shall
41 appoint, to fill the vacancies so occasioned, members of
42 like qualification whose terms shall be for three years
43 from the day on which that of their immediate
44 predecessors expired.

45 The governor shall remove from the board any
46 member who fails to attend, without just cause, three
47 regularly scheduled board meetings. Any member of
48 the board shall immediately and automatically forfeit
49 his membership if he (i) has his certificate, registra-
50 tion or license suspended or revoked by the board; or
51 (ii) is convicted of a felony under the laws of any state
52 or the United States.

53 The board shall pay each member fifty dollars for
54 each day or portion thereof spent in the discharge of
55 his official duties and shall reimburse each member
56 for his actual and necessary expenses incurred in the
57 discharge of his official duties.

58 All fees and other moneys received by the board
59 pursuant to the provisions of this article shall be kept
60 by the board in a separate fund and expended solely
61 for the purposes of this article. The board shall retain
62 its funds from year to year, and no part of this special
63 fund shall revert to the general funds of this state. The
64 compensation provided by this article and all expenses
65 incurred under this article shall be paid from this
66 special fund. No compensation or expense incurred
67 under this article is a charge against the general funds
68 of this state.

69 The board shall make and enforce all necessary
70 rules, not inconsistent with this article, for the exam-

71 ination, certification and licensure of public accoun-
72 tants as set forth herein, and for the general practice
73 of public accounting, including the collection of fees
74 for examination, certification and licensure. The board
75 may promulgate and amend rules of professional
76 conduct appropriate to establish and maintain a high
77 standard of integrity in the profession of public
78 accountancy, which rules are applicable to all licen-
79 sees. No rule promulgated by the board is effective
80 unless promulgated pursuant to article three, chapter
81 twenty-nine-a of this code: *Provided*, That all rules
82 promulgated by the board under prior law shall
83 remain in full force and effect unless modified or
84 repealed in accordance with this section.

§30-9-4. Certification; applicability of article to previous holders of certificates.

1 The board shall grant a certificate to any applicant
2 who, at the time of making application:

3 (1) Is over the age of eighteen years;

4 (2) Is of good moral character;

5 (3) Is, at the time of taking the examination provided
6 for in subdivision (5), a resident of this state or
7 employed in this state on a full-time basis: *Provided*,
8 That the board may provide by rule for exceptions to
9 this requirement;

10 (4) Has satisfied the following educational
11 requirements:

12 (a) If application is made prior to the first day of
13 July, two thousand, the obtainment of a baccalaureate
14 or equivalent degree conferred by a college or univer-
15 sity acceptable to the board with a concentration in
16 accounting or its equivalent, as determined by the
17 board by rule;

18 (b) If application is made on or after the first day of
19 July, two thousand, the satisfactory completion of one
20 hundred fifty semester hours or their equivalent at
21 such accredited institutions, including the obtainment
22 of the aforesaid degree.

23 (5) Has completed satisfactorily an examination to be
24 given by the board at least twice each year in account-
25 ing theory, accounting practice, auditing, commercial
26 law or such other appropriate subjects as determined
27 by the board by rule. The board shall prescribe by rule
28 for the retention of credit for the satisfactory comple-
29 tion of a portion of such examination in future
30 examinations.

31 The board may, in its discretion, in lieu of the
32 examination provided for in this section, issue a
33 certificate to any person who possesses the other
34 qualifications stated in this section, and who is the
35 holder of a certificate issued under the laws of any
36 state which extends similar privileges to certified
37 public accountants of this state provided the require-
38 ments for such certificates in the state which has
39 granted the certificate to such person, are, in the
40 opinion of the board, equivalent to those herein
41 required; or who is the holder of a certificate, or the
42 equivalent thereof, granted under the authority of a
43 foreign nation, if the requirements for such certifi-
44 cates in the foreign nation, are, in the opinion of the
45 board, equivalent to those herein required.

46 Persons who, on the effective date of this article,
47 hold certificates theretofore issued by the board are
48 not required to obtain additional certificates under this
49 article, but are otherwise subject to all provisions of
50 this article; and such certificates theretofore issued
51 shall, for all purposes, be considered certificates issued
52 under this article and subject to the provisions hereof.

§30-9-5. Grant and renewal of license; rights of licensee.

1 The board shall prescribe by rule for the issuance of
2 licenses on an annual basis. The board shall issue a
3 license only to a person who holds a valid certificate
4 or is registered under prior law. The board may
5 establish by rule work experience, continuing educa-
6 tion, and other qualifications for the licensure of
7 certificate holders: *Provided*, That no such qualifica-
8 tions may be imposed on registrants under prior law.

9 Only a person who holds a valid license granted to

10 him by the board may practice public accounting.
11 Failure to obtain a license does not impair the right of
12 a person to obtain a license in future years, but only
13 removes that person from those licensed to practice
14 during the year.

**§30-9-6. Practice of public accounting restricted to licensees;
prohibited acts.**

1 (a) A person who does not hold a valid license issued
2 by the board may not claim to hold one; nor may he
3 or she practice or offer to practice public accountancy
4 or public accounting; nor may he or she make any
5 other claim of licensure or approval related to the
6 preparation of financial statements or expression of
7 assurances thereon which is false or misleading.

8 (b) Except as set forth in this subsection, a person
9 who does not hold a valid certificate issued by the
10 board may not claim to hold one or describe himself
11 as or assume any of the following titles or designa-
12 tions: Certified public accountant, CPA, public account-
13 tant, PA, certified accountant, CA, chartered account-
14 tant, licensed accountant, LA, registered accountant,
15 RA, independent auditor, auditor, or similar designa-
16 tion: *Provided*, That registrants under prior law may
17 use the titles public accountant or PA.

18 Partnerships practicing accountancy in this state
19 may use the aforesaid designations, or practice as such,
20 only if all the members thereof who practice in this
21 state are so licensed.

22 (c) A person who does not hold a valid license issued
23 by the board may not claim to have used "generally
24 accepted accounting principles," "generally accepted
25 accounting standards," "public accountancy stand-
26 ards," "public accountancy principles," "generally
27 accepted auditing principles," or "generally accepted
28 auditing standards," in connection with his prepara-
29 tion of any financial statement; nor may he or she use
30 any of these terms in describing any complete or
31 partial variation from such standards or principles or
32 to imply complete or partial conformity with such
33 standards or principles.

34 (d) A person who does not hold a valid license issued
35 by the board may not use the words "audit," "audit
36 report," "independent audit," "attest," "attestation,"
37 "examine," "examination," "opinion," or "review" in
38 a report on a financial statement.

39 (e) A person who does not hold a valid license issued
40 by the board may neither state nor imply that he or
41 she is tested, competent, qualified, or proficient in
42 financial standards established by: (i) The American
43 institute of certified public accountants or any agency
44 thereof; (ii) the governmental accounting standards
45 board or any agency thereof; (iii) the securities and
46 exchange commission or any agency thereof; (iv) the
47 financial accounting standards board; or (v) any
48 successor entity to an entity named in this subsection.

49 (f) No person who holds a valid license issued by the
50 board may engage in the practice of public accounting
51 under a professional or firm name or designation that
52 contains a name or term other than past or present
53 partners, officers or shareholders of the firm or of a
54 predecessor firm; nor may any such person engage in
55 the practice of public accounting under a professional
56 or firm name which is deceptive or misleading.

§30-9-7. Prohibitions and penalties.

1 Any person who engages in any of the unauthorized
2 acts listed in section six of this article is guilty of a
3 misdemeanor, and, upon conviction thereof, shall be
4 fined not more than one thousand dollars or impris-
5 oned in the county jail not more than one year, or
6 both fined and imprisoned.

§30-9-8. Injunction against unlawful act; evidence.

1 The board or any other interested person may apply
2 to any court of competent jurisdiction for an order
3 enjoining any of the acts listed in section six of this
4 article. Upon a showing that any person has engaged,
5 or is about to engage, in any such acts, an injunction,
6 restraining order or such other order as may be
7 appropriate shall be granted by such court without
8 bond. The display or uttering by a person of any

9 printed, engraved or written instrument, bearing the
10 name of such person in conjunction with any of the
11 claims, titles, words or phrases listed in section six of
12 this article shall, for purposes of this section, be prima
13 facie evidence that such person has engaged in such
14 acts.

§30-9-9. Inapplicability of article.

1 (a) Nothing contained in this article may be con-
2 strued to prevent any person from describing himself
3 as an "accountant" or a "bookkeeper" or from stating
4 that he practices accountancy or bookkeeping; nor,
5 subject to the licensure requirements herein imposed
6 on persons holding themselves out as certificate
7 holders, may this article be construed to prevent any
8 person from performing services involving the use of
9 accounting skills, rendering tax services, management
10 advisory or consulting services, or in the keeping of
11 books of account and related accounting records, or
12 from preparing financial statements without the
13 expression of an assurance.

14 (b) Nothing contained in this article may be con-
15 strued to prevent any person from stating that he has
16 prepared, compiled, assembled or drafted a financial
17 statement, provided he does not use any additional
18 language which comprises an assurance.

19 (c) The prohibitions of section six and the other
20 provisions of this article may not be construed to
21 preclude the use of the following or substantially
22 similar language: "I (We) have compiled the accom-
23 panying (financial statements) of (name of entity) as of
24 (time period) for the (period) then ended. A compila-
25 tion is limited to presenting in the form of financial
26 statements information that is the representation of
27 management (owners). I (We) have not audited or
28 reviewed the accompanying financial statements and,
29 accordingly, do not express an opinion or any other
30 form of assurance on them. Management has elected
31 to omit substantially all (or certain) required disclo-
32 sures (and the statement of changes in financial
33 position). If omitted disclosures were included in the

34 financial statements, they might influence the user's
35 conclusions about the (entity's) financial position,
36 results of operations and changes in financial position.
37 Accordingly, these financial statements are not
38 designed for those who are not informed about these
39 matters."

40 (d) Nothing contained in this article may be con-
41 strued to prohibit an employee from furnishing
42 services to his employer.

§30-9-10. Ownership of working papers.

1 (a) All statements, records, schedules, working
2 papers and memoranda prepared by a licensee, or a
3 partner, shareholder, officer, director or employee of a
4 licensee, incident to or in the course of rendering
5 services to a client pursuant to the practice of public
6 accountancy of a licensee, shall be and remain the
7 property of the licensee in the absence of an express
8 agreement between the licensee and the client to the
9 contrary: *Provided*, That this subsection shall not
10 apply to reports submitted to a client and statements,
11 records, schedules, working papers and memoranda
12 provided by a client to a licensee, or a partner,
13 shareholder, officer, director or employee to a licensee.
14 No such statement, record, schedule, working paper or
15 memorandum may be sold, transferred or bequeathed,
16 without the consent of the client or his personal
17 representative, successor or assignee, to anyone other
18 than one or more surviving partners or shareholders
19 or new partners or shareholders of the licensee or any
20 combined or merged firm or successor in interest to
21 the licensee.

22 (b) In addition to any statements, records, schedules,
23 working papers, memoranda or reports required to be
24 furnished or returned to the client in accordance with
25 subsection (a), a licensee shall furnish to his client or
26 former client, upon request made within a reasonable
27 time after original issuance of the document in
28 question:

29 (1) A copy of a tax return of the client.

30 (2) A copy of any report or other document issued by
31 the licensee to or for such client and not formally
32 withdrawn or disavowed by the licensee prior to the
33 request.

34 (3) A copy of the licensee's working papers to the
35 extent that such working papers include records that
36 would ordinarily constitute part of the client's records
37 and are not otherwise available to the client.

38 (4) Any accounting or other records belonging to, or
39 obtained from or on behalf of, the client which the
40 licensee removed from the client's premises or
41 received for the client's account. The licensee may
42 make and retain copies of such documents of the client
43 whenever those documents form the basis for work
44 done by him.

§30-9-11. Accounting corporations.

1 One or more individuals, each of whom is licensed
2 within this state, may organize and become a share-
3 holder or shareholders of an accounting corporation.
4 Individuals who may be practicing public accountancy
5 as an organization created otherwise than pursuant to
6 the provisions of this section may incorporate under
7 and pursuant to this section. This section is not
8 intended to amend the statutory or common law as it
9 relates to associations or partnerships, except to allow
10 partnerships of licensees to organize as an accounting
11 corporation.

12 An accounting corporation may render public
13 accounting services only through officers, employees
14 and agents who are themselves duly licensed within
15 this state. The term "employee" or "agent," as used in
16 this section, does not include secretaries, clerks, typists
17 or other individuals who are not usually and ordi-
18 narily considered by custom and practice to be render-
19 ing accounting services for which a license is required.

20 This section does not modify the law as it relates to
21 the relationship between a person furnishing account-
22 ing services and his client, nor does it modify the law
23 as it relates to liability arising out of such a profes-

24 sional service relationship. Except for permitting an
25 accounting corporation, this section is not intended to
26 modify any legal requirement or court rule relating to
27 ethical standards of conduct required of persons
28 providing public accounting services.

29 An accounting corporation may issue its capital stock
30 only to persons who are duly certified or registered
31 under prior law.

32 When not inconsistent with this section, the organi-
33 zation and procedures of accounting corporations shall
34 conform to the requirements of article one, chapter
35 thirty-one of this code.

36 The board may require that those persons subject to
37 this article must obtain prior board authorization
38 before beginning to act as an accounting corporation
39 and may require by regulation a fee for each applica-
40 tion for authorization to form an accounting corpora-
41 tion. The board may adopt rules: (1) to set reasonable
42 standards for granting or refusing authorization to act
43 as an accounting corporation, (2) to require appropri-
44 ate information therefor from an accounting corpora-
45 tion applicant, and (3) to notify the secretary of state
46 that certain persons have been given authorization by
47 the board to act as an accounting corporation.

48 Upon notification by the board of its approval the
49 secretary of state, upon compliance by the incorpora-
50 tors with this section and the applicable provisions of
51 chapter thirty-one of this code, may issue to the
52 incorporators a certificate of incorporation for the
53 accounting corporation which then may engage in
54 practice through duly licensed or otherwise legally
55 authorized stockholders, employees and agents.

56 A shareholder of an accounting corporation may sell
57 or transfer his shares of stock in such corporation only
58 to (i) another individual who is duly licensed to
59 practice public accountancy in this state or (ii) back to
60 the corporation.

61 The corporate name of an accounting corporation
62 shall contain the last name or names of one or more

63 of its shareholders: *Provided*, That if the rules of the
64 board so permit the corporate name may contain or
65 include the name or names of former shareholders or
66 of persons who were associated with a predecessor
67 partnership or other organization. The corporate name
68 shall also contain the words "accounting corporation,"
69 or the abbreviation "A.C." The use of the word
70 "company," "corporation" or "incorporated," or any
71 other words or abbreviations in the name of an
72 accounting corporation organized under this article
73 which indicate that such corporation is a corporation,
74 other than the words "accounting corporation" or the
75 abbreviation "A.C.," is specifically prohibited.

§30-9-12. Revocation or suspension of certificate, license or registration.

1 After notice and hearing, as provided in article one
2 of this chapter, the board may revoke or suspend any
3 certificate or registration and may refuse to issue, or
4 refuse to renew, any license, for any one or combina-
5 tion of the following causes:

6 (a) Fraud or deceit in obtaining a certificate, regis-
7 tration or license;

8 (b) Dishonesty, fraud or gross negligence in the
9 practice of public accounting;

10 (c) Violation of a rule of professional conduct
11 promulgated by the board under the authority granted
12 by this article;

13 (d) Conviction of any felony, or any crime, an
14 element of which is deceit or fraud, under the laws of
15 any state or of the United States;

16 (e) Cancellation, revocation, suspension or refusal to
17 renew authority to practice public accountancy by any
18 other state, for any cause other than failure to pay an
19 annual license fee in such other state;

20 (f) Habitual drunkenness, addiction to the use of
21 habit-forming drugs, mental incompetence or gross
22 immorality; or

23 (g) Unlawful practice of law as defined by the

24 supreme court of appeals or statutory law of this state.

§30-9-13. Effective date.

- 1 This article shall take effect on the first day of July,
- 2 one thousand nine hundred eighty-nine.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1989.

John C. Wicks
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Ray S. Tucker
.....
President of the Senate

Robert M. Bell
.....
Speaker House of Delegates

The within *is approved* this the *12th*
day of *April* 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/6/89

Time 9:29