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
ENROLLED
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 enjoinderment
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
terms shall have the following meanings, unless the
context clearly indicates otherwise:

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

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

13 “Certificate” means a certificate as a certified public
accountant issued by the board pursuant to this article
or corresponding provisions of prior law or a correspond-
ling certificate as a certified public accountant
issued after examination under the laws of any other
state.

"Financial statement" means a writing or other
presentation, including accompanying notes, which
presents, in whole or in part, historical or prospective
financial position, results of operations or changes in
financial position of any person, corporation, partner-
ship or other entity.

"License" means a license to practice public
accounting issued annually under the provisions of
this article and "licensee" means a person holding
such license.

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

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

"Report" or "reports" when used with reference to
financial statements, means an opinion or disclaimer
of opinion or other form of language or representation
which states or implies any form of assurance or
denial of assurance.
“State” means any state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands or Guam.

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

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

The state board of accountancy, known as the “West Virginia board of accountancy,” is hereby continued. The board consists of five members appointed by the governor with the advice and consent of the Senate for terms of three years. Any vacancy on the board occurring during a three-year term shall be filled by appointment of the governor for the remainder of the unexpired term. No member may serve more than two consecutive full terms, and any member having served two full terms may not be appointed or reappointed for one year after completion of his second full term.

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

Every member of the board shall hold a certificate: Provided, That the governor shall appoint as a member no more than one noncertificated, licensed registrant under prior law. At the time of any appointment at least three members of the board shall hold a certificate and a current license.

Notwithstanding the foregoing, for the first five years after the effective date of this article the board shall further consist of two additional members, and
for the second five years after the effective date of this article the board shall further consist of one additional member, each of whom shall be a noncertificated, licensed registrant. One of such two additional members shall be appointed for an initial term of one year, and the second of such two additional members shall be appointed for an initial term of two years. Thereafter, and subject to the expiration of such five year periods, as the terms of office of such additional members respectively expire, the governor shall appoint, to fill the vacancies so occasioned, members of like qualification whose terms shall be for three years from the day on which that of their immediate predecessors expired.

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

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

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

The board shall make and enforce all necessary rules, not inconsistent with this article, for the exam-
information, certification and licensure of public accountants as set forth herein, and for the general practice of public accounting, including the collection of fees for examination, certification and licensure. The board may promulgate and amend rules of professional conduct appropriate to establish and maintain a high standard of integrity in the profession of public accountancy, which rules are applicable to all licensees. No rule promulgated by the board is effective unless promulgated pursuant to article three, chapter twenty-nine-a of this code: Provided, That all rules promulgated by the board under prior law shall remain in full force and effect unless modified or 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 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 for in subdivision (5), a resident of this state or employed in this state on a full-time basis: Provided, That the board may provide by rule for exceptions to this requirement;

10 (4) Has satisfied the following educational requirements:

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

18 (b) If application is made on or after the first day of July, two thousand, the satisfactory completion of one hundred fifty semester hours or their equivalent at such accredited institutions, including the obtainment of the aforesaid degree.
(5) Has completed satisfactorily an examination to be given by the board at least twice each year in accounting theory, accounting practice, auditing, commercial law or such other appropriate subjects as determined by the board by rule. The board shall prescribe by rule for the retention of credit for the satisfactory completion of a portion of such examination in future examinations.

The board may, in its discretion, in lieu of the examination provided for in this section, issue a certificate to any person who possesses the other qualifications stated in this section, and who is the holder of a certificate issued under the laws of any state which extends similar privileges to certified public accountants of this state provided the requirements for such certificates in the state which has granted the certificate to such person, are, in the opinion of the board, equivalent to those herein required; or who is the holder of a certificate, or the equivalent thereof, granted under the authority of a foreign nation, if the requirements for such certificates in the foreign nation, are, in the opinion of the board, equivalent to those herein required.

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

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

The board shall prescribe by rule for the issuance of licenses on an annual basis. The board shall issue a license only to a person who holds a valid certificate or is registered under prior law. The board may establish by rule work experience, continuing education, and other qualifications for the licensure of certificate holders: Provided, That no such qualifications may be imposed on registrants under prior law.

Only a person who holds a valid license granted to
§30-9-6. Practice of public accounting restricted to licensees; prohibited acts.

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

(b) Except as set forth in this subsection, a person who does not hold a valid certificate issued by the board may not claim to hold one or describe himself as or assume any of the following titles or designations: Certified public accountant, CPA, public accountant, PA, certified accountant, CA, chartered accountant, licensed accountant, LA, registered accountant, RA, independent auditor, auditor, or similar designation: Provided, That registrants under prior law may use the titles public accountant or PA.

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

(c) A person who does not hold a valid license issued by the board may not claim to have used "generally accepted accounting principles," "generally accepted accounting standards," "public accountancy standards," "public accountancy principles," "generally accepted auditing principles," or "generally accepted auditing standards," in connection with his preparation of any financial statement; nor may he or she use any of these terms in describing any complete or partial variation from such standards or principles or to imply complete or partial conformity with such standards or principles.
(d) A person who does not hold a valid license issued by the board may not use the words "audit," "audit report," "independent audit," "attest," "attestation," "examine," "examination," "opinion," or "review" in a report on a financial statement.

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

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

§30-9-7. Prohibitions and penalties.

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

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

The board or any other interested person may apply to any court of competent jurisdiction for an order enjoining any of the acts listed in section six of this article. Upon a showing that any person has engaged, or is about to engage, in any such acts, an injunction, restraining order or such other order as may be appropriate shall be granted by such court without bond. The display or uttering by a person of any
Enr. Com. Sub. For S. B. No. 254j 10

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
financial statements, they might influence the user’s conclusions about the (entity’s) financial position, results of operations and changes in financial position. Accordingly, these financial statements are not designed for those who are not informed about these matters.”

(d) Nothing contained in this article may be construed to prohibit an employee from furnishing services to his employer.

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

(a) All statements, records, schedules, working papers and memoranda prepared by a licensee, or a partner, shareholder, officer, director or employee of a licensee, incident to or in the course of rendering services to a client pursuant to the practice of public accountancy of a licensee, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary: Provided, That this subsection shall not apply to reports submitted to a client and statements, records, schedules, working papers and memoranda provided by a client to a licensee, or a partner, shareholder, officer, director or employee to a licensee. No such statement, record, schedule, working paper or memorandum may be sold, transferred or bequeathed, without the consent of the client or his personal representative, successor or assignee, to anyone other than one or more surviving partners or shareholders or new partners or shareholders of the licensee or any combined or merged firm or successor in interest to the licensee.

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

(1) A copy of a tax return of the client.
(2) A copy of any report or other document issued by
the licensee to or for such client and not formally
withdrawn or disavowed by the licensee prior to the
request.

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

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

§30-9-11. Accounting corporations.

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

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

This section does not modify the law as it relates to
the relationship between a person furnishing account-
ing services and his client, nor does it modify the law
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
of its shareholders: Provided, That if the rules of the board so permit the corporate name may contain or include the name or names of former shareholders or of persons who were associated with a predecessor partnership or other organization. The corporate name shall also contain the words “accounting corporation,” or the abbreviation “A.C.” The use of the word “company,” “corporation” or “incorporated,” or any other words or abbreviations in the name of an accounting corporation organized under this article which indicate that such corporation is a corporation, other than the words “accounting corporation” or the abbreviation “A.C.,” is specifically prohibited.

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

After notice and hearing, as provided in article one of this chapter, the board may revoke or suspend any certificate or registration and may refuse to issue, or refuse to renew, any license, for any one or combination of the following causes:

(a) Fraud or deceit in obtaining a certificate, registration or license;
(b) Dishonesty, fraud or gross negligence in the practice of public accounting;
(c) Violation of a rule of professional conduct promulgated by the board under the authority granted by this article;
(d) Conviction of any felony, or any crime, an element of which is deceit or fraud, under the laws of any state or of the United States;
(e) Cancellation, revocation, suspension or refusal to renew authority to practice public accountancy by any other state, for any cause other than failure to pay an annual license fee in such other state;
(f) Habitual drunkenness, addiction to the use of habit-forming drugs, mental incompetence or gross immorality; or
(g) Unlawful practice of law as defined by the

1. This article shall take effect on the first day of July,
   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.

S. W. Milh
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Maynard A. Sanders
President of the Senate

Tom M. Smith
Speaker House of Delegates

Governor