

SB 468

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



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Committee Substitute For

SENATE BILL NO. 468

(By Senator BOWMAN, ET AL)



PASSED March 14, 1998

In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 468

(SENATORS BOWMAN, MCKENZIE, KESSLER
AND BALL, *original sponsors*)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, four, six and eleven, article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections fourteen and fifteen, all relating to accountants; adding and revising definitions; revising and clarifying requirements for licensure; authorizing part ownership of accounting corporations and other entities by persons other than accountants; requiring supervision of persons other than accountants by persons appropriately licensed; requiring certificates of authorizations; requiring notification of change in identities

of partners, officers, shareholders, members, managers, supervisory personnel or changes in number or location of offices; requiring equity ownership in accounting corporations and other entities by licensed persons other than accountants who perform services or sell products requiring licensure other than under this article; allowing commissions, referral fees and contingency fees; requiring fee arrangements to be in writing; requiring rules; and providing for a termination date.

Be it enacted by the Legislature of West Virginia:

That sections two, four, six and eleven, article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections fourteen and fifteen, all to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-2. Definitions.

1 As used in this article, unless the context clearly indi-
2 cates otherwise:

3 (a) "Assurance" means any act or action, whether
4 written or oral, expressing an opinion or conclusion about
5 the reliability of a financial statement or about its confor-
6 mity with any financial accounting principles or stan-
7 dards.

8 (b) "Board" means the state board of accountancy,
9 known as the "West Virginia board of accountancy",
10 continued by the provisions of this article and established
11 under prior law.

12 (c) "Certificate" means a certificate as a certified public
13 accountant issued by the board pursuant to this article or
14 corresponding provisions of prior law or a corresponding
15 certificate as a certified public accountant issued after
16 examination under the laws of any other state.

17 (d) "Commission" means compensation, except a referral
18 fee, for recommending or referring any product or service
19 to be supplied by another person.

20 (e) "Contingent fee" means a fee established for the
21 performance of any service pursuant to an arrangement in
22 which no fee will be charged unless a specified finding or
23 result is attained, or in which the amount of the fee is
24 otherwise dependent upon the finding or result of such
25 service. A fee fixed by a court, taxing authority or other
26 public authority is not a contingent fee.

27 (f) "Financial statement" means a writing or other
28 presentation, including accompanying notes, which
29 presents, in whole or in part, historical or prospective
30 financial position, results of operations or changes in
31 financial position of any person, corporation, partnership
32 or other entity.

33 (g) "License" means a license to practice public account-
34 ing issued annually under the provisions of this article.

35 (h) "Licensee" means a person holding a license to
36 practice public accounting issued under the provisions of
37 this article, including those persons who were duly
38 registered to practice public accounting under prior law,
39 and "nonlicensee" means all other persons.

40 (i) "Practice of public accountancy" or "public account-
41 ing" means: (1) The giving of an assurance, in a report or
42 otherwise, whether expressly or implicitly; or (2) in the
43 case of a person holding himself out as a certificate holder,
44 the performance of or offering to perform any service
45 involving the use of accounting or auditing skills, includ-
46 ing, but not limited to, management advisory or consulting
47 services, the preparation of tax returns, the rendering of
48 tax services, the keeping of books of account and related
49 accounting records and the preparation of financial
50 statements without the expression of an assurance:
51 *Provided*, That an employee giving assurances to or

52 performing such services for an employer shall not be
53 deemed to be practicing public accountancy.

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

59 (k) "Referral fee" means compensation for recommend-
60 ing or referring any service of a licensee to any person.

61 (l) "Report" or "reports" when used with reference to
62 financial statements, means an opinion or disclaimer of
63 opinion or other form of language or representation which
64 states or implies any form of assurance or denial of
65 assurance.

66 (m) "State" means any state of the United States, the
67 District of Columbia, Puerto Rico, the U.S. Virgin Islands
68 or Guam.

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

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

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

10 (4) Has satisfied the following educational requirements,

11 which must be met before an applicant is eligible to apply
12 for the examination provided for in subdivision (5) of this
13 subsection:

14 (A) For applicants making their initial application for
15 the examination prior to the fifteenth day of February,
16 two thousand, a baccalaureate degree or its equivalent
17 conferred by a college or university acceptable to the
18 board, with an accounting concentration or equivalent as
19 the board may determine by rule to be appropriate; or

20 (B) For applicants making their initial application for
21 the examination on or after the fifteenth day of February,
22 two thousand, at least one hundred fifty semester hours of
23 college education including a baccalaureate or higher
24 degree conferred by an accredited college or university
25 acceptable to the board, the total educational program to
26 include an accounting concentration or equivalent as the
27 board may determine by rule to be appropriate;

28 (5) Has completed satisfactorily an examination to be
29 given by the board at least twice each year in accounting
30 theory, accounting practice, auditing, commercial law or
31 such other appropriate subjects as determined by the
32 board by rule. The board shall prescribe by rule for the
33 retention of credit for the satisfactory completion of a
34 portion of such examination in future examinations.

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

47 nation, are, in the opinion of the board, equivalent to
48 those herein required.

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

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

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

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

17 Partnerships practicing accountancy in this state may
18 use the aforesaid designations, or practice as such, only if
19 all the members thereof who practice in this state are so
20 licensed: *Provided*, That nothing in this section may be
21 construed to prevent a person not licensed under this
22 article from owning an equity interest in an accounting
23 partnership, or rendering a compatible professional
24 service that the person is otherwise legally authorized to

25 render, so long as the nonlicensee owner does not practice
26 public accounting in this state or exercise voting rights
27 with respect to any question related to the practice of
28 accounting: *Provided, however,* That ownership of the
29 accounting partnership is held at least sixty percent by
30 individuals duly licensed under this article.

31 (c) A person who does not hold a valid license issued by
32 the board may not claim to have used “generally accepted
33 accounting principles”, “generally accepted accounting
34 standards”, “public accountancy standards”, “public
35 accountancy principles”, “generally accepted auditing
36 principles” or “generally accepted auditing standards”, in
37 connection with his or her preparation of any financial
38 statement; nor may he or she use any of these terms in
39 describing any complete or partial variation from such
40 standards or principles or to imply complete or partial
41 conformity with such standards or principles.

42 (d) A person who does not hold a valid license issued by
43 the board may not use the words “audit”, “audit report”,
44 “independent audit”, “attest”, “attestation”, “examine”,
45 “examination”, “opinion” or “review” in a report on a
46 financial statement.

47 (e) A person who does not hold a valid license issued by
48 the board may neither state nor imply that he or she is
49 tested, competent, qualified or proficient in financial
50 standards established by: (1) The American institute of
51 certified public accountants or any agency thereof; (2) the
52 governmental accounting standards board or any agency
53 thereof; (3) the securities and exchange commission or any
54 agency thereof; (4) the financial accounting standards
55 board; or (5) any successor entity to an entity named in
56 this subsection.

57 (f) No person who holds a valid license issued by the
58 board may engage in the practice of public accounting
59 under a professional or firm name or designation that
60 contains a name or term other than past or present

61 partners, officers or shareholders of the firm or of a
62 predecessor firm, engaged in the practice of accounting;
63 nor may any such person engage in the practice of public
64 accounting under a professional or firm name which is
65 deceptive or misleading.

§30-9-11. Accounting corporations.

1 (a) One or more individuals licensed within this state
2 pursuant to this article may organize and become a
3 shareholder or shareholders of an accounting corporation
4 domiciled within this state, and may organize for this
5 purpose together with individuals duly licensed or other-
6 wise legally authorized to provide compatible professional
7 services. The practice of or offer to practice public
8 accounting through a corporation domiciled in this state
9 is permitted: *Provided*, That the person or persons in
10 direct control or having personal supervision of the
11 practice and all personnel who act in behalf of the corpo-
12 ration in the practice of public accounting are individually
13 licensed under this article; that ownership of the corpora-
14 tion is held at least sixty percent by individuals duly
15 licensed under this article; that all nonlicensee owners are
16 active participants in the accounting corporation; and that
17 the corporation has been issued a certificate of authoriza-
18 tion by the board. As used in this section, "ownership"
19 includes both the financial interests and voting rights of
20 all partners, officers, shareholders, members or managers
21 of the corporation.

22 (b) The board shall, on or before the first day of July,
23 one thousand nine hundred ninety-eight, propose rules for
24 legislative approval in accordance with chapter twenty-
25 nine-a of this code, establishing a procedure to assure the
26 issuance of certificates of authorization only upon a
27 determination that a corporation meets the requirements
28 of this section.

29 (c) An accounting corporation may render public
30 accounting services only through officers, employees and

31 agents who are themselves duly licensed within this state.
32 The term "employee" or "agent", as used in this section,
33 does not include secretaries, clerks, typists or other
34 individuals who are not usually and ordinarily considered
35 by custom and practice to be rendering accounting
36 services for which a license is required.

37 (d) This section does not modify the law as it relates to
38 the relationship between a person furnishing accounting
39 services and his or her client, nor does it modify the law as
40 it relates to liability arising out of such a professional
41 service relationship. Except for permitting an accounting
42 corporation, this section is not intended to modify any
43 legal requirement or court rule relating to ethical stan-
44 dards of conduct required of persons providing public
45 accounting services.

46 (e) When not inconsistent with this section, the organi-
47 zation and procedures of accounting corporations shall
48 conform to the requirements of article one, chapter thirty-
49 one of this code.

50 (f) Upon determination that a corporation meets the
51 requirements of this section, the board shall notify the
52 secretary of state that a certificate of authorization has
53 been issued to the person or persons making the applica-
54 tion. When the secretary of state receives this notification
55 from the board, he or she shall attach the authorization to
56 the corporation application and, upon compliance with
57 the applicable provisions of chapter thirty-one of this
58 code, the secretary of state may issue to the incorporators
59 a certificate of incorporation for the accounting corpora-
60 tion, which then may engage in the practice of public
61 accounting through persons duly licensed under this
62 article.

63 (g) The corporate name of an accounting corporation
64 shall contain the last name or names of one or more of its
65 shareholders who are licensees under the provisions of this
66 article: *Provided*, That if the rules of the board so permit,

67 the corporate name may contain or include the name or
68 names of former shareholders or of persons who were
69 associated with a predecessor partnership or other organi-
70 zation. The corporate name shall also contain the words
71 "accounting corporation", or the abbreviation "A.C." The
72 use of the word "company", "corporation" or "incorpo-
73 rated", or any other words or abbreviations in the name of
74 an accounting corporation organized under this article
75 which indicate that the corporation is a corporation, other
76 than the words "accounting corporation" or the abbrevia-
77 tion "A.C.", is specifically prohibited.

78 (h) Nothing in this section shall be construed to prohibit
79 the employment of a person duly licensed under this
80 article to practice public accounting as an employee of a
81 corporation other than an accounting corporation, or to
82 have an ownership interest of a corporation other than an
83 accounting corporation. A corporation other than an
84 accounting corporation may use a nondeceptive trade
85 name including words such as, by way of illustration,
86 "computer services", "financial services" or "general
87 business services", but may not use the designation
88 "accounting corporation" or the abbreviation "A.C.", may
89 not represent that the corporation is engaged in the
90 practice of public accounting, and may not engage in or
91 offer to engage in any act prohibited under section six of
92 this article: *Provided*, That a corporation other than an
93 accounting corporation may represent that named individ-
94 uals duly licensed under this article are employees or
95 members of the corporation.

96 (i) Any corporation holding a certificate under this
97 article shall notify the board, in writing, within thirty
98 days after its occurrence, of any change in the identities of
99 partners, officers, shareholders, members, managers whose
100 principal place of business is in this state, or licensed
101 person or persons in control or having supervision of the
102 practice of public accounting; or any change in the
103 number or location of offices within this state.

104 (j) The provisions of this section are not applicable to
105 article thirteen, chapter thirty-one-b of this code related
106 to professional limited liability companies and rules of the
107 board promulgated thereunder.

108 (k) A license issued under the provisions of this article
109 may not be construed to permit a licensee to perform a
110 service or sell a product which is not a traditional ac-
111 counting service when the activity requires a separate
112 license under federal law or other provision of this code
113 and the licensee does not hold the separate license. The
114 provisions of this article may not be construed to permit
115 a person, by reason of licensure under the provisions of
116 this article or by employment by or ownership in an
117 accounting firm, to practice law, to appraise real estate, to
118 act as a real estate broker or salesperson, or to act as a
119 stockbroker or insurance agent, broker or solicitor, when
120 the person is not separately licensed to engage in that
121 activity.

122 (l) Notwithstanding the provisions of subsection (j) of
123 this section, an accounting corporation may perform a
124 service or sell a product which is not a traditional ac-
125 counting service and which requires a separate license
126 under federal law or other provision of this code, when an
127 owner of an equity interest in the corporation holds a
128 valid license as required for the activity, and supervises
129 and is responsible for the licensed activity, to the extent
130 permitted by applicable law relating to licensure of the
131 separate activity.

§30-9-14. Commissions, referral fees and contingent fees.

1 (a) (1) A licensee may not, for a commission or referral
2 fee, recommend or refer to a client any product or service
3 or refer any product or service to be supplied by a client,
4 or perform for a contingent fee any professional services
5 for or receive referral fees, commissions or contingent fees
6 from a client for whom the licensee or any firm with
7 which the licensee works or associates or any firm in

8 which the licensee owns an interest performs for that
9 client:

10 (A) An audit or review of a financial statement;

11 (B) A compilation of a financial statement when the
12 licensee expects, or reasonably might expect, that a third
13 party will use the financial statement and the licensee's
14 compilation report does not disclose a lack of independ-
15 ence; or

16 (C) An examination of prospective financial informa-
17 tion.

18 (2) The prohibition in subdivision (1) of this subsection
19 applies only during the period in which the licensee is
20 engaged to perform any of the services listed therein and
21 the period covered by any historical financial statements
22 involved in any such listed services.

23 (b) A licensee may not for a contingent fee:

24 (1) Prepare an original or amended tax return or claim
25 for a tax refund; or

26 (2) Serve as an expert witness.

27 (c) To the extent permitted by reasonable rules of the
28 board proposed to the Legislature pursuant to the provi-
29 sions of article three, chapter twenty-nine-a of this code,
30 a licensee may for a contingent fee represent a client
31 before a taxing authority within the scope of practice of
32 public accounting: *Provided*, That this provision may not
33 be construed either to limit or to expand the scope of
34 practice of public accounting, and may not be construed
35 to permit the unauthorized practice of law.

36 (d) All agreements or arrangements in which a licensee
37 is to be paid a commission, referral fee or contingent fee
38 shall be in writing, shall state the method by which the fee
39 is to be determined, shall be signed by both the licensee
40 and the client, and shall be delivered to the client before

41 the performance of any services or the delivery of any
42 product to which the commission, referral fee or contin-
43 gent fee relates. A contingent fee agreement shall state
44 the method of calculation of the fee, including the per-
45 centage or percentages which shall accrue to the licensee
46 in the event of all foreseeable outcomes, the expenses to be
47 deducted from any recovery, collection or other amount on
48 which the fee may be based, and whether the expenses are
49 to be deducted before or after the contingent fee is calcu-
50 lated.

51 (e) The board shall, on or before the first day of July, one
52 thousand nine hundred ninety-eight, propose rules for
53 legislative approval in accordance with chapter twenty-
54 nine-a of this code, establishing a procedure to assure that
55 all fees charged by and paid to licensees are reasonable.

§30-9-15. Termination date.

1 The West Virginia board of accountancy shall terminate
2 on the first day of July, two thousand one, pursuant to the
3 provisions of article ten, chapter four of this article.

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

Randy Skonover
.....
Chairman Senate Committee

Neil Santas
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll Adams
.....
Clerk of the Senate

Burgess M. Sam
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *approved* this the *7th*
day of *April* 1998.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 10:50am