WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED
Committee Substitute for
SENATE BILL NO. 468

(By Senator Bowman, et al.)

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 indicates otherwise:

2 (a) "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.

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

4 (c) "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 corresponding certificate as a certified public accountant issued after examination under the laws of any other state.
(d) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person.

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

(f) "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, partnership or other entity.

(g) "License" means a license to practice public accounting issued annually under the provisions of this article.

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

(i) "Practice of public accountancy" or "public accounting" means: (1) The giving of an assurance, in a report or otherwise, whether expressly or implicitly; or (2) 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.

(j) "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.

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

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

(m) "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.

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

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

(1) Is over the age of eighteen years;

(2) Is of good moral character;

(3) Is, at the time of taking the examination provided for
in subdivision (5) of this subsection, 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;

(4) Has satisfied the following educational requirements,
which must be met before an applicant is eligible to apply for the examination provided for in subdivision (5) of this subsection:

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

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

(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.

(b) 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.

(c) 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.

§30-9-6. 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: Provided, That nothing in this section may be construed to prevent a person not licensed under this article from owning an equity interest in an accounting partnership, or rendering a compatible professional service that the person is otherwise legally authorized to
render, so long as the nonlicensee owner does not practice public accounting in this state or exercise voting rights with respect to any question related to the practice of accounting: Provided, however, That ownership of the accounting partnership is held at least sixty percent by individuals duly licensed under this article.

(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 or her 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: (1) The American institute of certified public accountants or any agency thereof; (2) the governmental accounting standards board or any agency thereof; (3) the securities and exchange commission or any agency thereof; (4) the financial accounting standards board; or (5) 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, engaged in the practice of accounting;
nor may any such person engage in the practice of public
accounting under a professional or firm name which is
deceptive or misleading.

§30-9-11. Accounting corporations.

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

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

(c) 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 ordinarily considered by custom and practice to be rendering accounting services for which a license is required.

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

(e) When not inconsistent with this section, the organization and procedures of accounting corporations shall conform to the requirements of article one, chapter thirty-one of this code.

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

(g) The corporate name of an accounting corporation shall contain the last name or names of one or more of its shareholders who are licensees under the provisions of this article: 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 the corporation is a corporation, other than the words "accounting corporation" or the abbreviation "A.C.", is specifically prohibited.

(h) Nothing in this section shall be construed to prohibit the employment of a person duly licensed under this article to practice public accounting as an employee of a corporation other than an accounting corporation, or to have an ownership interest of a corporation other than an accounting corporation. A corporation other than an accounting corporation may use a nondeceptive trade name including words such as, by way of illustration, "computer services", "financial services" or "general business services", but may not use the designation "accounting corporation" or the abbreviation "A.C.", may not represent that the corporation is engaged in the practice of public accounting, and may not engage in or offer to engage in any act prohibited under section six of this article: Provided, That a corporation other than an accounting corporation may represent that named individuals duly licensed under this article are employees or members of the corporation.

(i) Any corporation holding a certificate under this article shall notify the board, in writing, within thirty days after its occurrence, of any change in the identities of partners, officers, shareholders, members, managers whose principal place of business is in this state, or licensed person or persons in control or having supervision of the practice of public accounting; or any change in the number or location of offices within this state.
The provisions of this section are not applicable to article thirteen, chapter thirty-one-b of this code related to professional limited liability companies and rules of the board promulgated thereunder.

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

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

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

(a) (1) A licensee may not, for a commission or referral fee, recommend or refer to a client any product or service or refer any product or service to be supplied by a client, or perform for a contingent fee any professional services for or receive referral fees, commissions or contingent fees from a client for whom the licensee or any firm with which the licensee works or associates or any firm in
which the licensee owns an interest performs for that client:

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

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

(C) An examination of prospective financial information.

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

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

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

(2) Serve as an expert witness.

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

(d) All agreements or arrangements in which a licensee is to be paid a commission, referral fee or contingent fee shall be in writing, shall state the method by which the fee is to be determined, shall be signed by both the licensee and the client, and shall be delivered to the client before
the performance of any services or the delivery of any
product to which the commission, referral fee or contin-
gent fee relates. A contingent fee agreement shall state
the method of calculation of the fee, including the per-
centage or percentages which shall accrue to the licensee
in the event of all foreseeable outcomes, the expenses to be
deducted from any recovery, collection or other amount on
which the fee may be based, and whether the expenses are
to be deducted before or after the contingent fee is calcu-
lated.

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

§30-9-15. Termination date.

The West Virginia board of accountancy shall terminate
on the first day of July, two thousand one, pursuant to the
provisions of article ten, chapter four of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .......... this the .......... day of .......... 1996.

Governor