WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4494

(By Delegates Morgan, White, Campbell, Hutchins, Higgins, Palumbo, Andes and Kominar)

Passed March 7, 2008

In Effect Ninety Days from Passage
Be it enacted by the Legislature of West Virginia:

That §30-9-2, §30-9-8, §30-9-13, §30-9-16, §30-9-17, §30-9-19 and §30-9-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 9. ACCOUNTANTS.

§30-9-2. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context or associated language clearly indicates otherwise:

(1) "Affiliated entity" means an entity that controls, is controlled by, or is under common control with, a firm. For purposes of this definition, an entity controls another entity if the entity directly or indirectly or acting in concert with one or more other affiliated entities, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than fifty percent of the voting interest in such entity.

(2) "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 standards.

(3) "Attest services" means providing any:

(A) Audit or other engagement to be performed in accordance with the Statements on Auditing Standards;
(B) Review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services;

(C) Examination of prospective financial information to be performed in accordance with applicable Statements on Standards for Attestation Engagements; or

(D) Engagement to be performed in accordance with the Auditing Standards of the Public Company Accounting Oversight Board.

(4) "Audit" means expressing an opinion about the fairness of presentation of financial statements in accordance with the Statements on Auditing Standards.

(5) "Authorization" means an authorization issued pursuant to this article that entitles a permit holder or an individual practitioner to perform attest or compilation services.

(6) "Board" means the West Virginia Board of Accountancy.

(7) "Business entity" means any corporation, partnership, limited partnership, limited liability partnership, professional limited liability partnership, limited liability company, professional limited liability company, joint venture, business trust or any other form of business organization. The term "business entity" includes a firm.

(8) "Certificate" means a certificate as a certified public accountant issued or renewed by the board pursuant to this article or corresponding provisions of prior law.
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(8) "Certificate" means a certificate as a certified public accountant issued or renewed by the board pursuant to this article or corresponding provisions of prior law.
(9) "Certified public accountant" or "CPA" means the holder of a certificate.

(10) "Client" means a person or entity that agrees with a licensee or licensee's employer to receive any professional service.

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

(12) "Compilation services" means providing a service performed in accordance with the Statements on Standards for Accounting and Review Services that presents, in the form of a financial statement, information that is the representation of management without an expression of assurance on the statement. Provided, that this definition does not apply to the use of the term "compilation" in section thirty-one of this article.

(13) "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 the service. A fee fixed by a court, taxing authority or other public authority is not a contingent fee.

(14) "Examination," when used with reference to prospective financial statements, means expressing an opinion about the fairness of presentation of financial information in accordance with the Statements on Standards for Attestation Engagements.

(15) "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.

(16) "Firm" means any business entity, including but not limited to accounting corporations and professional limited liability companies, in which two or more certified public accountants or public accountants hold an ownership or membership interest, in terms of the financial interests and voting rights of all partners, officers, shareholders, members or managers, and the primary business activity of which is the provision of professional services to the public by certified public accountants or public accountants.

(17) "Firm ownership requirements" means, with respect to:

(A) Any professional limited liability company organized pursuant to article thirteen, chapter thirty-one-b of this code, consisting of one or more licensed certified public accountants or licensed public accountants;

(B) Any other firm where:

(i) A simple majority of ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs either to:

(I) Certified public accountants holding a certificate under section twelve of this article or the equivalent provision of another state; or

(II) Public accountants who have met the continuing professional education requirements of subsection (b), section twelve of this article and who are not subject to the exemption or limitation set forth in subdivisions (1) or (2),
subsection (b), section twelve of this article or similar provisions of another state.

(ii) All owners of the firm who are not certified public accountants or public accountants are active participants in the firm or in affiliated entities.

(18) “Foreign” means any country other than the United States.

(19) “Good moral character” means lack of a history of dishonesty or felonious activity.

(20) “Home office” means the client’s office address.

(21) “Individual practitioner” means a certified public accountant or a public accountant who offers professional services to the public but who does not practice in a firm.

(22) "License" means a certificate, permit, registration or authorization.

(23) "Licensee" means the holder of a license.

(24) "Manager" means a manager of a professional limited liability company.

(25) "Member" means a member of a professional limited liability company.

(26) “Nonlicensee” means a person or business entity that does not hold a license.

(27) “Out-of-state certificate” means a valid certificate as a certified public accountant or equivalent designation issued or renewed under the laws of another state: Provided,
That "out-of-state certificate" does not include any certificate as a certified public accountant or equivalent designation that was issued or renewed solely by virtue of a holder's prior status as a public accountant or its equivalent in the state of issuance and not by virtue of the holder's having met the certification requirements of the state of issuance.

(28) "Out-of-state permit" means a valid permit as a firm of certified public accountants or another designation equivalent to a permit issued or renewed by the board and that is issued or renewed under the laws of another state.

(29) "Peer Review" means a study, appraisal or review of one or more aspects of the professional work of a licensee by a person who holds a certificate or an out-of-state certificate and who is not affiliated with the licensee being reviewed.

(30) "Permit" means a permit issued to a firm pursuant to this article.

(31) "Principal place of business" means the licensee's office location in the state where the licensee holds a certificate or registration.

(32) "Professional services" means those services that involve the specialized knowledge and skills of a certified public accountant or a public accountant delivered by any means, including but not limited to, in person, by mail, telephone or by electronic means.

(33) "Public accountant" means a person holding a registration who is not a certified public accountant.

(34) "Referral fee" means compensation for recommending or referring any service of a licensee to any person.
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(35) "Registration" means a registration as a public accountant issued by the board pursuant to prior law governing the registration of public accountants and renewed by the board pursuant to this article.

(36) "Report," 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.

(37) "Rule" means any rule proposed for legislative approval by the board pursuant to this article.

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

(39) "Substantial equivalency" or "substantially equivalent" means or refers to a determination by the board or its designee that the education, examination and experience requirements contained in the statutes or rules of another state are comparable to or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act, or that an individual certified public accountant's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act.

(40) "Substantial equivalency practitioner" means any individual whose principal place of business is not in this state, who holds a certificate from another state and has complied with the provisions of section sixteen of this article.

(41) "Uniform Accountancy Act" means the Uniform Accountancy Act, fifth edition, revised (July 2007), jointly published by the American Institute of Certified Public
§30-9-8. Education, examination and experience certificate requirements.

The board shall issue a certificate to an applicant of good moral character who meets the following requirements:

(1) At least one hundred fifty semester hours of college education including a baccalaureate or higher degree conferred by a college or university, the total education program to include an accounting concentration or equivalent, as determined by the board to be appropriate;

(2) Passage of the uniform certified public accountant examination published by the American institute of certified public accountants or its successor and any additional examination required by the board by rule that tests the applicant's knowledge of subjects related to the practice of accounting: Provided, That before applying for the examination required by this subsection, an applicant is required to have met the baccalaureate degree requirement but not the one hundred fifty semester hour requirement of subsection (1) of this section; and

(3) At least one year of experience in providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. The experience requirement may be satisfied by employment in private practice, government, industry, not-for-profit organization, academia or public practice. An applicant’s experience must be verified by a licensee and must meet requirements specified by rule.

Each licensee must notify the board, within thirty days of its occurrence, of any denial, suspension or revocation of or any limitation placed on a license or out-of-state certificate.


(a) An individual whose principal place of business is not in this state and who holds an out-of-state certificate has all the rights and privileges of a certificate holder of this state without the need to obtain a certificate if:

(1) The state that issued the out-of-state certificate has certification requirements that are substantially equivalent to the certification requirements of the Uniform Accountancy Act; or

(2) The individual holds a valid license as a certified public accountant from any state which the National Association of State Boards of Accountancy National Qualification Appraisal Service has not verified to be in substantial equivalence with the CPA licensure requirements of the Uniform Accountancy Act and the individual has obtained from the National Association of State Boards of Accountancy National Qualification Appraisal Service verification that his or her CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act. Any individual who qualifies for practice privileges pursuant to this subdivision before the first day of January, two thousand twelve, and who passed the uniform CPA examination and holds a valid license issued by any other state is exempt from the education requirement in the Uniform Accountancy Act for purposes of this section.
(b) An individual who offers or renders professional services under this section shall be granted practice privileges in this state, and no notice, fee, or other submission is required of any such individual. Such an individual is subject to the requirements in subsection (c) of this section.

(c) (1) Any individual performing or offering to perform any services in the state as a substantial equivalency practitioner and the firm which employs that out-of-state certificate holder are simultaneously subject to the jurisdiction of the board concerning all matters within the scope of this article and are required to comply with the provisions of this article and applicable rules.

(2) The state board of accountancy of the state of issuance of any substantial equivalency practitioner’s certificate is appointed as his or her agent upon which process may be served in an action or proceeding by the board.

(d) In the event the certificate from the state of the individual’s principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a firm.

(e) Subject to the provisions of subsection (f) of this section, an individual who qualifies for the practice privileges under this section may only perform any of the following services, for any entity with its home office in this state, through a firm which has obtained a permit issued under section seventeen of this article and an authorization issued under section nineteen of this article:

(1) A financial statement audit or other engagement to be performed in accordance with the Statements on Auditing Standards;
(2) An examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements; or

(3) An engagement to be performed in accordance with the Auditing Standards of the Public Company Accounting Oversight Board.

(f) An individual practitioner who is also a substantial equivalency practitioner may provide the services set out in subsection (e) of this section without obtaining a permit issued under section seventeen of this article, but must obtain the authorization issued under section nineteen of this article.

(g) A certificate holder of this state offering or rendering services or using their CPA title in another state is subject to disciplinary action in this state for an act committed in another state for which the certificate holder would be subject to discipline in that other state.

(h) The board shall investigate any complaint made by the board of accountancy of another state.

§30-9-17. Issuance and renewal of permits.

(a) The board shall grant or renew permits to firm applicants that demonstrate their qualifications in accordance with this section.

(b) Firms meeting the following criteria must hold a permit issued under this section:

(1) Any firm with an office in this state performing attest or compilation services;

(2) Any firm with an office in this state that uses the title "CPA" or "CPA firm"; or
(3) Any firm that does not have an office in this state but performs attest services described in subdivisions (A), (C) or (D), subsection (3), section two of this article for a client having its home office in this state.

(c) A firm that does not have an office in this state may perform services described in subdivision (B), subsection (3), section two of this article, or subsection (12), section two of this article, for a client having its home office in this state and may use the title “CPA” or “CPA firm” without a permit issued under this section only if it meets firm ownership requirements and is undergoing a peer review program that conforms with applicable rules, and performs the services through an individual with practice privileges under section sixteen of this article.

(d) A firm that does not have an office in this state and does not perform attest services or compilation services for a client having its home office in this state may perform other professional services while using the title “CPA” or “CPA firm” in this state without a permit issued under this section only if it performs the services through an individual with practice privileges under section sixteen of this article: Provided, That the firm may lawfully perform the services in the state where the individuals with practice privileges have their principal place of business.

(e) Applicants for a permit must demonstrate that:

(1) Each partner, officer, shareholder, member or manager of the firm whose principal place of business is in this state and who performs or offers to perform professional services in this state holds a certificate or a registration; and

(2) The firm meets firm ownership requirements.
(f) An application for the issuance of a permit must be made in the form specified by the board by rule and must include the following information:

(1) The names of all partners, officers, shareholders, members or managers of the firm whose principal place of business is in this state;

(2) The location of each office of the firm within this state and the name of the certified public accountant or public accountant in charge of each office; and

(3) Any issuance, denial, revocation or suspension of an out-of-state permit.

(g) Permits will initially be issued for a period to expire on the thirtieth day of June following the date of issue.

(h) The board shall renew a permit for a one-year period beginning on the first day of July of each year after initial issuance in accordance with the requirements for initial issuance of a permit in this section.

(i) The board shall charge an application fee for the initial issuance or renewal of a permit in an amount specified by rule.


(a) Commencing with the first day of July, two thousand one, no person or business entity may provide attest or compilation services without having first obtained an authorization issued by the board. An applicant may apply to provide attest services or compilation services or both. This requirement does not apply to individuals performing attest or compilation services based on the practice privilege under
section sixteen of this article except as required under subsection (e) of that section, or to business entities performing attest or compilation services that are not required to obtain a permit under subsections (c) or (d), section seventeen of this article. Any substantial equivalency practitioner who issues a compilation report as an individual practitioner or on behalf of a business entity may do so without obtaining an authorization under this section so long as such individual does so in accordance with the requirements set out in subdivisions (1) and (2), subsection (f) of this section.

(b) Applications for the issuance of authorizations must be made in the form specified by the board by rule.

(c) Authorizations will initially be issued for a period to expire on the thirtieth day of June following the date of initial issuance.

(d) The board shall issue an authorization to a permit holder that demonstrates that:

(1) Any certified public accountant, public accountant or substantial equivalency practitioner who signs or authorizes someone to sign an attest or compilation report on behalf of the permit holder meets the competency requirements set forth in the professional standards for those services specified by rule;

(2) All attest and compilation services rendered by the permit holder in this state are verified by a certified public accountant, substantial equivalency practitioner or a public accountant; and

(3) The permit holder is undergoing a peer review program that conforms with applicable rules.
(e) A firm may simultaneously apply for the issuance or renewal of a permit and the issuance or renewal of an authorization by demonstrating that the firm meets the requirements of section seventeen of this article and subsection (d) of this section.

(f) The board shall issue an authorization to an individual practitioner who demonstrates that he or she:

(1) Signs an attest or compilation report as a certified public accountant, public accountant or substantial equivalency practitioner, as applicable and meets the competency requirements set forth in the professional standards for those services specified by rule; and

(2) Is undergoing a peer review program that conforms with applicable rules.

(g) The board shall renew an authorization for a one year period beginning on the first day of July of each year after initial issuance in accordance with the requirements for initial issuance of an authorization in this section.

(h) The board shall charge an application fee for the initial issuance or renewal of an authorization in an amount specified by rule.


(a) No authorization holder or substantial equivalency practitioner may perform attest or compilation services in a manner other than pursuant to the statements on standards relating to those services specified by rule.

(b)(1) No licensee or substantial equivalency practitioner or firm may, 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 a referral fee,
commission or contingent fee from a client for whom the
licensee, the substantial equivalency practitioner or firm
works or associates or in which either of them owns an
interest or who performs for that client:

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

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

(C) An examination of prospective financial information.

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

(c) No licensee or substantial equivalency practitioner
may for a contingent fee prepare an original or amended tax
return or claim for a tax refund or serve as an expert witness.

(d) No licensee may use a professional or firm name or
designation that: (1) Is deceptive or misleading about the
legal form of the firm, or about the persons who are partners,
officers, members, managers or shareholders of the firm, or
about any other matter; or (2) contains a name or term other
than past or present partners, officers, members, managers or
shareholders of the firm or of a predecessor firm engaged in
the practice of accounting.
(e) No person or firm that does not hold an authorization to perform attest services, or is not otherwise exempt from the authorization requirement, may perform or offer to perform attest services, and no person or firm that does not hold an authorization to perform compilation services, or is not otherwise exempt from the authorization requirement, may perform or offer to perform compilation services.

(f) No individual practitioner who holds an authorization may perform or offer to perform attest services for a client of his or her employer through or on behalf of his or her employer.

(g) No person who is not a certified public accountant, a public accountant or a substantial equivalency practitioner may:

(1) Issue a report on financial statements of any other person, business entity, or governmental unit or otherwise render or offer to render any attest or compilation service: Provided, That this subdivision does not prohibit any act of a public official or public employee in the performance of that person's duties or the performance by any person of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon: Provided, however, That this subdivision does not prohibit any person who is not a certified public accountant, a public accountant or a substantial equivalency practitioner to prepare financial statements or issue nonattest transmittals of information thereon that do not purport to have been performed in accordance with the applicable statements on standards;

(2) Claim to hold a certificate, registration or authorization or make any other claim of licensure or
(3) 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 the preparation of any financial statement, or use any of these terms to describe any complete or partial variation from those standards or principles or to imply complete or partial conformity with those standards or principles;

(4) State or imply that he or she is tested, competent, qualified or proficient in financial standards established by the American institute of certified public accountants or any agency thereof, the governmental accounting standards board or any agency thereof, the securities and exchange commission or any agency thereof, the financial accounting standards board or any agency thereof, or any successor entity to any of these entities;

(5) Assume or use the titles "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "Auditor," "independent Auditor" or any other title or designation that a reasonable person may confuse with the titles "certified public accountant" or "public accountant," or assume or use the abbreviations "CA," "LA," "RA," or similar abbreviation that a reasonable person may confuse with the abbreviations "CPA" or "PA": Provided, That the title "Enrolled Agent" and the abbreviation "EA" may only be used by individuals so designated by the Internal Revenue Service;

(6) Use language in any statement relating to the financial affairs of a person or entity that is conventionally used by a licensee in a report on a financial statement;
(7) Use the words "audit," "audit report," "independent
audit," "examine," "examination," "opinion" or "review" in
a report on a financial statement;

(8) Assume or use any title that includes the words
"accountant," "Auditor," or "accounting" in connection with
any other language (including the language of a report) that
implies that the person or business entity holds a license or
has special competence in accounting or auditing: Provided,
That this subdivision does not prohibit any officer, partner,
member, manager or employee of any business entity from
affixing that person's own signature to any statement in
reference to the financial affairs of the business entity with
any wording designating the position, title, or office that the
person holds therein, nor does it prohibit any act of a public
official or employee in the performance of the person's
duties;

(9) Use or assume the title "certified public accountant,"
the abbreviation "CPA," or any other title, designation, word,
combination of letters, abbreviation, sign, card or device that
may lead a reasonable person to believe that the person is a
certified public accountant or the holder of an out-of-state
certificate; or

(10) Assume or use the title "public accountant," the
abbreviation "PA," or any other title, designation, word,
combination of letters, abbreviation, sign, card or device that
may lead a reasonable person to believe that the person is a
public accountant.

(h) Only a business entity that holds a permit or is exempt
from the permit requirement under subsections (c) or (d),
section seventeen of this article, may assume or use the
designations "certified public accountants," "CPA firm,"
“public accountants,” or “PA firm” or the abbreviations "CPAs," or “PAs,” or any other title, designation, word, combination of letters, abbreviation, sign, card or device that may lead a reasonable person to believe that the business entity is a firm or holds a permit.

(i) The display or uttering by a person of any printed, engraved or written instrument, bearing the name of the person in conjunction with any of the claims, titles, words or phrases listed in this section is, for purposes of this section, prima facie evidence that the person has engaged in the acts.

(j) Notwithstanding any provision in this section to the contrary, it is not a violation of this section for a firm or business entity which does not hold a permit under section seventeen or an authorization under section nineteen of this article and which does not have an office in this state to provide its professional services in this state so long as it complies with subsection (c) or (d) of section seventeen, whichever is applicable, and with any applicable provision of section nineteen of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy White  
Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell Jeffrey  
Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

Speaker of the House of Delegates

The within is approved this the 28th day of March 2008.

Governor