

Act No. 10
Public Acts of 1997
Approved by the Governor
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1997

**Introduced by Reps. Dobb, Hammerstrom, Galloway, Profit, Anthony, Scott, Wetters, Olshove, Brackenridge, Gilmer, Bankes, Gubow, Richner, Fitzgerald and Perricone
Reps. Birkholz, Bobier, Bodem, Brewer, Cassis, DeVuyst, Freeman, Gagliardi, Geiger, Godchaux, Goschka, Jansen, Johnson, Kelly, Kukuk, McBryde, McNutt, Middleton, Raczkowski, Rhead, Sikkema, Varga, Vaughn, Voorhees and Whyman named co-sponsors**

ENROLLED HOUSE BILL No. 4238

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 339.101 to 339.2721) by adding sections 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, and 736; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 720. (1) As used in this article:

(a) "Certified public accountant" means an individual who is qualified by education, examination, and experience as evidenced by the issuance of a certificate as a certified public accountant under section 725 or 726 to engage or offer to engage in the practice of public accounting.

(b) "Firm" means a corporation, partnership, limited liability company, unincorporated association, sole proprietorship operating under an assumed name, or other legal entity.

(c) Subject to subsection (2), "practice of public accounting" means rendering or offering to render an opinion on or attesting to or offering to attest to the reliability of a representation or estimate, including, but not limited to, the giving of an opinion in substance that financial information as set forth fairly presents the condition of the entity reviewed or audited, in regard to an entity embracing 1 or more of the following:

(i) Financial information.

(ii) Facts respecting compliance with conditions established by law or contract, including, but not limited to, a statute, ordinance, regulation, grant, loan, or appropriation.

(iii) The scope of the accounting procedures rendered in connection with the presentation of a financial statement.

(2) In addition to the definition set forth in subsection (1)(c), practice of public accounting includes 1 or more of the following activities when performed or offered to be performed by a person holding himself or herself out as a certified public accountant for a client or a potential client:

(a) The issuance of reports on financial statements.

(b) One or more kinds of management advisory, financial advisory, or consulting services.

- (c) The preparation of tax returns.
- (d) The furnishing of advice on tax matters.

Sec. 721. (1) The state board of accountancy is created.

(2) Six members of the board shall be certified public accountants who hold a certificate as a certified public accountant, who are licensed under section 727, and who have practiced in this state as certified public accountants for not less than 5 years. Three members shall be representative of the general public, 1 of whom shall be an attorney who is a member in good standing in the bar of this state.

(3) The director may promulgate the following rules:

(a) Rules of professional conduct for establishing and maintaining high standards of competence and integrity in the practice of public accounting.

(b) Rules governing corporations practicing public accounting, consistent with the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

(c) Rules governing educational and experience requirements for the issuance of a certificate as a certified public accountant.

(d) Rules of procedure governing the conduct of matters before the board.

(e) Rules governing the recognition of educational institutions by the board.

(f) Rules governing continuing education as required by section 729.

(g) Any other rules considered necessary by the director to implement and enforce this article.

Sec. 722. The department shall issue licenses, registrations, and certificates as a certified public accountant under this article. The department shall issue a license to engage in the practice of public accounting in this state only to an individual who holds a certificate as a certified public accountant and who has furnished evidence satisfactory to the board of compliance with the requirements of this article and the rules promulgated under this article.

Sec. 723. (1) Each licensed or registered individual holder of a certificate as a certified public accountant shall be known as a certified public accountant and a person shall not use that title or the abbreviation "CPA" or any other word, words, letters, or figures to indicate that the person using them is a certified public accountant unless the use is specifically approved by the board. Use of the terms "certified accountant", "chartered accountant", "public accountant", and "registered accountant" and the abbreviations "C.A.", "P.A.", and "R.A." is specifically prohibited as being prima facie misleading to the public.

(2) Except as provided in section 724, a person shall not engage in the practice of public accounting either in the person's own name, under an assumed name, or as a member of a firm or as an employee, unless the person holds a certificate as a certified public accountant and a license as a certified public accountant issued under this article.

(3) Unless use of a term is specifically approved by the board, the display or uttering by a person of a card, sign, advertisement, directory listing, or other printed, engraved, or written instrument or device bearing a person's name in conjunction with a title described in subsection (1) shall be prima facie evidence that the person whose name is so displayed caused or procured the display or uttering of the card, sign, advertisement, directory listing, or other printed, engraved, or written instrument or device. Evidence of the commission of a single act prohibited by this article is sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

(4) Each licensed firm may use the designation "certified public accountants" in connection with the firm name, except that a licensed firm having only 1 member may use only the designation "certified public accountant". An unlicensed firm shall not use the designation "certified public accountants", "certified accountants", "chartered accountants", "public accountants", or "registered accountants" or the abbreviation "C.P.A.", "CPA", "CPAs", "C.A.", "P.A.", or "R.A." in connection with the firm name.

Sec. 724. This article does not prohibit the following:

(a) An individual who is not a certified public accountant from serving as an employee of, or an assistant to, a certified public accountant or firm composed of certified public accountants licensed to practice under this article if the individual does not issue an accounting or financial statement over his or her name.

(b) A certified public accountant of another state, or an accountant who is licensed in a foreign country for the practice of public accounting in that country, from temporarily and periodically engaging in the practice of public accounting in this state if all of the following requirements are met:

(i) The individual is conducting a regular practice of public accounting in the other state or foreign country.

(ii) The temporary practice is conducted in conformity with section 736 and applicable rules promulgated by the director, if any.

(iii) The individual secures a temporary permit from the department to conduct the practice in this state.

(c) A practicing attorney from preparing reports or presenting records customarily prepared by an attorney in connection with the attorney's professional work.

(d) A person from preparing a financial report or tax return, not requiring the expression of an opinion on the report or return, for filing with a federal, state, or local governmental unit.

(e) An officer, employee, partner, or principal of an organization from signing a statement or report in reference to the financial affairs of the organization with wording designating the position, title, or office which the officer, employee, partner, or principal of an organization holds in that organization.

(f) An act of a public official or public employee in the performance of that individual's official duties.

(g) An individual who may be employed by more than 1 person or firm from keeping books, making trial balances or statements, and preparing audits or reports, if the audits or reports are not used or issued by the employer as having been prepared by a certified public accountant.

Sec. 725. (1) The department shall issue a certificate as a certified public accountant to an individual who meets all of the following requirements:

(a) Is of good moral character.

(b) Has complied with the education requirements of subsection (2).

(c) Has passed an examination meeting the requirements of subsection (3).

(d) Has complied with the experience requirements of subsection (4).

(2) Except as otherwise provided in this subsection, before sitting for the examination required under subsection (3), an applicant for a certificate as a certified public accountant shall have completed at least a curriculum required for a baccalaureate degree with a concentration in accounting at an educational institution approved by the board. An applicant for a certificate as a certified public accountant shall be considered to have fulfilled the educational requirements of this subsection if he or she is scheduled to receive his or her baccalaureate degree with a concentration in accounting from an educational institution approved by the board, within 30 days after the date of the examination required under subsection (3), as certified by the chief academic officer of the educational institution. If an applicant fails to fulfill the educational requirements of the educational institution within 30 days of the examination, then the board shall not credit the examination results to the applicant.

(3) An applicant for a certificate as a certified public accountant shall pass an examination in accounting, auditing, and other related subjects, acceptable to the department and the board, that is given reciprocal status in the plurality of states as compared to other examinations.

(4) Subject to subsections (5) and (6), an applicant for a certificate as a certified public accountant shall have 2 years of qualifying experience under the direction and supervision of a licensed certified public accountant of this or another state in either of the following:

(a) The practice of public accounting with experience obtained in 1 financial audit and in all of the following areas which may be performed under the direction and supervision of a licensed certified public accountant while the applicant was meeting the education requirements of subsection (2):

(i) The application of a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records.

(ii) The preparation of working papers covering the examination of the accounts usually found in accounting records for audit, review, and compilation.

(iii) The participation in the planning of the program of work including the selection of the procedures to be followed for audit, review, and compilation.

(iv) The participation in the preparation of reports, including written explanations and comments on the findings of the examinations and on the content of the accounting records.

(v) The participation in the preparation and analysis of financial statements together with explanations and notes.

(b) The practice of public accounting with a governmental agency involving either of the following:

(i) The auditing of the books and accounts or financial activities of persons engaged in 3 or more distinct lines of commercial or industrial business in accordance with generally accepted auditing standards or generally accepted government auditing standards.

(ii) The auditing of the books and accounts of financial activities of 3 or more distinct governmental agencies or independent organizational units other than an employer of the applicant in accordance with generally accepted auditing standards or generally accepted government auditing standards, and in which the results of the auditing are reported to a third party.

(5) An individual who has done both of the following is considered to have received the equivalent of 1 year of qualifying experience under subsection (4):

- (a) Has earned a graduate degree in accounting or its equivalent at an educational institution approved by the board.
- (b) Has completed a curriculum in public accounting as prescribed in rules promulgated by the director.

(6) An individual who has done all of the following is considered to have received the equivalent of 2 years of qualifying experience under subsection (4):

(a) Has earned a graduate degree in accounting or its equivalent at an educational institution approved by the board and has completed a curriculum in public accounting as prescribed in rules promulgated by the director.

(b) Has completed at least 2 years as a full-time instructor of accounting in subjects above the elementary level prescribed in rules promulgated by the director.

(7) In complying with the requirement of subsection (4) that an applicant shall have performed 1 financial audit, an applicant may submit an audit performed under the direction and supervision of a licensed certified public accountant who is not the applicant's employer or an audit performed while the applicant was meeting the educational requirements of subsection (2).

Sec. 726. (1) The department shall issue a certificate as a certified public accountant to an individual who meets both of the following requirements:

(a) Holds a valid and unrevoked certificate as a certified public accountant issued by or under the authority of another state or United States jurisdiction.

(b) Provides proof that the applicant's original certificate as a certified public accountant was secured on the basis of requirements that the board determines are equivalent to the standards required for qualification in this state at the same time the applicant was issued his or her original certificate.

(2) The department shall issue a certificate as a certified public accountant to an individual who meets both of the following requirements:

(a) Holds a valid and unrevoked certificate as a certified public accountant or an equivalent title issued by or under the authority of a jurisdiction outside the United States that the board determines to be equivalent to the requirements to obtain a certificate of certified public accountant in this state.

(b) Has passed an examination on topics specific to the practice of public accounting in the United States and approved by the board.

Sec. 727. After obtaining a certificate as a certified public accountant under section 725 or 726, an individual shall do 1 of the following:

(a) If the individual only seeks to use a title authorized by this article, the individual shall apply for registration under this article.

(b) If the individual seeks to use a title authorized by this article and to engage in the practice of public accounting, the individual shall apply for licensure under this article. A nonresident member of a firm who has authority for the firm's practice of public accounting in this state is considered to be engaged in the practice of public accountancy in this state.

Sec. 728. (1) A firm organized for the practice of public accounting shall apply for and obtain a license under this article in order to engage in the practice of public accounting in this state. The firm applying for licensure under this article shall meet both of the following requirements:

(a) At least 2/3 of the equity and voting rights of the firm are held directly or beneficially by individuals who are licensed in good standing as certified public accountants of this or another state or the equivalent in another licensing jurisdiction acceptable to the board.

(b) The principal officer of the firm and each officer or director having authority for the practice of public accounting by the firm are licensed in good standing as certified public accountants in this or another state or the equivalent in another licensing jurisdiction acceptable to the board.

(2) A firm shall provide a change in address to the department within 30 days of the change.

Sec. 729. (1) In order to renew an individual license, a licensee shall complete at least 40 hours of continuing education for each year since the issuance of the original license or the last renewal. Of the 40 hours of continuing education credits, the board shall not require more than 8 of those hours to be in the areas of auditing and accounting.

(2) The board may make exceptions from the continuing education requirements of subsection (1) for reasons of health, military service, or other good cause.

Sec. 730. (1) Except as otherwise provided in this section, a certified public accountant may charge or receive a contingent fee.

(2) A licensee shall not charge or receive a contingent fee from a client during the period in which a licensee or a licensee's firm is engaged to perform for the client 1 or more of the following services or during the period of time covered by any of such client's historical financial statements involved in those services:

(a) An audit or review of a financial statement.

(b) A compilation of a financial statement when the licensee expects, or may reasonably expect, that a third party will use the financial statement and that the compilation report does not disclose a lack of independence.

(c) An examination of prospective financial information.

(3) A licensee shall not charge or receive a contingent fee for the preparation of an original or amended tax return or claim for a tax refund.

(4) As used in this section, "contingent fee" means a fee established for the performance of a service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained or in an arrangement where the amount of the fee is dependent upon a finding or result of the service. Contingent fee does not include a fee fixed by a court or other public authority and, in tax matters, a fee determined based upon the results of judicial proceedings or the findings of a governmental agency.

Sec. 731. (1) Except as otherwise provided in this section, a certified public accountant may perform services for or receive for services a commission as long as the certified public accountant discloses that arrangement to the person to whom the certified public accountant recommends or refers a product or service to which the commission relates.

(2) A licensed certified public accountant shall not receive a commission for recommending or referring to a client a product or service or for causing to be recommended, referred, or supplied to a client a product or service during the period in which a licensee or a licensee's firm is engaged by the client to perform 1 or more of the following services or during the period of time covered by any historical financial statements in those services:

(a) An audit or review of a financial statement.

(b) A compilation of financial statement when the licensee expects, or may reasonably expect, that a third party will use the financial statement and that the compilation report does not disclose a lack of independence.

(c) An examination of prospective financial information.

(3) This section does not prohibit a licensee from paying or receiving a referral fee for recommending or referring a service involving the practice of public accounting if the payment or receipt of the referral fee is disclosed to the client.

Sec. 732. (1) Except by written permission of the client or the heir, successor, or personal representative of the client to whom the information pertains, a licensee, or a person employed by a licensee, shall not disclose or divulge and shall not be required to disclose or divulge information relative to and in connection with an examination or audit of, or report on, books, records, or accounts that the licensee or a person employed by the licensee was employed to make. Except as otherwise provided in this section, the information derived from or as the result of professional service rendered by a certified public accountant is confidential and privileged.

(2) Subsection (1) does not prohibit a certified public accountant whose professional competence has been challenged in a court of law or before an administrative agency from disclosing information otherwise confidential and privileged as part of a defense in the court action or administrative hearing.

(3) Subsection (1) does not prohibit the disclosure of information required to be disclosed in the course of practice monitoring programs and ethical investigations conducted by a licensed certified public accountant. In such cases, the information disclosed to another licensed certified public accountant in the course of practice monitoring programs and ethical investigations is confidential and privileged to the same degree and in the same manner as provided for in subsection (1).

Sec. 733. (1) Statements, records, schedules, working papers, or memoranda made by a licensee or by an employee of a licensee shall remain the property of the licensee unless there is an agreement to the contrary. This subsection does not apply to a report submitted by a licensee to a client or a document constituting the original books or records of a client's business.

(2) Statements, records, schedules, working papers, or memoranda pertaining to a client shall not be sold, transferred, or bequeathed without consent of the client or the client's personal representative and shall not be assigned except to 1 or more surviving partners or a new partner of the licensee or members of the licensee's firm.

Sec. 734. A holder of a certificate as a certified public accountant, a registration, or a license is subject to the penalties of section 602 for 1 or more of the following:

(a) Fraud or deceit in obtaining a certificate as a certified public accountant, a license to practice public accounting, or a registration under this article.

(b) Dishonesty, fraud, or negligence in the practice of public accounting.

(c) Violation of a rule of professional conduct promulgated under this article.

(d) Conviction of a felony under the laws of this or another state or the United States or conviction of a crime, an element of which is dishonesty, fraud, or negligence, under the laws of this or another state or of the United States, including, but not limited to, the failure to file a personal federal, state, or local income tax return.

(e) Cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant by another state for a cause other than failure to pay a licensure or other required fee in that state.

(f) Suspension or revocation for cause of the right to engage in the practice of public accounting before a state or federal agency.

(g) Conduct discreditable to the public accounting profession.

(h) Determination of mental incompetency by a court of law.

(i) A violation of this article or a rule promulgated under this article.

(j) A violation of the provisions of section 604.

(k) A violation of professional standards regarding the issuance of reports on financial statements; 1 or more kinds of management advisory, financial advisory, or consulting services; the preparation of tax returns; or the furnishing of advice on tax matters.

Sec. 735. A person who violates section 723 is guilty of a misdemeanor, punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 1 year, or both.

Sec. 736. If requested by an insurer, a licensee who agrees to issue an audit report concerning the statutory financial statements of a domestic insurer shall include an opinion as to whether the financial information is presented according to statutory accounting principles as prescribed or permitted by the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or orders issued or rules promulgated under that act. An opinion issued pursuant to this section may be separate from the audit report if the letter of engagement provides that the opinion be available for general distribution.

Enacting section 1. Sections 701 to 716 of 1980 PA 299, MCL 339.701 to 339.716, are repealed.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.