

HOUSE BILL No. 6196

May 19, 2010, Introduced by Reps. Johnson, Stamas and Rocca and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 720, 725, 726, 727, 728, 729, and 734 (MCL 339.720, 339.725, 339.726, 339.727, 339.728, 339.729, and 339.734), sections 720, 728, and 734 as amended by 2008 PA 161, sections 725 and 729 as amended by 2007 PA 1, and sections 726 and 727 as added by 1997 PA 10.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 720. (1) As used in this article:
- 2 (a) "Attest" means providing the following financial statement
- 3 services:
- 4 (i) Any audit or other engagement to be performed in accordance
- 5 with the statements on auditing standards.

1 (ii) Any review of a financial statement to be performed in
2 accordance with the statements on standards for accounting and
3 review services.

4 (iii) Any examination of prospective financial information to be
5 performed in accordance with the statements on standards for
6 attestation engagements.

7 (iv) Any engagement to be performed in accordance with the
8 public company accounting oversight board auditing standards.

9 (b) "Certified public accountant" means an individual who is
10 either of the following:

11 (i) Qualified by education, examination, and experience to
12 engage or offer to engage in the practice of public accounting as
13 evidenced by the issuance of a certificate as a certified public
14 accountant under section 725 or 726 and a license or registration
15 issued under section 727.

16 (ii) An individual whose principal place of business is not in
17 this state and who satisfies the requirements set forth in section
18 727a.

19 (c) "Client" means a person or entity that engages a licensee
20 or licensee's employer to receive any service in the practice of
21 public accounting.

22 (d) "Compilation" means providing a service to be performed in
23 accordance with statements on standards for accounting and review
24 services that are presenting, in the form of financial statements,
25 information that is the representation of management or owners
26 without undertaking to express any assurance on the statements.

27 (e) "Firm" means a corporation, partnership, limited liability

1 company, unincorporated association, sole proprietorship operating
2 under an assumed name, or other legal entity.

3 (f) "Home office" means the location specified by the client
4 as the address to which a service described in subdivision (a) or
5 (d) is directed.

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

13 (i) Financial information.

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

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

19 (h) "Principal place of business" means the office location
20 designated by the licensee for the purposes of substantial
21 equivalency and reciprocity.

22 (i) "Report", when used with reference to financial
23 statements, means an opinion, report, or other form of language
24 that states or implies assurance as to the reliability of any
25 financial statements and that also includes, or is accompanied by,
26 any statement or implication that the person or firm issuing it has
27 special knowledge or competence in accounting or auditing. Such a

1 statement or implication of special knowledge or competence may
2 arise from use by the issuer of the report of names or titles
3 indicating that the person or firm is an accountant or auditor or
4 from the language of the report itself. Report includes any form of
5 language which disclaims an opinion when that form of language is
6 conventionally understood to imply any positive assurance as to the
7 reliability of the financial statements referred to or special
8 competence on the part of the person or firm issuing such language,
9 or both, and includes any other form of language that is
10 conventionally understood to imply that assurance or special
11 knowledge and competence, or both.

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

17 (a) The issuance of reports on financial statements.

18 (b) One or more kinds of management advisory, financial
19 advisory, or consulting services, **INCLUDING, BUT NOT LIMITED TO,**
20 **BUSINESS VALUATION, FORENSIC ACCOUNTING, AND FRAUD EXAMINATION**
21 **SERVICES.**

22 (c) The preparation of tax returns.

23 (d) The furnishing of advice on tax matters.

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

27 (a) Is of good moral character.

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

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

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

7 (e) Has completed at least 150 semester hours of college
8 education, including a baccalaureate degree or higher degree with a
9 concentration in accounting, at an educational institution approved
10 by the board.

11 (2) An individual who has completed a curriculum required for
12 a baccalaureate degree with a concentration in accounting at an
13 educational institution approved by the board may sit for the
14 examination required under subsection (3).

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

20 ~~—— (4) An applicant for a certificate as a certified public~~
21 ~~accountant shall have 1 year of qualifying experience under the~~
22 ~~direction and supervision of a licensed certified public accountant~~
23 ~~of this or another state in either of the following:~~

24 ~~—— (a) The practice of public accounting with experience obtained~~
25 ~~in 1 financial audit and in all of the following areas that may be~~
26 ~~performed under the direction and supervision of a licensed~~
27 ~~certified public accountant while the applicant was meeting the~~

1 ~~education requirements of subsection (2):~~

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

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

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

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

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

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

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

23 ~~—— (ii) The auditing of the books and accounts of financial~~
24 ~~activities of 3 or more distinct governmental agencies or~~
25 ~~independent organizational units other than an employer of the~~
26 ~~applicant in accordance with generally accepted auditing standards~~
27 ~~or generally accepted government auditing standards, and in which~~

1 ~~the results of the auditing are reported to a third party.~~
2 ~~—— (5) In complying with the requirement of subsection (4) that~~
3 ~~an applicant shall have performed 1 financial audit, an applicant~~
4 ~~may submit an audit performed under the direction and supervision~~
5 ~~of a licensed certified public accountant who is not the~~
6 ~~applicant's employer or an audit performed while the applicant was~~
7 ~~meeting the educational requirements of subsection (2).~~

8 (4) FOR AN APPLICATION FOR A CERTIFICATE AS A CERTIFIED PUBLIC
9 ACCOUNTANT RECEIVED ON OR AFTER THE EFFECTIVE DATE OF THE
10 AMENDATORY ACT THAT ADDED THIS SUBSECTION, OR AN APPLICATION
11 RECEIVED BEFORE THAT DATE IF A CERTIFICATE OF CERTIFIED PUBLIC
12 ACCOUNTANT HAS NOT BEEN ISSUED, THE APPLICANT SHALL HAVE 1 YEAR OF
13 QUALIFYING EXPERIENCE, ALL OF WHICH IS VERIFIED BY A CERTIFIED
14 PUBLIC ACCOUNTANT OF THIS STATE, ANY OTHER STATE, OR ANY
15 JURISDICTION OF THE UNITED STATES, SUBMITTED ON A FORM PRESCRIBED
16 BY THE DEPARTMENT. QUALIFIED EXPERIENCE IS EXPERIENCE GAINED
17 THROUGH EMPLOYMENT IN GOVERNMENT, INDUSTRY, ACADEMIA, OR PUBLIC
18 PRACTICE IN 1 OR MORE OF THE FOLLOWING AREAS:

19 (A) AUDITS OF FINANCIAL STATEMENTS IN ACCORDANCE WITH THE
20 APPLICABLE STANDARDS AT THE TIME OF ENGAGEMENT.

21 (B) REVIEWS OF FINANCIAL STATEMENTS IN ACCORDANCE WITH THE
22 APPLICABLE STANDARDS AT THE TIME OF ENGAGEMENT.

23 (C) COMPILATIONS OF FINANCIAL STATEMENTS WITH COMPLETE
24 DISCLOSURE IN ACCORDANCE WITH THE APPLICABLE STANDARDS AT THE TIME
25 OF ENGAGEMENT.

26 (D) ATTESTATION ENGAGEMENTS IN ACCORDANCE WITH THE APPLICABLE
27 STANDARDS AT THE TIME OF ENGAGEMENT.

1 (E) OTHER AUDITING IN ACCORDANCE WITH APPLICABLE STANDARDS AT
2 THE TIME OF ENGAGEMENT THAT LEADS TO AN EXPRESSION OF A WRITTEN
3 OPINION INCLUDING ANY OF THE FOLLOWING:

4 (i) REVIEWS REGARDING INTERNAL CONTROL.

5 (ii) OPERATIONAL AUDITS.

6 (iii) COMPLIANCE AUDITS.

7 (iv) EXPRESSIONS OF AN OPINION ON FINANCIAL FORECASTS AND
8 PROJECTIONS.

9 (F) PERFORMANCE OF AN INDEPENDENT INTERNAL AUDIT FUNCTION.

10 (G) COMPLIANCE AUDITS OF GOVERNMENT CONTRACTS PERFORMED ON
11 BEHALF OF A GOVERNMENT AGENCY THAT RESULT IN THE ISSUANCE OF AN
12 OPINION OR REPORT.

13 (H) AUDITS PERFORMED ON BEHALF OF A GOVERNMENT AUDIT AGENCY
14 THAT RESULT IN THE ISSUANCE OF AN OPINION OR REPORT.

15 (I) PREPARATION OF INCOME AND NONPROFIT TAX RETURNS FOR ANY
16 TAXING JURISDICTION.

17 (J) PROPERLY DOCUMENTED TAX RESEARCH.

18 (K) REPRESENTATION OF A CLIENT BEFORE A GOVERNMENT AGENCY ON A
19 TAX MATTER.

20 (L) FINANCIAL FORECASTS, ANALYSES, AND PROJECTIONS.

21 (M) MANAGEMENT ADVISORY SERVICES INCLUDING, BUT NOT LIMITED
22 TO, BUSINESS VALUATION, FORENSIC ACCOUNTING, AND FRAUD EXAMINATION
23 SERVICES THAT MEET APPLICABLE STANDARDS.

24 (N) MANAGEMENT AND SUPERVISION OF ACCOUNTING FUNCTIONS AND
25 PREPARING FINANCIAL STATEMENTS FOR PROFIT OR NONPROFIT ENTITIES.

26 (O) PROFESSIONAL ACCOUNTING-RELATED WORK IN A PUBLIC
27 ACCOUNTING FIRM.

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1 (P) OTHER WORK GENERALLY ASSOCIATED WITH THE PROFESSION OF
2 PUBLIC ACCOUNTING.

3 (5) AN APPLICANT FOR CERTIFICATION UNDER THIS SECTION SHALL
4 NOT RECEIVE CREDIT AS QUALIFYING EXPERIENCE FOR THE FOLLOWING:

5 (A) EXPERIENCE CONSISTING OF NONPROFESSIONAL WORK, INCLUDING
6 RECRUITING, INDUSTRIAL ENGINEERING, ADMINISTRATION, BOOKKEEPING,
7 AND APPRAISALS.

8 (B) PARAPROFESSIONAL WORK THAT DOES NOT COMPLY WITH SUBSECTION
9 (4) (O).

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

13 ~~——(a) Holds~~ **HOLDS** a valid and unrevoked certificate as a certified
14 public accountant issued by or under the authority of another state or
15 United States jurisdiction ~~—AND MEETS EITHER OF THE FOLLOWING~~
16 **CONDITIONS:**

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

22 (B) **HAS HAD 4 YEARS OF EXPERIENCE OF THE TYPE DESCRIBED IN SECTION**
23 **725(4) AFTER HAVING PASSED THE EXAMINATION UPON WHICH THE APPLICANT'S**
24 **CERTIFICATE WAS BASED, WITHIN 10 YEARS IMMEDIATELY PRECEDING THE DATE OF**
25 **APPLICATION.**

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

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1 ~~_____ (a) Holds~~ **HOLDS** a valid and unrevoked certificate as a certified
 2 public accountant or an equivalent title issued by or under the authority
 3 of a jurisdiction outside the United States ~~that the board determines to~~
 4 ~~be equivalent to the requirements to obtain a certificate of certified~~
 5 ~~public accountant in this state~~ **AS DESCRIBED IN SECTION 725.**

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

9]

10 Sec. 727. After obtaining a certificate as a certified public
 11 accountant under section 725 or 726, an individual **SEEKING TO USE A**
 12 **TITLE AUTHORIZED BY THIS ARTICLE** shall do 1 of the following:

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

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

22 Sec. 728. (1) A firm ~~organized for the practice of public~~
 23 ~~accounting~~ shall apply for and obtain a Michigan license under this
 24 article in order to engage in the practice of public accounting in
 25 this state if either of the following apply:

26 (a) The firm establishes or maintains an office in this state.

27 (b) An individual representing the firm performs any

1 engagement described in section 720(1)(a)(i), (iii), or (iv) for any
2 client having its home office in this state.

3 (2) Reports produced pursuant to engagements in subsection
4 (1)(b) may be supervised or signed, or the report's signature may
5 be authorized for the firm, by an individual practicing public
6 accounting in Michigan pursuant to section 727a.

7 (3) A firm applying for licensure under this article shall
8 meet all of the following requirements:

9 (a) At least a simple majority of the equity and voting rights
10 of the firm are held directly or beneficially by individuals who
11 are licensed in good standing as certified public accountants of
12 this or another state or the equivalent in another licensing
13 jurisdiction acceptable to the board. Owners who are not certified
14 public accountants as defined by section 720(1)(b) must be active
15 individual participants in the firm or its affiliated entities. An
16 individual with practice privileges under section 727a who performs
17 services for which a firm ~~permit~~**LICENSE** is required under this
18 section is not required to obtain a certificate under section 726
19 or a registration or license under section 727.

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

25 (c) Has filed the required certificate of authority with the
26 department pursuant to the business corporations act, 1972 PA 284,
27 MCL ~~450.2001~~**450.1101** to 450.2098, if applicable.

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

3 (5) A firm not required to obtain a Michigan license under
4 subsection (1) may perform a review engagement in accordance with
5 the statements on standards for accounting and review services or a
6 compilation for a client having its home office in this state, may
7 use the title "CPA" or "CPA firm", and may practice public
8 accountancy as authorized in this section without a license issued
9 under subsection (1) only if it meets both of the following
10 conditions:

11 (a) It has met the requirements in subsection (3)(a) and (b)
12 and section 729(2).

13 (b) It performs such services through an individual with
14 practice privileges under section 727a.

15 (6) A firm not required to obtain a Michigan license under
16 subsection (1) and that is not seeking to practice under subsection
17 (5) may perform other professional services within the practice of
18 public accountancy while using the title "CPA" or "CPA firm" in
19 this state without a license issued under subsection (1) only if it
20 meets both of the following conditions:

21 (a) It performs such services through an individual with
22 practice privileges under section 727a.

23 (b) It can lawfully do so in the licensing jurisdiction where
24 such individuals with practice privilege have their principal place
25 of business.

26 Sec. 729. (1) As a condition of license renewal, an individual
27 licensee shall complete at least 40 hours of continuing education

1 for each year since the issuance of the original license or the
 2 last renewal. Of the 40 hours of continuing education credits, the
 3 board shall not require more than 8 of those hours to be in the
 4 areas of auditing and accounting. The board may make exceptions
 5 from the continuing education requirements of this subsection for
 6 reasons of health, military service, or other good cause.

7 (2) Each licensed firm and sole practitioner that performs
 8 ~~attest ANY OF THE FOLLOWING services, including audits, reviews,~~
 9 ~~and compilations that are relied upon by third parties,~~ shall
 10 participate in a peer review program established by rule of the
 11 department and approved by the board: -

12 (A) AUDIT.

13 (B) REVIEW.

14 (C) COMPILATIONS THAT ARE RELIED UPON BY THIRD PARTIES.

15 (3) An applicant for renewal ~~or relicensure~~ shall submit to
 16 the department, **ON A FORM PRESCRIBED BY THE DEPARTMENT AND** at the
 17 time of renewal, ~~or relicensure~~ proof of peer review obtained
 18 within the 3 years immediately preceding the application.

19 (4) A firm or sole practitioner required to participate in a
 20 peer review program under this subsection shall notify the
 21 department within 30 days after receipt of ~~an adverse report~~ **A FAIL**
 22 **RATING** or second ~~modified peer review report~~ **CONSECUTIVE PASS WITH**
 23 **DEFICIENCIES RATING**. Verbal testimony or documents, or both,
 24 pertaining to a peer review shall be considered confidential and
 25 shall be exempt from disclosure to the department, except in the
 26 case of ~~an adverse~~ **A FAIL** or second consecutive ~~modified opinion~~
 27 **PASS WITH DEFICIENCIES RATING**.

1 (5) ~~(3)~~—The peer review requirements under subsection (2) for
2 licensees become effective as follows:

3 (a) For licensed firms and sole practitioners whose attest
4 services include audits, beginning March 1, 2008.

5 (b) For licensed firms and sole practitioners whose attest
6 services include compilation with disclosures relied upon by third
7 parties, or review, or both compilation with disclosures and
8 review, but not audits under subdivision (a), beginning March 1,
9 2009.

10 (c) For licensed firms and sole practitioners whose attest
11 services include compilation without disclosures relied upon by
12 third parties, but not audits under subdivision (a) or any
13 compilation with disclosures relied upon by third parties, or
14 review, or both compilation with disclosures and review under
15 subdivision (b), beginning March 1, 2010.

16 Sec. 734. (1) A holder of a certificate, registration, or
17 license as a certified public accountant or an individual
18 exercising the practice privilege granted under section 727a and
19 the firm employing that individual is subject to the penalties of
20 section 602 for 1 or more of the following:

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

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

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

1 (D) DEPARTURE FROM STANDARDS OF PROFESSIONAL PRACTICE
2 APPLICABLE TO THE ENGAGEMENT, AT THE TIME OF ENGAGEMENT.

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

9 (F) ~~(e)~~—Cancellation, revocation, suspension, or refusal to
10 renew authority to practice as a certified public accountant by
11 another state **OR ANY JURISDICTION OF THE UNITED STATES** for a cause
12 other than failure to pay a licensure or other required fee in that
13 state.

14 (G) ~~(f)~~—Suspension or revocation ~~for cause~~ of the right to
15 engage in the practice of public accounting before a state or
16 federal agency **OR A PUBLIC ACCOUNTING OVERSIGHT BOARD**.

17 (H) ~~(g)~~—Conduct discreditable to the public accounting
18 profession.

19 (I) ~~(h)~~—Determination of mental incompetency by a court of
20 law.

21 (J) ~~(i)~~—A violation of this article or a rule promulgated
22 under this article.

23 (K) ~~(j)~~—A violation of the provisions of section 604.

24 (L) ~~(k)~~—A violation of professional standards regarding the
25 issuance of reports on financial statements; 1 or more kinds of
26 management advisory, financial advisory, or consulting services;
27 the preparation of tax returns; or the furnishing of advice on tax

1 matters.

2 (2) Notwithstanding section 602(e), a person that violates
3 this article or a rule or order promulgated or issued under or
4 related to this article is liable for an administrative fine
5 payable to the department of not more than \$25,000.00 per
6 violation.

7 (3) Within 30 days after a final determination rendered by a
8 federal or state administrative agency or a judgment or conviction
9 issued by a federal court, a state court, or any other court of
10 record, a licensee or registrant shall report to the department in
11 writing or electronically a determination, order, judgment, or
12 conviction regarding a violation in which dishonesty, fraud, or
13 negligence is an element of that determination, order, judgment, or
14 conviction.