

AN ACT

RELATING TO PUBLIC ACCOUNTANCY; PROHIBITING CERTAIN ACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-28B-3 NMSA 1978 (being Laws 1999, Chapter 179, Section 3) is amended to read:

"61-28B-3. DEFINITIONS.--As used in the 1999 Public Accountancy Act:

A. "attest" means to provide the following financial statement services:

(1) an audit or other engagement performed in accordance with the statements on auditing standards;

(2) a review of a financial statement performed in accordance with the statement on standards for accounting and review services; and

(3) an examination of prospective financial information performed in accordance with the statements on standards for attestation engagements;

B. "board" means the New Mexico public accountancy board;

C. "certificate" means the legal recognition issued to identify a certified public accountant or a registered public accountant pursuant to the 1999 Public Accountancy Act or prior law;

D. "certified public accountant" means a person certified by this state or by another state to practice public accountancy and use the designation;

E. "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 specific finding or result is attained or upon which the amount of the fee is dependent upon a finding or result. "Contingent fee" does not mean a fee set by the court or a public authority on a tax matter;

F. "director" means the executive director of the board;

G. "firm" means a sole proprietorship, professional corporation, partnership, limited liability company, limited liability partnership or other legal business entity that practices public accountancy;

H. "licensee" means a certified public accountant, certified public accountant firm, registered public accountant or registered public accountant firm;

I. "peer review" means a study, appraisal or review of one or more aspects of the professional work of a firm by a certified public accountant who is not affiliated with the firm being reviewed;

J. "permit" means the annual authority granted to practice as a certified public accountant firm or a registered public accountant firm;

K. "person" means a licensee;

L. "practice" means performing or offering to perform public accountancy for a client or potential client by a person holding himself out to the public as a permit holder or registered firm;

M. "public accountancy" means the performance of

one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters;

N. "registered public accountant" means a person who is registered by the board to practice public accountancy and use the designation;

O. "report" means an opinion or other writing that:

(1) states or implies assurance as to the reliability of any financial statements;

(2) includes or is accompanied by a statement or implication that the person issuing it has special knowledge or competency in accounting or auditing indicated by the use of names, titles or abbreviations likely to be understood to identify the author of the report as a licensee; and

(3) includes the following types of reports as they are defined by board rule:

(a) a review report; or

(b) an audit report;

P. "specialty designation" means a designation indicating professional competence in a specialized area of practice; and

Q. "substantial equivalency" means a determination by the board that the education, examination

and experience requirements for certification of another jurisdiction are comparable to or exceed the corresponding requirements of the 1999 Public Accountancy Act."

Section 2. Section 61-28B-17 NMSA 1978 (being Laws 1999, Chapter 179, Section 17) is amended to read:

"61-28B-17. ENFORCEMENT--UNLAWFUL ACTS.--

A. Except as provided in Subsection C of this section and Section 61-28B-18 NMSA 1978, it is unlawful for a person to engage in practice in New Mexico unless he is a licensee.

B. Except as provided in Subsection C of this section and Section 61-28B-18 NMSA 1978, no person or accountant shall issue a report or financial statement of a person or a governmental unit or issue a report using any form of language conventionally used respecting an audit or review of financial statements, unless he holds a current license or permit. The state auditor and his auditing staff are considered to be in the practice of public accountancy.

C. With the exception of persons cited in Section 61-28B-18 NMSA 1978, a person or accountant who prepares a financial accounting and related statements and who is not the holder of a certificate or a permit under the provisions of that act shall use the following statement in the transmittal letter: "I (we) have prepared the accompanying financial statements of (name of entity) as of (time period) and for the (time period) ending (date). This presentation is limited to preparing in the form of financial statements information that is the representation

of management (owners). I (we) have not audited nor reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."

D. No person or accountant shall indicate by title, designation, abbreviation, sign, card or device that he is a certified public accountant or a registered public accountant unless he is currently certified by the board pursuant to the 1999 Public Accountancy Act or is a firm currently permitted with the board pursuant to that act. Unless he is a holder of a current certificate or permit, no person or accountant shall use any title, initials or designation intended to or substantially likely to indicate to the public that he is a certified public accountant or registered public accountant.

E. No person shall engage in practice unless:

(1) he holds a valid certificate or current permit; or

(2) he is an employee and not a partner, officer, shareholder or member of a firm.

F. No person or firm holding a certificate or permit shall engage in practice using a professional or firm name or designation that is misleading about the legal form of the firm; provided, however, that names of one or more former partners, shareholders or members may be included in the name of a firm or its successors.

G. No person shall sell, offer to sell or fraudulently obtain or furnish any certificate or permit nor

shall he fraudulently register as a certified public accountant or registered public accountant or practice in this state without being granted a certificate or permit as provided in the 1999 Public Accountancy Act.

H. A licensee or his firm shall not receive a commission to recommend or refer a product or service to a client or to recommend to anyone else a product or service to be supplied by a client during the period the licensee or his firm is engaged to perform the following services for that client and during the period covered by any historical financial statements involved in the services:

(1) an audit or review of a financial statement;

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

(3) an examination of prospective financial information.

I. A licensee or his firm that is not prohibited from receiving a commission by Subsection H of this section and that is paid or expects to be paid a commission shall disclose that fact in writing to the person for whom the licensee or his firm performs a service or refers or recommends a product or service. A licensee or firm that accepts or pays a referral fee for a service or to obtain a client shall disclose such acceptance or payment to the

