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SENATE BILL 266

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Don Kidd

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

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1 standards for attestation engagements;

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

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

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

11 E. "contingent fee" means a fee established for
12 the performance of a service pursuant to an arrangement in
13 which no fee will be charged unless a specific finding or
14 result is attained or upon which the amount of the fee is
15 dependent upon a finding or result. "Contingent fee" does
16 not mean a fee set by the court or a public authority on a
17 tax matter;

18 ~~[E.]~~ F. "director" means the executive director of
19 the board;

20 ~~[F.]~~ G. "firm" means a sole proprietorship,
21 professional corporation, partnership, limited liability
22 company, limited liability partnership or other legal
23 business entity that practices public accountancy;

24 ~~[G.]~~ H. "licensee" means a certified public
25 accountant, certified public accountant firm, registered
public accountant or registered public accountant firm;

~~[H.]~~ I. "peer review" means a study, appraisal or

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1 review of one or more aspects of the professional work of a
2 firm by a certified public accountant who is not affiliated
3 with the firm being reviewed;

4 ~~[I.]~~ J. "permit" means the annual authority
5 granted to practice as a certified public accountant firm or
6 a registered public accountant firm;

7 ~~[J.]~~ K. "person" means a licensee;

8 ~~[K.]~~ L. "practice" means performing or offering to
9 perform public accountancy for a client or potential client
10 by a person holding himself out to the public as a permit
11 holder or registered firm;

12 ~~[L.]~~ M. "public accountancy" means the performance
13 of one or more kinds of services involving accounting or
14 auditing skills, including the issuance of reports on
15 financial statements, the performance of one or more kinds of
16 management, financial advisory or consulting services, the
17 preparation of tax returns or the furnishing of advice on tax
18 matters;

19 ~~[M.]~~ N. "registered public accountant" means a
20 person who is registered by the board to practice public
21 accountancy and use the designation;

22 ~~[N.]~~ O. "report" means an opinion or other writing
23 that:

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

(2) includes or is accompanied by a
statement or implication that the person issuing it has

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1 special knowledge or competency in accounting or auditing
2 indicated by the use of names, titles or abbreviations likely
3 to be understood to identify the author of the report as a
4 licensee; and

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

- 7 (a) a review report; or
- 8 (b) an audit report;

9 ~~[P.]~~ P. "specialty designation" means a
10 designation indicating professional competence in a
11 specialized area of practice; and

12 ~~[P.]~~ Q. "substantial equivalency" means a
13 determination by the board that the education, examination
14 and experience requirements for certification of another
15 jurisdiction are comparable to or exceed the corresponding
16 requirements of the 1999 Public Accountancy Act."

17 Section 2. Section 61-28B-17 NMSA 1978 (being Laws
18 1999, Chapter 179, Section 17) is amended to read:

19 "61-28B-17. ENFORCEMENT--UNLAWFUL ACTS.--

20 A. Except as provided in Subsection C of this
21 section and Section ~~[18 of the 1999 Public Accountancy Act]~~
22 61-28B-18 NMSA 1978, it is unlawful for a person to engage in
23 practice in New Mexico unless he is a licensee.

24 B. Except as provided in Subsection C of this
25 section and Section ~~[18 of the 1999 Public Accountancy Act]~~
61-28B-18 NMSA 1978, no person or accountant shall issue a
report or financial statement of a person or a governmental

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1 unit or issue a report using any form of language
2 conventionally used respecting an audit or review of
3 financial statements, unless he holds a current license or
4 permit. The state auditor and his auditing staff are
5 considered to be in the practice of public accountancy.

6 C. With the exception of persons cited in Section
7 ~~[18 of the 1999 Public Accountancy Act]~~ 61-28B-18 NMSA 1978,
8 a person or accountant who prepares a financial accounting
9 and related statements and who is not the holder of a
10 certificate or a permit under the provisions of that act
11 shall use the following statement in the transmittal letter:
12 "I (we) have prepared the accompanying financial statements
13 of (name of entity) as of (time period) and for the (time
14 period) ending (date). This presentation is limited to
15 preparing in the form of financial statements information
16 that is the representation of management (owners). I (we)
17 have not audited nor reviewed the accompanying financial
18 statements and accordingly do not express an opinion or any
19 other form of assurance on them."

20 D. No person or accountant shall indicate by
21 title, designation, abbreviation, sign, card or device that
22 he is a certified public accountant or a registered public
23 accountant unless he is currently certified by the board
24 pursuant to the 1999 Public Accountancy Act or is a firm
25 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

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1 designation intended to or substantially likely to indicate
2 to the public that he is a certified public accountant or
3 registered public accountant.

4 E. No person shall engage in practice unless:

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

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

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

15 G. No person shall sell, offer to sell or
16 fraudulently obtain or furnish any certificate or permit nor
17 shall he fraudulently register as a certified public
18 accountant or registered public accountant or practice in
19 this state without being granted a certificate or permit as
20 provided in the 1999 Public Accountancy Act.

21 ~~[H. A licensee shall not pay a commission to~~
22 ~~obtain a client, nor accept a commission for a referral to a~~
23 ~~client of products or services of others; provided, however,~~
24 ~~that this subsection shall not prohibit payments for the~~
25 ~~purchase of all, or a material part, of an accounting~~
~~practice, or retirement payments to persons formerly engaged~~
~~in the practice of public accountancy, or payment to the~~

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1 ~~heirs or estates of such persons.~~

2 ~~F. A licensee shall not offer or perform~~
3 ~~professional services for a fee that is contingent upon the~~
4 ~~findings or results of such services; provided, however, that~~
5 ~~this subsection shall not apply to professional services~~
6 ~~involving federal, state or other taxes in which the findings~~
7 ~~are those of the tax authorities and not those of the~~
8 ~~licensee or to professional services for which the fees are~~
9 ~~to be fixed by courts or other public authorities and that~~
10 ~~are therefore indeterminate in amount at the time the~~
11 ~~professional services are undertaken.]~~

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

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

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

(3) an examination of prospective financial
information.

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

9 J. A licensee or his firm shall not charge or
10 receive a contingent fee when the licensee or his firm
11 performs the following services:

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

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

18 (3) an examination of prospective financial
19 information; or

20 (4) preparation of an original or amended
21 tax return or claim for tax refund.

22 ~~[K.]~~ K. No licensee shall sign or certify any
23 financial statements if he knows the same to be materially
24 false or fraudulent."
25

Section 3. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2000.