

AN ACT

RELATING TO PUBLIC ACCOUNTANCY; PROVIDING FOR AN EXCEPTION TO THE CHARGING OF FEES FOR CERTAIN WORK; AMENDING THE 1999 PUBLIC ACCOUNTANCY ACT; DECLARING AN EMERGENCY.

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

Section 1. Section 61-28B-17 NMSA 1978 (being Laws 1999, Chapter 179, Section 17, as amended) 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 by 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 client in writing.

J. A licensee or his firm shall not charge or receive a contingent fee for a client for whom the licensee or his firm performs the following services:

- (1) an audit or review of a financial statement;
- (2) a compilation of a financial statement when the licensee 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;
- (3) an examination of prospective financial information; or
- (4) preparation of an original or amended tax return or claim for tax refund, except in the case of federal, state or other taxes in which the findings are those of the tax authorities and not those of the licensee or in the case of professional services for which fees are

to be fixed by courts or other public authorities and that are therefore indeterminate in amount at the time the professional services are undertaken.

K. No licensee shall sign or certify any financial statements if he knows the same to be materially false or fraudulent. "

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. _____