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SENATE BILL 677

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Don Kidd

AN ACT

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

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

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1 person or a governmental unit or issue a report using any form  
2 of language conventionally used respecting an audit or review  
3 of 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 61-28B-18 NMSA 1978, a person or accountant who prepares a  
8 financial accounting and related statements and who is not the  
9 holder of a certificate or a permit under the provisions of  
10 that act shall use the following statement in the transmittal  
11 letter: "I (we) have prepared the accompanying financial  
12 statements of (name of entity) as of (time period) and for the  
13 (time period) ending (date). This presentation is limited to  
14 preparing in the form of financial statements information that  
15 is the representation of management (owners). I (we) have not  
16 audited nor reviewed the accompanying financial statements and  
17 accordingly do not express an opinion or any other form of  
18 assurance on them."

19 D. No person or accountant shall indicate by  
20 title, designation, abbreviation, sign, card or device that he  
21 is a certified public accountant or a registered public  
22 accountant unless he is currently certified by the board  
23 pursuant to the 1999 Public Accountancy Act or is a firm  
24 currently permitted ~~[with]~~ by the board pursuant to that act.  
25 Unless he is a holder of a current certificate or permit, no

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1 person or accountant shall use any title, initials or  
2 designation intended to or substantially likely to indicate to  
3 the public that he is a certified public accountant or  
4 registered public accountant.

5 E. No person shall engage in practice unless:

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

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

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

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

22 H. A licensee or his firm shall not receive a  
23 commission to recommend or refer a product or service to a  
24 client or to recommend to anyone else a product or service to  
25 be supplied by a client during the period the licensee or his

1 firm is engaged to perform the following services for that  
2 client and during the period covered by any historical  
3 financial statements involved in the services:

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

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

11 (3) an examination of prospective financial  
12 information.

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

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

25 (1) an audit or review of a financial

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1 statement;

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

6 (3) an examination of prospective financial  
7 information; or

8 (4) preparation of an original or amended tax  
9 return or claim for tax refund, except in the case of federal,  
10 state or other taxes in which the findings are those of the  
11 tax authorities and not those of the licensee or in the case  
12 of professional services for which fees are to be fixed by  
13 courts or other public authorities and that are therefore  
14 indeterminate in amount at the time the professional services  
15 are undertaken.

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