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HOUSE BILL 197

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Jason C. Harper

AN ACT

RELATING TO THE 1999 PUBLIC ACCOUNTANCY ACT; CLARIFYING THE
DEFINITION OF "ATTEST"; ALLOWING A NONRESIDENT TO MEET
CONTINUING EDUCATION REQUIREMENTS IN NEW MEXICO IF THE
NONRESIDENT MEETS THE REQUIREMENTS IN THE STATE WHERE THE
NONRESIDENT'S PRIMARY PLACE OF BUSINESS IS LOCATED; EXPANDING
THE TYPE OF SERVICES A NONRESIDENT FIRM MAY OFFER TO OR RENDER
FOR A CLIENT IN NEW MEXICO WITHOUT A PERMIT; REPEALING SECTION
61-28B-7 NMSA 1978 (BEING LAWS 1999, CHAPTER 179, SECTION 7, AS
AMENDED).

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, as amended) is amended to read:

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

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- 1 A. "attest" means to provide the following
2 ~~[financial statement]~~ services:
- 3 (1) an audit or other engagement performed in
4 accordance with the statements on auditing standards;
- 5 (2) a review of a financial statement
6 performed in accordance with the statement on standards for
7 accounting and review services;
- 8 (3) an ~~[examination of prospective financial~~
9 ~~information]~~ engagement performed in accordance with the
10 statements on standards for attestation engagements adopted by
11 the board; and
- 12 (4) an engagement to be performed in
13 accordance with the auditing standards of the public company
14 accounting oversight board;
- 15 B. "board" means the New Mexico public accountancy
16 board;
- 17 C. "certificate" means the legal recognition issued
18 to identify a certified public accountant or a registered
19 public accountant pursuant to the 1999 Public Accountancy Act
20 or prior law;
- 21 D. "certified public accountant" means a person
22 certified by this state or by another state to practice public
23 accountancy and use the designation;
- 24 E. "compilation" means a service provided to
25 management, applying accounting and financial reporting

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1 expertise, in the presentation of financial statements and
2 reports without undertaking to obtain or provide assurance that
3 there are no material modifications that should be made to the
4 financial statements or reports to be in accordance with the
5 applicable financial reporting framework;

6 [E-] F. "contingent fee" means a fee established
7 for the performance of a service pursuant to an arrangement in
8 which no fee will be charged unless a specific finding or
9 result is attained or upon which the amount of the fee is
10 dependent upon a finding or result. "Contingent fee" does not
11 mean a fee set by the court or a public authority on a tax
12 matter;

13 [F-] G. "director" means the executive director of
14 the board;

15 [G-] H. "firm" means a sole proprietorship,
16 professional corporation, partnership, limited liability
17 company, limited liability partnership or other legal business
18 entity that practices public accountancy;

19 [H-] I. "licensee" means a person, certified public
20 accountant, certified public accountant firm, registered public
21 accountant or registered public accountant firm authorized to
22 do business in New Mexico pursuant to the provisions of the
23 1999 Public Accountancy Act or prior law;

24 [I-] J. "peer review" means a study, appraisal or
25 review of one or more aspects of the professional work of a

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1 firm by a certified public accountant who is not affiliated
2 with the firm being reviewed;

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

6 ~~[K.]~~ L. "practice" means performing or offering to
7 perform public accountancy for a client or potential client by
8 a person who makes a representation to the public as being a
9 permit holder or registered firm;

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

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

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

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

23 ~~(2) includes or is accompanied by a statement~~
24 ~~or implication that the person issuing it has special knowledge~~
25 ~~or competency in accounting or auditing indicated by the use of~~

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1 ~~names, titles or abbreviations likely to be understood to~~
2 ~~identify the author of the report as a licensee; and~~

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

5 ~~(a) a compilation report;~~

6 ~~(b) a review report; or~~

7 ~~(c) an audit report;] a written~~

8 communication issued by an accountant or an accountant firm

9 that:

10 (1) when used in reference to an audit, review
11 or examination service, expresses or disclaims an opinion or a
12 conclusion as to whether subject matter is presented in
13 accordance with specified criteria; and

14 (2) when used in reference to a compilation,
15 agreed-upon procedures service or other service that is not an
16 audit, review or examination service, includes a statement or
17 implication that the accountant or accountant firm that issued
18 the report has special knowledge or competence in accounting or
19 attest services such as by the use of names or titles
20 indicating that the person or firm is an accountant or an
21 accountant firm or by the contents of the report itself; and

22 ~~[0-] P.~~ "substantial equivalency" means a
23 determination by the board that the education, examination and
24 experience requirements for certification of another
25 jurisdiction are comparable to or exceed the requirements of

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1 Paragraph (1) of Subsection A of Section 61-28B-26 NMSA 1978."

2 SECTION 2. Section 61-28B-9 NMSA 1978 (being Laws 1999,
3 Chapter 179, Section 9, as amended) is amended to read:

4 "61-28B-9. ISSUANCE AND RENEWAL OF CERTIFICATE--
5 MAINTENANCE OF COMPETENCY--NONRESIDENT MAINTENANCE OF
6 COMPETENCY REQUIREMENTS.--

7 A. The board shall grant or renew a certificate
8 upon application and demonstration that the applicant's
9 qualifications are in accordance with the 1999 Public
10 Accountancy Act or that they are eligible under the substantial
11 equivalency standard provided in that act.

12 B. The board may establish by rule for the issuance
13 of annual certificates and may prescribe the expiration date of
14 certificates. Failure to pay the renewal fee shall be cause
15 for the board to withhold renewal of a certificate without
16 prior hearing pursuant to the provisions of the Uniform
17 Licensing Act. If the renewal fee and delinquency fee are not
18 paid within ninety days after the expiration date of the
19 license, the certificate shall be subject to cancellation. A
20 certificate holder whose certificate has been canceled for
21 failure to pay the annual renewal fee may secure reinstatement
22 of the certificate only upon application and payment of the
23 renewal fee and reinstatement fee and upon approval by the
24 board.

25 C. The board shall grant or deny an application for

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1 certification no later than one hundred twenty days after the
2 complete application is filed.

3 D. If an applicant appeals the decision of the
4 board to deny a certificate, the board may issue a provisional
5 certificate for no longer than ninety days while the board
6 reconsiders its decision.

7 E. To renew a certificate, a certificate holder
8 shall provide satisfactory proof to the board of continuing
9 professional education that is designed to maintain competency.
10 Continuing professional education courses shall comply with
11 board rules. The board may create an exception to the
12 requirement to maintain continuing professional education for
13 certificate holders who do not provide services to the public.
14 A certificate holder granted such an exception must place the
15 word "inactive" or "retired" adjacent to ~~[his]~~ the certificate
16 holder's certified public accountant title or registered public
17 accountant title on a business card, letterhead or other
18 document or device, except for a board-issued certificate.

19 F. A nonresident certificate holder seeking to
20 renew a certificate shall be determined to have met the
21 continuing professional education requirement in this state if
22 the nonresident has met the continuing professional education
23 requirement in the state where the nonresident's principal
24 place of business is located; provided that:

25 (1) the nonresident signs a statement on the

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1 renewal application that the nonresident has met the continuing
2 professional education requirement in the state where the
3 nonresident's principal place of business is located; and

4 (2) the state where the nonresident's
5 principal place of business is located requires continuing
6 professional education.

7 ~~[F-]~~ G. An applicant for initial issuance or
8 renewal of a certificate pursuant to this section shall list
9 all foreign and domestic jurisdictions in which the applicant
10 has applied for or holds a designation to practice public
11 accountancy. The applicant shall also list any past denial,
12 revocation or suspension of a certificate, license or permit.
13 An applicant or certificate holder shall notify the board in
14 writing, within thirty days of the occurrence of any issuance,
15 denial, revocation or suspension of a designation or
16 commencement of a disciplinary or enforcement action by any
17 jurisdiction."

18 **SECTION 3.** Section 61-28B-13 NMSA 1978 (being Laws 1999,
19 Chapter 179, Section 13, as amended) is amended to read:

20 "61-28B-13. FIRM PERMITS TO PRACTICE, ATTEST EXPERIENCE,
21 PEER REVIEW.--

22 A. The board may grant or renew a permit to
23 practice as a certified public accountant firm to an applicant
24 that demonstrates its qualifications in accordance with this
25 section.

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1 B. A permit issued pursuant to this section shall
2 be required for the following:

3 (1) a firm with an office in New Mexico
4 performing attest services as defined by the 1999 Public
5 Accountancy Act;

6 (2) a firm with an office in New Mexico that
7 uses the title "CPA" or "CPA firm"; or

8 (3) a firm that does not have an office in New
9 Mexico but ~~[performs]~~ offers or renders attest services for a
10 client ~~[whose principal place of business is]~~ in New Mexico,
11 except as provided in Subsection C of this section.

12 C. A firm ~~[without]~~ that does not have an office in
13 New Mexico may ~~[perform]~~ offer or render attest services
14 ~~[described in Paragraph (2) of Subsection A of Section 61-28B-3~~
15 ~~NMSA 1978]~~ for a client ~~[whose principal place of business is]~~
16 in New Mexico and may use the title "CPA" or "CPA firm" without
17 a permit issued pursuant to this section only if:

18 (1) ~~[it performs]~~ the firm offers or renders
19 the services through a person with practice privileges under
20 Section 61-28B-26 NMSA 1978; provided that the firm can
21 lawfully perform the services in the state where the person's
22 primary place of business is located;

23 (2) ~~[a simple majority of the ownership of the~~
24 ~~firm belongs to holders of a certificate who are licensed in~~
25 ~~some state pursuant to]~~ the firm meets the requirements of

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1 Paragraph (1) of Subsection H of this section; and

2 (3) the firm [~~has undergone a peer review~~
3 ~~pursuant to~~] meets the requirements of Subsection L of this
4 section.

5 D. A firm not subject to the requirements of
6 Subsection B or C of this section may perform other nonattest
7 professional services while using the title "CPA" or "CPA firm"
8 in New Mexico without a permit issued pursuant to this section
9 only if:

10 (1) the firm performs services through a
11 person with practice privileges pursuant to Section 61-28B-26
12 NMSA 1978; and

13 (2) the firm can lawfully perform services in
14 the state that is the firm's principal place of business.

15 E. Permits shall be issued and renewed for periods
16 of not more than two years, expiring on June 30 of the year of
17 expiration. Failure to pay the renewal fee shall be cause for
18 the board to withhold renewal of a permit without prior hearing
19 pursuant to the provisions of the Uniform Licensing Act. If
20 the renewal fee and delinquency fee are not paid within ninety
21 days after the expiration of the permit, the permit shall be
22 subject to cancellation. A firm whose permit has been canceled
23 for failure to pay the annual renewal fee may secure
24 reinstatement of the permit upon application and payment of the
25 renewal fee and upon approval by the board.

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1 F. The board shall grant or deny an application for
2 a permit no later than ninety days after the complete
3 application is filed.

4 G. If an applicant appeals the decision of the
5 board to deny a permit, the board may issue a provisional
6 permit for no longer than ninety days while the board
7 reconsiders its decision.

8 H. An applicant for initial issuance or renewal of
9 a permit shall demonstrate that:

10 (1) a simple majority of the ownership of the
11 firm, in terms of financial interests, profits, losses,
12 dividends, distributions, options, redemptions and voting
13 rights of all partners, officers, shareholders, members or
14 managers, belongs to holders of a certificate who are licensed
15 in some state. A partner, officer, shareholder, member or
16 manager, whose principal place of business is in New Mexico,
17 and who performs professional services in New Mexico, must hold
18 a valid certificate. The firm and all owners must comply with
19 the 1999 Public Accountancy Act. A person with practice
20 privileges pursuant to Section 61-28B-26 NMSA 1978 who performs
21 services for which a permit is required pursuant to this
22 section shall not be required to obtain a certificate from New
23 Mexico pursuant to Section 61-28B-9 NMSA 1978. A firm may
24 include owners who are not certificate holders; provided that:

25 (a) the firm designates a New Mexico

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1 certificate holder, or in the case of a firm that must have a
2 permit, a licensee of another state who meets the requirements
3 of Subsection A of Section 61-28B-26 NMSA 1978, who is
4 responsible for the proper registration of the firm and
5 identifies that person to the board;

6 (b) all owners who are not certificate
7 holders are active participants in the certified public
8 accountant firm or registered public accountant firm or
9 affiliated entities; and

10 (c) the firm complies with the 1999
11 Public Accountancy Act; and

12 (2) a certificate holder, or a person
13 qualifying for practice privileges pursuant to Section
14 61-28B-26 NMSA 1978, who is responsible for supervising attest
15 services or signs or authorizes someone to sign the
16 accountant's report [~~on the financial statements~~] on behalf of
17 the firm meets the experience requirements set out in the
18 professional standards for such services.

19 I. An applicant for initial issuance or renewal of
20 a permit shall be required to register each office of the firm
21 within New Mexico with the board and to show that all attest
22 services rendered in this state are under the charge of a
23 person holding a valid certificate issued pursuant to the 1999
24 Public Accountancy Act or the corresponding provision of prior
25 law or by some other state.

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1 J. An applicant for initial issuance or renewal of
2 a permit shall list all foreign and domestic jurisdictions in
3 which it has applied for or holds permits as a certified public
4 accountant firm and list any past denial, revocation or
5 suspension of a permit by any jurisdiction. Each permit holder
6 or applicant shall notify the board in writing, within thirty
7 days of the occurrence of a change in the identities of
8 partners, officers, shareholders, members or managers whose
9 principal place of business is in this state, a change in the
10 number or location of offices within this state, a change in
11 the identity of the persons in charge of such offices and any
12 issuance, denial, revocation or suspension of a permit by
13 another jurisdiction.

14 K. A firm that falls out of compliance with the
15 provisions of the 1999 Public Accountancy Act due to changes in
16 firm ownership or personnel shall take corrective action to
17 bring the firm back into compliance as quickly as possible.
18 The board may grant a six-month period for a firm to take the
19 corrective action. Failure to bring the firm back into
20 compliance within six months shall result in the suspension or
21 revocation of the firm permit.

22 L. As a condition to permit renewal, the board
23 shall require the applicant to undergo a peer review conducted
24 in accordance with board rules. The review shall include a
25 verification that a person in the firm, or a person qualifying

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1 for practice privileges pursuant to Section 61-28B-26 NMSA
2 1978, who is responsible for supervising attest services and
3 signs or authorizes someone to sign the accountant's report [~~on~~
4 ~~the financial statements~~] on behalf of the firm meets the
5 experience requirements set out in the professional standards
6 for the services as required by the board.

7 M. If a partner, shareholder or member is a legal
8 business entity, that legal business entity must be a firm.

9 N. Attest services may only be provided by a
10 certificate holder or a member of a firm that satisfies the
11 requirements of this section and Sections 61-28B-8 and
12 61-28B-13 NMSA 1978. Attest services may not be performed by a
13 certificate holder who is a member of a firm that does not meet
14 the certificate holder's ownership requirements set forth in
15 this section."

16 SECTION 4. Section 61-28B-26 NMSA 1978 (being Laws 1999,
17 Chapter 179, Section 26, as amended) is amended to read:

18 "61-28B-26. PRACTICE PRIVILEGE AND DISCIPLINE FOR A
19 CERTIFICATE HOLDER FROM A STATE WHOSE ACCOUNTANCY STATUTE IS
20 SUBSTANTIALLY EQUIVALENT.--

21 A. Except as provided in Subsection D of this
22 section, a person whose principal place of business is not in
23 New Mexico shall be presumed to have qualifications
24 substantially similar to New Mexico's requirements and may
25 exercise all the practice privileges of certificate holders of

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1 New Mexico without the need to obtain a certificate pursuant to
2 Section 61-28B-9 NMSA 1978 if the person:

3 (1) holds a valid license as a certified
4 public accountant from any state that requires, as a condition
5 of licensure, that a person:

6 (a) have at least one hundred fifty
7 semester hours of college education, including a baccalaureate
8 or higher degree conferred by a college or university
9 acceptable to the board;

10 (b) achieve a passing grade on the
11 uniform certified public accountant examination; and

12 (c) possess at least one year of
13 experience, including providing any type of service or advice
14 involving the use of accounting, attest, compilation,
15 management advisory, financial advisory, tax or consulting
16 skills, which may be obtained through government, industry,
17 academic or public practice, all of which can be verified by a
18 licensee; or

19 (2) holds a valid license as a certified
20 public accountant from any state that does not meet the
21 requirements of Paragraph (1) of Subsection A of this section,
22 but the person's certified public accountant qualifications are
23 substantially equivalent to those requirements. A person who
24 passed the uniform certified public accountant examination and
25 holds a valid license issued by any other state prior to

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1 January 1, 2012 may be exempt from the education requirement in
2 Subparagraph (a) of Paragraph (1) of this subsection.

3 B. Notwithstanding any other provision of law, a
4 person who qualifies for the practice privilege pursuant to
5 this section may offer or render professional services whether
6 in person or by mail, telephone or electronic means, and no
7 notice, fee or other submission shall be required of the
8 person.

9 C. A person licensed in another state exercising
10 the practice privilege afforded pursuant to this section [~~and~~
11 ~~the firm that employs the licensee simultaneously~~] shall
12 consent, as a condition of exercising the practice privilege:

13 (1) to submit to the personal and subject-
14 matter jurisdiction and disciplinary authority of the board;

15 (2) to comply with the 1999 Public Accountancy
16 Act and the rules adopted by the board;

17 (3) to cease offering or rendering
18 professional attest services in New Mexico in the event the
19 license from the state of the person's principal place of
20 business is no longer valid; and

21 (4) to the appointment of the state board that
22 issued the license as agent upon whom process may be served in
23 any action or proceeding by the New Mexico public accountancy
24 board against the licensee.

25 D. A person who qualifies for the practice

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1 privileges pursuant to this section and who performs an attest
2 service shall meet the requirements of Section 61-28B-11 NMSA
3 1978.

4 ~~[D-]~~ E. A certificate or permit holder of New
5 Mexico that offers or renders an attest service or uses its
6 certified public accountant title in another state shall be
7 subject to disciplinary action in New Mexico for an act
8 committed in another state for which it would be subject to
9 discipline in the other state. ~~[Notwithstanding the provisions~~
10 ~~of Sections 61-28B-15 and 61-28B-16 NMSA 1978]~~ The board shall
11 investigate any complaint made by the board of accountancy in
12 another state in accordance with the provisions of the 1999
13 Public Accountancy Act."

14 SECTION 5. REPEAL.--Section 61-28B-7 NMSA 1978 (being
15 Laws 1999, Chapter 179, Section 7, as amended) is repealed.