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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:

A. "attest" means to provide the following
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;

(3) an engagement performed in accordance
with the statements on standards for attestation engagements

1 adopted by the board; and

2 (4) an engagement to be performed in
3 accordance with the auditing standards of the public company
4 accounting oversight board;

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

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

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

14 E. "compilation" means a service provided to
15 management, applying accounting and financial reporting
16 expertise, in the presentation of financial statements and
17 reports without undertaking to obtain or provide assurance
18 that there are no material modifications that should be made
19 to the financial statements or reports to be in accordance
20 with the applicable financial reporting framework;

21 F. "contingent fee" means a fee established for
22 the performance of a service pursuant to an arrangement in
23 which no fee will be charged unless a specific finding or
24 result is attained or upon which the amount of the fee is
25 dependent upon a finding or result. "Contingent fee" does

1 not mean a fee set by the court or a public authority on a
2 tax matter;

3 G. "director" means the executive director of the
4 board;

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

9 I. "licensee" means a person, certified public
10 accountant, certified public accountant firm, registered
11 public accountant or registered public accountant firm
12 authorized to do business in New Mexico pursuant to the
13 provisions of the 1999 Public Accountancy Act or prior law;

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

18 K. "permit" means the annual authority granted to
19 practice as a certified public accountant firm or a
20 registered public accountant firm;

21 L. "practice" means performing or offering to
22 perform public accountancy for a client or potential client
23 by a person who makes a representation to the public as being
24 a permit holder or registered firm;

25 M. "public accountancy" means the performance of

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

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

10 O. "report" means a written communication issued
11 by an accountant or an accountant firm that:

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

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

25 P. "substantial equivalency" means a determination

1 by the board that the education, examination and experience
2 requirements for certification of another jurisdiction are
3 comparable to or exceed the requirements of Paragraph (1) of
4 Subsection A of Section 61-28B-26 NMSA 1978."

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

7 "61-28B-9. ISSUANCE AND RENEWAL OF CERTIFICATE--
8 MAINTENANCE OF COMPETENCY--NONRESIDENT MAINTENANCE OF
9 COMPETENCY REQUIREMENTS.--

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

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

1 upon application and payment of the renewal fee and
2 reinstatement fee and upon approval by the board.

3 C. The board shall grant or deny an application
4 for certification no later than one hundred twenty days after
5 the complete application is filed.

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

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

23 F. A nonresident certificate holder seeking to
24 renew a certificate shall be determined to have met the
25 continuing professional education requirement in this state

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

4 (1) the nonresident signs a statement on the
5 renewal application that the nonresident has met the
6 continuing professional education requirement in the state
7 where the nonresident's principal place of business is
8 located; and

9 (2) the state where the nonresident's
10 principal place of business is located requires continuing
11 professional education.

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

22 **SECTION 3.** Section 61-28B-13 NMSA 1978 (being Laws
23 1999, Chapter 179, Section 13, as amended) is amended to
24 read:

25 "61-28B-13. FIRM PERMITS TO PRACTICE, ATTEST

1 EXPERIENCE, PEER REVIEW.--

2 A. The board may grant or renew a permit to
3 practice as a certified public accountant firm to an
4 applicant that demonstrates its qualifications in accordance
5 with this section.

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

8 (1) a firm with an office in New Mexico
9 performing attest services as defined by the 1999 Public
10 Accountancy Act;

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

13 (3) a firm that does not have an office in
14 New Mexico but offers or renders attest services for a client
15 in New Mexico, except as provided in Subsection C of this
16 section.

17 C. A firm that does not have an office in New
18 Mexico may offer or render attest services for a client in
19 New Mexico and may use the title "CPA" or "CPA firm" without
20 a permit issued pursuant to this section only if:

21 (1) the firm offers or renders the services
22 through a person with practice privileges under Section
23 61-28B-26 NMSA 1978; provided that the firm can lawfully
24 perform the services in the state where the person's primary
25 place of business is located;

1 (2) the firm meets the requirements of
2 Paragraph (1) of Subsection H of this section; and

3 (3) the firm meets the requirements of
4 Subsection L of this 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
8 firm" in New Mexico without a permit issued pursuant to this
9 section 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
14 in 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
17 of expiration. Failure to pay the renewal fee shall be cause
18 for the board to withhold renewal of a permit without prior
19 hearing pursuant to the provisions of the Uniform Licensing
20 Act. If the renewal fee and delinquency fee are not paid
21 within ninety days after the expiration of the permit, the
22 permit shall be subject to cancellation. A firm whose permit
23 has been canceled for failure to pay the annual renewal fee
24 may secure reinstatement of the permit upon application and
25 payment of the renewal fee and upon approval by the board.

1 F. The board shall grant or deny an application
2 for 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
11 the 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
15 licensed in some state. A partner, officer, shareholder,
16 member or manager, whose principal place of business is in
17 New Mexico, and who performs professional services in New
18 Mexico, must hold a valid certificate. The firm and all
19 owners must comply with the 1999 Public Accountancy Act. A
20 person with practice privileges pursuant to Section 61-28B-26
21 NMSA 1978 who performs services for which a permit is
22 required pursuant to this section shall not be required to
23 obtain a certificate from New Mexico pursuant to Section
24 61-28B-9 NMSA 1978. A firm may include owners who are not
25 certificate holders; provided that:

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

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

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

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

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

1 provision of prior law or by some other state.

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

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

23 L. As a condition to permit renewal, the board
24 shall require the applicant to undergo a peer review
25 conducted in accordance with board rules. The review shall

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

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

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

17 SECTION 4. Section 61-28B-26 NMSA 1978 (being Laws
18 1999, Chapter 179, Section 26, as amended) is amended to
19 read:

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

23 A. Except as provided in Subsection D of this
24 section, a person whose principal place of business is not in
25 New Mexico shall be presumed to have qualifications

1 substantially similar to New Mexico's requirements and may
2 exercise all the practice privileges of certificate holders
3 of New Mexico without the need to obtain a certificate
4 pursuant to Section 61-28B-9 NMSA 1978 if the person:

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

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

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

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

21 (2) holds a valid license as a certified
22 public accountant from any state that does not meet the
23 requirements of Paragraph (1) of Subsection A of this
24 section, but the person's certified public accountant
25 qualifications are substantially equivalent to those

1 requirements. A person who passed the uniform certified
2 public accountant examination and holds a valid license
3 issued by any other state prior to January 1, 2012 may be
4 exempt from the education requirement in Subparagraph (a) of
5 Paragraph (1) of this subsection.

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

12 C. A person licensed in another state exercising
13 the practice privilege afforded pursuant to this section
14 shall consent, as a condition of exercising the practice
15 privilege:

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

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

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

24 (4) to the appointment of the state board
25 that issued the license as agent upon whom process may be

1 served in any action or proceeding by the New Mexico public
2 accountancy board against the licensee.

3 D. A person who qualifies for the practice
4 privileges pursuant to this section and who performs an
5 attest service shall meet the requirements of Section
6 61-28B-11 NMSA 1978.

7 E. A certificate or permit holder of New Mexico
8 that offers or renders an attest service or uses its
9 certified public accountant title in another state shall be
10 subject to disciplinary action in New Mexico for an act
11 committed in another state for which it would be subject to
12 discipline in the other state. The board shall investigate
13 any complaint made by the board of accountancy in another
14 state in accordance with the provisions of the 1999 Public
15 Accountancy Act."

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

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