

AN ACT

RELATING TO PUBLIC ACCOUNTANCY; ENACTING THE 1999 PUBLIC ACCOUNTANCY ACT; CREATING A BOARD; PROVIDING POWERS AND DUTIES; PROVIDING FOR LICENSURE; CREATING A FUND; PRESCRIBING FEES; PRESCRIBING PENALTIES; REPEALING THE FORMER PUBLIC ACCOUNTANCY ACT; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the "1999 Public Accountancy Act".

Section 2. PURPOSE.--The purpose of the 1999 Public Accountancy Act is to protect the public interest by regulating the practice of public accountancy.

Section 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 standards for attestation engagements;

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

C. "certificate" means the legal recognition issued to identify a certified public accountant or a registered public accountant pursuant to the 1999 Public

Accountancy Act or prior law;

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

E. "director" means the executive director of the board;

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

G. "licensee" means a certified public accountant, certified public accountant firm, registered public accountant or registered public accountant firm;

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

I. "permit" means the annual authority granted to practice as a certified public accountant firm or a registered public accountant firm;

J. "person" means a licensee;

K. "practice" means performing or offering to perform public accountancy for a client or potential client by a person holding himself out to the public as a permit holder or registered firm;

L. "public accountancy" means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services,

the preparation of tax returns or the furnishing of advice on tax matters;

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

N. "report" means an opinion or other writing that:

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

(2) includes or is accompanied by a statement or implication that the person issuing it has special knowledge or competency in accounting or auditing indicated by the use of names, titles or abbreviations likely to be understood to identify the author of the report as a licensee; and

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

(a) a review report; or

(b) an audit report;

O. "specialty designation" means a designation indicating professional competence in a specialized area of practice; and

P. "substantial equivalency" means a determination by the board that the education, examination and experience requirements for certification of another jurisdiction are comparable to or exceed the corresponding requirements of the 1999 Public Accountancy Act.

Section 4. BOARD CREATED--TERMS--OFFICERS--MEETINGS--REIMBURSEMENT.--

A. The "New Mexico public accountancy board" is

created, composed of seven members appointed by the governor who are citizens of the United States and residents of New Mexico. Four members of the board shall be certified public accountants or registered public accountants who have practiced for at least five calendar years immediately preceding their appointment to the board. Three members shall represent the public and shall not have ever held a certificate or permit to practice public accountancy in any state and shall not have ever had a significant financial interest, direct or indirect, in the public accountancy profession or in a firm. Public members shall have professional or practical experience in the use of accounting services and financial statements, so as to be qualified to make judgments about the qualifications and conduct of persons subject to the provisions of the 1999 Public Accountancy Act.

B. Members of the board shall serve for terms of three years or less, staggered in such a manner that the terms of not more than three members expire on January 1 of each year; provided that members appointed and serving pursuant to prior law on the effective date of the 1999 Public Accountancy Act shall serve the remainder of their terms. A vacancy on the board shall be filled by appointment by the governor for the unexpired term. Upon the expiration of a member's term of office, he shall continue to serve until his successor has been appointed and qualified. A professional member of the board whose certificate is suspended or revoked shall automatically cease to be a member of the board. The governor may remove a member of the board for neglect of duty or other just

cause.

C. The board shall elect annually from among its members a chairman and such other officers as the board determines. The board shall meet at such times and places as fixed by the board. A majority of the board constitutes a quorum.

D. Members of the board may receive per diem and travel expenses as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

Section 5. BOARD--POWERS AND DUTIES.--

A. The board may:

(1) employ an executive director as an exempt employee and such other personnel as it deems necessary to carry out its duties;

(2) appoint committees or persons to advise or assist it in carrying out the provisions of the 1999 Public Accountancy Act;

(3) retain its own counsel to advise and assist it in addition to advice and assistance provided by the attorney general;

(4) contract, sue and be sued and have and use a seal;

(5) cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of the 1999 Public Accountancy Act and comparable acts of other states; and

(6) adopt and file in accordance with the Uniform Licensing Act and the State Rules Act rules to carry out the provisions of the 1999 Public Accountancy Act,

including rules governing the administration and enforcement of the 1999 Public Accountancy Act and the conduct of certificate and permit holders.

B. The board shall maintain a registry of the names and addresses of all certificate and permit holders.

Section 6. FUND CREATED.--

A. The "public accountancy fund" is created in the state treasury. All money received by the board and interest earned on investment of the fund shall be credited to the fund.

B. Payments from the public accountancy fund shall be made upon warrants of the secretary of finance and administration pursuant to vouchers issued by the director in accordance with the budget approved by the department of finance and administration.

C. Money in the fund shall be used only to pay the expenses of carrying out the provisions of the 1999 Public Accountancy Act and rules adopted pursuant to that act.

D. All amounts paid into the fund are appropriated for expenditure by the board for the necessary expenses of the board for execution of the provisions of the Public Accountancy Act. The balance remaining in the fund at the end of a fiscal year shall accumulate to the credit of the fund for use by the board for necessary expenses.

Section 7. QUALIFICATIONS FOR A CERTIFICATE AS A CERTIFIED PUBLIC ACCOUNTANT.--

A. An applicant for a certified public accountant certificate shall complete the application form provided by the board and demonstrate to the board's satisfaction that

he:

(1) is of good moral character and lacks a history of dishonest or felonious acts; and

(2) meets the education, experience and examination requirements of the board.

B. The board may refuse to grant a certificate on the ground that the applicant failed to satisfy the requirement of good moral character.

C. The education requirements for a certificate, which must be met before an applicant is eligible to apply for examination, are as required in this section or Section 8 of the 1999 Public Accountancy Act. After July 1, 1999, the requirement for a certificate is a baccalaureate or higher degree or its equivalent conferred by a college or university acceptable to the board, with thirty semester hours in accounting or equivalent as determined by the board.

D. The examination for certification shall be held at least twice a year and shall test the applicant's knowledge of the subjects of accounting and auditing and such other related subjects as prescribed by the board. The time for holding the examination shall be determined by the board and may be changed from time to time. The board shall prescribe the methods of applying for the examination and of grading papers; provided, however, that the board shall to the extent possible provide that the examination, the grading of the examination and the passing grades are uniform with examinations of all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the

American institute of certified public accountants to perform administrative services with respect to the examination. The board shall administer and proctor the examination with volunteers from the accounting profession.

E. An applicant must pass all sections of the examination in order to qualify for a certificate. A passing grade for each section shall be seventy-five. If he passes two or more but not all sections in an examination sitting, he shall be given credit for those sections and need not sit for re-examination in those sections; provided that he passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed.

F. An applicant shall be given credit for examination sections passed in another state if such credit would have been given in New Mexico.

G. The board may waive or defer requirements of this section regarding the circumstances in which sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, he was unable to meet the requirement.

H. An applicant for initial issuance of a certified public accountant certificate shall show that he has had at least one year of experience. After July 1, 2004, the applicant shall have had at least one year of experience. This experience shall include providing service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills as verified by a certified public accountant who meets requirements prescribed by the board. The experience

is acceptable if it was gained through employment in government, industry, academia or public practice.

Section 8. QUALIFICATIONS FOR A CERTIFICATE AS A CERTIFIED PUBLIC ACCOUNTANT--JULY 1, 2004.--

A. An applicant for a certificate shall complete the application form provided by the board and demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts; and

(2) meets the education, experience and examination requirements of the board.

B. The board may refuse to grant a certificate on the ground that the applicant failed to satisfy the requirement of good moral character.

C. The education requirements for a certificate, which must be met before an applicant is eligible to apply for examination are as provided in this section or Section 7 of the 1999 Public Accountancy Act. After July 1, 2004, an applicant shall have at least one hundred fifty semester hours of college education, including a baccalaureate or higher degree or its equivalent conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by the board, with thirty semester hours in accounting or equivalent as determined by the board.

D. The examination for certification shall be held at least twice a year and shall test the applicant's knowledge of the subjects of accounting and auditing and other related subjects as prescribed by the board. The time for holding the examination shall be determined by the board

and may be changed from time to time. The board shall prescribe the methods of applying for the examination and of grading papers; provided, however, that the board shall to the extent possible provide that the examination, the grading of the examination and the passing grades are uniform with examinations of all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants to perform administrative services with respect to the examination. The board shall administer and proctor the examination with volunteers from the accounting profession.

E. An applicant must pass all sections of the examination in order to qualify for a certificate. A passing grade for each section shall be seventy-five. If he passes two or more but not all sections in an examination sitting, he shall be given credit for those sections and need not sit for re-examination in those sections; provided that:

(1) at that sitting he wrote all sections of the examination for which he does not have credit;

(2) he made a minimum grade of fifty on each section taken at that sitting;

(3) he passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were credited;

(4) at each subsequent sitting at which he seeks to pass an additional section, the applicant writes all sections for which he does not have credit; and

(5) in order to receive credit for passing

additional sections in such subsequent sitting, the applicant makes a minimum grade of fifty on sections taken at that sitting.

F. An applicant shall be given credit for examination sections passed in another state if such credit would have been given in New Mexico.

G. The board may waive or defer requirements of this section regarding the circumstances in which sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, he was unable to meet the requirement.

H. An applicant for initial issuance of a certified public accountant certificate shall show that he has had at least one year of experience. This experience shall include providing service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills as verified by a certified public accountant who meets requirements prescribed by the board. The experience is acceptable if it was gained through employment in government, industry, academia or public practice.

Section 9. ISSUANCE AND RENEWAL OF CERTIFICATE--
MAINTENANCE OF COMPETENCY.--

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

B. The board may establish by rule for the issuance of biennial certificates and permits, and may

prescribe the expiration date of certificates and permits.

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

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

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

F. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a

designation or commencement of a disciplinary or enforcement action by any jurisdiction.

Section 10. SPECIALTY DESIGNATIONS.--The board shall adopt rules allowing the use of specialty designations by certificate holders. Specialty designations shall be consistent with designations prescribed by national or regional accreditation bodies offering the designations pursuant to a prescribed course of study, experience or examination.

Section 11. CERTIFICATES ISSUED TO HOLDERS OF A CERTIFICATE, LICENSE OR PERMIT ISSUED BY ANOTHER STATE.--

A. If an applicant does not qualify for reciprocity pursuant to the substantial equivalency standard, the board may issue a certificate to a holder of a certificate, license or permit issued by another state upon a showing that the applicant:

(1) passed the examination required for issuance of his certificate with grades that would have been passing grades at the time in New Mexico;

(2) passed the examination upon which his out-of-state certificate was based and has two years of experience acceptable to the board or meets equivalent requirements prescribed by board rule, within the ten years immediately preceding the application; and

(3) if the applicant's certificate, license or permit was issued more than four years prior to application, he has fulfilled the board's requirements of continuing professional education.

B. A person licensed by another state who wishes to establish his principal place of business in New Mexico

shall apply to the board for a certificate prior to establishing the business. The board may issue a certificate to the person if he provides proof from a board-approved national qualification appraisal service that his certified public accountant qualifications are substantially equivalent to the certified public accountant certification requirements of the 1999 Public Accountancy Act.

C. The board may issue a certificate to a holder of a substantially equivalent foreign designation; provided that:

(1) the foreign authority that granted the designation makes similar provision to allow a person who holds a valid certificate issued by New Mexico to obtain such foreign authority's comparable designation;

(2) the foreign designation:

(a) was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(b) entitles the holder to issue reports upon financial statements; and

(c) was issued upon the basis of educational, examination and experience requirements established by the foreign authority or by law; and

(3) the applicant:

(a) received the designation based on educational and examination standards substantially equivalent to those in effect in New Mexico at the time the foreign designation was granted;

(b) completed an experience

requirement in the jurisdiction that granted the foreign designation that is substantially equivalent to the requirement provided for in the 1999 Public Accountancy Act or has completed four years of professional experience in New Mexico or meets equivalent requirements prescribed by the board within the ten years immediately preceding the application; and

(c) passed a uniform qualifying examination on national standards and an examination on the laws, rules and code of ethical conduct in effect in New Mexico that is acceptable to the board.

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

E. The board has the sole authority to interpret the application of the provisions of this section.

Section 12. REGISTERED PUBLIC ACCOUNTANTS AND FIRMS OF REGISTERED PUBLIC ACCOUNTANTS.--

A. A person who on July 1, 1999 holds a certificate as a registered public accountant issued pursuant to prior New Mexico law shall be entitled to have his certificate renewed upon fulfillment of the continuing

professional education requirements, application and payment of fees prescribed for certificate renewal.

B. A registered public accountant firm holding a permit issued pursuant to prior New Mexico law shall be entitled to have its permit renewed pursuant to the requirements for permit renewal for a certified public accountant firm in the 1999 Public Accountancy Act.

C. As long as a registered public accountant and a registered public accountant firm hold a valid certificate and permit, they shall be entitled to perform attest services to the same extent as a certified public accountant and certified public accountant firm. In addition, they shall be entitled to use the titles "registered public accountant" and "registered public accountants", but no other title.

Section 13. FIRM PERMITS TO PRACTICE, ATTEST EXPERIENCE, PEER REVIEW.--

A. The board may grant or renew a permit to practice as a firm to an applicant that demonstrates its qualification for the permit as provided in Subsection E of this section. A firm must hold a permit issued pursuant to the provisions of the 1999 Public Accountancy Act in order to provide attest services or use the title "certified public accountant", "CPA", "certified public accountant firm", "CPA firm", "registered public accountant", "RPA", "registered public accountant firm" or "RPA firm".

B. Permits shall be issued and renewed for periods not more than two years, expiring on June 30. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a certificate without prior hearing

pursuant to the provisions of the Uniform Licensing Act. A certificate holder whose certificate has been canceled for failure to pay the annual renewal fee may secure reinstatement of his certificate upon payment of the delinquency fee set by the board. If the renewal fee and delinquency fee are not paid by September 30 of the year in which the renewal fee was due, a certificate shall be reinstated only upon application and examination satisfactory to the board.

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

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

E. An applicant for initial issuance or renewal of a permit shall demonstrate that:

(1) a minimum of sixty percent majority of the ownership of the firm, in terms of financial interests, profits, losses, dividends, distributions, options, redemptions and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state. Such partners, officers, shareholders, members or managers, whose principal place of business is in New Mexico, and who perform professional services in New Mexico, must hold a valid certificate. The firm and all owners must comply with the 1999 Public Accountancy Act. A firm may include owners who are not certificate holders; provided that:

(a) the firm designates a New Mexico certificate holder who is responsible for the proper registration of the firm and identifies that individual to the board;

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

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

(2) an individual certificate holder who is responsible for supervising attest services or signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm meets the experience requirements set out in the professional standards for such services.

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

G. An applicant for initial issuance or renewal of a permit shall list all foreign and domestic jurisdictions in which it has applied for or holds permits as a certified public accountant firm and list any past denial, revocation or suspension of a permit by any jurisdiction. Each permit holder or applicant shall notify the board in writing, within thirty days of the occurrence

of a change in the identities of partners, officers, shareholders, members or managers whose principal place of business is in this state, a change in the number or location of offices within this state, a change in the identity of the persons in charge of such offices and any issuance, denial, revocation or suspension of a permit by another jurisdiction.

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

I. As a condition to permit renewal, the board shall require the applicant to undergo a peer review conducted in accordance with board rules. The review shall include a verification that a person in the firm who is responsible for supervising attest services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm meets the experience requirements set out in the professional standards for the services as required by the board.

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

K. Attest services may only be provided by a certificate holder or a member of a firm that satisfies the requirements of this section. Attest services may not be performed by a certificate holder who is a member of a firm

that does not meet the certificate holder's ownership requirements set forth in this section.

Section 14. APPOINTMENT OF SECRETARY OF STATE AS AGENT.--Application for a certificate or permit by a person or firm that is domiciled outside of New Mexico shall constitute appointment of the secretary of state as the applicant's agent, upon whom process may be served in an action or proceeding against the applicant or certificate holder arising out of a transaction or operation connected with or incidental to services performed within New Mexico.

Section 15. ENFORCEMENT PROCEDURES--INVESTIGATIONS.--

A. Upon receipt of a complaint or other information suggesting a violation of the 1999 Public Accountancy Act, the board may conduct an investigation to determine whether there is probable cause to institute a proceeding against a person or firm. An investigation is not required when a determination of probable cause can be made without investigation. To aid the investigation, the board or the board's chairman may issue a subpoena to compel a witness to testify or to produce evidence.

B. The board may designate a person to serve as investigating officer to conduct an investigation. The investigating officer shall file a report with the board upon completion of an investigation. The board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation.

C. Upon a finding of probable cause, if the subject of the investigation is a certificate or permit holder, the board shall direct that a notice of contemplated

action be issued in accordance with the 1999 Public Accountancy Act. If the subject of the investigation is not a certificate or permit holder, the board shall take appropriate action as provided in that act. Upon a finding of no probable cause, the board shall close the matter.

D. The board may review the publicly available professional work of a certificate or permit holder without any requirement of a formal complaint or suspicion of impropriety on the part of a particular certificate or permit holder. In the event that such review reveals reasonable grounds for a more specific investigation, the board may proceed pursuant to the 1999 Public Accountancy Act.

Section 16. ENFORCEMENT PROCEDURES--HEARINGS BY THE BOARD.--

A. Hearings by the board shall be conducted in accordance with the provisions of the Uniform Licensing Act.

B. In a case when the board renders a decision imposing discipline against a certificate or permit holder pursuant to the 1999 Public Accountancy Act, the board shall examine its records to determine whether the certificate or permit holder holds a certificate or permit in any other state; and, if so, the board shall notify the board of accountancy of the other state of its decision, by mail, within forty-five days of rendering the decision. The board may also furnish information relating to a proceeding resulting in disciplinary action to another public authority and to private professional organizations having a disciplinary interest in the certificate or permit holder.

When an appeal pursuant to New Mexico law is in progress, the notification and furnishing of information to a disciplinary authority shall await the resolution of such appeal. If resolution is in favor of the certificate or permit holder, no automatic notification or furnishing of information shall be made.

Section 17. ENFORCEMENT--UNLAWFUL ACTS.--

A. Except as provided in Subsection C of this section and Section 18 of the 1999 Public Accountancy Act, it is unlawful for a person to engage in practice in New Mexico unless he a licensee.

B. Except as provided in Subsection C of this section and Section 18 of the 1999 Public Accountancy Act, 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 18 of the 1999 Public Accountancy Act, 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 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 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 shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others; provided, however, that this subsection shall not prohibit payments for the 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 heirs or estates of such persons.

I. A licensee shall not offer or perform professional services for a fee that is contingent upon the findings or results of such services; provided, however, that this subsection shall not apply to professional services involving federal, state or other taxes in which the findings are those of the tax authorities and not those of the licensee or to professional services for which the 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.

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

Section 18. EXEMPTIONS--UNLAWFUL ACTS.--

A. Subsection B of Section 17 of the 1999 Public Accountancy Act does not prohibit:

(1) an officer, partner, shareholder, member or employee of a firm from affixing his own signature to a statement or report in reference to the financial affairs of his firm with any wording designating the

position, title or office that he holds within the firm;

(2) any act of a public official or employee in the performance of his duties; or

(3) the performance by any persons of other services, including management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters and the preparation of financial statements without the issuance of reports on them.

B. Nothing contained in the 1999 Public Accountancy Act shall prevent a person from serving as an employee of or as an assistant to a certified public accountant, a registered public accountant or a firm; provided that the employee or assistant shall work under the control and supervision of a certified public accountant or registered public accountant who holds a certificate issued pursuant to that act.

Section 19. BUSINESS NAMES--PROHIBITIONS.--

A. No person engaged in practice shall use in a business name the words "company" or "and company" or a similar designation or any abbreviations thereof unless the person is a firm pursuant to the 1999 Public Accountancy Act and has more than one partner, shareholder or member and the business name contains the name of at least one current or former partner, shareholder or member. A business name may contain only the name or initials of a present or former partner, shareholder or member and the words "and company" or "company" or a similar designation or any abbreviation thereof.

B. Nothing contained in this section shall apply

to, affect or limit the right of the remaining partner, shareholder or member or added partners, shareholders or members in the continuous use of a business name adopted before the enactment of the 1999 Public Accountancy Act, even though the person whose name is included in the business name is no longer a partner, shareholder or member.

Section 20. ENFORCEMENT--ADMINISTRATIVE VIOLATIONS AND REMEDIES.--

A. The board may take, after providing any person due process pursuant to the Uniform Licensing Act, corrective action identified in Subsection B of this section following a finding that an applicant or licensee:

(1) committed fraud or deceit in obtaining a certificate or permit;

(2) lost a certificate or permit through cancellation, revocation, suspension or refusal of renewal in any other state for cause, as defined by board rule;

(3) failed to maintain compliance with the requirements of the 1999 Public Accountancy Act and board rules for issuance or renewal of a certificate or permit or failed to report material changes to the board, as required by board rule;

(4) lost the authorization to practice in any state or before any federal agency through revocation or suspension of that authorization;

(5) committed dishonest, fraudulent or grossly negligent acts in the practice of public accountancy or in the filing or failure to file his own income or other federal, state or local tax returns;

(6) violated any provision of the 1999

Public Accountancy Act or any rule promulgated by the board pursuant to that act;

(7) violated any rule of professional conduct promulgated by the board pursuant to the 1999 Public Accountancy Act;

(8) has been convicted of a felony or of any crime an element of which is dishonesty or fraud under the laws of the United States, of New Mexico or of any other state, or of any other jurisdiction, if the acts involved would have constituted a crime under the laws of New Mexico;

(9) performed any fraudulent act while holding a certificate or permit issued pursuant to the 1999 Public Accountancy Act or prior law; or

(10) participated in any conduct reflecting adversely upon the licensee's fitness to engage in practice.

B. After a finding by the board that an applicant or licensee has committed a violation identified in Subsection A of this section, the board may take, with or without terms, conditions and limitations, one or more of the following corrective actions:

(1) deny an application or revoke a certificate or permit issued pursuant to the 1999 Public Accountancy Act or corresponding provisions of prior law;

(2) suspend any certificate or permit for a period of not more than five years;

(3) reprimand, censure or limit the scope of practice of a licensee;

(4) impose an administrative fine not exceeding one thousand dollars (\$1,000); or

(5) place the licensee on probation.

C. In lieu of or in addition to any remedy specifically provided in Subsection B of this section, the board may require of a licensee:

(1) a quality review conducted in such a fashion as the board may specify;

(2) satisfactory completion of such continuing professional education programs as the board may specify;

(3) correction of the violation identified;
and

(4) any other suitable remedial action as determined by the board.

D. In any proceeding in which a remedy provided by Subsection B or C of this section is imposed, the board may also require the respondent to pay the costs of the proceeding.

Section 21. REINSTATEMENT.--

A. In any case in which the board has suspended or revoked a certificate or permit or refused to renew the same, the board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension or reissue the certificate or permit.

B. The board shall specify by rule the manner in which such applications shall be made, the times within which they shall be made and the circumstances in which hearings shall be held thereon.

C. Before reissuing or terminating the suspension of a certificate or permit pursuant to this section and as a condition thereto, the board may require the applicant to show successful completion of specified continuing

professional education or may require a quality review or both.

Section 22. CRIMINAL PENALTIES.--

A. When the board has reason to believe that a person or firm has knowingly engaged in an act or practice that violates the provisions of the 1999 Public Accountancy Act, the board may bring its information to the attention of the district attorney or other appropriate law enforcement officer of any jurisdiction who may bring a criminal proceeding.

B. A person or firm that knowingly violates a provision of the 1999 Public Accountancy Act is guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand dollars (\$1,000) or by a definite term of imprisonment not to exceed six months or both.

Section 23. SINGLE ACT EVIDENCE OF PRACTICE.--In an action brought pursuant to the provisions of the 1999 Public Accountancy Act, evidence of the commission of a single act prohibited by that act shall be sufficient to justify a penalty, injunction, restraining order or conviction, respectively, without evidence of a general course of conduct.

Section 24. CONFIDENTIAL COMMUNICATIONS.--Except by permission of the client for whom a certificate or permit holder performs a service or the heir, successor or personal representative of the client, a certificate holder shall not voluntarily disclose information communicated to him by the client relating to and in connection with a service rendered to the client by him. Such information shall be deemed

confidential; provided that nothing in this section shall prohibit the disclosure of information required to be disclosed by a standard of the public accounting profession in reporting on the examination of a financial statement or prohibit disclosure in a court proceeding, in an investigation or proceeding pursuant to the 1999 Public Accountancy Act, in an ethical investigation conducted by a private professional organization or in the course of a peer review, or to another person active in the organization performing a service for that client on a need-to-know basis or to a person in the entity who needs this information for the sole purpose of assuring quality control.

Section 25. WORKING PAPERS--CLIENT RECORDS.--

A. A statement, record, schedule, working paper or memorandum made by a certificate or permit holder incident to rendering a service to a client shall be the property of the certificate or permit holder in the absence of an express agreement between him and the client to the contrary, except the report submitted by him to the client and except for a record that is part of the client's records. No such item shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative, except to a partner, stockholder or member of the firm or any combined or merged firm or successor in interest to the certificate or permit holder. Nothing in this section shall prohibit any temporary transfer of a work paper or other material necessary in the course of carrying out a peer review or as otherwise interfering with the disclosure of information pursuant to the 1999 Public Accountancy Act.

B. A certificate or permit holder shall furnish to a client or former client, upon request and reasonable notice:

(1) a copy of his working paper, to the extent that such working paper includes a record that would ordinarily constitute part of the client's record and is not otherwise available to the client; and

(2) an accounting or other record belonging to, or obtained from or on behalf of, the client that he removed from the client's premises or received for the client's account; he may make and retain a copy of a document of the client when they form the basis for work done by him.

Section 26. PRACTICE PRIVILEGE AND DISCIPLINE FOR A CERTIFICATE HOLDER FROM A STATE WHOSE ACCOUNTANCY STATUTE IS SUBSTANTIALLY EQUIVALENT.--

A. A person whose principal place of business is not in New Mexico and who has a valid certificate or license as a certified public accountant from a state that the board-approved qualification appraisal service has verified to be in substantial equivalence with the certified public accountant requirements of the New Mexico 1999 Public Accountancy Act shall be presumed to have qualifications substantially equivalent to New Mexico's requirements. A person may also obtain from the board-approved qualification appraisal service verification that his certified public accountant qualifications are substantially equivalent to New Mexico's certified public accountant licensure requirements. The person shall have all the privileges of certificate holders of New Mexico without the need to obtain

a New Mexico certificate or permit; provided, however, the person shall notify the board of his intent to enter the state under this provision.

B. A certificate or permit holder of another state exercising the privilege afforded by the provisions of this section consents, as a condition of the grant of this privilege:

(1) to the personal and subject matter jurisdiction of the board;

(2) to comply with the provisions of the 1999 Public Accountancy Act; and

(3) to the appointment of the state board that issued its certificate or license as its agent, upon whom process may be served in an action or proceeding by the New Mexico public accountancy board against it.

C. A certificate or permit holder of New Mexico that offers or renders a service or uses its certified public accountant title in another state shall be subject to disciplinary action in New Mexico for an act committed in another state for which it would be subject to discipline for an act committed in the other state. The board shall investigate any complaint made by the board of accountancy of another state.

Section 27. FEES.--The board may collect from certificate holders, permit holders, applicants and others the following fees:

A. for examination, a fee not to exceed one hundred seventy-five dollars (\$175) per examination application;

B. for certificate issuance or renewal, a fee not

to exceed one hundred seventy-five dollars (\$175) per year; provided, however, the board may charge a biennial fee of not more than twice the annual fee;

C. for firm permits, a fee not to exceed one hundred dollars (\$100) per year; provided, however, the board may charge a biennial fee of not more than twice the annual fee;

D. for incomplete or delinquent continuing education reports, certificate or permit renewals, a fee not to exceed one hundred dollars (\$100) each;

E. for preparing and providing licensure and examination information to others, a fee not to exceed seventy-five dollars (\$75.00) per report;

F. reasonable administrative fees for such services as research, record copies, duplicate or replacement certificates or permits;

G. for certificate reinstatement, a fee not to exceed one hundred seventy-five dollars (\$175), plus past due fees and penalties;

H. for waiver to comply with continuing professional education requirements, a fee not to exceed seventy-five dollars (\$75.00) per application; and

I. for reentry into active certificate status and to comply with continuing education, a fee not to exceed seventy-five dollars (\$75.00) per application.

Section 28. CRIMINAL OFFENDER ELIGIBILITY.--Except as otherwise provided in the 1999 Public Accountancy Act, the provisions of the Criminal Offender Employment Act shall govern any consideration or criminal records required or permitted by the 1999 Public Accountancy Act.

Section 29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico public accountancy board is terminated on July 1, 2005 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the 1999 Public Accountancy Act until July 1, 2006. Effective July 1, 2006, the 1999 Public Accountancy Act is repealed.

Section 30. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, RECORDS, CONTRACTS AND STATUTORY REFERENCES.--

A. On July 1, 1999, all personnel, money, appropriations, property, records and other things of value belonging to the New Mexico state board of public accountancy shall be transferred to the New Mexico public accountancy board. All contracts, including certificates and registrations, in effect for the New Mexico state board of public accountancy shall be binding on the New Mexico public accountancy board. All references in law to the New Mexico state board of public accountancy shall be construed as references to the New Mexico public accountancy board.

B. Nothing in the 1999 Public Accountancy Act shall invalidate or affect any action taken or any proceeding instituted pursuant to a law in effect prior to the effective date of that act. A disciplinary action taken by the board and any delinquency fee or penalty owed pursuant to the Public Accountancy Act shall remain in effect and due unless reviewed and rescinded by the board pursuant to procedures provided in the Uniform Licensing Act and the 1999 Public Accountancy Act.

C. A certificate, permit or firm registration

issued pursuant to the Public Accountancy Act that is current on the effective date of the 1999 Public Accountancy Act shall remain current until June 30, 2000.

D. A rule in effect as of June 30, 1999, and not in direct conflict with the 1999 Public Accountancy Act, shall remain in effect until amended or repealed by the New Mexico public accountancy board.

Section 31. REPEAL.--Sections 61-28A-1 through 61-28A-28 NMSA 1978 (being Laws 1992, Chapter 10, Sections 1 through 26 and 28 and Laws 1993, Chapter 83, Section 6, as amended) are repealed.

Section 32. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____

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