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HOUSE BILL 495

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Max Coll

AN ACT

RELATING TO THE PRACTICE OF PUBLIC ACCOUNTANCY; AMENDING THE  
1999 PUBLIC ACCOUNTANCY ACT TO PROHIBIT A LICENSEE FROM  
PERFORMING CERTAIN ATTEST SERVICES IF THE LICENSEE, THE  
LICENSEE'S FIRM OR AN AFFILIATE OF THE LICENSEE'S FIRM HAS  
PERFORMED CERTAIN SERVICES FOR THE SAME CLIENT WITHIN THE  
PREVIOUS THREE YEARS.

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

Section 1. Section 61-28B-17 NMSA 1978 (being Laws 1999,  
Chapter 179, Section 17, as amended) is amended to read:

"61-28B-17. ENFORCEMENT--UNLAWFUL ACTS. --

A. Except as provided in Subsection C of this  
section and Section 61-28B-18 NMSA 1978, it is unlawful for a  
person to engage in practice in New Mexico unless he is a  
licensee.

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1           B. Except as provided in Subsection C of this  
2 section and Section 61-28B-18 NMSA 1978, no person or  
3 accountant shall issue a report or financial statement of a  
4 person or a governmental unit or issue a report using any form  
5 of language conventionally used respecting an audit or review  
6 of financial statements, unless he holds a current license or  
7 permit. The state auditor and his auditing staff are  
8 considered to be in the practice of public accountancy.

9           C. With the exception of persons cited in Section  
10 61-28B-18 NMSA 1978, a person or accountant who prepares a  
11 financial accounting and related statements and who is not the  
12 holder of a certificate or a permit under the provisions of  
13 that act shall use the following statement in the transmittal  
14 letter: "I (we) have prepared the accompanying financial  
15 statements of (name of entity) as of (time period) and for the  
16 (time period) ending (date). This presentation is limited to  
17 preparing in the form of financial statements information that  
18 is the representation of management (owners). I (we) have not  
19 audited nor reviewed the accompanying financial statements and  
20 accordingly do not express an opinion or any other form of  
21 assurance on them".

22           D. No person or accountant shall indicate by title,  
23 designation, abbreviation, sign, card or device that he is a  
24 certified public accountant or a registered public accountant  
25 unless he is currently certified by the board pursuant to the

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1 1999 Public Accountancy Act or is a firm currently permitted by  
2 the board pursuant to that act. Unless he is a holder of a  
3 current certificate or permit, no person or accountant shall  
4 use any title, initials or designation intended to or  
5 substantially likely to indicate to the public that he is a  
6 certified public accountant or registered public accountant.

7 E. No person shall engage in practice unless:

8 (1) he holds a valid certificate or current  
9 permit; or

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

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

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

24 H. A licensee or his firm shall not receive a  
25 commission to recommend or refer a product or service to a

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1 client or to recommend to anyone else a product or service to  
2 be supplied by a client during the period the licensee or his  
3 firm is engaged to perform the following services for that  
4 client and during the period covered by any historical  
5 financial statements involved in the services:

6 (1) an audit or review of a financial  
7 statement;

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

13 (3) an examination of prospective financial  
14 information.

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

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

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- (1) an audit or review of a financial statement;
- (2) a compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the compilation report does not disclose a lack of independence;
- (3) an examination of prospective financial information; or
- (4) preparation of an original or amended tax return or claim for tax refund, except in the case of federal, state or other taxes in which the findings are those of the tax authorities and not those of the licensee or in the case of professional services for which fees are to be fixed by courts or other public authorities and that are therefore indeterminate in amount at the time the professional services are undertaken.

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

L. No licensee shall perform attest services for a client if, within the previous three years, the licensee, the licensee's firm or an affiliate of the licensee's firm has provided that client with management advisory, financial advisory, tax or consulting services."

Section 2. EFFECTIVE DATE. --The effective date of the . 142246. 1

1 provisions of this act is January 1, 2004.

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