

SENATE BILL NO. 2398

Introduced by

Senators Klein, Stenehjem

Representatives Kempenich, Wald

1 A BILL for an Act to create and enact two new sections to chapter 43-02.2 of the North Dakota
2 Century Code, relating to licensure of accredited public accountants; and to amend and reenact
3 subdivision b of subsection 2 of section 10-19.1-50, subdivision a of subsection 1 of section
4 10-19.1-85, subdivision a of subsection 1 of section 10-32-52, subdivision b of subsection 2 of
5 section 10-32-86, subdivision b of subsection 2 of section 10-33-45, section 43-02.2-02,
6 subsection 5 of section 43-02.2-03, subsections 1 and 3 of section 43-02.2-06, section
7 43-02.2-08, subdivision c of subsection 1 of section 43-02.2-09, and section 43-02.2-12 of the
8 North Dakota Century Code, relating to accredited public accountants.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1. AMENDMENT.** Subdivision b of subsection 2 of section 10-19.1-50 of the
11 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12 b. Counsel, certified or licensed public accountants, or other persons as to
13 matters that the director reasonably believes are within the person's
14 professional or expert competence; or

15 **SECTION 2. AMENDMENT.** Subdivision a of subsection 1 of section 10-19.1-85 of the
16 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17 a. If the statements are audited by a certified or licensed public accountant, each
18 copy must be accompanied by a report setting forth the opinion of the
19 accountant on the statements.

20 **SECTION 3. AMENDMENT.** Subdivision a of subsection 1 of section 10-32-52 of the
21 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

22 a. If the statements are audited by a certified or licensed public accountant, each
23 copy must be accompanied by a report setting forth the opinion of the
24 accountant on the statements.

1 **SECTION 4. AMENDMENT.** Subdivision b of subsection 2 of section 10-32-86 of the
2 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3 b. Counsel, certified or licensed public accountants, or other persons as to
4 matters that the governor reasonably believes are within the person's
5 professional or expert competence; or

6 **SECTION 5. AMENDMENT.** Subdivision b of subsection 2 of section 10-33-45 of the
7 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 8 b. Counsel, certified or licensed public accountants, or other persons as to
9 matters that the director reasonably believes are within the person's
10 professional or expert competence; or

11 **SECTION 6. AMENDMENT.** Section 43-02.2-02 of the 1999 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **43-02.2-02. Definitions.** As used in this chapter, unless the context requires
14 otherwise:

- 15 1. "Accredited public accountant" means an individual licensed by the board who
16 does not hold a certificate as a certified public accountant or license as a licensed
17 public accountant under this chapter.
- 18 2. "Attest" or "attest service" means providing any of the following services:
- 19 a. An audit or other engagement to be performed in accordance with the
20 statement on auditing standards, which are those standards adopted by the
21 board by rule, by reference to the standards developed for general application
22 by the American institute of certified public accountants or other recognized
23 national accounting organization.
- 24 b. An examination of prospective financial information to be performed in
25 accordance with the statements on standards for attestation engagements,
26 which are those standards adopted by the board by rule, by reference to the
27 standards developed for general application by the American institute of
28 certified public accountants or other recognized national accounting
29 organization.
- 30 3. "Board" means the state board of accountancy.

- 1 ~~2-~~ 4. "Certificate" means a certificate as "certified public accountant" issued under
2 section 43-02.2-04 or provisions of prior law, or a corresponding certificate as
3 certified public accountant issued after examination under the law of any other
4 state.
- 5 ~~3-~~ 5. "Client" means a person or entity that agrees with a licensee to receive any
6 professional service other than an employer-employee relationship.
- 7 6. "Compilation" means a service performed in accordance with statements on
8 standards for accounting and review services adopted by rule by the board which
9 must refer to the standards developed for general application by the American
10 institute of certified public accountants or other recognized national accountancy
11 organization.
- 12 ~~4-~~ 7. "Firm" means a sole proprietorship, a corporation, a partnership, or any
13 combination thereof, or any other entity permitted by law.
- 14 ~~5-~~ 8. "Licensee" means the holder of a certificate, license, or permit issued under this
15 chapter or prior law.
- 16 ~~6-~~ 9. "Permit" means a permit to practice public accountancy issued under section 8 of
17 this Act, 43-02.2-06 or 43-02.2-07, prior law, or corresponding provisions of the
18 laws of other states.
- 19 ~~7-~~ 10. "Practice of" or "practicing" public accountancy means the performance or the
20 offering to perform by a person or firm holding out to the public as a licensee, for a
21 client or potential client, services involving the use of accounting or auditing skills
22 including the issuance of reports on financial statements, but not including
23 management advisory, financial advisory, or consulting services, bookkeeping
24 services, or the preparation of tax returns or the furnishing of advice on tax matters
25 unless provided by a firm with a permit issued under section 43-02.2-06 or
26 43-02.2-07.
- 27 ~~8-~~ 11. "Practice review" means a study, appraisal, or review of one or more aspects of the
28 professional work of a firm in the practice of public accountancy, by a person or
29 persons who hold certificates and are in the practice of public accounting and who
30 are not affiliated with the person or firm being reviewed.

9- 12. "Professional" means arising out of or related to the specialized knowledge or skills associated with certified public accountants or licensed public accountants.

~~40-~~ 13. "Report", when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. A statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the issuer is an accountant, auditor, or is in the business of accounting, or from the language of the report. "Report" includes any form of language that disclaims an opinion when the form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language. "Report" includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

~~41-~~ 14. "Rule" means any rule, regulation, or other written directive of general application duly adopted by the board.

~~42-~~ 15. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.

~~43-~~ 16. "Substantial equivalency" is a determination by the board or its designee that another jurisdiction's education, examination, and experience requirements are comparable to or exceed that of the uniform accountancy act, or that an individual's education, examination, and experience qualifications are comparable to or exceed that of the uniform accountancy act.

SECTION 7. AMENDMENT. Subsection 5 of section 43-02.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The board has the following powers:

- a. To administer oaths to all applicants or persons appearing before it in respect to investigations, examinations, or the issuance of ~~certified public accountant~~ certificates or licenses under this chapter.

- b. To conduct investigations and examinations and issue certificates and
licenses to properly qualified applicants and permits to properly qualified
firms.
- c. To determine the qualifications of all applicants.
- d. To employ and establish the salary of an executive director and such other
personnel as it deems necessary in administration and enforcement of this
chapter. The board may appoint committees or persons, including counsel, to
advise or assist the board.
- e. To take all action that is necessary and proper to effectuate the purposes of
this chapter, including the power to sue and be sued in its official name as an
agency of this state, to issue subpoenas to compel the attendance of
witnesses and the production of documents, to administer oaths, to take
testimony, to cooperate with appropriate authorities in other states in
investigations and enforcement concerning violations of this chapter and
comparable laws of other states, and to receive evidence concerning all
matters within its jurisdiction. In case of disobedience of a subpoena, the
board may invoke the aid of any court in requiring the attendance and
testimony of witnesses and the production of documentary evidence. The
board, its members, and its agents are immune from personal liability for
actions taken in good faith in the discharge of the board's responsibilities.
- f. The board may adopt rules governing its administration and enforcement of
this chapter and the conduct of licensees, including:
 - (1) Rules governing the board's meetings and the conduct of its business;
 - (2) Rules of procedure governing the conduct of investigations and
hearings by the board;
 - (3) Rules specifying the educational and experience qualifications required
for the issuance of certificates and licenses under this chapter and the
continuing education required for renewal of certificates and licenses;
 - (4) Rules of conduct including rules relating to independence, integrity, and
objectivity; competence and technical standards; responsibilities to the
public; and responsibilities to clients;

- (5) Rules specifying actions and circumstances that must be deemed to constitute holding oneself out as a licensee in connection with the practice of public accountancy;
- (6) Rules governing the manner and circumstances of use of the titles "accredited public accountant", "APA", "certified public accountant", "CPA", "licensed public accountant", and "LPA";
- (7) Rules concerning substantial equivalency;
- (8) Rules regarding practice reviews that may be required to be performed under this chapter; and
- (9) Other rules the board deems necessary or appropriate for implementing this chapter.

SECTION 8. A new section to chapter 43-02.2 of the North Dakota Century Code is created and enacted as follows:

Accredited public accountants.

1. The board shall grant the license of accredited public accountant to any applicant of good moral character, as provided under subsection 2 of section 43-02.2-04, who meets the licensure requirements and the education or experience requirements of this section.
2. The applicant must successfully pass an examination offered by the board; however, the board shall recognize a successful accreditation council for accounting and taxation examination taken in this or another state if the applicant has been engaged in the practice of public accounting since passage of the examination.
 - a. The examination must test the applicant's knowledge of accounting and may not include questions relating to the subject of auditing.
 - b. The board may use all or any part of the examination in accountancy provided by the accreditation council for accounting and taxation, and may contract with a third party to perform administrative services with respect to the examination.
 - c. The board shall offer the examination at least once per year, on dates determined by the board. The board may adopt rules regarding methods of

1 application, methods of conducting the examination, and methods of grading
2 examinations; however, the rules must attempt to ensure that grading
3 requirements of the examination are uniform with grading requirements of
4 other states.

5 d. The board may allow an applicant who has not met the requirements under
6 this subsection to take the examination if the board determines the candidate
7 is scheduled to meet the experience or education requirements within six
8 months of the application to take the examination.

9 3. The board may charge an examination fee and a reexamination fee or may allow a
10 third party administering an examination to charge an examination fee or a
11 reexamination fee. The board shall adopt rules establishing the amount of any fee
12 charged under this subsection.

13 4. A license of an accredited public accountant must be renewed annually. The
14 board may adopt rules establishing licensure and renewal fees and licensure and
15 renewal requirements.

16 5. An applicant for initial licensure or for renewal shall list on the application all states
17 and jurisdictions in which the applicant has applied for or holds a license, permit, or
18 other recognized accounting designation. An applicant for initial licensure or
19 renewal shall notify the board in writing within thirty days of the occurrence of any
20 issuance, denial, revocation, or suspension of a license, permit, or other
21 recognized accounting designation in another state or jurisdiction.

22 6. The board may adopt rules establishing experience and education requirements.
23 An applicant for initial licensure under this section shall show that the applicant
24 satisfies one of the following:

25 a. The applicant has at least two years actual experience in practice as an
26 accountant in the employment of a certified public accountant or licensed
27 public accountant.

28 b. The applicant has a two-year or four-year degree with a concentration in
29 accounting from a college or university approved by the board.

30 c. The applicant has at least five years of continuous, full-time experience
31 engaged in performing services as an accredited public accountant.

7. The board may adopt rules establishing continuing education requirements.

8. Any rules adopted under this section may include exceptions and must include reasonable provisions addressing situations under which an applicant is unable to satisfy the requirements due to circumstances beyond the applicant's control.

SECTION 9. A new section to chapter 43-02.2 of the North Dakota Century Code is created and enacted as follows:

Accredited public accountant - Services. An accredited public accountant may offer to perform or perform for the public any of the following services: record financial transactions in books of record; make adjustments of financial transactions in books of record; make trial balances from books of record; prepare an internal verification and analysis of books or accounts of original entry; prepare financial statements, schedules, or reports; devise and install systems or methods of bookkeeping, internal controls of financial data, or the recording of financial data; or make compilation. An accredited public accountant may not give an opinion attesting to the reliability of any representation embracing financial information.

SECTION 10. AMENDMENT. Subsections 1 and 3 of section 43-02.2-06 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A firm must hold a firm permit issued by the board, in order to practice public accounting or to use the titles "APAs", "CPAs", "LPAs", "APA firm", "CPA firm", "LPA firm", or similar titles. The board shall grant or renew permits to practice public accountancy to firms that make application and demonstrate their qualifications in accordance with this section.
3. An applicant for initial issuance or renewal of a permit to practice under this section must show that notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights, belongs to licensees of a state or other recognized jurisdiction and that all accredited public accountants, certified public accountants, or licensed public accountants associated with the firm whose principal place of business is in this state and who perform professional services in this state hold a valid certificate or license issued by this state. The firm and its owners must comply with all board rules regarding ownership.

1 **SECTION 11. AMENDMENT.** Section 43-02.2-08 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **43-02.2-08. Appointment of secretary of state as agent.** Application by a person or
4 a firm not a resident of this state for a certificate under section 43-02.2-04, a license under
5 section 8 of this Act, or a permit to practice under section 43-02.2-06 constitutes appointment of
6 the secretary of state as the applicant's agent upon whom process may be served in any action
7 or proceeding against the applicant arising out of any transaction or operation connected with or
8 incidental to services performed within this state by the applicant.

9 **SECTION 12. AMENDMENT.** Subdivision c of subsection 1 of section 43-02.2-09 of
10 the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 11 c. Failure, on the part of a holder of a certificate, license, or permit, to maintain
12 compliance with the requirements for issuance or renewal of such certificate,
13 license, or permit or to report changes to the board under section 43-02.2-04,
14 8 of this Act, 43-02.2-06, or 43-02.2-07;

15 **SECTION 13. AMENDMENT.** Section 43-02.2-12 of the 1999 Supplement to the North
16 Dakota Century Code is amended and reenacted as follows:

17 **43-02.2-12. Unlawful acts.**

- 18 1. A person or firm that is not a licensee may not practice or offer to practice public
19 accountancy or issue a report on financial statements of any other person, firm,
20 organization, or governmental unit. Only a certified public accountant or licensed
21 public accountant may issue a report on financial statements of a person or offer to
22 render or render any attest service. Only an accredited public accountant, a
23 certified public accountant, or a licensed public accountant may render compilation
24 services. Individual licensees may not practice public accountancy unless they do
25 so within a firm that holds a permit issued under this chapter. These prohibitions
26 do not apply to an officer, partner, or employee of any firm or organization affixing
27 the person's name or signature to any statement or report in reference to the
28 financial affairs of such firm or organization with any wording designating the
29 position, title, or office that the signer holds therein, does not prohibit any act of a
30 public official or employee in the performance of duties as such, and does not
31 prohibit the performance by any persons of other services involving the use of

1 accounting skills, including the preparation of tax returns, management advisory
2 services, and the preparation of financial statements without the issuance of
3 reports thereon. This prohibition does not apply to transactions between
4 manufacturing and sales organizations and their customers when accounting
5 services accompany the sale of products provided that such accounting services
6 are incidental and that any financial report made is clearly titled "unaudited
7 financial report".

8 2. A person not holding a valid certificate issued under this chapter may not use or
9 assume the title or designation "certified public accountant", or the abbreviation
10 "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or
11 device tending to indicate that the person is a certified public accountant.

12 3. A firm may not practice public accountancy or assume or use the title or
13 designation "certified public accountant", or the abbreviation "CPA", or any other
14 title, designation, words, letters, abbreviation, sign, card, or device tending to
15 indicate that the firm is a certified public accountant firm, unless the firm holds a
16 valid permit issued under this chapter.

17 4. A person may not assume or use the title or designation "licensed public
18 accountant" or the abbreviation "LPA", or any other title, designation, words,
19 letters, abbreviation, sign, card, or device tending to indicate that the person is a
20 licensed public accountant unless the person is registered as provided in section
21 43-02.2-07.

22 5. A firm may not practice public accountancy, or assume or use the title or
23 designation "licensed public accountant", the abbreviation "LPA", or any other title,
24 designation, words, letters, abbreviation, sign, card, or device tending to indicate
25 that the firm is a licensed public accountant firm, unless the firm holds a valid
26 permit issued under this chapter.

27 6. A person may not assume or use the title or designation accredited public
28 accountant or the abbreviation "APA" or any other title, designation, word, letter,
29 abbreviation, sign, card, or device tending to indicate that the person is an
30 accredited public accountant unless the person is registered as provided in
31 section 8 of this Act.

1 7. A firm may not practice public accountancy or assume or use the title or
2 designation accredited public accountant, the abbreviation "APA" or any other title,
3 designation, word, letter, abbreviation, sign, card, or device tending to indicate that
4 the firm is a licensed public accountant firm, unless the firm holds a valid permit
5 issued under this chapter.

6 8. A person or firm not holding a valid certificate, license, or permit issued under this
7 chapter may not assume or use the title or designation "certified accountant",
8 "chartered accountant", "enrolled accountant", "licensed accountant", "public
9 accountant", "registered accountant", "accredited accountant", or any other title or
10 designation likely to be confused with the titles "accredited public accountant",
11 "certified public accountant" or "licensed public accountant", or use any of the
12 abbreviations "CA", "LA", "PA", "RA", "AA", or similar abbreviation likely to be
13 confused with the abbreviations "APA", "CPA" or "LPA".

14 ~~7.~~ 9. A person or firm not holding a valid certificate, license, or permit issued under this
15 chapter may not assume or use any title or designation that includes the words
16 "accountant", "auditor", or "accounting", or other terms in any manner that implies
17 such person or firm holds such a certificate, license, or permit or has special
18 competence as an accountant or auditor. This subsection does not prohibit any
19 officer, partner, or employee of any firm or organization from affixing the person's
20 name or signature to any reference to the financial affairs of such firm or
21 organization with any wording designating the position, title, or office that the
22 person holds and does not prohibit any act of a public official or employee in the
23 performance of duties.

24 ~~8.~~ 10. A licensee may not use a professional or firm name or designation that is
25 misleading. Names of one or more former partners or shareholders may be
26 included in the name of a firm or its successor.

27 ~~9.~~ 11. This section does not apply to a person or firm holding a certification, designation,
28 degree, or license granted in a foreign country entitling the holder to engage in the
29 practice of public accountancy or its equivalent in that country, whose activities in
30 this state are limited to the provision of professional services to persons or firms
31 who are residents of, governments of, or business entities of the country in which

1 the person or firm holds such entitlement. This subsection does not authorize
2 issuing reports with respect to the financial statements of any other persons, firms,
3 or governmental units in this state. A person or firm acting under the authority of
4 this subsection may not use in this state any title or designation other than the one
5 under which the person or firm practices in such country, followed by a translation
6 of such title or designation into the English language, if it is in a different language,
7 and by the name of such country.