

Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2329

Introduced by

Senators Klein, Brown

Representatives Kasper, Weisz

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 business accountants; and to amend and
3 reenact subdivision b of subsection 2 of section 10-19.1-50, subdivision a of subsection 1 of
4 section 10-19.1-85, subdivision a of subsection 1 of section 10-32-52, subdivision b of
5 subsection 2 of section 10-32-86, subdivision b of subsection 2 of section 10-33-45, section
6 43-02.2-02, subsection 5 of section 43-02.2-03, subsections 1 and 3 of section 43-02.2-06,
7 section 43-02.2-08, subdivision c of subsection 1 of section 43-02.2-09, and section 43-02.2-12
8 of the North Dakota Century Code, relating to accredited business 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 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 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 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 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 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 North Dakota Century Code is
12 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 business 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 to provide 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.

- 22 b. An examination of prospective financial information to be performed in
23 accordance with the statements on standards for attestation engagements
24 which are those standards adopted by the board by rule.

- 25 3. "Board" means the state board of accountancy.

- 26 ~~2.~~ 4. "Certificate" means a certificate as "certified public accountant" issued under
27 section 43-02.2-04 or provisions of prior law, or a corresponding certificate as
28 certified public accountant issued after examination under the law of any other
29 state.

- 30 ~~3.~~ 5. "Client" means a person ~~or entity~~ that agrees with a licensee to receive any
31 professional service other than an employer-employee relationship.

6. "Compilation" means a service performed in accordance with statements on standards for accounting and review services adopted by rule by the board which must refer to the standards developed for general application by the American institute of certified public accountants or other recognized national accountancy organization.

4- 7. "Firm" means a sole proprietorship, a corporation, a partnership, or any combination thereof, or any other entity permitted by law.

5- 8. "Licensee" means the holder of a certificate, license, or permit issued under this chapter or prior law.

6- 9. "Permit" means a permit to practice public accountancy issued under section 8 of this Act, 43-02.2-06, or 43-02.2-07, prior law, or corresponding provisions of the laws of other states.

7- 10. "Practice of" or "practicing" public accountancy means the performance or the offering to perform by ~~a person~~ an individual or a firm holding out to the public as a licensee, for a client or potential client, services involving the use of accounting or auditing skills including the issuance of reports on financial statements, but not including management advisory, financial advisory, or consulting services, bookkeeping services, or the preparation of tax returns or the furnishing of advice on tax matters unless provided by a firm with a permit issued under section 43-02.2-06 or 43-02.2-07.

8- 11. "Practice review" means a study, appraisal, or review of one or more aspects of the professional work of a firm in the practice of public accountancy, by a person or persons who hold certificates and are in the practice of public accounting and who are not affiliated with the ~~person~~ individual 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.

10- 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~~ individual 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.

~~44.~~ 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 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 business accountant", "ABA", "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 business accountants.

1. The board shall grant the license of accredited business 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 accountancy and taxation examination taken in 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 shall use all or any part of the examination in accountancy provided by the accreditation council for accountancy 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 application, methods of conducting the examination, and methods of grading examinations; however, the rules must attempt to ensure that grading requirements of the examination are uniform with grading requirements of other states.
 - d. The board may allow an applicant who has not met the requirements under this subsection to take the examination if the board determines the candidate

1 is scheduled to meet the experience or education requirements within six
2 months of the application to take the examination.

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

7 4. A license of an accredited business accountant must be renewed annually. The
8 board may adopt rules establishing licensure and renewal fees and licensure and
9 renewal requirements.

10 5. An applicant for initial licensure or for renewal shall list on the application all states
11 and jurisdictions in which the applicant has applied for or holds a license, permit, or
12 other recognized accounting designation. An applicant for initial licensure or
13 renewal shall notify the board in writing within thirty days of the occurrence of any
14 issuance, denial, revocation, or suspension of a license, permit, or other
15 recognized accounting designation in another state or jurisdiction.

16 6. The board may adopt rules establishing experience and education requirements.
17 An applicant for initial licensure under this section shall show that the applicant
18 satisfies the following:

19 a. An applicant must have successfully completed four years of higher education
20 that includes a minimum of fifteen semester hours of accounting, finance, and
21 taxation and have one year of verified experience as defined under current
22 law.

23 b. Before July 1, 2008, an applicant with three years of verifiable experience will
24 qualify to take the accreditation council for accountancy and taxation
25 examination, and upon successful completion of this examination, the
26 applicant may be granted the title of accredited business accountant. After
27 June 30, 2003, an applicant must have passed the accreditation council for
28 accountancy and taxation examination.

29 c. Experience must include providing any type of service or advice involving the
30 use of accounting, management advisory, financial advisory, tax, or consulting
31 skills.

- 1 7. Upon successful completion of the accreditation council for accountancy and
2 taxation examination and the work experience requirement, applicants will be
3 granted the title of accredited business accountant.
- 4 8. The board may adopt rules establishing continuing education requirements.
- 5 9. Any rules adopted under this section may include exceptions and must include
6 reasonable provisions addressing situations under which an applicant is unable to
7 satisfy the requirements due to circumstances beyond the applicant's control.

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

10 **Accredited business accountant - Services:**

- 11 1. An accredited business accountant may offer to perform or perform for the public
12 any of the following services:
 - 13 a. Record financial transactions in books of record;
 - 14 b. Make adjustments of financial transactions in books of record;
 - 15 c. Make trial balances from books of record;
 - 16 d. Prepare an internal verification and analysis of books or accounts of original
17 entry;
 - 18 e. Prepare financial statements, schedules, or reports; and
 - 19 f. Devise and install systems or methods of bookkeeping, internal controls of
20 financial data, or the recording of financial data.
- 21 2. An accredited business accountant may not give an opinion attesting to the
22 reliability of any representation embracing financial information.

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

- 25 1. A firm must hold a firm permit issued by the board, in order to practice public
26 accounting or to use the titles "ABAs", "CPAs", "LPAs", "ABA firm", "CPA firm",
27 "LPA firm", or similar titles. The board shall grant or renew permits to practice
28 public accountancy to firms that make application and demonstrate their
29 qualifications in accordance with this section.
- 30 3. An applicant for initial issuance or renewal of a permit to practice under this section
31 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 business 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.

SECTION 11. AMENDMENT. Section 43-02.2-08 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 13. AMENDMENT. Section 43-02.2-12 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-12. Unlawful acts.

1. ~~A person~~ An individual or a firm that is not a licensee may not practice or offer to practice public accountancy or issue a report on financial statements of any other person, ~~firm, organization, or governmental unit~~. Only a certified public accountant or licensed public accountant may issue a report on financial statements of a person or offer to render or render any attest service. An accredited business accountant shall use safe harbor language as presented in the Uniform Accountancy Act when preparing financial statements from compiled information.

Individual licensees may not practice public accountancy unless they do so within a firm that holds a permit issued under this chapter. These prohibitions do not apply to an officer, partner, or employee of any firm or organization affixing the ~~person's~~ individual's name or signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the signer holds therein, does not prohibit any act of a public official or employee in the performance of duties as such, and does not prohibit the performance by any persons of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. This prohibition does not apply to transactions between manufacturing and sales organizations and their customers when accounting services accompany the sale of products provided that such accounting services are incidental and that any financial report made is clearly titled "unaudited financial report".

2. A person not holding a valid certificate issued under this chapter may not use or assume the title or designation "certified public accountant", or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.
3. A firm may not practice public accountancy or assume or use the title or designation "certified public accountant", or the abbreviation "CPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is a certified public accountant firm unless the firm holds a valid permit issued under this chapter.
4. A person may not assume or use the title or designation "licensed public accountant" or the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a licensed public accountant unless the person is registered as provided in section 43-02.2-07.
5. A firm may not practice public accountancy, or assume or use the title or designation "licensed public accountant", the abbreviation "LPA", or any other title,

1 designation, words, letters, abbreviation, sign, card, or device tending to indicate
2 that the firm is a licensed public accountant firm unless the firm holds a valid permit
3 issued under this chapter.

4 6. A person may not assume or use the title or designation accredited business
5 accountant or the abbreviation "ABA" or any other title, designation, word, letter,
6 abbreviation, sign, card, or device tending to indicate that the person is an
7 accredited business account and unless the person is licensed as provided in
8 section 8 of this Act.

9 7. A firm may not practice public accountancy or assume or use the title or
10 designation accredited business accountant, the abbreviation "ABA" or any other
11 title, designation, word, letter, abbreviation, sign, card, or device tending to indicate
12 that the firm is a licensed business accountant firm unless the firm holds a valid
13 permit issued under this chapter.

14 8. ~~A person~~ An individual or a firm not holding a valid certificate, license, or permit
15 issued under this chapter may not assume or use the title or designation "certified
16 accountant", "chartered accountant", "enrolled accountant", "licensed accountant",
17 "public accountant", "registered accountant", "accredited accountant", or any other
18 title or designation likely to be confused with the titles "accredited business
19 accountant", "certified public accountant", or "licensed public accountant", or use
20 any of the abbreviations "CA", "LA", "PA", "RA", "AA", or similar abbreviation likely
21 to be confused with the abbreviations "ABA", "CPA", or "LPA".

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

- 1 8- 10. A licensee may not use a professional or firm name or designation that is
2 misleading. Names of one or more former partners or shareholders may be
3 included in the name of a firm or its successor.
- 4 9- 11. This section does not apply to ~~a person~~ an individual or a firm holding a
5 certification, designation, degree, or license granted in a foreign country entitling
6 the holder to engage in the practice of public accountancy or its equivalent in that
7 country, whose activities in this state are limited to the provision of professional
8 services to ~~persons~~ individuals or firms who are residents of, governments of, or
9 business entities of the country in which the ~~person~~ individual or firm holds such
10 entitlement. This subsection does not authorize issuing reports with respect to the
11 financial statements of any other ~~persons~~ individuals, firms, or governmental units
12 in this state. ~~A person~~ An individual or a firm acting under the authority of this
13 subsection may not use in this state any title or designation other than the one
14 under which the ~~person~~ individual or firm practices in such country, followed by a
15 translation of such title or designation into the English language, if it is in a different
16 language, and by the name of such country.