

PROPOSED AMENDMENT TO SENATE BILL NO. 2061

Page 2, line 5, after "~~appeal.~~" insert "The Board may not grant a certificate if the applicant 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 this state, or of any other state if the acts involved would have constituted a crime under the laws of this state."

Renumber accordingly

Harlow, Mandy L.

From: Patrick Kautzman <pkautzman@eidebailly.com>
Sent: Monday, January 30, 2023 11:18 AM
To: Wobbema, Michael
Cc: Harlow, Mandy L.
Subject: SB 2061 Proposed Amendment
Attachments: Proposed Amendment to SB 2061.rtf; MARK UP OF PROPOSED AMENDMENT TO SB 2061.docx

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Good Morning Chairman Wobbema,

I am writing in response and as a follow-up to our testimony on SB 2061. The State Board of Accountancy reviewed the testimony provided and some of the concerns the Committee voiced during our testimony. The State Board of Accountancy is fine with the bill as is, but again, in lieu of some concerns voiced by the Committee we offer the attached amendment to address those potential concerns.

As we testified, the current law Section 43-02.2-09 (see insert below) gives the Board the authority to revoke, suspend, reprimand, censure, limit the scope of practice, or place on probation a licensee for acts of "**Dishonesty, fraud**, or gross negligence" in the performance of services as well as "Conviction of a felony, or **any** crime an element of which is **dishonesty or fraud**." Under the current law that we are asking to be changed, good moral character means "the lack of a history of dishonest or felonious acts". The Board believes that the enforcement actions identified in the current law under Section 43-02.2-09 allow us to regulate licensees for acts identified in the definition of "good moral character."

That said, if the Committee believes that language is also needed to allow the Board to "not grant" a CPA certificate up front to a person who has a history of dishonesty or fraud, then we would offer the attached amendment to address those concerns. This would provide for the same authority for the board in both the initial granting as well as the ongoing annual renewal of a licensee to prohibit licensees from having a history of fraud or dishonesty.

Thank you for your consideration and please reach out to me or the Board if you have further questions.

43-02.2-09. Enforcement against licensees.

1. The board may revoke any certificate, license, practice privilege, or permit issued under this chapter or corresponding provisions of prior law; suspend any such certificate, license, practice privilege, or permit or refuse to renew any such certificate, license, practice privilege, or permit for a period of not more than five years; reprimand, censure, or limit the scope of practice of any licensee or holder of a practice privilege; impose an administrative fine not exceeding one thousand dollars; or place any licensee or holder of a practice privilege on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons:
 - a. Fraud or deceit in obtaining a certificate, license, practice privilege, or permit;
 - b. Cancellation, revocation, suspension, or refusal to renew a certificate, license, practice privilege, or permit in any other state or jurisdiction for any cause;
 - c. Failure, on the part of a holder of a certificate, license, practice privilege, or permit, to maintain compliance with the requirements for issuance or renewal of such certificate, license, practice privilege, or permit or to report changes to the board under section 43-02.2-04, 43-02.2-06, or 43-02.2-07;
 - d. Revocation or suspension of the right to practice before any state or federal agency;
 - e. Dishonesty, fraud, or gross negligence in the performance of services as a licensee or in the filing or failure to file the licensee's own income tax returns;
 - f. Violation of any provision of this chapter or rule adopted by the board under this chapter;
 - g. Violation of any rule of conduct adopted by the board under section 43-02.2-03;
 - h. Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
 - i. Performance of any fraudulent act while holding a certificate, license, practice privilege, or permit issued under this chapter or prior law;
 - j. Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee; and
 - k. Making any false or misleading statement or verification, in support of an application for a certificate, license, or permit filed by another.
2. In lieu of or in addition to any remedy specifically provided in subsection 1, the board may require of a licensee either or both of the following:
 - a. A practice review conducted as the board specifies.
 - b. Satisfactory completion of continuing education programs the board specifies.
3. In any proceeding in which a remedy provided by subsection 1 or 2 is imposed, the board may require the respondent licensee to pay the costs of the proceeding.

Sincerely,

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MARK UP OF PROPOSED AMENDMENT TO SENATE BILL NO. 2061

SECTION 3. AMENDMENT. Section 43-02.2-04 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-04. Certified public accountants.

1. The board shall grant the certificate of "certified public accountant" to any person of good moral character who meets the requirements of this section.
2. ~~For the purposes of this chapter, good moral character means the lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the grounds of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal. The Board may not grant a certificate if the applicant 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 this state, or of any other state if the acts involved would have constituted a crime under the laws of this state.~~