

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1147
(Government and Veterans Affairs Committee)
(At the request of the State Board of Accountancy)

AN ACT to amend and reenact sections 43-02.2-02, 43-02.2-04, and 43-02.2-04.1, subsections 1 and 5 of section 43-02.2-06, subsection 1 of section 43-02.2-09, section 43-02.2-10, subsections 1 and 3 of section 43-02.2-11, and subsections 1, 2, 3, 5, 6, and 7 of section 43-02.2-12 of the North Dakota Century Code, relating to certified public accountants and the practice of public accountancy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Board" means the state board of accountancy.
2. "Certificate" means a certificate as "certified public accountant" issued under section 43-02.2-04 or provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.
3. "Client" means a person or entity that agrees with a licensee to receive any professional service other than an employer-employee relationship.
4. "Firm" means a sole proprietorship, a corporation, a partnership, or any combination thereof, or any other entity permitted by law.
5. "Licensee" means the holder of a certificate, license, or permit issued under this chapter or prior law.
6. "NASBA national qualification appraisal service" means the section of the national association of state boards of accountancy that either reviews the CPA licensure requirements of its member jurisdictions to determine which CPA licensure requirements are substantially equivalent to the licensure requirements of the Uniform Accountancy Act or evaluates the credentials of individuals who are licensed in jurisdictions that are not substantially equivalent to determine their individual substantial equivalency.
7. "Permit" means a permit to practice public accountancy issued under section 43-02.2-06 or 43-02.2-07, prior law, or corresponding provisions of the laws of other states.
7. 8. "Practice of" or "practicing" public accountancy means the performance or the offering to perform by a person or 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~~ of certified public accountants or licensed public accountants.

9. "Practice privilege" means the privilege for a person to practice public accountancy described in, and subject to the conditions contained in, subsection 1 of section 43-02.2-04.1.
- ~~8.~~ 10. "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 or firm being reviewed.
11. "Principal place of business" means the office location designed by the licensee for purposes of substantial equivalence and reciprocity.
- ~~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 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.
- ~~11.~~ 14. "Rule" means any rule, regulation, or other written directive of general application duly adopted by the board.
- ~~12.~~ 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, and the Commonwealth of the Northern Mariana Islands.
- ~~13.~~ 16. "Substantial equivalency", as used in section 43-02.2-04, pertaining to certification by reciprocity, and in section 43-02.2-04.1, pertaining to the practice privilege, 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. In ascertaining substantial equivalency as used in this chapter, the board shall take into account the qualifications without regard to the sequence in which experience, education, or examination requirements were attained.

SECTION 2. 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.

3. The board shall grant or renew certificates to persons who make application and demonstrate that their qualifications are in accordance with the following:
 - a. The board shall issue a certificate to a holder of a certificate, license, or permit issued by another state, provided that that state extends similar reciprocity to the certificate holders of this state, and upon a showing that:
 - a. ~~The the applicant passed the examination required for issuance of the certificate with grades that would have been passing grades at the time in this state; is eligible under the substantial equivalency standard set out in subsection 1 of section 43-02.2-04.1. An application under this section may be made through the NASBA qualification appraisal service.~~
 - b. ~~The applicant~~ With regard to applicants that do not qualify for reciprocity under the substantial equivalency standard set out in subdivision a, the board shall issue a certificate to a holder of a certificate, license, or permit issued by another state upon a showing that:
 - (1) ~~Meets all current requirements in this state for issuance of a certificate, at the time application is made; or~~ The applicant passed the uniform CPA examinations;
 - (2) ~~At the time of the issuance of the applicant's certificate in the other state, met all such requirements then applicable in this state; and~~ The applicant had four years of experience of the type described in subsection 14 or meets comparable requirements prescribed by the board by rule, after passing the examination upon which the applicant's certificate was based and within ten years immediately preceding the application; and
 - (3) If the applicant's certificate, license, or permit was issued more than four years prior to the application for issuance of an initial certificate under this section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable under subsection 15.
 - c. The applicant ~~has paid~~ shall pay the applicable fees fee.
 - d. An individual who establishes that individual's principal place of business in this state must obtain a certificate under this section.
4. The board shall issue a certificate to a holder of a recognized accounting designation from a jurisdiction or organization outside of the United States, provided such jurisdiction or organization extends similar reciprocity to the certificate holders of this state, and upon a showing to the board's satisfaction that the applicant:
 - a. Meets the good moral character requirement of subsection 2;
 - b. Meets the substantial equivalent of the education requirements of subsection 5 and the experience requirements of subsection 14 at the time of application, or at the time of the issuance of the designation by the other jurisdiction or organization met the education and experience requirements then applicable in this state;
 - c. Has completed examinations generally equivalent to those prescribed under subsection 6;

- d. Has satisfactorily completed any additional examinations that the board prescribes; and
 - e. Has paid the applicable fees.
5. The education requirement for a certificate is as follows:
- a. Through December 31, 1999, a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, and an accounting concentration or equivalent as determined by board rule to be appropriate, or four years of public accounting experience on one's own account or in the office of a public accountant in active practice, or in an accounting or auditing position with the government of the United States or a state.
 - b. After December 31, 1999, 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 board rule to be appropriate. An individual who on December 31, 1999, meets the requirements of subdivision a may obtain a certificate under subdivision a if the individual passes the examination in accordance with board rules before December 31, 2004.
6. The examination required to be passed as a condition for the granting of a certificate must test the applicant's knowledge of the subjects of accounting and auditing. ~~A grade of seventy-five percent is required in each subject to constitute a passing grade.~~ The time for holding the examination must be fixed by the board and may be changed from time to time. The board may prescribe by rule the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate provided that the board to the extent possible sees to it that the grading of the examination and the passing grade requirements are uniform with those applicable in 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 and may contract with third parties to perform administrative services with respect to the examination it deems appropriate to assist it in performing its duties. The board may permit a candidate to take the examination if the board is satisfied that the candidate will complete the educational requirements of this section within six months after the candidate's application to take the examination.
7. An applicant must pass the examination provided for in subsection 6, as specified by rule, in order to qualify for a certificate.
8. An applicant must be given credit for any and all sections of an examination passed in another state if such credit would have been given under then applicable requirements, if the applicant had taken the examination in this state.
9. The board may in particular cases waive or defer any of the requirements of subsections 7 and 8 regarding the circumstances under which the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.
10. The board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the board by rule, for examination or reexamination.
11. A certificate of certified public accountant must be renewed each year, with renewal subject to payment of fees and any other requirements prescribed by the board.
12. The board may require examination of other related subjects as specified by rule.

13. Applicants for initial issuance or renewal of certificates under this section shall list in the applications all states and jurisdictions in which they have applied for or hold certificates or permits or other recognized accounting designation, and each holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized accounting designation by another state or jurisdiction.
14. After December 31, 2000, an applicant for initial issuance of a certificate under this section shall show that the applicant has had one year of experience. This experience must include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills. This experience must be verified and must meet any other requirements prescribed by the board by rule. This experience is acceptable if it was gained through employment in government, industry, academia, or public accounting. This experience requirement does not apply to those who received a certificate from this state prior to January 1, 2000.
15. The board may require by rule, as a condition for granting and renewal of certificates under this section, that applicants show completion of continuing education meeting requirements of board rule. The continuing education rules may include provisions for exceptions and must include reasonable provision for an applicant who cannot meet the continuing education requirements due to circumstances beyond the applicant's reasonable control.
16. ~~As an alternative to the requirements of subsection 3, the board shall issue a certificate to an individual who holds a certificate from another state, who establishes the individual's principal place of business within this state and has submitted the applicable application and fees, provided that the individual or the other state has attained substantial equivalency.~~

SECTION 3. AMENDMENT. Section 43-02.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-04.1. Substantial equivalency.

1. An individual whose principal place of business is not in this state shall have all the privileges of certificate holders and licensees of this state without the need to obtain a certificate or permit under section 43-02.2-04, if the individual holds a valid ~~certificate license~~ as a CPA from any state that ~~has attained substantial equivalency~~ the NASBA national qualification appraisal service has verified to be in substantial equivalence with the CPA licensure requirements of the Uniform Accountancy Act, or, if the individual's CPA qualifications are deemed to meet substantial equivalency license is not from any state which the NASBA national qualification appraisal service has verified to be in substantial equivalence with the CPA licensure requirements of the Uniform Accountancy Act, ~~that the individual has obtained from the NASBA national qualification appraisal service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act. An individual who passed the uniform CPA examination and holds a valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in the Uniform Accountancy Act for purposes of this section.~~
2. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person or by mail, telephone, or electronic means, under this section shall be granted practice privileges in this state and may use the title "CPA" or "certified public accountant" and no notice, fee, or other submission shall be provided by any such individual. Such an individual is subject to the requirements of subsection 3.
3. ~~Individuals intending to enter the state under this provision shall submit the applicable application and fees prior to entry. Any individual licensee of another state exercising the~~

privilege afforded under this section ~~and the firm that employs that licensee hereby consents simultaneously consent~~, as a condition of the grant of this privilege:

- a. To the personal and subject matter jurisdiction and disciplinary authority of the board;
- b. To comply with this chapter and the board's rules;~~and~~
- c. That in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a firm; and
- d. To the appointment of the state board which issued the person's ~~certificate~~ license as the person's agent upon whom process may be served in any action or proceeding by this board against the licensee.

2. ~~4.~~ A licensee of this state offering or rendering services or using the licensee's CPA title in another state is subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline in the other state. The board shall investigate any complaint made by the board of accountancy of another state.

SECTION 4. AMENDMENT. Subsections 1 and 5 of section 43-02.2-06 of 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 "CPAs", "LPAs", "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. The board shall grant or renew permits to practice as a CPA or LPA firm to applicants that demonstrate their qualifications therefor in accordance with this subsection.~~
 - a. The following must hold a permit issued under this subsection:
 - (1) Any firm with an office in this state practicing public accountancy as defined in subsection 8 of section 43-02.2-02; or
 - (2) Any firm with an office in this state that uses the title "CPA", "LPA", "CPA firm", or "LPA firm", or similar titles.
 - b. A firm which is not subject to the requirements of subdivision a may perform professional services within the practice of public accountancy while using the title "CPA" or "CPA firm" in this state without a permit issued under this subsection only if:
 - (1) It performs such services through an individual with practice privileges under subsection 1 of section 43-02.2-04.1; and
 - (2) It can lawfully do so in the state where such individuals with practice privileges have their principal place of business.
5. The board ~~shall~~ may charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.

SECTION 5. AMENDMENT. Subsection 1 of section 43-02.2-09 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 6. AMENDMENT. Section 43-02.2-10 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-10. Enforcement procedures - Investigations. If this chapter authorizes the board to revoke, deny, or suspend the certificate, license, practice privilege, or permit of any licensee or holder of a practice privilege, the ~~licensee~~ individual or firm has a right to a hearing before the board on such contemplated disciplinary action and has a right to appeal to the courts from the decision of the board on the hearing. All of the provisions of chapter 28-32 relating to proceedings before an administrative agency are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the board's decision. During the investigation of any complaint or other information suggesting violations of this chapter, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of the pending investigation must be treated as confidential information and may not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

SECTION 7. AMENDMENT. Subsections 1 and 3 of section 43-02.2-11 of the North Dakota Century Code are amended and reenacted as follows:

1. If the board has suspended, refused to renew, or revoked a certificate, license, practice privilege, or a permit, the board may modify the suspension or reissue the certificate,

license, practice privilege, or permit upon application in writing by the person or firm affected and for good cause shown and payment of a fee established by the board.

3. Before reissuing or terminating the suspension of a certificate, license, practice privilege, or permit under this section, the board may require the applicant to show successful completion of specified continuing education and may make the reinstatement conditional and subject to specified conditions, including satisfactory completion of a practice review conducted as specified by the board.

SECTION 8. AMENDMENT. Subsections 1, 2, 3, 5, 6, and 7 of section 43-02.2-12 of the North Dakota Century Code are amended and reenacted as follows:

1. A person or firm that is not a licensee or otherwise authorized to practice in this state under subsection 1 of section 43-02.2-04.1 or subdivision b of subsection 1 of section 43-02.2-06 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. Individual licensees may not practice public accountancy unless they do so within a firm that holds a permit issued under this chapter or is otherwise exempt from the firm permit requirement. These prohibitions do not apply to an officer, partner, or employee of any firm or organization affixing the person'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 or practice privilege 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 unless the firm holds a valid permit issued under this chapter or is otherwise exempt from the firm permit requirement.
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, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is a licensed public accountant firm unless the firm holds a valid permit issued under this chapter or is otherwise exempt from the firm permit requirement.
6. A person or firm not holding a valid certificate, license, practice privilege, or permit issued under this chapter or otherwise exempt from the firm permit requirement may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "public accountant", "registered accountant", "accredited accountant", or any other title or designation likely to be confused with the titles "certified public accountant" or "licensed public accountant", or use any of the abbreviations "CA", "LA", "PA", "RA", "AA", or similar abbreviation likely to be confused with the abbreviations "CPA" or "LPA".

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1147.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State