

## CHAPTER 50

## (HB 259)

AN ACT relating to the practice of accounting.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. A NEW SECTION OF KRS CHAPTER 325 IS CREATED TO READ AS FOLLOWS:

***A person that enters this state and represents himself or herself as a "certified public accountant" or a "CPA" and performs or offers to perform a regulated activity for a person in this state without first obtaining a license under this chapter or complying with the practice privilege requirement in KRS 325.280 consents to the personal, subject matter, and disciplinary jurisdiction of the board. The board may conduct investigations, hearings, and impose sanctions against the person or firm as if the person or firm held a license under this chapter.***

Section 2. KRS 325.240 is amended to read as follows:

- (1) The board shall elect annually a president ***and such other officers as it deems necessary***~~[a secretary, and a treasurer from its members. The offices of secretary and treasurer may be held by the same individual].~~
- (2) The board may promulgate, and amend from time to time, administrative regulations, in accordance with the provisions of KRS Chapter 13A, for the orderly conduct of its affairs,~~[and]~~ for the administration of this chapter, ***and***~~[. The board may also promulgate, and amend from time to time, rules of professional conduct appropriate]~~ to establish and maintain a high standard of integrity and dignity in the profession of public accounting.
- (3) A majority of the board shall constitute a quorum for the transaction of business.
- (4) The board shall have a seal which shall be judicially noticed. The board shall keep records of its proceedings, and in any proceeding in court, civil or criminal, arising out of or founded upon any provision of this chapter, copies of said records certified as correct under the seal of the board shall be admissible in evidence as tending to prove the content of said records.
- (5) The board may employ an executive director and such other personnel as it deems necessary in its administration and enforcement of this chapter. It may appoint such committees or persons, to advise or assist it in the administration and enforcement, as it may see fit. It may retain its own counsel to advise and assist it, in addition to such advice and assistance as is provided by the Attorney General of this state.
- (6) ***The board may join or participate in professional organizations and associations that promote improvement of the practice of accounting for the protection of the public or to facilitate the activities of the board.***
- (7) ***The board may expend funds from its account created by KRS 325.250 to assist with accounting educational programs proposed or offered in the primary and secondary schools in this state. The amount of the expenditure shall not interfere with the performance of the board's other responsibilities.***
- (8) ***The board may purchase professional liability insurance for its members, staff, and investigators. The purchase of or failure to purchase insurance shall not be deemed a waiver of any immunity already conferred on the board, its members, staff, and investigators.***

Section 3. KRS 325.250 is amended to read as follows:

All fees and other moneys received by the board pursuant to the provisions of this chapter shall be~~[paid to the treasurer of the board for the use of the board, and shall be]~~ deposited in the State Treasury to the credit of a revolving fund for the use of the board ***in carrying out the provisions of this chapter***. No part of this revolving fund shall revert to the general funds of this state. The compensation provided by this chapter and all expenses incurred under this chapter shall be paid from this revolving fund. No such compensation or expense shall be a charge against the general funds of this state.~~[The board shall file an annual report of its activities with the Governor, and such report shall include a statement of all receipts and disbursements.]~~

Section 4. KRS 325.330 is amended to read as follows:

- (1) An applicant for initial issuance of a license to practice shall:
  - (a) Satisfy all the requirements of KRS 325.261 and the administrative regulations promulgated by the board;
  - (b) Pay a fee not to exceed two hundred dollars (\$200); and

- (c) **Complete the application process established in an administrative regulation promulgated**~~Submit a completed application on a form issued~~ by the board.
- (2) Licenses shall be initially issued and renewed for a period of two (2) years, and shall expire on the first day of July in the year of expiration.
- (3) When an initial license to practice is granted, the board shall issue a nonrenewable document that indicates that the licensee has satisfied all requirements to receive an initial license as a certified public accountant.
- (4) An applicant for renewal of a license to practice *who is*~~is~~ in good standing~~is~~ shall complete **the renewal procedure established in administrative regulations promulgated by the board that show that**~~a license renewal form provided by the board showing~~ the applicant has:
- Fulfilled the requirement of continuing professional education for professional enhancement as defined by the board by administrative regulation, but not to exceed eighty (80) hours during a two (2) year calendar period ending December 31 preceding the July 1 renewal date. Certified public accountants not employed by a firm licensed by the board shall be required to achieve continuing professional education not to exceed sixty (60) hours during the two (2) year calendar period ending December 31 preceding the July 1 renewal date. The board shall provide for lesser, prorated requirements for applicants whose initial permit was issued substantially less than two (2) years prior to the renewal date;
  - Paid a fee not to exceed two hundred dollars (\$200) biennially;
  - Listed a permanent mailing address; and
  - Designated **as part of the renewal process**~~on the license renewal application~~ whether **the applicant**~~he~~ is employed by a firm licensed by the board.
- (5) Any license not renewed by the expiration date shall automatically expire and the holder of the expired license shall be prohibited from practicing public accounting or holding himself out as a certified public accountant.
- (6) The holder of a license that from the date of renewal has been expired for a period shorter than six (6) months, and who has not violated any other provision of this chapter, may renew the license by meeting all of the requirements of this section and paying a late penalty fee not to exceed one hundred dollars (\$100).
- If the license has expired for a period longer than six (6) months, the applicant shall apply to the board for reinstatement. The board shall determine the eligibility for license reissuance, including a late penalty fee not to exceed two hundred dollars (\$200) and additional continuing professional education hours.
  - Failure to receive a renewal notice shall not constitute an adequate reason for failing to renew the license to practice in a timely manner.
- (7) The board may reduce or waive the license to practice renewal requirements upon written request of the licensee showing illness, extreme hardship, or age and complete retirement from practice as prescribed by the board by administrative regulation.
- (8) **A licensee shall notify the board in writing of a change in his or her mailing address within twenty (20) days following the effective date of the change in address.**

Section 5. KRS 325.340 is amended to read as follows:

- (1) After notice and hearing as provided in KRS Chapter 13B, the board may revoke, suspend, impose a fine not to exceed one thousand dollars (\$1,000) **for each violation of a provision of this chapter or administrative regulations promulgated by the board under this chapter**, refuse to issue or renew any license, censure, or place on probation any **person or firm**~~licensee~~, all with or without terms, for any one (1) or any combination of the following causes:
- Fraud or deceit in obtaining a license issued under this chapter;
  - Dishonesty, fraud, or negligence while performing any regulated activity, including fiscal dishonesty or an intentional breach of fiduciary responsibility of any kind, and also including, but not limited to, the following:
    - Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information; and

2. Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses;
  - (c) Violation of any of the provisions of this chapter or administrative regulations promulgated by the board under this chapter or violation of any order of the board;
  - (d) Violation of a rule of professional conduct promulgated by the board;
  - (e) Conviction of any felony, or of any crime in which dishonesty or fraud is an element, under the laws of any state or of the United States. Conviction includes, but is not limited to, pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;
  - (f) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant or a public accountant in any state;
  - (g) Suspension or revocation of the right to practice before any state or federal agency *or the Public Company Accounting Oversight Board or its successor*;
  - (h) Conduct discreditable to the accounting profession; or
  - (i) Failure to respond to a board inquiry regarding any licensing or complaint matter.
- (2) In any proceeding in which a remedy provided by subsection (1) of this section is imposed, the board may also require the respondent~~{licensee}~~ to pay the costs of the *investigation and all proceedings*~~{proceeding}~~.

Section 6. KRS 325.360 is amended to read as follows:

- (1) The board may conduct investigations of suspected violations of this chapter or the administrative regulations promulgated by the board to determine whether there is probable cause to institute proceedings against any person or firm for any violation under this chapter, but an investigation under this section shall not be a prerequisite to proceedings. In aid of these investigations, the board or its designee may issue subpoenas to compel witnesses to testify and to produce evidence. Subpoenas may be served in person or by certified mail, return receipt requested.
- (2) The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall report to the board. The board shall then find probable cause or lack of probable cause, or it shall request that the investigating officer investigate further. Until there has been a determination of probable cause, the findings of the investigating officer, the testimony and documents gathered in the investigation, and the fact of pendency of the investigation shall be treated as confidential information and shall 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.
- (3) Upon a finding of probable cause,~~{if the subject of the investigation is a licensee,}~~ the board shall direct that a complaint be issued pursuant to this section *setting forth appropriate charges and a date for a hearing that shall be conducted in accordance with KRS Chapter 13B*~~{, and if the subject of the investigation is not a licensee, the board shall take appropriate action pursuant to this chapter}~~. Upon a finding of a lack of probable cause, the board shall *dismiss*~~{close}~~ the matter *either with or without prejudice*.
- (4) In any case where probable cause has been determined pursuant to this section, *the board may request the affected party to informally resolve the matter through mediation or otherwise*~~{with respect to a violation by a licensee, or where the board has received a written complaint by any person furnishing grounds for a determination of probable cause about a violation or where the board has received notice of a decision by the board of accountancy of another state furnishing grounds, the board shall issue a complaint setting forth appropriate charges and set a date for a hearing which shall be conducted in accordance with KRS Chapter 13B}~~.
- (5) A *person or firm*~~{licensee}~~, after having been served with the notice of hearing and complaint as provided for in subsection (3)~~{(4)}~~ of this section, shall file a written response within twenty (20) days from the date *of service*~~{he was served}~~. If the respondent licensee fails to file a timely response or fails to appear at the hearing, the board may hear evidence against *the respondent*~~{him}~~ and may enter a final order as shall be justified by the evidence.

- (6) In a hearing under this section, the respondent~~[licensee]~~ may appear in person or, in the case of a firm, through a partner, or shareholder or other person with an ownership interest.
- (7) The evidence supporting the complaint shall be presented by the investigating officer, by a board member designated for that purpose, or by counsel. A board member who presents the evidence, or who has conducted the investigation of the matter under this section, shall not participate in the board's decision of the matter.
- (8) In a hearing under this section before the board or in acting upon the recommended order of a hearing officer, a vote of a majority of all members of the board then in office, other than a member disqualified by reason of subsection (7) of this section, shall be required to sustain any charge and to impose any penalty with respect thereto.
- (9) Any person adversely affected by any order of the board may obtain a review thereof by filing a written petition for review with the Franklin Circuit Court in accordance with KRS Chapter 13B.
- (10) On rendering a final order~~[to revoke, suspend, refuse to renew, or censure the holder of a license to practice issued under this chapter]~~, the board shall examine its records to determine whether the respondent is authorized or licensed to practice as a certified public accountant in any other state. If the board determines that the respondent is authorized or licensed to practice in any other state, the board shall notify the board of accountancy of the other state of its action by mail within thirty (30) days of rendering the final order.
- (11) The board may exchange information relating to proceedings resulting in disciplinary action against licensees with the boards of accountancy of other states and with other public authorities or private organizations having an interest in the information.

**Approved March 21, 2007.**