

CHAPTER 24

(HB 177)

AN ACT relating to certified public accountants.

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

➔Section 1. KRS 325.220 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Attest service" means providing the following services:
 - (a) Any audit or other engagement subject to and to be performed in accordance with the current versions of the American Institute of Certified Public Accountants (AICPA) Statements on Auditing Standards (SAS), and Government Auditing Standards issued by the United States Government Accountability Office;
 - (b) Any review of a financial statement subject to and to be performed in accordance with the current versions of the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services (SSARS);
 - (c) Any examination of prospective financial information or other professional services to be performed in accordance with the current versions of the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements (SSAE);
 - (d) Any engagement to be performed in accordance with the Public Company Accounting Oversight Board Auditing Standards; and
 - (e) Any examination, review, or agreed-upon procedures engagement to be performed in accordance with the SSAE, other than an examination described in paragraph (c) of this subsection;
- (2) "Board" means the State Board of Accountancy;
- (3) "Firm" means a sole proprietorship, partnership, professional service corporation, or any other form of business organization that is authorized to operate under the laws of this Commonwealth, complies with the provisions of this chapter, and is issued a license to practice by the board or is exempt from having to obtain a license pursuant to KRS 325.301;
- (4) "Firm manager" means a licensee of this state or another state designated by a firm to be responsible for the firm complying with the firm registration and firm licensing requirements contained in this chapter and administrative regulations promulgated thereunder;
- (5) "License" means a license as a certified public accountant or a firm issued pursuant to this chapter;
- (6) "Licensee" means a certified public accountant, firm, or public accountant, holding a license to practice issued under this chapter;
- (7) "Peer review" means a practice monitoring process designed to promote quality in *attest and compilation* ~~accounting and auditing~~ services, and protect the public interest. The process shall comply with standards that are equivalent to or more stringent than the current version of the Standards for Performing and Reporting on Peer Reviews issued by the American Institute of Certified Public Accountants (AICPA);
- (8) ~~["Peer review committee" means any person or persons administering a peer review program that is equivalent to or more stringent than a program as outlined in the American Institute of Certified Public Accountants (AICPA)'s current version of the Standards for Performing and Reporting on Peer Reviews, including provisions that provide guidance for administering peer reviews;~~
- ~~(9)]~~"Public accountant" means a public accountant issued a license to practice by the Commonwealth of Kentucky under the Public Accounting Act of 1946 as amended;
- ~~(9)~~~~(10)~~ (a) "Regulated activities" means the offering to perform or the performance for a client or potential client by a person or firm holding a license issued under this chapter of one (1) or more types of services involving the use of accounting, attest, or compilation services, including the issuance of

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reports on financial statements, or one (1) or more types of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

- (b) Notwithstanding paragraph (a) of this subsection, this definition shall not prohibit anyone who is not a certified public accountant from performing accounting and bookkeeping services, as well as the preparation of tax returns or financial statements, for which attestation by the preparer is not required. The board shall promulgate an administrative regulation defining terms, as necessary, that are not included in this chapter;
- ~~(10)(11)~~ "Report," when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information on 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. Such 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 person or firm is an accountant or auditor, or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence;
- ~~(11)(12)~~ *"Sponsoring organization" means a board-approved professional society or other organization responsible for facilitating and administering a peer review program that is equivalent to or more stringent than a program as outlined in the American Institute of Certified Public Accountants (AICPA)'s current version of the Standards for Performing and Reporting on Peer Reviews, including provisions that provide guidance for administering peer reviews;*
- (12) "State" includes and means any state, territory, or insular possession of the United States, or the District of Columbia; and
- (13) "Substantial equivalency" means a determination by the board or its designee that the education, examination, and experience requirements in the statutes and administrative regulations of another state for the licensing of a certified public accountant are comparable or better than those contained in the Uniform Accountancy Act issued by the American Institute of Certified Public Accountants (AICPA) and National Association of State Boards of Accountancy (NASBA), or that an individual certified public accountant's education, examination, and experience qualifications are comparable or exceed these national standards.

➔Section 2. KRS 325.301 is amended to read as follows:

- (1) The following firms shall obtain a license to practice in this state:
- (a) Any firm with an office located in this state performing attest services, as defined in KRS 325.220; **and**
- (b) Any firm with an office in this state that uses the title "CPA" or other phrase or abbreviation in any manner described in KRS 325.410 to suggest it is a certified public accounting firm; ~~and~~
- ~~(c) Any firm that does not have an office located in this state but performs any attest service described in KRS 325.220(1)(a), (c), or (d) for a client with his or her home office in this state or a client who is a resident of this state].~~
- (2) ~~[The following firms shall not be required to obtain a license to practice in this state and may use the title "CPA" in the name of the firm:~~
- ~~(a)]A firm which does not have an office in this state that performs services described in KRS 325.220(1)(b) or (e) for a client having its home office *located* in this state or a client who is a resident of this state **shall not be required to obtain a license to practice in this state and may use the title "CPA" in the name of the firm** if:~~
- ~~(a)]The firm complies with the requirements contained in subsections (3)(a) and ~~(10)(12)~~ of this section; ~~and~~~~
- ~~(b)]All services provided by the firm are performed by an individual with a practice privilege granted under KRS 325.282; and~~

- ~~[(b) A firm which does not have an office in this state and does not provide attest services, as defined in KRS 325.220, to a client having his or her home office located in this state or a client who is a resident of this state may provide other services that are regulated activities, as defined in KRS 325.220, if:~~
- ~~1. The services are provided through an individual granted a practice privilege as described in KRS 325.282; and~~
- ~~(c)[2.] The firm can legally provide the services in the state where the individual with a practice privilege has his or her principal place of business.~~
- (3) All firms **required**~~[seeking]~~ to obtain a license to practice in this Commonwealth shall meet the following requirements:
- (a) Certified public accountants shall hold fifty-one percent (51%) or more of the ownership of the firm in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers of the firm;
 - (b) All owners of the firm who are not certified public accountants shall be natural persons actively engaged in the firm's operations and shall satisfy additional requirements established by the board through promulgation of an administrative regulation;
 - (c) The name of the firm shall comply with the requirements of KRS 325.380;
 - (d) All certified public accountants who are sole proprietors, partners, shareholders, members, officers, directors, or employees of a firm with an office located in this state, who regularly practice in this Commonwealth, shall maintain current licenses to practice issued by the board;
 - (e) Any individual licensee and any individual qualifying for a practice privilege under this chapter who is responsible for supervising attest services and signs or authorizes someone to sign the report on behalf of the firm shall meet the competency requirements established by the board through promulgation of an administrative regulation; and
 - (f) The firm shall comply with the provisions of this chapter, the administrative regulations promulgated by the board, and all other laws of this Commonwealth applicable to the firm's particular form of business organization.
- (4) Before a firm may practice in this Commonwealth, the firm manager shall:
- (a) Submit an initial application which contains information required by the board through promulgation of an administrative regulation; and
 - (b) Pay a fee not to exceed two hundred dollars (\$200) established by an administrative regulation promulgated by the board.
- (5) The firm license shall be renewed **on or before August 1** every two (2) years by the firm manager:
- (a) Completing the renewal process according to the procedures as established in administrative regulation promulgated by the board; and
 - (b) Paying the renewal fee, which shall not exceed two hundred dollars (\$200), as established by administrative regulation promulgated by the board.
- ~~(6) [A firm license due to expire on July 1, 2011, shall:~~
- ~~(a) Be renewed by the firm manager according to the procedures established by the board through promulgation of an administrative regulation;~~
 - ~~(b) Require payment of a fee not to exceed fifty dollars (\$50) established by the board through promulgation of an administrative regulation; and~~
 - ~~(c) Expire on August 1, 2012.~~
- ~~(7) A firm license that expires on or after August 1, 2012, shall:~~
- ~~(a) Be renewed by the firm manager prior to August 1, 2012;~~
 - ~~(b) Require payment of a fee not to exceed two hundred dollars (\$200) established by the board through promulgation of an administrative regulation;~~

- (c) ~~Be effective for two (2) years; and~~
- (d) ~~Be renewed by the firm manager on or before August 1 of each two (2) year period thereafter according to the procedures contained in this subsection and as established by the board through promulgation of an administrative regulation.~~
- (8) ~~If a firm license has been expired for a period of less than one (1) month and the firm has not violated any other provision of this chapter or the accompanying administrative regulations promulgated thereunder, the firm manager may renew the license by:~~
- (a) ~~Satisfying all the requirements of this subsection, including any requirements established by the board through promulgation of an administrative regulation; and~~
 - (b) ~~In addition to the renewal fee, paying a late fee not to exceed one hundred dollars (\$100).~~
- (7)~~(9)~~ A firm with a license expired for a period of longer than one (1) month after the date of expiration shall cease operating immediately. The firm shall not operate until the board approves the issuance of a new license to the firm.
- (8) ~~[(10) Effective August 1, 2012,]~~ Sole proprietors shall comply with the licensing requirements for firms under this section.
- (9)~~(11)~~ The firm manager shall notify the board in accordance with procedures established in an administrative regulation promulgated by the board, of any change in its licensing information within thirty (30) days. Any change in the name of a firm shall require the filing of an initial application.
- (10)~~(12)~~ All firms that perform *attest or compilation services*~~[audits, reviews, or compilations]~~ shall enroll in, *schedule, undergo*, and complete *its peer review in*~~[on a regular basis]~~ an approved peer review program with standards that are equivalent to or better than the peer review program administered by the American Institute of Certified Public Accountants as determined by administrative regulations promulgated by the board.
- (a) Every firm shall comply with any requirements or restrictions placed on its license as prescribed by the board in response to the results of peer reviews; **and**
 - (b) ***Every firm shall allow the sponsoring organization to provide the board access to the peer review documents via a secure Web site process, such as Facilitated State Board Access and its successor operated by the American Institute of Certified Public Accountants, or similar system operated by another equivalent sponsoring organization.***
- (11)~~(13)~~ Nothing contained in this chapter shall require a certified public accountant or firm of certified public accountants licensed by another state to obtain a license to practice in this Commonwealth if the certified public accountant or firm of certified public accountants enters this Commonwealth solely to:
- (a) Conduct a peer review of a firm; or
 - (b) Perform attestation work, incidental to an engagement which was initiated with a client located outside of the Commonwealth and has extended into the Commonwealth due to common ownership or existence of a subsidiary, assets, or other operations located within the Commonwealth.
- (12) ***A Peer Review Oversight Committee may be appointed by the board to monitor the board-approved peer review program, including sponsoring organizations. The purpose of the committee is to provide reasonable assurance that peer reviews are being conducted and reported in accordance with peer review standards. The board shall promulgate an administrative regulation setting forth the process and procedures of the committee.***

➔Section 3. 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, ***or issue a private reprimand to*** any person or firm, all with or without terms, for any one (1) or any combination of the following causes:
 - (a) Fraud or deceit in obtaining a license issued under this chapter;
 - (b) 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:

1. 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, if in accordance with KRS Chapter 335B;
 - (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 to pay the costs of the investigation and all proceedings.
 - (3) *A private reprimand shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private reprimand shall not constitute disciplinary action, but may be used by the board for statistical purposes, or in subsequent disciplinary actions against the same licensee.*
 - (4)
 - (a) *Any licensee disciplined under this section for a minor violation may request in writing that the board expunge the minor violation from the licensee's record.*
 - (b) *A request for expungement may be filed no sooner than ten (10) years after the date on which the licensee completed the disciplinary sanctions imposed and may only be filed if the licensee has not been disciplined, within this same period of time, for any subsequent violation of the same nature.*
 - (c) *No licensee may have his, her, or its record expunged under this section more than once.*
 - (d) *A minor violation is one that does not:*
 1. *Demonstrate a serious inability to practice the profession;*
 2. *Result in economic harm to a person; or*
 3. *Create a significant threat of such harm.*
 - (5) *The board shall promulgate administrative regulations under KRS Chapter 13A to establish procedures to expunge a minor violation.*

➔Section 4. KRS 325.431 is amended to read as follows:

- (1) The proceedings, records, and workpapers of the *sponsoring organization*~~{peer review committee}~~ shall be privileged and not subject to discovery, subpoena, or other means of legal process, or introduction into evidence in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding. No member of the *sponsoring organization*~~{peer review committee}~~ or person involved in the *peer*~~{quality}~~ review process shall testify in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding as to any matter produced, presented, disclosed, or discussed during or in connection with the *peer*~~{quality}~~ review process, or as to any finding, recommendation, evaluation, opinion, or other action of the committee.
- (2) Information, documents, or records that are publicly available shall not be immune from discovery or use in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding merely because they were presented or considered in connection with the *peer*~~{quality}~~ review process.
- (3) The privilege created in subsection (1) of this section shall not apply to:

- (a) Materials prepared in connection with a particular engagement merely because they happen to subsequently be presented or considered as part of the *peer*[quality] of review process.
- (b) Disputes between *the sponsoring organization*[peer review committees] and persons or firms subject to a *peer*[quality] review arising from the performance of the *peer*[quality] review.
- (c) Correspondence and reports of the peer review program obtained by the board from a licensee seeking renewal or an individual or firm seeking to become licensed.
- (d) A statement obtained by the board from *sponsoring organization*[a peer review committee] to determine if a licensee seeking renewal or an individual or firm seeking to become licensed is enrolled in or is not enrolled in a peer review program.

➔Section 5. KRS 325.440 is amended to read as follows:

- (1) A licensee shall not, without the consent of his client, disclose any confidential information pertaining to his client obtained in the course of performing professional services.
- (2) This section does not:
 - (a) Relieve a licensee of any obligations under the rules of professional conduct;
 - (b) Affect in any way a licensee's obligation to comply with a validly issued subpoena or summons enforceable by order of a court;
 - (c) Prohibit disclosures in the course of a *peer*[quality] review of a licensee's professional services; or
 - (d) Preclude a licensee from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board.
- (3) Members of the board and professional practice reviewers shall not disclose any confidential client information which comes to their attention from licensees in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish such information to an investigative or disciplinary body of the kind referred to above.

Signed by Governor March 23, 2018.