

HOUSE BILL No. 2343

AN ACT concerning accountants; relating to the board of accountancy; relating to peer review and permits; amending K.S.A. 2000 Supp. 1-202, 1-302b, 1-310, 1-311, 1-312, 1-321 and 1-501 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 1-302b is hereby amended to read as follows: 1-302b. (a) No applicant who holds a Kansas certificate issued by the board shall receive a permit to practice in this state as a certified public accountant until the applicant submits evidence satisfactory to the board of having completed one year of accounting experience. This experience shall include providing any type of service or advice involving the use of attest or nonattest skills all of which was verified by a certified public accountant holding an active license to practice, meeting requirements prescribed by the board by rule. This experience would be acceptable if it was gained through employment in government, industry, academia or public practice.

(b) Any individual permit holder who is responsible for supervising attest *or compilation* services and signs or authorizes someone to sign the accountant's report on any audit, review, compilation or the examination of prospective financial information on behalf of the firm, shall meet the experience or competency requirements, as adopted by the board through rules and regulations.

(c) Any individual permit holder who signs or authorizes someone to sign the accountant's report on any audit, review, compilation or the examination of prospective financial information on behalf of the firm, shall meet the experience or competency requirement of subsection (b).

(d) As an alternative to the requirements of subsection (a), an individual with an active license issued by another state who establishes such individual's principal place of business in this state shall request the issuance of both a certificate and a permit to practice from the board prior to establishing such principal place of business. The board may issue both a certificate and permit to such individual who obtains from the NASBA national qualification appraisal service verification that such individual's C.P.A. qualifications are substantially equivalent to the C.P.A. licensure requirements of the uniform accountancy act. An application under this section may be made through the NASBA qualifications appraisal service or similar organization approved by the board. Any individual meeting the requirements set forth in this subsection who is denied a certificate and a permit to practice shall have the opportunity to be heard pursuant to the Kansas administrative procedures act.

Sec. 2. K.S.A. 2000 Supp. 1-310 is hereby amended to read as follows: 1-310. (a) Permits to engage in the practice of certified public accountancy in this state shall be issued by the board to persons who have met the requirements under K.S.A. 1-302b, and amendments thereto.

(b) Each holder of a Kansas certificate, which is numbered with an odd number, who is qualified under K.S.A. 1-302b, and amendments thereto, shall have a permit to practice issued or renewed on a biennial basis which shall expire on the next July 1 which occurs after the date the permit was issued or renewed and which occurs in an odd-numbered year.

(c) Each holder of a Kansas certificate, which is numbered with an even number, who is qualified under K.S.A. 1-302b, and amendments thereto, shall have a permit to practice issued or renewed on a biennial basis which shall expire on the next July 1 which occurs after the date the permit was issued or renewed and which occurs in an even-numbered year.

(d) A person may renew a permit within 12 months of its expiration date if such person submits a complete and sufficient renewal application together with the fee prescribed by K.S.A. 1-301, and amendments thereto.

(e) As a condition for renewal of a permit to practice, the board shall require *all* permit holders to furnish with such applicant's renewal application, evidence of ~~participation in a peer review program unless waived pursuant to K.S.A. 1-501, and amendments thereto, and~~ participation in continuing education in accounting, auditing, or related areas of at least 80 hours during the two-year period for renewal unless the board waives all or a portion of the continuing education requirements. ~~The board may adopt rules and regulations regarding peer review and continuing education including the number of continuing education hours required for~~

~~each year of the two-year period and the type of continuing education. As a condition for renewal of a permit to practice, the board shall require permit holders who do not have their principal place of business in Kansas and who are not required to register pursuant to K.S.A. 1-308, and amendments thereto, to furnish with such applicant's renewal application evidence of participation in a peer review program unless waived for good cause as determined by the board.~~

(f) The board may exempt from the continuing education requirements an individual who holds a permit from another state if:

(1) The permit holder has a principal place of business located outside the state of Kansas;

(2) the permit holder verifies to the board's satisfaction that such person has met the continuing education requirements of the state in which the principal place of business is located;

(3) the board considers the continuing education requirements of the state in which the principal place of business is located to be substantially equivalent to those of Kansas; and

(4) the state in which the principal place of business is located extends the same exemption to Kansas permit holders who practice in that state.

(g) A person who fails to renew a permit within 12 months after its expiration may apply for reinstatement by making application on a form provided by the board, submitting a reinstatement fee as prescribed by K.S.A. 1-301 and amendments thereto, and submitting proof that such person has obtained 40 hours of qualifying continuing education within the preceding 12 months prior to applying for reinstatement.

Sec. 3. K.S.A. 2000 Supp. 1-311 is hereby amended to read as follows: 1-311. (a) The board may deny an application for a Kansas certificate, revoke or suspend any certificate issued under the laws of this state ~~including a Kansas certificate, or any registration granted under K.S.A. 1-308, and amendments thereto,~~ or may revoke, suspend or refuse to renew any permit issued under K.S.A. 1-310 and amendments thereto, and any notification issued pursuant to K.S.A. 2000 Supp. 1-322 and amendments thereto, may censure the holder of any such permit, certificate, ~~or notification or registration,~~ limit the scope of practice of any permit holder, and may impose an administrative fine not exceeding \$2,000, for any one or any combination of the following causes:

(1) Fraud or deceit in obtaining a certificate, permit, *firm* registration or notification;

(2) cancellation, revocation, suspension or refusal to renew a person's authority to practice for disciplinary reasons in any other jurisdiction for any cause;

(3) failure, on the part of a holder of a permit to practice or notification ~~and a registered firm~~ to maintain compliance with the requirements for issuance or renewal of such permit, ~~or notification or registration;~~

(4) revocation or suspension of the right to practice before any state or federal agency;

(5) dishonesty, fraud or gross negligence in the practice of certified public accountancy or in the filing or failure to file the certificate holder's own income tax returns;

(6) violation of any provision of this act or rule and regulation of the board except for a violation of a rule of professional conduct;

(7) willful violation of a rule of professional conduct;

(8) violation of any order of the board;

(9) conviction of any felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of Kansas or of any other state, if the acts involved would have constituted a crime under the laws of Kansas;

(10) performance of any fraudulent act while holding a Kansas certificate;

(11) making any false or misleading statement or verification, in support of an application for a certificate, permit, notification or *firm* registration filed by another; ~~or~~

(12) *failure to establish timely compliance with peer review pursuant to K.S.A. 1-501, and amendments thereto; and*

~~(12)~~ (13) any conduct reflecting adversely on a permit holder's fitness to practice certified public accountancy.

(b) In lieu of or in addition to any remedy specifically provided in subsection (a), the board may require of a permit holder satisfactory completion of such continuing education programs as the board may specify.

(c) All administrative proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act and the act for judicial review and civil enforcement of agency actions.

Sec. 4. K.S.A. 2000 Supp. 1-312 is hereby amended to read as follows: 1-312. ~~After notice and hearing as provided by the Kansas administrative procedure act: (a) The board shall revoke or suspend the registration of any registered firm if at any time it does not have all the qualifications prescribed by K.S.A. 1-308, and amendments thereto; (b) the board may revoke or suspend the registration of any registered firm or may revoke, suspend or refuse to renew the permit to practice of any member of a registered firm, or may censure the holder of any such permit for any of the causes enumerated in K.S.A. 1-311, and amendments thereto; (c) the board may revoke or suspend the registration of any registered firm upon the cancellation, revocation, suspension or refusal to renew the authority of the firm or any partner, officer, shareholder or member thereof to practice public accounting in any other state; and (d) the board may revoke or suspend the registration of a registered partnership if any corporate member thereof ceases to be a professional corporation in good standing under the professional corporation law of Kansas or if the board has revoked or suspended the permit to practice of any shareholder of such professional corporation.~~ *(a) Except as provided in subsection (b), the board may deny an application to register a firm, revoke or suspend a firm's registration, censure a firm, limit the scope of practice of a firm or impose such remedial action as it deems necessary to protect the public interest, or both, and impose an administrative fine not exceeding \$2,000 for any one or any combination of the following causes:*

- (1) Failure to meet the requirements of K.S.A. 1-308 and amendments thereto;*
- (2) fraud or deceit in obtaining a registration;*
- (3) revocation or suspension of a firm's right to practice before any state or federal agency;*
- (4) dishonesty, fraud or gross negligence in the practice of certified public accountancy;*
- (5) violation of any provision of chapter 1 of the Kansas Statutes Annotated and rules and regulations promulgated by the board except for a violation of a rule of professional conduct;*
- (6) willful violation of a rule of professional conduct;*
- (7) violation of any order of the board;*
- (8) cancellation, revocation, suspension or refusal to renew the authority of a firm to practice certified public accountancy in any other state;*
- (9) conviction of a firm of any felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of Kansas or of any other state, if the acts involved would have constituted a crime under the laws of Kansas; or*
- (10) failure to establish timely compliance with peer review pursuant to K.S.A. 1-501 and amendments thereto;*

(b) In actions arising under peer review for reports modified for matters relating to attest services, the board may take such remedial action as it deems necessary to protect the public interest. However, the board may not limit the scope of practice of attest services of a firm or limit the scope of practice of attest services of any permit holder under K.S.A. 1-311, and amendments thereto, for failure to comply with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards unless:

- (1) The firm has received at least two modified peer review reports during 12 consecutive years relating to attest services and the board finds that the firm has exhibited a course of conduct that reflects a pattern of noncompliance with applicable professional standards and practices; or*
- (2) the firm has failed to abide by remedial measures required by a peer review committee or the board.*

(c) Nothing in subsection (b) shall be construed to preclude the board

from: Limiting the scope of practice of attest services of a firm or limiting the scope of practice of attest services of a permit holder under K.S.A. 1-311, and amendments thereto; or taking such remedial action as the board deems necessary to protect the public interest, after a review of an adverse peer review report based on matters relating to attest services if the board determines that the firm failed to comply with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards.

(d) All administrative proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act and the act for judicial review and civil enforcement of agency actions.

(e) The board shall not have the power to assess fines under this section if a fine has been assessed for the same or similar violation under the provisions of subsection (a) of K.S.A. 1-311 and amendments thereto.

Sec. 5. K.S.A. 2000 Supp. 1-321 is hereby amended to read as follows: 1-321. When used in this act, the following terms have the meanings indicated:

(a) “Actively participate” means participation that is continuous as one’s primary occupation.

(b) “Affiliated entity” means one that provides services to the CPA firm or provides services to the public that are complementary to those provided by the CPA firm.

(c) “AICPA” means the American institute of certified public accountants.

(d) “Attest” means providing the following financial statement services:

(1) Any audit or other engagement to be performed in accordance with the statements on auditing standards (SAS);

(2) any audit to be performed in accordance with the Kansas municipal audit guide;

(3) any review of a financial statement ~~or compilation of a financial statement~~ to be performed in accordance with the statements on standards for accounting and review services (SSARS); *and*

(4) any ~~examination of prospective financial information~~ engagement, *except a compilation*, to be performed in accordance with the statements on standards for attestation engagements (SSAE); ~~and~~

~~(5) the statements on standards and guide specified in this act shall be adopted by reference by the board pursuant to rulemaking and shall be those developed for general application by the AICPA or the Kansas division of accounts and reports.~~

(e) “Board” means the Kansas board of accountancy established under K.S.A. 1-201 and amendments thereto.

(f) “Certificate” means a certificate as a certified public accountant issued under K.S.A. 1-302 and amendments thereto, or a certificate as a certified public accountant issued after examination under the law of any other state.

(g) “Client” means a person or entity that agrees with a permit holder to receive any professional service.

(h) “Compilation” means providing a service to be performed in accordance with the statements on standards for accounting and review services (SSARS) or performed in accordance with the statements on standards for attestation engagements (SSAE) that is presented in the form of financial statements or information that is the representation of management, or both, without undertaking to express any assurance on the statements.

~~(i)~~ (i) “Equity capital” means (1) capital stock, capital accounts, capital contributions or undistributed earnings of a registered firm as referred to in K.S.A. 1-308 and amendments thereto; and (2) loans and advances to a registered firm made or held by its owners. “Equity capital” does not include an interest in bonuses, profit sharing plans, defined benefit plans or loans to a registered firm from banks, financial institutions or other third parties that do not actively participate in such registered firm.

~~(j)~~ (j) “Good moral character” means lack of a history of professional dishonesty or other felonious acts.

~~(k)~~ (k) “Active license” means a certificate or a permit to practice

issued by another state that is currently in force and authorizes the holder to practice certified public accountancy.

~~(k)~~ (l) "Licensee" means the holder of a certificate or a permit to practice issued by this state or another state.

~~(l)~~ (m) "Manager" means a manager of a limited liability company.

~~(m)~~ (n) "Member" means a member of a limited liability company.

~~(n)~~ (o) "NASBA" means the national association of state boards of accountancy.

~~(o)~~ (p) "Nonattest" means providing the following services:

(1) The preparation of tax returns and providing advice on tax matters;

~~(2)~~ (2) *the preparation of any compilation;*

~~(3)~~ (3) management advisory, consulting, litigation support and assurance services, except for attest services;

~~(4)~~ (4) financial planning; and

~~(5)~~ (5) any other financial service not included in the statements on auditing standards, the statements on standards for accounting and review services, the standards for attestation engagements as developed by the American institute of certified public accountants or as defined by the board.

~~(p)~~ (q) "Practice of certified public accountancy" means performing or offering to perform attest or nonattest services for the public while using the designation "certified public accountant" or "C.P.A." in conjunction with such services.

~~(q)~~ (r) "Practice of public accountancy" means performing or offering to perform attest or nonattest services for the public by a person not required to have a permit to practice or a firm not required to register with the board.

~~(r)~~ (s) "Professional" means arising out of or related to the specialized knowledge or skills associated with CPAs.

~~(s)~~ (t) "Report," when used with reference to financial statements, means an opinion, report or other form of language that states or implies assurance as 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. 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 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.

~~(t)~~ (u) "Rule" means any rule or regulation adopted by the board.

~~(u)~~ (v) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam; except that "this state" means the state of Kansas.

~~(v)~~ (w) "Substantial equivalency" is a determination by the board of accountancy or its designee that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirements contained in the uniform accountancy act or that an individual CPA's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the uniform accountancy act.

~~(w)~~ (x) "Uniform accountancy act" means model legislation issued by the AICPA and NASBA *in existence on July 1, 2000*. ~~The board shall adopt the act by reference pursuant to rulemaking. The board shall adopt the version of the act in existence on July 1, 2000.~~

Sec. 6. K.S.A. 2000 Supp. 1-501 is hereby amended to read as follows: 1-501. Commencing with ~~permits firm registrations~~ scheduled for renewal ~~for the fiscal year beginning on July 1, 1994~~ *on December 31, 2001, and thereafter.*

(a) The board of accountancy may require as a condition for renewal

of a ~~permit to practice firm registration that an applicant or the applicant's firm~~ *a firm that provides attest services* undergo a ~~quality review or peer review~~ and submit evidence of such so that the board may determine the degree of the ~~applicant's firm's~~ compliance with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards. The reviews shall occur at least once every three years with the cost of such review to be borne by the ~~applicant or the applicant's firm~~.

(b) ~~The applicant's or applicant's firms' completion of a quality review or peer review program endorsed or supported by the American institute of certified public accountants or other substantially similar programs shall satisfy the requirements of this section. The board shall provide for oversight of these programs by adoption of rules and regulations.~~

~~(c) The board may establish criteria for determining when the results of a review under this section are satisfactory to the board. As a result of the review the board may suspend or revoke a permit to practice or firm registration when the results of the review under this section are unsatisfactory to the board. The board may renew a permit or firm registration when the results of the review under this section are unsatisfactory to the board if the applicant or applicant's firm agrees to follow a particular education or remedial program prescribed by the board.~~

~~(d) Failure of an applicant or the applicant's firm to undergo a review under this section constitutes grounds for revocation or suspension by the board of a permit to practice or certificate as prescribed by K.S.A. 1-311, and amendments thereto, or to revoke or suspend a firm registration as prescribed by K.S.A. 1-312, and amendments thereto, unless the board determines that failure to have been due to a reasonable cause.~~

~~(e) An applicant (c) A firm at the time of application, may request in writing upon forms provided by the board, a waiver from the review requirement. The board may grant a waiver if one or more of the following conditions are met: the firm does not perform or has not performed any attest services during the twelve-month period preceding the date of application or for good cause as determined by the board.~~

~~(1) The applicant and the applicant's firm do not engage in and do not intend to engage in during the following year, financial reporting areas of practice, including but not limited to, financial audits, reviews and compilations;~~

~~(2) for reasons of health;~~

~~(3) due to military service;~~

~~(4) in instances of hardship; or~~

~~(5) for other good cause as determined by the board.~~

~~An applicant A firm granted a waiver pursuant to subsection (1) on the basis that the firm does not perform or intend to perform attest services shall immediately notify the board if the applicant or the applicant's firm engages in such practice and thus becomes subject to the review.~~

~~(d) Except as provided by K.S.A. 60-437, and amendments thereto, and in actions by the board of accountancy to enforce this section subsections (e) and (f) of this section, any reports, statements, memoranda, transcripts, findings, records, or working papers prepared and any opinions formulated, in connection with any quality review or peer review shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding, except that such privilege shall not exist when the material in question is involved in a dispute between a reviewer and the person or entity firm being reviewed.~~

~~(e) Nothing in subsection (d) shall limit the authority of the board to require a person whose work is the subject of a peer review or a firm to provide a copy of an adverse or modified peer review report and any documents that contain comments from peer reviewers, responses to comments from the person or firm and any document identifying follow-up requirements for the purpose of determining the person's or firm's compliance with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards, provided however, the board may not request or require a person or firm subject to a peer review to provide a peer review report or any other document contained in this section unless the peer review~~

report has been accepted by a report acceptance committee under the peer review program after December 31, 2001.

(f) In any proceeding before the board in which discussion or admission into evidence of peer review report documents identified in subsection (e) is proposed, the board or presiding officer shall conduct that portion of the proceeding in closed session. In closing a portion of such proceeding, the board or presiding officer may exclude any person from the proceeding except the person whose work is the subject of peer review, members of the permit holder's firm, the attorneys representing the parties, the board's attorneys, necessary witnesses and a court reporter. The board or presiding officer shall make the portions of the agency record in which such documents are disclosed subject to a protective order prohibiting further disclosure. Documents that are privileged under subsection (d) and that are considered during a closed proceeding shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity. No person in attendance at a closed portion of such proceeding shall at a subsequent civil, criminal or administrative hearing, be required to testify regarding the existence or content of a document privileged under subsection (d) which was disclosed in a closed portion of a proceeding, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing. All other evidence shall be presented as part of the proceeding in an open meeting. Offering any testimony or records in the open portion of a proceeding shall not be deemed a waiver of the peer review privilege created in subsection (d).

(g) No person who participates in the conduct of any peer review within the scope of this section shall be liable in damages to any person for any action taken or recommendation made in connection with the peer review process.

Sec. 7. K.S.A. 2000 Supp. 1-202 is hereby amended to read as follows: 1-202. (a) Each year the board shall meet and organize by electing a chairperson and a vice-chairperson from its membership. The board shall appoint a secretary, who need not be a member of the board. The board shall meet at the call of the chairperson but not less than twice each year and shall have a seal. The chairperson and the secretary of the board shall have the power to administer oaths.

(b) The board shall keep records of all proceedings and actions by and before it. In any proceedings in court, civil or criminal, arising out of or founded upon any provisions of this act, copies of such records which are certified as correct by the secretary of the board under the seal of the board shall be admissible in evidence and shall be prima facie evidence of the correctness of the contents thereof.

(c) The board may:

(1) provide for certification, notification and registration and issue permits to practice in accordance with the provisions of this act;

(2) adopt, amend and revoke rules and regulations governing its administration and enforcement of this act, including but not limited to: (A) Educational qualifications required under K.S.A. 1-302a and amendments thereto; (B) experience qualifications required under K.S.A. 1-302b and amendments thereto; (C) continuing professional education qualifications required under K.S.A. 1-310 and amendments thereto; (D) professional conduct directed to controlling the quality of services by licensees, and dealing among other things with independence, integrity and objectivity, competence and technical standards, responsibilities to the public and clients, commissions and referral fees, contingent fees, advertising, firm names, discreditable acts and communication with the board; (E) professional standards applicable to licensees; (F) the manner and circumstances of use of the titles "certified public accountant" and "C.P.A."; (G) peer reviews required in K.S.A. 1-501 and amendments thereto; (H) the definition of substantial equivalency for purposes of K.S.A. 2000 Supp. 1-322 and amendments thereto; and (I) such other rules and regulations as the board may deem necessary to regulate the practice of certified public accountancy.

(d) The board shall:

(1) Keep accounts of its receipts and disbursements;

(2) keep a register of Kansas certificates issued by the board;

(3) deny, revoke, suspend and reinstate certificates, notifications, firm registrations and permits; and

(4) initiate proceedings, hold hearings and do all things necessary to regulate the practice of certified public accountancy.

(e) *Any statements on standards and guides imposed by the board shall meet the standards or guides developed for general application either by the American institute of certified public accountants or the division of accounts and reports which are in effect on July 1, 2001, or any later version as adopted by the board in rules and regulations.*

~~(f)~~ (f) A majority of the board shall constitute a quorum for the transaction of any business at any meeting of the board.

Sec. 8. K.S.A. 2000 Supp. 1-202, 1-302b, 1-310, 1-311, 1-312, 1-321 and 1-501 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.