

CHAPTER 98-340

Committee Substitute for House Bill No. 4065

An act relating to public accountancy; amending s. 473.302, F.S.; providing definitions; amending s. 473.303, F.S.; revising provisions relating to membership on probable cause panels of the Board of Accountancy; amending s. 473.306, F.S.; providing conditions under which the board may adopt an alternative licensure examination for persons licensed to practice public accountancy or its equivalent in a foreign country; providing for appointment of an Educational Advisory Committee for purposes of maintaining proper educational qualifications for licensure of certified public accountants; amending s. 473.308, F.S.; revising licensure requirements relating to public accountancy experience outside this state; amending s. 473.309, F.S.; providing additional requirements for a partnership, corporation, or limited liability company to practice public accountancy in this state; amending s. 473.3101, F.S.; providing requirements for the licensure of sole proprietors and other legal entities; amending s. 473.312, F.S.; providing for appointment of a Continuing Professional Education Advisory Committee for purposes of maintaining proper continuing education requirements for renewal of licensure of certified public accountants; amending s. 473.313, F.S.; providing continuing education requirements for the reactivation of certain licenses; amending s. 473.315, F.S.; providing an exemption for attorneys; amending ss. 473.319, 473.3205, F.S.; revising provisions relating to contingency fees, commissions, and referral fees; amending s. 473.322, F.S.; providing certain requirements for persons offering certain public accounting services; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 473.302, Florida Statutes, is amended to read:

473.302 Definitions.—As used in this chapter, the term:

- (1) “Board” means the Board of Accountancy.
- (2) “Department” means the Department of Business and Professional Regulation.
- (3) “Division” means the Division of Certified Public Accounting.
- (4) “Certified public accountant” means a person who holds a license to practice public accounting in this state under the authority of this chapter.
- (5) “Firm” means any entity that is engaged in the practice of public accounting.
- (6) “Licensed audit firm” or “public accounting firm” means a firm licensed under s. 473.3101.

(7)(5) “Practice of,” “practicing public accountancy,” or “public accounting” means:

(a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, the expression of an opinion on the reliability of an assertion by one party for the use by a third party;~~;~~ ~~or the preparation of financial statements by a certified public accountant, a firm of certified public accountants, or a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person; or~~

(b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is holding herself or himself or itself out as a certified public accountant who holds an active license or a firm of certified public accountants, including the performance of such services by a certified public accountant in the employ of a person ~~so holding herself or firm; or himself or itself out.~~

(c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within s. 473.302(7)(a), by a certified public accountant who holds an active license, a firm of certified public accountants, or a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements, provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting licensees employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

However, these terms shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

(6) ~~“Holding out” means advertising, as a part of a licensee’s business activities, that the licensee is a certified public accountant when providing, or offering to provide, services or products to the public which involve the use of accounting skills or one or more types of management advisory or consulting services.~~

Section 2. Subsection (2) of section 473.303, Florida Statutes, is amended to read:

473.303 Board of Accountancy.—

(2) ~~Notwithstanding the provisions of s. 455.225(4),~~ The probable cause panel of the board may be composed of at least one board member who shall serve as chair and additional board members or ~~one past members member~~ of the board who are licensees ~~is a licensee~~ in good standing. The ~~past board members member~~ shall be appointed to the panel for a maximum of 2 years by the chair of the board with the approval of the secretary of the department.

Section 3. Subsection (5) of section 473.306, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

473.306 Examinations.—

(5) The board may adopt an alternative licensure examination for persons who have been licensed to practice public accountancy or its equivalent in a foreign country so long as the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has ratified an agreement with that country for reciprocal licensure ~~Canadian chartered accountants who have completed the Canadian chartered accountant licensure examination and hold a chartered accountant license from a Canadian province.~~

(6) For the purposes of maintaining the proper educational qualifications for licensure under this chapter, the board may appoint an Educational Advisory Committee, which shall be composed of one member of the board, two persons in public practice who are licensed under this chapter, and four academicians on faculties of universities in this state.

Section 4. Paragraph (a) of subsection (3) and subsection (4) of section 473.308, Florida Statutes, are amended to read:

473.308 Licensure.—

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) 1. Is not licensed and has not been licensed in another state or territory and who qualifies to take the examination as set forth in s. 473.306, who has passed a national, regional, state, or territorial licensing examination which is substantially equivalent to the examination required by s. 473.306, and who has satisfied the experience requirements set forth in s. 473.307; and

2. Has completed such continuing education courses as the board deems appropriate, within the limits for each applicable 2-year period as set forth in s. 473.312, but at least such courses as are equivalent to the continuing education requirements for a licensee in this state during the 2 years immediately preceding her or his application for licensure by endorsement; or

(4) If application for licensure is made prior to August 1, 2000, and the applicant has 5 years of experience in the practice of public accountancy,

either in the United States or in the practice of public accountancy or its equivalent in a foreign country that the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has determined has licensure standards that are substantially equivalent to those in the United States as a licensed chartered accountant in Canada, the board shall waive the requirements of s. 473.306(2)(b)2. that are in excess of a baccalaureate degree. All experience that is used as a basis for waiving said requirements of s. 473.306(2)(b)2. must be experience outside this state. Furthermore, said experience must be after licensure as a certified public accountant by another state or territory of the United States or after licensure in the practice of public accountancy or its equivalent in a foreign country that the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has determined has licensure standards that are substantially equivalent to those in the United States. The board shall have the authority to establish the standards for experience that meet this requirement.

Section 5. Section 473.309, Florida Statutes, is amended to read:

473.309 Practice requirements for partnerships, corporations, and limited liability companies; business entities practicing public accounting.—

(1) A partnership may not engage in the practice of public accounting, as defined in s. 473.302(7)(a), in this state unless:

(a) It is a form of partnership recognized by Florida law.

(b) Partners owning at least two-thirds of the financial interest and voting rights of the partnership are certified public accountants in some state. However, each partner who is a certified public accountant in another state and is domiciled in this state must be a certified public accountant of this state and hold an active license.

(c) At least one general partner is a certified public accountant of this state and holds an active license.

(d) ~~All noncertified public accountant~~ partners who are not certified public accountants in any state are engaged in the business of the partnership as their principal occupation.

(e) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.

(f) It is currently licensed as required by s. 473.3101.

(2) A corporation may not engage in the practice of public accounting, as defined in s. 473.302(7)(a), in this state unless:

(a) It is a corporation duly organized in this or some other state.

(b) Shareholders of the corporation owning at least two-thirds of the financial interest and voting rights of the corporation are certified public accountants in some state and are principally engaged in the business of the

corporation. However, each shareholder who is a certified public accountant in another state and is domiciled in this state must be a certified public accountant of this state and hold an active license.

(c) The principal officer of the corporation is a certified public accountant in some state.

(d) At least one shareholder of the corporation is a certified public accountant and holds an active license in this state.

(e) ~~All noncertified public accountant~~ shareholders who are not certified public accountants in any state are engaged in the business of the corporation as their principal occupation.

(f) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.

(g) It is currently licensed as required by s. 473.3101.

(3) A limited liability company may not engage in the practice of public accounting, as defined in s. 473.302(7)(a), ~~in this state~~ unless:

(a) It is a limited liability company duly organized in this or some other state.

(b) Members of the limited liability company owning at least two-thirds of the financial interest and voting rights of the company are certified public accountants in some state. However, each member who is a certified public accountant in some state and is domiciled in this state must be a certified public accountant of this state and hold an active license.

(c) At least one member of the limited liability company is a certified public accountant and holds an active license in this state.

(d) ~~All noncertified public accountant~~ members who are not certified public accountants in any state are engaged in the business of the company as their principal occupation.

(e) It is in compliance with rules adopted by the board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance.

(f) It is currently licensed as required by s. 473.3101.

(4) A partnership, corporation, limited liability company, or any other business entity is engaged in the practice of public accounting if its employees are engaged in the practice of public accounting. Notwithstanding any other provision of law, a licensed audit firm may own all or part of another licensed audit firm.

Section 6. Section 473.3101, Florida Statutes, is amended to read:

473.3101 Licensure of sole proprietors, partnerships, corporations, and limited liability companies, and other legal entities.—

(1) Each sole proprietor, partnership, corporation, or limited liability company, or any other legal entity seeking to engage in the practice of public accounting, as defined in s. 473.302(7)(a), in this state must file an application for licensure with the department and supply the information the board requires. An application must be made upon the affidavit of a sole proprietor, general partner, shareholder, or member who is a certified public accountant.

(2) The board shall determine whether the sole proprietor, partnership, corporation, or limited liability company, or any other legal entity meets the requirements for practice and, pending that determination, may certify to the department the partnership, corporation, or limited liability company for provisional licensure.

(3) Each license must be renewed every 2 years. Each sole proprietor, partnership, corporation, or limited liability company, or any other legal entity licensed under this section must notify the department within 1 month after any change in the information contained in the application on which its license is based.

Section 7. Section 473.312, Florida Statutes, is amended to read:

473.312 Continuing education.—

(1)(a) As part of the license renewal procedure, the board shall by rule require licensees to submit proof satisfactory to the board that during the 2 years prior to application for renewal, they have successfully completed not less than 48 or more than 80 classroom hours of continuing professional education programs in public accounting subjects approved by the board. The board may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.

(b)(1) Not less than 25 percent of the total hours required by the board shall be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.

(2) Programs of continuing professional education approved by the board shall be formal programs of learning which contribute directly to the professional competency of an individual following licensure to practice public accounting and may be any of the following:

(a) Professional development programs of the American Institute of Certified Public Accountants, state societies of certified public accountants, or other organizations.

(b) Technical sessions at meetings of the American Institute of Certified Public Accountants, state societies, chapters, or other organizations.

(c) University and college courses.

(d) Formal organized in-firm education programs.

(3) The board shall adopt rules establishing the continuing education requirements for licensees who are engaged in the audit of a governmental entity. The board shall approve subjects directly related to the governmental environment and to governmental auditing for purposes of satisfying the requirement of this subsection.

(4) For the purposes of maintaining proper continuing education requirements for renewal of licensure under this chapter, the board may appoint a Continuing Professional Education Advisory Committee, which shall be composed of one member of the board, one academician on the faculty of a university in this state, and six certified public accountants.

Section 8. Section 473.313, Florida Statutes, is amended to read:

473.313 Inactive status.—

(1) A licensee may request that her or his license be placed in an inactive status by making application to the department. The board may prescribe by rule fees for placing a license on inactive status, renewal of inactive status, and reactivation of an inactive license.

(2) A license that has become inactive may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The minimum continuing education requirements for reactivating a license shall be those of the most recent biennium plus one-half of the requirements in s. 473.312 for each year or part thereof during which the license was inactive. Notwithstanding any other provision of this section the continuing education requirements are 120 hours, including at least 30 hours in accounting-related and auditing-related subjects and not more than 30 hours in behavioral subjects, for the reactivation of a license that is inactive on June 30, 1998, if the licensee notifies the Board of Accountancy by December 31, 1998, of an intention to reactivate such a license and completes such reactivation by June 30, 2000.

(3) Any licensee holding an inactive license may be permitted to reactivate such license in a conditional manner. The conditions of reactivation shall require, in addition to the payment of fees, the passing of the examination approved by the board concerning chapters 455 and 473, and the related administrative rules, and the completion of required continuing education.

Section 9. Subsection (4) is added to section 473.315, Florida Statutes, to read:

473.315 Independence, technical standards.—

(4) Attorneys who are admitted to practice law by the Supreme Court of Florida are exempt from the standards of practice of public accounting as defined in s. 473.302(7)(b) and (c) when such standards conflict with the rules of The Florida Bar or orders of the Florida Supreme Court.

Section 10. Section 473.319, Florida Statutes, is amended to read:

473.319 Contingent fees.—Public accounting services as defined in s. 473.302(7)(a) and (c) ~~s. 473.302(5)(a)~~, and those that include tax filings with federal, state, or local government, shall not be offered or rendered for a fee contingent upon the findings or results of such service. This section does not apply to services involving federal, state, or other taxes in which the findings are those of the tax authorities and not those of the licensee. Fees to be fixed by courts or other public authorities, which are of an indeterminate amount at the time a public accounting service is undertaken, shall not be regarded as contingent fees for purposes of this section.

Section 11. Section 473.3205, Florida Statutes, is amended to read:

473.3205 Commissions or referral fees.—A licensee may not accept or pay a commission or referral fee in connection with the sale or referral of public accounting services as defined in s. 473.302(7)(a) and (c) ~~s. 473.302(5)(a)~~. Any certified public accountant or business entity that is engaged in the practice of public accounting and that accepts a commission for the sale of a product or service to a client must disclose that fact to the client in writing in accordance with rules adopted by the board. However, this section shall not prohibit:

- (1) Payments for the purchase of an accounting practice;
- (2) Retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs or estates; or
- (3) Payment of fees to a referring licensee for public accounting services to either the successor licensee or the client in connection with an engagement.

Section 12. Section 473.322, Florida Statutes, is amended to read:

473.322 Prohibitions; penalties.—

- (1) A person may not knowingly:
 - (a) Practice public accounting unless the person is a certified public accountant or a public accountant;
 - (b) Assume or use the titles or designations “certified public accountant” or “public accountant” or the abbreviation “C.P.A.” or any other title, designation, words, letters, abbreviations, sign, card, or device tending to indicate that the person holds an active license under this chapter, unless the person holds an active license under this chapter;
 - (c) ~~Perform or offer to perform any services described in s. 473.302(7)(a) Attest as an expert in accountancy to the reliability or fairness of presentation of financial information or utilize any form of disclaimer of opinion that is intended or conventionally understood to convey an assurance of reliability as to matters not specifically disclaimed unless such person holds an active license under this chapter and is a licensed audit firm or provides such services through a licensed audit firm.~~ Perform or offer to perform any services described in s. 473.302(7)(a) Attest as an expert in accountancy to the reliability or fairness of presentation of financial information or utilize any form of disclaimer of opinion that is intended or conventionally understood to convey an assurance of reliability as to matters not specifically disclaimed unless such person holds an active license under this chapter and is a licensed audit firm or provides such services through a licensed audit firm. This paragraph does not prohibit the performance by persons other than certified public accountants of

other services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without expression of opinion thereon;

- (d) Present as her or his own the license of another;
- (e) Give false or forged evidence to the board or a member thereof;
- (f) Use or attempt to use a public accounting license that has been suspended, revoked, or placed on inactive or delinquent status;
- (g) Employ unlicensed persons to practice public accounting; or
- (h) Conceal information relative to violations of this chapter.

(2) Any person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 13. This act shall take effect October 1 of the year in which enacted.

Became a law without the Governor's approval May 30, 1998.

Filed in Office Secretary of State May 29, 1998.