

CHAPTER 97-35

House Bill No. 947

An act relating to public accountancy; amending s. 473.309, F.S.; revising practice requirements for partnerships, corporations, and limited liability companies; providing that business entities are practicing public accounting if their employees are practicing public accounting; amending s. 473.319, F.S.; restricting the prohibition on contingency fees to certain public accounting services; amending s. 473.3205, F.S.; prohibiting licensees from accepting or paying commissions or referral fees in connection with the sale or referral of certain public accounting services; requiring written disclosure to clients relating to the acceptance of certain commissions; amending s. 473.323, F.S.; providing that failing to provide any required written disclosure to a client or the public is a ground for disciplinary action; providing penalties; amending s. 517.021, F.S., revising an exemption from the definition of investment adviser for certified public accountants; providing an effective date.

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

Section 1. Section 473.309, Florida Statutes, is amended to read:

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

(1) A partnership ~~may~~ shall not engage in the practice of public accounting 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. Each partner is a certified public accountant in some state.; and

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

(d) All noncertified public accountant partners 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 and adequate public liability insurance.

~~(f)(c)~~ It ~~The partnership~~ is currently licensed as required by s. 473.3101.

(2) A corporation ~~may~~ shall not engage in the practice of public accounting in this state unless:

(a) It is a ~~professional service~~ corporation duly organized in this or some any other state.;

(b) ~~Shareholders~~ Each shareholder of the corporation owning at least two-thirds of the financial interest and voting rights of the corporation are certified public accountants is licensed as a certified public accountant in some state and are is principally engaged in the business of the corporation.;

(c) The principal officer of the corporation ~~and any officer or director having authority over the practice of public accounting by the corporation~~ is a certified public accountant in some state.;

(d) At least one shareholder of the corporation, ~~and each shareholder, director, and officer domiciled in this state having authority over the practice of public accounting by the corporation,~~ is a certified public accountant and holds an active license in this state.;

(e) All noncertified public accountant shareholders are engaged in the business of the corporation as their principal occupation.

(f)(e) It is in compliance with rules adopted by the board pertaining to minimum capitalization and adequate public liability insurance.;

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

(3) A limited liability company may not engage in the practice of public accounting in this state unless:

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

(b) ~~Members~~ Each member of the limited liability company owning at least two-thirds of the financial interest and voting rights of the company are certified public accountants is a certified public accountant in some state.

(c) At least one member of the limited liability company, ~~and each member or manager domiciled in this state having authority over the practice of public accounting by the limited liability company,~~ is a certified public accountant and holds an active license in this state.

(d) All noncertified public accountant members are engaged in the business of the company as their principal occupation.

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

(f)(d) 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.

Section 2. Section 473.319, Florida Statutes, is amended to read:

473.319 Contingent fees.—Public accounting services as defined in 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 3. 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(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. A licensee who is engaged in the practice of public accounting shall not pay a commission to obtain a client, nor shall he accept compensation for the sale of products, other than the work product of the licensee, or for referral of products or services of others. 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 4. Paragraph (m) is added to subsection (1) of section 473.323, Florida Statutes, 1996 Supplement, to read:

473.323 Disciplinary proceedings.—

- (1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(m) Failing to provide any written disclosure to a client or the public which is required by this chapter or rule of the board.

Section 5. Paragraph (b) of subsection (10) of section 517.021, Florida Statutes, is amended to read:

517.021 Definitions.—When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

- (10)(a) “Investment adviser” includes any person who for compensation engages for all or part of his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securi-

ties or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of his business as a dealer and who receives no special compensation for such services.

(b) The term "investment adviser" does not include the following:

1. Any licensed practicing attorney ~~or certified public accountant~~ who renders or performs any of such services in connection with the regular practice of his profession;

2. Any licensed certified public accountant whose performance of such services is solely incidental to the practice of his profession;

~~3.2.~~ Any bank authorized to do business in this state;

~~4.3.~~ Any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state;

~~5.4.~~ Any trust company having trust powers which it is authorized to exercise in the state, which trust company renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;

~~6.5.~~ Any person who renders investment advice exclusively to insurance or investment companies; or

~~7.6.~~ Any person who does not hold himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state.

Section 6. This act shall take effect October 1, 1997.

Approved by the Governor April 30, 1997.

Filed in Office Secretary of State April 30, 1997.