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New York Legislation

New York (State)

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New York Legislation

Following is the text of the bill passed by both houses of the legislature of the state of New York relative to the practice of accountancy in that state. At the time of going to press the governor of the state had not signified his approval or disapproval of the bill:

AN ACT

TO AMEND THE GENERAL BUSINESS LAW, IN RELATION TO THE REGULATION OF THE PRACTICE OF PUBLIC ACCOUNTANCY AND THE AUTHORIZATION OF PUBLIC ACCOUNTANTS TO ENGAGE IN SUCH PRACTICE.

The people of the state of New York, represented in senate and assembly, do enact as follows:

Section 1. Article eight of chapter twenty-five of the laws of nineteen hundred and nine, entitled "An act relating to general business, constituting chapter twenty of the consolidated laws," as amended by chapter four hundred and forty-three of the laws of nineteen hundred and thirteen, is hereby amended to read as follows:

ARTICLE VIII

PUBLIC ACCOUNTANTS

Section 80. Definitions.

- 80a. New York board of accountancy.
- 80b. Qualifications and expenses.
- 80c. Powers of the board.
- 80d. Organization and meetings of the board.
- 80e. Receipts and disbursements.
- 80f. Records and reports.
- 80g. Certified public accountants.
- 80h. Issuance of licenses.
- 80i. Expiration and renewal of licenses.
- 81. Penalties and their collections.
- 82. Use of firm names and employment of unlicensed employees.
- 82a. Practice of accountants from other jurisdictions.
- 82b. Effect of invalid provisions.
- 82c. Revocation and re-issue of certificates of certified public accountant and license.
- 82d. New certificate or license to replace certificate or license lost.

Section 80. Definitions. As used in this article: (1) "The education department" means the education department of the state of New York, as provided for by the education law. (2) "The university" means the university of the state of New York. (3) "Regents" means the board of regents of the university of the state of New York. (4) "The board" means the board of accountancy referred to in section eighty-a of this article. (5) "The public practice of accountancy" is defined as follows:

A person engages in the public practice of accountancy within the meaning and intent of this article who, holding himself or herself out to the public as a

qualified practitioner of accountancy, offers for compensation to perform, or who does perform, on behalf of clients, a service that requires the audit or verification of financial transactions and accounting records; the preparation, verification and certification of financial, accounting and related statements for publication or credit purposes; or who in general and as an incident to such work renders professional assistance in any or all matters of principle and detail relating to accounting procedure and the recording, presentation and certification of financial facts.

Section 80a. New York board of accountancy. To carry out the provisions of this article, there is hereby created a state board of accountancy, to be known as the "New York board of accountancy," hereinafter called the "board," consisting of five members, who shall be appointed by the regents of the university of the state of New York within sixty days after this article becomes effective. The members of the first board shall be appointed to serve for the following terms: one member for one year; one member for two years; one member for three years; one member for four years; and one member for five years. On the expiration of each of said terms, the term of office of each newly appointed, or re-appointed member of the board shall be for a period of five years. Each member shall hold over after the expiration of his term until his successor shall be duly appointed and qualified. The regents may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board, however created, shall be filled by appointment by the regents for the unexpired term.

Section 80b. Qualifications and expenses. Each member of the board shall be a citizen of the United States and a resident of this state at the time of his appointment. He shall have been engaged in the practice of accountancy, as defined in section eighty of this article, for at least ten years, and shall have been a certified public accountant for at least five years, and shall be, after this article becomes effective, a licensed practitioner in this state, as provided in this article. Each member of this board shall receive such compensation as may be determined by the regents, for attending sessions of the board or of its committees, and for the time spent in necessary travel, and in addition shall be reimbursed for all necessary travel and other necessary expenses incurred in carrying out the provisions of this article.

Section 80c. Powers of the board. Each member of the board shall receive a certificate of appointment from the regents and before beginning his term of office, he shall file with the secretary of state the constitutional oath of office. The board shall have power to compel the attendance of witnesses, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction; and shall make all by-laws and rules not inconsistent with law, needed in the performance of its duty, and approved by the board of regents.

Section 80d. Organization and meetings of the board. The board shall hold a meeting within thirty days after its members are first appointed, and thereafter shall in the month of October hold a regular annual meeting, at which it shall elect from its members a chairman, a vice-chairman and a secretary. Other regular meetings shall be held at such times as the by-laws of the board may provide, and such special meetings shall be held as may be necessary. Notice of all meetings shall be given in such manner as provided in the by-laws. A quorum of the board shall consist of not less than three members.

Section 80e. Receipts and disbursements. The secretary of the board shall receive and account for all moneys derived from the operation of this article and shall pay them to the regents, who shall pay therefrom all expenses incurred in carrying out the provisions of this article, and shall pay any portion of the moneys received, which shall remain after the payment of these expenses, into the state treasury.

Section 80f. Records and reports. The board shall keep a record of its proceedings and a register of all applicants for the certificate of certified public accountant, showing with respect to each application, the date, name, age, education, and other qualifications, place of business and place of residence, whether or not an examination was required, and whether the applicant was rejected or a certificate of certified public accountant granted, and the date of such action, and in any civil or criminal proceeding involving the violation of any part of this article, the books and register of the board, or a certificate thereof by the chairman of the board, shall be prima facie evidence of all matters recorded therein.

Section 80g. Certified public accountants. The certificate of certified public accountant shall be granted to any citizen of the United States, any person who has declared his intention of becoming such citizen, who resides within the state of New York, or has a place for the regular transaction of business therein, and who is over twenty-one years of age and of good moral character, and who shall submit evidence satisfactory to the board of the possession of academic and professional qualifications for the practice of public accountancy and who passes the required examination; provided that the regents may in their discretion, upon recommendation of the board and without examination, issue the certificate of certified public accountant (a) to any accountant who for a period of three years or more preceding January first, nineteen hundred and twenty-five, has been engaged in the practice of public accountancy within the state, or to any accountant who for a period of three years or more preceding January first, nineteen hundred and twenty-five, has been in responsible charge of accounting engagements as an employed member of the staff of an accountant, or of a firm of accountants engaged in public practice within the state or to any accountant, who is a graduate of a school of accountancy approved by the board of regents and subsequent to such graduation has received a certified public accountant certificate after passing an examination by a duly constituted board of certified public accountant examiners in another state, in which the examination is equal to that required in this state, and who has been in reputable practice of accountancy in this state for a period of not less than one year since receiving his certified public accountant certificate, and provided that each applicant mentioned in this subdivision (a) is engaged in the public practice of accountancy at the time this article goes into effect, provided further such applicant submits evidence of other qualifications satisfactory to the board, and provided further that such applicant makes application for the certificate of certified public accountant on or before the first day of January, nineteen hundred and twenty-five, and provided further that he has been in continuous practice from the date this article becomes effective to the date of his or her application; and (b) to any accountant who has practiced three years or more as a certified public accountant in another state or political subdivision of the United States under a

license or a certificate of his qualifications so to practice, issued by the proper authorities of such state or political subdivision, and whose professional and other qualifications are satisfactory to the board; and the regents shall make all necessary rules for the examination of persons applying for the certificate of certified public accountant and for otherwise carrying into effect the provisions of this section, including a fee of twenty-five dollars, which fee shall accompany every application for a certificate. Applicants examined and licensed in accordance with the provisions of this act but when admitted to the licensing examination who were citizens of a foreign country and who had declared intention of becoming citizens of the United States shall upon passing the examination be issued a certificate of certified public accountant valid for six years from the date of such declaration of intention and upon failure of such accountant to furnish evidence of his having actually become a citizen his certificate shall become invalid and automatically become revoked and his registration and license shall be annulled.

Section 80h. Issuance of licenses. The regents upon application, and upon the payment of a fee of two dollars and upon recommendation of the board, shall issue to any person to whom the certificate of certified public accountant has been granted, a license to engage in the public practice of accountancy, which license shall cover a period of time not exceeding thirteen months, and shall be renewable as hereinafter provided in this article, and under the authority of which the person to whom the license is issued, may engage in the public practice of accountancy in the state of New York, either on his own behalf, or as a member of a firm of public accountants.

The regents shall annually during the month of January publish an alphabetical list of the names, certificate numbers and last-known addresses of all certified public accountants, who are licensed to practise as hereinafter provided, and containing also an alphabetical list of the names of the copartnerships and firms, any member of which is licensed to practise, with the names of members licensed to practise, and shall mail one copy to every person listed therein, to every public library in this state, and to every county clerk in this state, and otherwise distribute the same as the regents in their discretion may consider advisable. And each such published list shall contain at the beginning thereof these words: "Each certified and licensed public accountant receiving this list is requested to notify the secretary of the board the name and address of any person known to be practising as a public accountant, whose name does not appear in this registry. The names of persons giving such information shall not be divulged."

Section 80i. Expiration and renewal of licenses. The licenses issued under this article shall expire on the last day of the month of December following their issuance or renewal, and shall become invalid on that date unless renewed; provided that licenses issued between December first and December thirty-first in any year, shall not expire until December thirty-first of the year following. It shall be the duty of the secretary of the board to notify by mail every person licensed hereunder, of the date of the expiration of his or her certificate, and the amount of the fee required for its renewal for one year; and such notice shall be mailed at least one month in advance of the date of expiration of said certificate.

Renewal may be effected, provided no disqualification has occurred, at any

time during the month of December, upon application by the holder of the license, for renewal, and the payment of the annual license fee of two dollars to the secretary of the board. The failure on the part of any licensee to renew his license annually in the month of December, shall not deprive him or her of the right of renewal thereafter, but the fee to be paid for the renewal of a license after the month of December, shall be increased twenty per centum for each month, or fraction of month that payment for a renewal is delayed, provided, however, that the maximum fee for a delayed renewal shall not exceed twice the regular fee.

Section 81. Penalties and their collection.

(1) Any person who shall

(a) Sell or fraudulently obtain or furnish any certificate of certified public accountant or license, or aid and abet the same, or

(b) Practise accountancy as defined in section eighty of this article, under cover of any certificate of certified public accountant, or license illegally or fraudulently obtained, or signed, or issued unlawfully, or under fraudulent representation or mistake of fact in a material regard, or

(c) Advertise to practise accountancy under a name other than his own, or under a false or assumed name, and

(2) Any person, who not being a certified public accountant and licensed to practise accountancy within this state, as defined in section eighty of this article, or not authorized within the provisions of sections eighty-two and eighty-two-a, shall

(a) Practise or holds himself out to practise public accountancy, or

(b) Use in connection with his name, any designation tending to imply or designate him as engaged in the public practice of accountancy, or

(c) Use the title "certified public accountant," or any abbreviation thereof in connection with his name, or with any trade name in the conduct of any occupation or profession involving or pertaining to the practice of accountancy, unless duly authorized by law to use the same, and

(3) Any person who during the time his license to practise accountancy shall be suspended or revoked, shall practise accountancy as heretofore defined, shall be guilty of a misdemeanor. Such misdemeanor shall be punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment for each separate violation.

(4) All courts of special sessions within their respective territorial jurisdictions are hereby empowered to try, hear and determine such crime without indictment, and to impose the penalties herein prescribed.

Such misdemeanors shall be prosecuted by the district attorney of the county wherein the same are committed, and at any time the attorney-general may, without further authority or direction, supersede the district attorney in the prosecution of such misdemeanors.

(5) In addition to the criminal liability, imprisonment and fine, as above provided, a civil penalty is hereby prescribed and imposed, which shall be one hundred dollars for each such violation to be recovered by the attorney-general in an action against the party or parties guilty of such violation, which action shall be maintained in the name of the people of the state of New York. Such civil penalty shall be cumulative, and each separate day's violation shall

constitute a separate violation, for which recovery may be had by the attorney-general, as above provided. The attorney-general, with the consent of the state commissioner of education, may compromise claims for such penalties, and accept less than the amount claimed, or due, before or after an action has been begun. No compromise may be made, however, after a decision made or verdict rendered, except pursuant to section thirty-four of the state finance law. Notwithstanding the provisions of any other general, local, or special law, all penalties, fees, forfeitures of bail and fines recovered under this article shall be paid to the regents, who shall pay over to the attorney-general out of the sums received, a sufficient amount to pay the salaries of such deputies and assistants as the attorney-general shall assign for the enforcement of this article, and the attorney-general is hereby authorized to pay any deficit in such salaries, or any additional sum necessary out of his general appropriations. The balance of such sums retained by the regents shall be used for the expenses of the regents in the enforcement of this article. On the first day of July, beginning in the year nineteen hundred and twenty-five and each year thereafter, the regents shall pay any balance of such fund remaining in their hands to the state treasurer. After this article shall take effect, the regents shall report to the state comptroller on the fifth day of every month, the amounts received by them under this article and remaining in their hands, with all expenditures made by them for the preceding month.

(6) The display of a card, sign, or an advertisement bearing a person's name as a practitioner of accountancy in any manner, or by implication, or containing any other matter forbidden by law, shall be presumptive evidence in any prosecution or hearing against such person that the person whose name is so carried thereon is responsible for the display of such card, sign, or advertisement, and that he is advertising to practise accountancy thereby. In any prosecution under this section, the proof of a single act prohibited by law shall be sufficient without proving a general course of conduct.

(7) All violations of this article when reported to the regents or the board, and duly substantiated by affidavits or other satisfactory evidence, shall be investigated, and if the report is found to be true, and the complaint substantiated, the regents or the board shall report such violation to the attorney-general and request prompt prosecution. The regents may appoint such inspectors as are necessary, to be paid from the funds received under this article, at such salaries as they may determine, for the purpose of the investigation of such violations.

Section 82. Use of firm names. Nothing contained in this article shall prevent the use in accountancy practice of a firm name or style of partnership duly registered under the laws of this state, provided one partner of such firm and every partner of such firm, who is engaged in the conduct of accountancy practice in the state, is a certified public accountant of New York, and is duly licensed to practise in New York, as elsewhere provided in this article, and further provided that every member of such firm is a certified public accountant or chartered accountant or otherwise legally qualified accountant of the state or country of his domicile, and further provided that unless every member of such firm or such copartnership is a certified public accountant, said firm or copartnership shall not hold itself out as a firm or copartnership of certified public accountants; and nothing contained in this article shall prevent the

employment by a certified public accountant, or a firm or copartnership of certified public accountants, of unlicensed persons as junior, semi-senior or senior or other assistant accountants, provided that the unlicensed employees work under the control and supervision of certified public accountants, and do not certify to any one the accuracy or verification of audits and statements, and provided further that such unlicensed employees do not hold themselves out as engaged in the practice of accountancy as defined in section eighty of this article; and nothing in this article contained shall prevent the continuation in practice of any corporation of this state which was chartered prior to January one, nineteen hundred and twenty-four to practice accountancy, and which has since continuously so practised and is engaged in the practice of public accountancy at the time this article takes effect, provided that no person other than a certified public accountant of this state shall act as its executive or manager or shall execute on its behalf any certificate or report.

Section 82a. Practice of accountant from other jurisdictions. A public accountant who has not qualified to practise under this article, and who resides without the state of New York, and who does not hold himself or herself out to the public as a practitioner of accountancy within the state of New York, may perform work within this state on engagements which arise as an incident to his or her practice in the state or political jurisdiction in which he or she is accredited; provided that the exercise of this privilege shall not be made continuous practice by such accountant within the state.

Section 82b. Effect of invalid provisions. Should the courts of this state or the United States declare any provision of this article unconstitutional or unauthorized, then such decision shall affect only the section or provision so declared to be unconstitutional or unauthorized, and shall not affect any other section or part of this article.

Section 82c. Revocation and re-issue of certificates of certified public accountant and license. The regents shall have the power, on the recommendation of the board, to revoke the certificate of certified public accountant or license to engage in the practice of public accountancy, of any certified public accountant, licensed under the provisions of this article, who has been convicted of a felony, or who is found guilty of any fraud or deceit in obtaining a certificate of certified public accountant, or a license to practice public accountancy or of gross negligence, incompetency, or misconduct in the practice of public accountancy. Any person may prefer charges of such fraud, deceit, negligence, incompetency or misconduct against any certified public accountant licensed under the provisions of this article; such charge shall be in writing, sworn to by the complainant and submitted to the board. The board shall fix the time and place for a hearing upon all charges submitted to it. The board shall fix the time and place for a hearing by not less than three members of the board, within three months after the date on which they are submitted. A copy of the charges, together with a notice of the time and place of hearing shall be served on the accused at least thirty days before the date fixed for the hearing, and in the event that such service cannot be effected thirty days before such hearing, then the date of hearing and determination shall be postponed to such further days as may be necessary to permit the service. At said hearing the accused shall have the right to appear personally and by counsel, and to cross-examine witnesses against him or her, and to produce evidence and witnesses

in his or her defense. If after said hearing, three or more members of the board vote in favor of finding the accused guilty of any fraud or deceit, in obtaining a certificate of certified public accountant or license, or of gross negligence, incompetency or misconduct in the practice of public accountancy, the board shall recommend to the regents, the revocation of the certificate of certified public accountant or license of the accused.

The regents may, on recommendation of the board, re-issue a certificate of certified public accountant or license to any person whose certificate has been revoked.

The regents shall within thirty days notify the clerk of each county of the state of its revocation of a certificate of certified public accountant or license, or its re-issuance of a revoked certificate of certified public accountant or license.

Section 82d. New certificate or license to replace certificate or license lost. A new certificate of certified public accountant or license to replace any certificate or license, lost, destroyed, or mutilated, may be issued upon presentation of satisfactory evidence to the board that the claim for such certificate or license is a valid claim. A charge of twenty dollars shall be made for such re-issued certificate or license.

Section 2. This act shall take effect immediately.