

CHAPTER 97
HOUSE BILL No. 2561

AN ACT concerning licensure, examination and registration of certified public accountants; relating to the board of accountancy; amending K.S.A. 1-302b, 1-308, 1-310, 1-311, 1-312, 1-316, 1-318, 1-319, 1-321 and 1-501 and K.S.A. 2006 Supp. 1-304 and repealing the existing sections.

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

Section 1. K.S.A. 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, attest or compilation or the examination of prospective financial information~~ service 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, attest or compilation or the examination of prospective financial information~~ service 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.~~ CPA qualifications are substantially equivalent to the ~~C.P.A.~~ CPA 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. 2006 Supp. 1-304 is hereby amended to read as follows: 1-304. (a) Each examination provided for by this act shall take place as often as may be necessary in the opinion of the board, but not less frequently than once each year. ~~A candidate who passes the examination in at least two subjects shall be deemed to have a conditional status and shall have the right to be re-examined in the remaining subjects only if a minimum grade of 50 was received in each of the failed subjects, at subsequent examinations held by the board, and if the candidate passes in the remaining subjects within a period of time specified in the rules and regulations of the board, such candidate shall be considered to have passed the examination. Upon the implementation of a computer-based examination, a candidate who has conditional status on the launch date of the computer-based examination shall be given a transition period to complete any remaining examination sections under conditions to be determined by rules and regulations of the board.~~

(b) After considering the need for uniformity with other states, the board may prescribe, by rule and regulation, the examination process, including but not limited to, the administration of the examination, application process, methods of grading, credit and determining a passing grade.

(c) The board may contract with third parties to perform administrative services with respect to the examination.

Sec. 3. K.S.A. 1-308 is hereby amended to read as follows: 1-308. (a)

Notwithstanding any other provision of Kansas law, ~~any individual who operates as a sole practitioner and who issues reports subject to peer review, any general partnership, limited liability partnership, general corporation, professional corporation or limited liability company, hereafter referred to as a "firm" may be organized for the practice of certified public accountancy and a firm may engage in the practice of certified public accountancy in this state only if it the firm registers annually with the board, it complies with requirements established by rules and regulations adopted by the board for such registration, and it meets the following requirements:~~

(1) At least one general partner, shareholder or member thereof must be a certified public accountant of this state holding a valid permit to practice;

(2) each partner, shareholder or member who is a certified public accountant thereof personally engaged within this state in a practice of certified public accounting must be a certified public accountant of this state holding a valid permit to practice;

(3) each partner, shareholder or member who is a certified public accountant thereof must be a certified public accountant in some state in good standing;

(4) each resident manager in charge of an office of the firm in this state must be a certified public accountant of this state holding a valid permit to practice; and

(5) at least a simple majority of the ownership of the firm, in the terms of equity capital and voting rights of all partners, shareholders and/or members, belongs to the holders of valid licenses to practice as certified public accountants in some state. All nonlicensee owners must be of good moral character and must be natural persons actively participating in the business of the firm or entities, such as partnerships, corporations or other business associations, that are affiliated with the firm, provided that each ultimate beneficial owner of an equity interest in such an affiliated entity shall be a natural person actively participating in the business of the firm or affiliated entity. Although firms may include nonlicensee owners *there shall be at least one certified public accountant who has ultimate responsibility for all the services provided by the firm and*, the firm and its ownership must comply with rules and regulations promulgated by the board. Any firm which is denied registration pursuant to this section shall be entitled to notice and an opportunity to be heard pursuant to the Kansas administrative procedures act.

~~(b) Nothing in this section shall prohibit a~~ A professional corporation from practicing in partnership with one or more corporations or individuals ~~and being shall not be~~ registered with the board as a partnership ~~under this section unless such a partnership was registered prior to January 1, 2007.~~

(c) The term "resident" as used in this section, shall include a person engaged in practice as a certified public accountant in this state, who spends all or the greater part of such person's time during business hours in this state, but who resides in another state.

~~(d) The~~ Each firm shall register prior to engaging in the practice of certified public accountancy in this state and shall renew the firm's registration annually. Each firm shall designate a permit holder of this state who is responsible for the proper registration of the firm and shall identify that individual to the board by affidavit of a general partner, manager or officer of the firm. A fee may be charged for the registration of a firm.

(e) A firm ~~which is so that is not~~ registered in accordance with this section ~~may shall not~~ use the words "certified public accountants" or the abbreviation "~~C.P.A.~~" CPA in connection with its name. Notification shall be given the board, within one month, after the admission or withdrawal of a partner, shareholder or member from any firm so registered. Firms which fall out of compliance with the provisions of this section due to changes in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to bring the firm back into compliance within a reasonable period as determined by the board will result in the suspension or revocation of the firm permit. ~~A firm that does not do business in Kansas shall register with the board prior to the date the firm opens a Kansas office.~~

Sec. 4. K.S.A. 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 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. ~~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. 5. K.S.A. 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 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. 1-322 and amendments thereto, may censure the holder of any such permit, certificate or notification, 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, *dishonesty* 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 to maintain compliance with the requirements for issuance or renewal of such permit or notification;

(4) revocation or suspension of the right to practice ~~before by the PCAOB~~ or 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) failure to comply with applicable federal or state requirements regarding the timely filing of the person's personal tax returns, the tax returns of the person's firm or the timely remittance of payroll and other taxes collected on behalf of others;

~~(6)~~ (7) 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)~~ (8) willful violation of a rule of professional conduct;

~~(8)~~ (9) violation of any order of the board;

~~(9)~~ (10) conviction of any felony, or of any crime an element of which is dishonesty, *deceit* 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)~~ (11) performance of any fraudulent act while holding a Kansas certificate;

~~(11)~~ (12) making any false or misleading statement or verification, in support of an application for a certificate, permit, notification or firm registration filed by another;

~~(12)~~ (13) failure to establish timely compliance with peer review pursuant to K.S.A. 1-501, and amendments thereto; and

~~(13)~~ (14) any conduct reflecting adversely on a permit holder's person'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. 6. K.S.A. 1-312 is hereby amended to read as follows: 1-312. (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, *dishonesty* or deceit in obtaining a registration;

(3) revocation or suspension of a firm's right to practice ~~before~~ *by the PCAOB* or 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, *deceit* 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) *After considering AICPA standards on peer review, the board may define, by rules and regulations, the terms “modified” and “adverse.”*

(e) *At the time of suspension or revocation of a firm’s registration, the board may suspend or revoke the permit to practice of a member, shareholder or partner of a firm if the permit holder is the only Kansas member, shareholder or partner of the firm. The permit shall be reinstated upon reinstatement of the firm’s registration.*

(f) 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.

~~(g)~~ (g) 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. 7. K.S.A. 1-316 is hereby amended to read as follows: 1-316. (a) It is unlawful for any person to practice certified public accountancy unless the person holds a *Kansas certificate and a valid permit to practice issued by the board pursuant to K.S.A. 1-310, and amendments thereto, or is entitled to practice pursuant to K.S.A. 1-322 and amendments thereto.*

(b) It is unlawful for any firm to practice certified public accountancy as a certified public accounting firm or ~~C.P.A.~~ CPA firm unless the firm is registered with the board pursuant to K.S.A. 1-308 and amendments thereto.

(c) It is unlawful for any person, except the holder of a valid ~~Kansas~~ certificate, to use or assume the title “certified public accountant” or to use the abbreviation ~~“C.P.A.”~~ CPA or any other title, designation, words, letters, abbreviation, sign, card or device likely to be confused with “certified public accountant.” The use of the term “public accountant” without the word “certified” shall not be interpreted as implying that one is a certified public accountant.

(d) Except as provided by this subsection, no person holding a permit or firm holding a registration under this act shall use a professional or firm name or designation that is misleading as to: (1) The legal form of the firm; (2) the persons who are partners, officers, members, managers or shareholders of the firm; or (3) any other matter. The names of one or more former partners, members or shareholders may be included in the name of a firm or its successor unless the firm becomes a sole proprietorship because of the death or withdrawal of all other partners, officers, members or shareholders. The use of a fictitious name by a firm is permissible if the fictitious name is registered with the board and is not otherwise misleading. The name of a firm may not include the name of an individual who is neither a present nor a past partner, member or shareholder of the firm or its predecessor. The name of the firm may not include the name of an individual who is not a certified public accountant.

(e) It is unlawful for any person, except the holder of a *Kansas permit to practice, or a valid Kansas firm registration,* to issue a report ~~on financial statements~~ *with regard to any attest or compilation service* that references the ~~American institute of certified public accountants~~ AICPA *or the PCAOB, or both.* The practice of public accountancy by persons not required to hold a ~~Kansas~~ permit to practice, including public accountants, is not prohibited or regulated by the provisions of this act, except for the provisions of this section, K.S.A. 1-308 ~~and amendments thereto,~~ K.S.A. 1-318 ~~and amendments thereto~~ and K.S.A. 1-319, and amendments thereto. The title “enrolled agent” may only be used by individuals so designated by the federal internal revenue service.

(f) Any person who violates any provision of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than \$1,000, or to imprisonment for not more than one year, or by both such fine and imprisonment.

Sec. 8. K.S.A. 1-318 is hereby amended to read as follows: 1-318.

Whenever in the judgment of the board any person *or firm, or both*, has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of K.S.A. 1-316 and amendments thereto, or any valid rules and regulations of the board, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that such person *or firm, or both*, has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.

Sec. 9. K.S.A. 1-319 is hereby amended to read as follows: 1-319. (a) The display or ~~uttering~~ *assertion* in any media form or public communication of a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof shall be prima facie evidence in any action for an injunction brought under K.S.A. 1-318, and amendments thereto, that the person whose name is so displayed or ~~uttered~~ *asserted* caused or procured the display or ~~utterance~~ *assertion* and that such person is holding such person out to be the holder of a ~~Kansas~~ certificate issued pursuant to ~~K.S.A. 1-302 and amendment thereto~~ or the holder of a permit to practice issued under K.S.A. 1-310 and amendments thereto.

(b) In any action under K.S.A. 1-318, and amendments thereto, evidence of the commission of a single act prohibited by this act or the act of which this section is amendatory shall be sufficient to justify an injunction without evidence of a general course of conduct.

Sec. 10. K.S.A. 1-321 is hereby amended to read as follows: 1-321. When used in ~~this act~~ *chapter 1 of the Kansas Statutes Annotated, and amendments thereto*, the following terms shall 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 to be performed in accordance with the statements on standards for accounting and review services (SSARS); ~~and~~

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

(5) *any engagement to be performed in accordance with the standards of the PCAOB.*

(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) "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) *"Firm" means:*

(1) *An individual who operates as a sole practitioner and who issues reports subject to peer review; or*

(2) *any business organization including, but not limited to, a general partnership, limited liability partnership, general corporation, professional corporation or limited liability company.*

(k) *"Good moral character" means lack of a history of professional dishonesty or other felonious acts.*

~~(l)~~ (l) *"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.*

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

~~(n)~~ (n) *"Manager" means a manager of a limited liability company.*

~~(o)~~ (o) *"Member" means a member of a limited liability company.*

~~(p)~~ (p) *"NASBA" means the national association of state boards of accountancy.*

~~(q)~~ (q) *"Nonattest" means providing the following services:*

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

(2) *the preparation of any compilation;*

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

(4) *financial planning; and*

(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.*

(r) *"PCAOB" means the public company accounting oversight board created by the Sarbanes-Oxley act of 2002.*

~~(s)~~ (s) *"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." CPA in conjunction with such services.*

~~(t)~~ (t) *"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.*

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

~~(v)~~ (v) *"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.*

~~(w)~~ (w) *"Rule" means any rule or regulation adopted by the board.*

~~(x)~~ (x) *"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.*

~~(y)~~ (y) *"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 ac-*

countancy act.

~~(x)~~ (z) “Uniform accountancy act” means model legislation issued by the AICPA and NASBA in existence on July 1, 2000.

Sec. 11. K.S.A. 1-501 is hereby amended to read as follows: 1-501. ~~Commencing with firm registrations scheduled for renewal on December 31, 2001, and thereafter:~~

(a) The board of accountancy may require as a condition for renewal of a firm registration that a firm that provides attest services undergo a peer review and submit evidence of such so that the board may determine the degree of the 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 firm.

(b) ~~The firms’~~ A firm’s completion of a peer review program endorsed or supported by the ~~American institute of certified public accountants AICPA~~ 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) 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 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.

A firm granted a waiver on the basis that the firm does not perform or intend to perform attest services shall immediately notify the board if the 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 subsections (e) and ~~(f)~~ (g) of this section, any reports, statements, memoranda, transcripts, findings, records, or working papers prepared and any opinions formulated, in connection with any 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 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 report deficiencies~~ 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) *After considering AICPA standards on peer review, the board may define, by rules and regulations, the terms “modified” and “adverse.”*

(g) 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)~~ (h) 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. 12. K.S.A. 1-302b, 1-308, 1-310, 1-311, 1-312, 1-316, 1-318, 1-319, 1-321 and 1-501 and K.S.A. 2006 Supp. 1-304 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 9, 2007.

Published in the *Kansas Register* April 19, 2007.
