

CHAPTER 38

Substitute for HOUSE BILL No. 2339

AN ACT concerning certified public accountants; relating to licensure, examination, registration and peer review; amending K.S.A. 1-307, 1-315 and 1-322 and K.S.A. 2008 Supp. 1-301, 1-302b, 1-308, 1-310, 1-311, 1-312, 1-316, 1-321 and 1-501 and repealing the existing sections.

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

New Section 1. (a) Upon receipt of a complaint or information suggesting violations of the accountancy statutes or the rules and regulations of the board of accountancy, the board may conduct investigations to determine whether there is probable cause to institute proceedings under K.S.A. 1-311, 1-312, 1-316 and 1-322, and amendments thereto. An investigation shall not be a prerequisite to such proceedings in the event that a determination of probable cause can be made without an investigation.

(b) The board may designate one or more board members to serve as investigating officers. The investigating officer or officers may employ, appoint, designate or utilize any other person of appropriate competence to assist with the investigation. Such person, if required, may later provide testimony in the event of a hearing.

(c) Upon completion of an investigation, the investigating officer or officers shall determine whether probable cause exists based upon the documents gathered, discussions with the person or firm under investigation and reports submitted by any other person assisting with the investigation.

(d) If the investigating officer or officers find no probable cause, the complaint, if any, testimony and any documents gathered during the investigation including any information regarding the pendency of an investigation shall be confidential and shall not be disclosed to any person, without the consent of the person or firm under investigation, except to law enforcement and state or federal agencies.

(e) Upon a finding of probable cause, the matter may be referred for prosecution or disciplinary action to the office of attorney general or to an attorney retained by the board.

(f) No person who provides services to the board in conjunction with any investigation authorized in subsection (a) shall be liable in a civil action for damages or other relief arising from any testimony, recommendation or opinion provided by such person acting in good faith and without malice.

(g) In all investigative and disciplinary matters pending before the board, the board shall have the power to issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books and records, documentary evidence and materials. Any person failing or refusing to appear or testify regarding any matter about which such person may be lawfully questioned or to produce any papers, books, records, documentary evidence or materials in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so, upon application to any district judge of the state of Kansas, may be ordered to comply with such subpoena. Upon failure to comply with the order of the district judge, the court may compel obedience by bringing an indirect contempt action pursuant to K.S.A. 20-1204a, and amendments thereto. A subpoena may be served upon any person named therein, anywhere within the state of Kansas with the same fees and mileage being paid as for any officer authorized to serve subpoenas in civil actions in the same manner as is prescribed by the code of civil procedure for subpoenas issued out of the district courts of this state.

(h) Within five days after service of a subpoena on any person requiring the production of any evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion: The evidence required does not relate to practices which may be grounds for disciplinary action; the subpoena is not relevant to the charge which is the subject matter of the proceeding or investigation; or the subpoena does not describe with sufficient particularity the physical evidence which is required to be produced. The district court, upon application by the board or by the person subpoenaed pursuant to subsection (g), shall have jurisdiction to issue an order revoking,

limiting or modifying the subpoena if in the court's opinion: The evidence demanded does not relate to practices which may be grounds for disciplinary action; the subpoena is not relevant to the charge which is the subject matter of the hearing or investigation; or the subpoena does not describe with sufficient particularity the evidence which is required to be produced.

(i) This section shall be part of and supplemental to article 2 of chapter 1 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 2. (a) When the board issues an order that is adverse to a firm, an applicant, a certificate or permit holder or a person practicing pursuant to K.S.A. 1-322, and amendments thereto, reasonable costs incurred by the board in conducting any proceeding under the Kansas administrative procedure act may be assessed against the parties to the proceeding in such proportion as the board may determine upon consideration of all relevant circumstances including the nature of the proceeding and the level of participation by the parties. Such order shall include findings and conclusions in support of the assessment of costs. If the board is the unsuccessful party, the board shall absorb the board's costs.

(b) For the purposes of this section, board costs incurred shall mean the presiding officer fees and expenses, attorneys fees, costs of making any transcripts, statutory witness fees and mileage, and any fees and expenses of persons identified in subsection (b) of section 1, and amendments thereto. Board costs incurred shall not include presiding officer fees, attorney fees and expenses or costs of making transcripts unless the board has designated or retained the services of independent contractors to perform such functions.

(c) This section shall be part of and supplemental to article 2 of chapter 1 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 3. K.S.A. 2008 Supp. 1-301 is hereby amended to read as follows: 1-301. (a) The board shall charge and collect a fee from each applicant for a Kansas certificate or notification and shall charge and collect a fee for a *Kansas* permit to practice as a certified public accountant in this state; *and shall charge and collect a fee for firm registrations in this state.* The board or the board's designated examination service may charge an examination application processing fee. Each fee payable to the board or the examination service shall accompany the appropriate application.

(b) The board shall adopt rules and regulations fixing the fees provided to be charged and collected under this section, which shall be as follows:

(1) For issuance of a certificate (initial or duplicate) an amount not to exceed \$50;

(2) for issuance of a reciprocal certificate an amount not to exceed ~~\$250~~ \$350;

(3) for issuance or renewal of a permit to practice for the holder of a Kansas certificate, an amount not to exceed ~~\$150~~ \$350, subject to paragraphs (4) and (6);

(4) for issuance or renewal of a permit to practice for the holder of a Kansas certificate whose permit is issued or renewed for a period of 12 months or less, an amount equal to ½ the amount of the fee fixed under paragraph (3), subject to paragraph (6);

(5) for issuance of a duplicate permit to practice for the holder of a Kansas certificate, an amount not to exceed ~~\$25~~ \$50;

(6) for reinstatement of a permit to practice in the case of the holder of a Kansas certificate who had in some prior year held a permit to practice but who did not hold such a permit for the year immediately preceding the period for which a permit to practice is requested, or who, if holding a permit to practice for such period immediately preceding applies for renewal subsequent to the expiration date of such permit, an amount equal to 1½ times the amount of the fee then fixed under paragraph (3) or paragraph (4), whichever is applicable;

(7) for notification or renewal of notification required pursuant to K.S.A. 1-322, and amendments thereto, an amount not to exceed \$150; and

(8) for *an initial or an* annual firm registration, an amount not to exceed ~~\$50~~ \$300;

(9) for renewing a firm registration after the expiration, an amount equal to 1½ times the amount of the fee then fixed under paragraph (8);

(10) for examination application processing by the board, an amount not to exceed \$150.

(c) On or before May 30 each year, the board shall determine the amount of funds that will be required during the ensuing year to carry out and enforce the provisions of law administered by the board and may adopt rules and regulations to change any fees fixed under this section as may be necessary, subject to the limitations prescribed by this section. Upon changing any renewal fees as provided by this section, the board shall immediately notify all holders of permits to practice *and of firm registrations* of the amount of such fees. The fees fixed by the board and in effect under this section immediately prior to the effective date of this act shall continue in effect until such fees are fixed by the board by rules and regulations as provided by this section.

Sec. 4. K.S.A. 2008 Supp. 1-302b is hereby amended to read as follows: 1-302b. (a) No applicant who holds a Kansas certificate issued by the board shall receive a permit to practice in this state as a certified public accountant until the applicant submits evidence satisfactory to the board of having completed one year of accounting experience. This experience shall include providing any type of service or advice involving the use of attest or nonattest skills all of which was verified by a certified public accountant holding an active license to practice, meeting requirements prescribed by the board by rule. This experience would be acceptable if it was gained through employment in government, industry, academia or public practice.

(b) Any individual permit holder who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on any attest or compilation 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 attest or compilation 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 CPA qualifications are substantially equivalent to the CPA licensure requirements of the uniform accountancy act~~ *is eligible under the substantial equivalency standard set out in either paragraph (1) or paragraph (2) of subsection (a) of K.S.A. 1-322, and amendments thereto.* An application under this section may be made through ~~the NASBA qualifications~~ *an 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. 5. K.S.A. 1-307 is hereby amended to read as follows: 1-307. (a) The board, in its discretion, may waive the examination of and may issue a certificate to a holder of a certificate as a "certified public accountant" issued under the laws of any state upon a showing that:

(1) The applicant passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in this state; and ~~(2)~~ the applicant (A) meets all current requirements in this state for the issuance of a certificate at the time application is made, (B) at the time of the issuance of the applicant's certificate in the other state, met all such requirements then applicable in this state ~~or~~, (C) had four years' of experience of the type described in subsection (a) of K.S.A. 1-302b, and amendments thereto, after passing the examination upon which the applicant's certificate was based and within the 10 years immediately preceding the application; *or*

(2) *the applicant meets the substantial equivalency standard set out in either paragraph (1) or paragraph (2) of subsection (a) of K.S.A. 1-322, and amendments thereto.*

(b) The board shall issue a certificate to a holder of a foreign designation, granted in a foreign country entitling the holder thereof to engage in the practice of certified public accountancy, provided that:

(1) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid certificate issued by this state to obtain such foreign authority's comparable designation;

(2) the foreign designation: (A) Was duly issued by a foreign authority that regulates the practice of certified public accountancy and the foreign designation has not expired or been revoked or suspended; (B) entitles the holder to issue reports upon financial statements; and (C) was issued upon the basis of educational, examination and experience requirements established by the foreign authority or by law;

(3) the applicant: (A) Received the designation, based on educational and examination standards substantially equivalent to those in effect in this state at the time the foreign designation was granted; (B) completed an experience requirement, substantially equivalent to the requirement set out in K.S.A. 1-302b, and amendments thereto, in the jurisdiction which granted the foreign designation; and (C) passed a uniform qualifying examination in national standards and an examination on the laws, regulations and code of ethical conduct in effect in this state acceptable to the board; and

(4) the applicant shall in the application list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy.

Each holder of a certificate issued under this subsection shall notify the board in writing, within 30 days after its occurrence, of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction. The board has the sole authority to interpret the application of the provisions of this subsection.

Sec. 6. K.S.A. 2008 Supp. 1-308 is hereby amended to read as follows: 1-308. (a) ~~Notwithstanding any other provision of Kansas law~~ *Unless exempt from registration pursuant to this section*, a firm may engage in the practice of certified public accountancy in this state only if the firm registers with the board, complies with requirements established by rules and regulations adopted by the board for such registration, and 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 *from this state or a practice privilege under subsection (a) of K.S.A. 1-322, and amendments thereto*;

(2) each partner, shareholder or member who is a certified public accountant ~~thereof~~ *and whose principal place of business is in this state and who is 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~~ ~~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 *actively participating in the business of 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) *Notwithstanding any other provision of Kansas law, the following must be registered by the board:*

(1) *Any firm with an office in this state which practices certified pub-*

lic accountancy;

(2) any firm that does not have an office in this state but performs or offers to perform attest services described in subsection (d) of K.S.A. 1-321, and amendments thereto, for a client having its home office in this state;

(c) A firm which is not subject to subsection (b) may perform or offer to perform services described in subsection (s) of K.S.A. 1-321, and amendments thereto, and may use the "certified public accountant," "CPA" or "CPA firm" without registering with the board only if:

(1) The individuals performing such services on behalf of the firm have the qualifications described in subsections (b) and (c) of K.S.A. 1-302b, and amendments thereto;

(2) it performs such services through an individual with practice privileges under K.S.A. 1-322, and amendments thereto; and

(3) it can lawfully perform such services in the state where such individuals with practice privileges have their principal place of business.

(d) An individual who has practice privileges under subsection (a) of K.S.A. 1-322, and amendments thereto, who performs or offers to perform services for which a firm registration is required under this section shall not be required to obtain a certificate or permit under K.S.A. 1-310, and amendments thereto.

(e) A professional corporation in partnership with one or more corporations or individuals shall not be registered with the board as a partnership unless such a partnership was registered prior to January 1, 2007.

~~(e)~~ (f) 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)~~ (g) Each firm *required to register under this section* shall register prior to engaging in the practice of certified public accountancy in this state and shall renew the firm's registration ~~annually~~ *by December 31 of each year*. Each firm shall designate a permit holder of this state, *or in the case of a firm which must register pursuant to paragraph (2) of subsection (b) a licensee of another state who meets the requirements set out in subsection (a) of K.S.A. 1-322, and amendments thereto*, 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)~~ (h) A firm that is not registered in accordance with this section *or not exempt from registration under subsection (c)* shall not use the words "certified public accountants" or the abbreviation 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 *registered 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.

(i) *Any firm prohibited from practicing certified public accountancy in this state, as a result of having a firm registration revoked or suspended by the board, shall not practice under subsection (c) without first obtaining the approval of the board.*

Sec. 7. K.S.A. 2008 Supp. 1-310 is hereby amended to read as follows: 1-310. (a) Permits to engage in the practice of certified public accountancy in this state shall be issued by the board to persons who have met the requirements under K.S.A. 1-302b, and amendments thereto.

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

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

year.

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

(e) As a condition for renewal of a permit to practice, the board ~~shall~~ *may* 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.

(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; *and*

(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. 8. K.S.A. 2008 Supp. 1-311 is hereby amended to read as follows: 1-311. (a) The board may deny an application for a Kansas certificate, revoke or suspend any certificate issued under the laws of this state ~~or~~, may revoke, suspend or refuse to renew any permit issued under K.S.A. 1-310 and amendments thereto, *or may revoke or suspend a practice privilege under K.S.A. 1-322, 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 *or practice privilege*, limit the scope of practice of any permit holder, and may impose an administrative fine not exceeding ~~\$2,000~~ \$5,000, for any one ~~or any combination~~ of the following causes:

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

(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 *or practice privilege* to maintain compliance with the requirements for issuance or renewal of such permit ~~or~~, notification *or practice privilege*;

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

(5) dishonesty, fraud or gross negligence in the practice of certified public accountancy;

(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;

(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;

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

(9) violation of any order of the board;

(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;

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

(12) making any false or misleading statement or verification, in support of an application for a certificate, permit, notification or firm regis-

tration filed by another;

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

(14) any conduct reflecting adversely on a 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. 9. K.S.A. 2008 Supp. 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~~ \$5,000 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 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 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~~ *the board's* 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) 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. 10. K.S.A. 1-315 is hereby amended to read as follows: 1-315. The board may reissue the Kansas certificate of any person whose Kansas certificate has been revoked, or may permit the reregistration of any firm whose registration has been revoked, *may reinstate the practice privilege of any out-of-state certified public accountant whose privileges had been revoked* or may reissue or modify the suspension of any permit to practice as a certified public accountant which has been revoked or suspended.

Sec. 11. K.S.A. 2008 Supp. 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 CPA firm unless the firm is registered with the board pursuant to K.S.A. 1-308, and amendments thereto, *or meets the requirements to be exempt from such registration.*

(c) It is unlawful for any person, except the holder of a valid certificate *or practice privilege pursuant to K.S.A. 1-322, and amendments thereto,* to use or assume the title “certified public accountant” or to use the abbreviation 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 practice privilege* or a firm holding a registration under this act *or meeting the requirements to be exempt from such registration* 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 practice privilege pursuant to K.S.A. 1-322, and amendments thereto,* or a valid Kansas firm registration, to issue a report with regard to any attest ~~or compilation service that references the AICPA or the PCAOB, or both~~ *or compilation service under standards adopted by the board. A reference in a report to auditing standards generally accepted in the United States of America is deemed to be a reference to standards adopted by the board.* The practice of public accountancy by persons not required to hold a 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, 1-318 and 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~~ \$5,000, or to imprisonment for not more than one year, or by both such fine and imprisonment.

Sec. 12. K.S.A. 2008 Supp. 1-321 is hereby amended to read as follows: 1-321. When used in 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);

(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 or the statements on standards for attestation engagements (SSAE) the objective of which is to present~~ in the form of financial statements ~~or~~ information that is the representation of management *or owners*, or both, without undertaking to express any assurance on the statements.

(i) “Directed” means the location to which the engagement letter is sent.

(j) “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.

~~(k)~~ (k) “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.

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

~~(m)~~ (m) “Home office” means the location specified by the client as the address to which a service described in subsection (d) of K.S.A. 1-322, and amendments thereto, is directed.

(n) “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.

~~(o)~~ (o) “Licensee” means the holder of a certificate or a permit to practice issued by this state or another state.

~~(p)~~ (p) “Manager” means a manager of a limited liability company.

~~(q)~~ (q) “Member” means a member of a limited liability company.

~~(r)~~ (r) “NASBA” means the national association of state boards of accountancy.

~~(s)~~ (s) “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) *valuation services*; and
(6) 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.

~~(t)~~ (t) “PCAOB” means the public company accounting oversight board created by the Sarbanes-Oxley act of 2002.

~~(u)~~ (u) “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 CPA in conjunction with such services.

~~(v)~~ (v) “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.

~~(w)~~ (w) “*Principal place of business*” means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

(x) “Professional” means arising out of or related to the specialized knowledge or skills associated with CPAs.

~~(y)~~ (y) “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.

~~(z)~~ (z) “Rule” means any rule or regulation adopted by the board.

~~(aa)~~ (aa) “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.

~~(bb)~~ (bb) “Substantial equivalency” is a determination by the board of accountancy or its designee that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirements contained in the uniform accountancy act or that an individual CPA’s education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the uniform accountancy act. *In ascertaining substantial equivalency as used in this act, the board shall take into account the qualifications without regard to the sequence in which experience, education or examination requirements were attained.*

~~(cc)~~ (cc) “Uniform accountancy act” means model legislation issued by the AICPA and NASBA in existence on July 1, ~~2000~~ 2007.

Sec. 13. K.S.A. 1-322 is hereby amended to read as follows: 1-322.
(a) (1) An individual whose principal place of business is not in this state having an active license to practice certified public accountancy from any state which the ~~NASBA national qualification appraisal service, or similar organization approved by the board,~~ board or its designee has verified to be in substantial equivalence with the CPA licensure requirements of the uniform accountancy act ~~may~~ shall be presumed to have qualifications substantially equivalent to this state’s requirements and may be granted all the privileges of permit holders of this state without the need to obtain a permit issued under K.S.A. 1-310 and amendments thereto, ~~or registration issued under K.S.A. 1-308 and amendments thereto;~~ or

(2) an individual whose principal place of business is not in this state having an active license to practice certified public accountancy from any state which the ~~NASBA national qualification appraisal service, or similar organization approved by the board,~~ *board or its designee* has not verified to be in substantial equivalency with the CPA licensure requirements of the uniform accountancy act ~~may~~ *shall* be presumed to have qualifications substantially equivalent to this state's requirements and may be granted all the privileges of permit holders of this state without the need to obtain a permit to practice issued under K.S.A. 1-310, and amendments thereto, ~~or registration issued under K.S.A. 1-308 and amendments thereto, if such individual obtains from the NASBA national qualification appraisal service, or similar organization approved by the board, verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the uniform accountancy act.~~ Any person meeting the requirements set forth in this section who is denied the right to practice in this state under this section shall have the opportunity to be heard pursuant to the Kansas administrative procedures act ~~if such individuals certified public accountancy qualifications are substantially equivalent to the following requirements:~~

(A) *Have at least 150 semester hours of college education, including a baccalaureate or higher academic degree, with a concentration in accounting as defined by the home licensing jurisdiction, from a college or university;*

(B) *obtains credit for passing each of the four test sections of the uniform certified public accountant examination; and*

(C) *possess at least one year of experience including service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, all of which were verified by a certified public accountant holding an active license to practice.*

Any individual who has passed the uniform certified public accountant examination and holds a valid license to practice certified public accountancy issued by another state prior to January 1, 2012, may be exempt from the education requirement in subparagraph (A) of paragraph (2) of subsection (a) for the purposes of this section.

(b) Individuals seeking to practice certified public accountancy in Kansas pursuant to subsection (a) shall notify the board prior to commencing practice in this state. Such individuals shall have a reasonable amount of time from the date of such notification to the board to complete an application of notification provided by the board and shall renew such notification on a biennial basis. The board may enact rules and regulations governing notification and renewal. ~~Individuals entering the state to provide attest services under this section shall be required to provide proof of having a peer review in accordance with K.S.A. 1-501 and amendments thereto, or similar requirements as approved by the board.~~ *Notwithstanding any other provision of law, an individual who offers or renders professional services on or after November 1, 2009, whether in person, by mail, telephone or electronic means, and possesses the qualifications set forth in paragraph (1) or (2) of subsection (a) shall be granted practice privileges in this state and no notice, fee or other submission shall be provided by any such individual. Permits issued pursuant to this section prior to November 1, 2009, shall continue in effect until the expiration date of the permit.*

(c) The board may charge a fee for such notification and a renewal of such notification pursuant to K.S.A. 1-301 and amendments thereto.

(d) Any licensee of another state exercising the privilege afforded under subsection ~~(a)~~ *(b) and the firm which employs that licensee hereby simultaneously consent*, as a condition of the grant of this privilege:

(1) ~~Consents~~ To the personal and subject matter jurisdiction of this board; ~~and;~~

(2) to the appointment of the state regulatory body ~~that initially issued the licensee's certificate~~ *which issued their licenses* as the agent upon whom process may be served in any action or proceeding by the Kansas board against the licensee; ~~and~~

~~(2) (3) to cease offering or rendering professional services in this state individually and on behalf of the firm in the event that the license from the state of the individual's principal place of business is no longer valid; and~~

(4) ~~agrees~~ to comply with this act and the board's rules and regulations.

(e) *An individual who has been granted practice privileges under this section who, for any client having its home office in this state, performs any of the following 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); (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; may only do so through a firm which has registered pursuant to K.S.A. 1-308, and amendments thereto.*

(f) *Any individual prohibited from practicing certified public accountancy in this state, as a result of having a permit, certificate or practice privilege revoked or suspended by the board, shall not be granted practice privileges under this section without first obtaining the approval of the board.*

(g) A holder of a permit to practice issued by this state offering or rendering services or using a CPA title in another state may be subject to disciplinary action in this state for an act committed in another state for which the permit holder would be subject to discipline for an act committed in the other state. The board ~~may~~ shall investigate any complaint made by the board of accountancy of another state.

Sec. 14. K.S.A. 2008 Supp. 1-501 is hereby amended to read as follows: 1-501. (a) The board 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) *Upon the issuance of the first report subject to peer review, a firm shall immediately notify the board on a form provided by the board; register as a firm in compliance with K.S.A. 1-308, and amendments thereto; and provide a peer review letter of completion to the board within 18 months after the date on which the report subject to peer review was issued.*

~~(b)~~ (c) A firm's completion of a peer review program endorsed or supported by the 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)~~ (d) 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)~~ (e) Except as provided by K.S.A. 60-437, and amendments thereto, and subsections (e) and (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)~~ (f) 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 responses to 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)~~ (g) After considering AICPA standards on peer review, the board may define, by rules and regulations, the terms “modified” and “adverse.”

~~(g)~~ (h) 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).

~~(h)~~ (i) 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. 15. K.S.A. 1-307, 1-315 and 1-322 and K.S.A. 2008 Supp. 1-301, 1-302b, 1-308, 1-310, 1-311, 1-312, 1-316, 1-321 and 1-501 are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 27, 2009.

Published in the *Kansas Register* April 2, 2009.
