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Susan L. Somers, Executive Director

Board of Accountancy

Laura Kelly, Governor

## **Testimony Before the Senate Commerce Committee SB 10 (Written Testimony Only)**

Chairman Olson and Members of the Committee:

The Kansas Board of Accountancy offers below its thoughts as to the proposed passage of SB 10. The Board takes a neutral position with respect to passage of SB 10; but has concerns with both its contents and application as presently drafted. If the Legislature is inclined to move forward with SB 10, the Board respectfully requests an exclusion from its application for the reasons set forth below.

The Kansas Board of Accountancy was created in 1915 with a three-member "Board of Examiners" as a part of the Business Administration Department of the University of Kansas. In its present form, the "Board of Accountancy" was statutorily authorized by the Kansas Legislature in 1952 and is vested with the responsibility to protect the public through enforcement of the laws governing the practice of certified public accountancy. The Board is composed of individual citizens of the State of Kansas, including both licensed practitioners and members of the general public. At present, there are 3,848 permit holders authorized to perform services in the state of Kansas as a certified public accountant; many of whom own, operate, or are employed by a Kansas business. In addition, there are many individuals who reside outside of the state who are authorized to practice certified public accountancy in Kansas pursuant to K.S.A. 1-322. They are permitted to do so under the doctrine of mobility, which permits qualified individuals who reside and hold a professional license in another state to provide certain services in Kansas without the necessity of a Kansas permit. Permit holders are "certified" public accountants. Traditional "public accountants" are not certified and are not regulated in the State of Kansas.

To practice certified public accountancy in Kansas, and in recognition of the importance of the services afforded to the public, an individual is required to complete a 150-semester hour course specific education requirement, the confines of which are set forth by statute, and a comprehensive examination. A minimum period of experience is also required by statute to garner a permit to practice certified public accountancy. These requirements mirror in most respects, the requirements of the other 55 jurisdictions. The Board has been directed by the Kansas Legislature to promulgate Regulations in certain specific areas, all of which as a matter of law, must be consistent with the statutes under which they are promulgated, appropriate and reasonable. The Board regularly reviews the propriety and necessity of regulation, considers how other states are regulating the profession and confers with stakeholders on the content and

necessity of Regulations. Each Regulation, before passage, must be vetted by the Division of Budget, the Department of Administration, and the Attorney General. In addition, the Regulations are subject to review by the Joint Committee on Administrative Rules and Regulations and the subject of a public hearing where support and opposition are considered prior to final adoption. Finally, an individual subject to a Rule or Regulation currently has a pathway to challenge the propriety of the Regulation through application of the Kansas Judicial Review Act. K.S.A. 77-601 *et. seq.* Judicial standards at present confirm that Regulations must be within the statutory authority conferred by the Legislature or they are void. Furthermore, those Regulations must be appropriate, reasonable, and not inconsistent with the law. In sum, the Kansas Legislature has established the Board's scope of authority, and the Kansas judiciary is currently authorized to monitor Regulations to ensure compliance with the Legislature's intent.

With this history and background in mind, the Board does have concerns as to the content of SB 10. SB 10 mandates that a licensing board review and report on the merits of published Regulations. While this goal is reasonable, the criteria for review is vague and burdensome. More importantly, SB 10 creates a statutory method by which any individual may file a legal action against a state agency challenging the propriety of a Regulation. That action may be filed without regard to whether that individual has suffered harm by virtue of the application of that Regulation; without regard to whether that individual is otherwise worthy of professional licensure as a certified public accountant; and without fair notice to the agency that the propriety of a particular Regulation is at issue. The Board's concerns include, without limitation, the following:

- (1) **The standards described in SB 10 to judicially assess the propriety of a Regulation are both vague and burdensome.** Individual opinions proffered by learned and caring professionals and citizens, can reasonably differ as to what is appropriate and necessary. In sum, actions taken in good faith to protect the citizens of Kansas and which have no history or attendant expectation of adversely impacting an individual and that have been formulated in accordance with the multiple safeguards outlined above, including legislative oversight and public hearings of proposed Regulations, may be viewed as unlawful and subject the Board to significant liability. **It is reasonable to anticipate that SB 10 may subject state agencies to ongoing and continuous litigation.**
- (2) Implementation of SB 10 may also overlap and impact the current ability of the Legislature to delegate authority to licensing boards to implement reasonable and appropriate Regulations. **SB 10, as drafted, does not provide immunity or relief to an agency that complies with a legislative mandate.** Instead, SB 10 judges the propriety of a Regulation solely on whether it is a burden of any degree, whether the Regulation is clearly directed to the public health, safety, and welfare and whether the Regulation is the least restrictive occupational Rule or Regulation available to maintain public health, safety, and welfare. **Accordingly, despite the Legislature's stated intent as to the development and implementation of Regulations, SB 10 may hinder a board's ability to effectively carry out that intent.** In the end, legislative bodies may be forced to micromanage each profession through the legislative process.

- (3) **Current mechanisms exist for the proper and reasonable implementation and review of Rules and Regulations.** Indeed, one of the most influential bodies participating in that process is the legislative Joint Committee on Administrative Rules and Regulations. The Board submits that the current process is suitable and appropriate.
- (4) It is the Board's understanding that legislation similar to SB 10 has been introduced in many states, but only perhaps the State of Tennessee has adopted legislation somewhat similar to SB 10. Given that SB 10 advocates that a licensing board consider how other states regulate the profession, **it would be reasonable to decline to implement SB 10 at this time without evidence of its effectiveness elsewhere.**
- (5) SB 10 paints all agencies with the same broad brush even though occupational licensing boards have varying degrees of influence on a profession, have unique variations in the scope and content of their standards, and distinct impacts on the public health, safety, and welfare. For this reason, **it is reasonable to consider whether the most appropriate remedy for concerns about the content and scope of Rules and Regulations, is to permit the Legislature to review and redefine where necessary a specific board's regulatory authority.** The perceived goals of SB 10 are conducive to consideration by the Legislature on a case-by-case basis.

The "practice of accountancy" by public accountants is not regulated in this state and persons may practice freely and without limitation. However, the "practice of certified public accountancy", restricted solely to Certified Public Accountants, is deemed to be a specialized profession worthy of governance and oversight. In fact, many, if not most of the members of the profession, take pride in their standing as such. Citizens and businesses alike, regularly rely upon the Board to oversee and supervise the profession in accordance with the Legislature's intent, subject to the reasonable limitation's existent in the status quo. The Board has trust in the present legislative oversight of the regulatory process and the joint input of the Attorney General and the public, to ensure that Regulations are reasonable and appropriate. For this reason, and at this time, the Board has concerns as to the propriety and necessity of SB 10.

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Sean P. Weaver, CPA, Chair  
Kansas Board of Accountancy