

FILED

2001 APR 25 P 12: 40

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2503

(By Delegates Douglas, Kuhn, Manchin,
Marshall, Perdue, Azinger and Stalnaker)



Passed April 12, 2001

In Effect July 1, 2001

FILED

2001 APR 25 P 12: 41

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2503

(BY DELEGATES DOUGLAS, KUHN, MANCHIN,
MARSHALL, PERDUE, AZINGER AND STALNAKER)

[Passed April 12, 2001; in effect July 1, 2001.]

AN ACT to amend and reenact article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of the practice of accountancy generally; establishing licensure requirements; and providing a civil cause of action and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-1. License required to practice.

FILED

17 15 11

Enr. Com. Sub. for H. B. 2503] 2

WEST VIRGINIA
STATE

1 To protect the public interest in receiving accurate and
2 reliable financial information and assurance, certified public
3 accountants, public accountants, and accounting firms are
4 required to be licensed as provided in this article.

§30-9-2. Definitions.

1 As used in this article, the following words and terms have
2 the following meanings, unless the context or associated
3 language clearly indicates otherwise:

4 (1) "Assurance" means any act or action, whether written
5 or oral, expressing an opinion or conclusion about the reliability
6 of a financial statement or about its conformity with any
7 financial accounting standards.

8 (2) "Attest services" means providing any audit or review
9 of a financial statement or any examination of prospective
10 financial information performed in accordance with applicable
11 statements on standards.

12 (3) "Audit" means expressing an opinion about the fairness
13 of presentation of financial statements in accordance with
14 applicable statements on standards.

15 (4) "Authorization" means an authorization issued pursuant
16 to this article that entitles a permit holder or an individual
17 practitioner to perform attest or compilation services.

18 (5) "Board" means the West Virginia board of accountancy.

19 (6) "Business entity" means any corporation, partnership,
20 limited partnership, limited liability partnership, professional
21 limited liability partnership, limited liability company, profes-
22 sional limited liability company, joint venture, business trust or
23 any other form of business organization. The term "business
24 entity" includes a firm.

25 (7) "Certificate" means a certificate as a certified public
26 accountant issued or renewed by the board pursuant to this
27 article or corresponding provisions of prior law.

28 (8) "Certified public accountant" or "CPA" means the
29 holder of a certificate.

30 (9) "Client" means a person or entity that agrees with a
31 licensee or licensee's employer to receive any professional
32 service.

33 (10) "Commission" means compensation, except a referral
34 fee, for recommending or referring any product or service to be
35 supplied by another person.

36 (11) "Compilation services" means providing a service
37 performed in accordance with applicable statements on stan-
38 dards that presents, in the form of a financial statement,
39 information that is the representation of management without
40 an expression of assurance on the statement: *Provided*, That this
41 definition does not apply to the use of the term "compilation"
42 in section thirty-one of this article.

43 (12) "Contingent fee" means a fee established for the
44 performance of any service pursuant to an arrangement in
45 which no fee will be charged unless a specified finding or result
46 is attained, or in which the amount of the fee is otherwise
47 dependent upon the finding or result of the service. A fee fixed
48 by a court, taxing authority or other public authority is not a
49 contingent fee.

50 (13) "Examination," when used with reference to prospec-
51 tive financial statements, means expressing an opinion about
52 the fairness of presentation of financial information in accor-
53 dance with applicable statements on standards.

54 (14) "Financial statement" means a writing or other
55 presentation, including accompanying notes, which presents, in

56 whole or in part, historical or prospective financial position,
57 results of operations or changes in financial position of any
58 person, corporation, partnership or other entity.

59 (15) "Firm" means any business entity, including an
60 accounting corporation, in which two or more certified public
61 accountants or public accountants hold an ownership or
62 membership interest, in terms of the financial interests and
63 voting rights of all partners, officers, shareholders, members or
64 managers, and the primary business activity of which is the
65 provision of professional services to the public by certified
66 public accountants or public accountants.

67 (16) "Firm ownership requirements" means, with respect to
68 any firm, the requirements that: (A) Sixty percent of the
69 ownership of the firm, in terms of financial interests and voting
70 rights of all partners, officers, shareholders, members or
71 managers, belongs either to certified public accountants or
72 public accountants who have met the continuing professional
73 education requirements of subsection (b), section twelve of this
74 article and who are not subject to the exemption or limitation
75 set forth in subdivisions (1) or (2) of subsection (b), section
76 twelve of this article, but not a combination of certified public
77 accountants and public accountants; and (B) all owners of the
78 firm who are not certified public accountants or public accoun-
79 tants are active participants in the firm.

80 (17) "Foreign" means any country other than the United
81 States.

82 (18) "Good moral character" means lack of a history of
83 dishonesty or felonious activity.

84 (19) "Individual practitioner" means a certified public
85 accountant or a public accountant who offers professional
86 services to the public but who does not practice in a firm.

87 (20) "License" means a certificate, permit, registration or
88 authorization.

89 (21) "Licensee" means the holder of a license.

90 (22) "Manager" means a manager of a limited liability
91 company.

92 (23) "Member" means a member of a limited liability
93 company.

94 (24) "Nonlicensee" means a person or business entity that
95 does not hold a license.

96 (25) "Out-of-state certificate" means a valid certificate as
97 a certified public accountant or equivalent designation issued or
98 renewed under the laws of another state: *Provided*, That
99 "out-of-state certificate" does not include any certificate as a
100 certified public accountant or equivalent designation that was
101 issued or renewed solely by virtue of a holder's prior status as
102 a public accountant or its equivalent in the state of issuance and
103 not by virtue of the holder's having met the certification
104 requirements of the state of issuance.

105 (26) "Out-of-state permit" means a valid permit as a firm
106 of certified public accountants or another designation equiva-
107 lent to a permit issued or renewed by the board and that is
108 issued or renewed under the laws of another state.

109 (27) "Peer Review" means a study, appraisal, or review of
110 one or more aspects of the professional work of a licensee by a
111 person who holds a certificate or an out-of-state certificate and
112 who is not affiliated with the licensee being reviewed.

113 (28) "Permit" means a permit issued to a firm pursuant to
114 this article.

115 (29) "Professional services" means those services that
116 involve the specialized knowledge and skills of a certified
117 public accountant or a public accountant.

118 (30) "Public accountant" means a person holding a registra-
119 tion who is not a certified public accountant.

120 (31) "Referral fee" means compensation for recommending
121 or referring any service of a licensee to any person.

122 (32) "Registration" means a registration as a public
123 accountant issued by the board pursuant to prior law governing
124 the registration of public accountants and renewed by the board
125 pursuant to this article.

126 (33) "Report," when used with reference to financial
127 statements, means an opinion or disclaimer of opinion or other
128 form of language or representation which states or implies any
129 form of assurance or denial of assurance.

130 (34) "Rule" means any rule proposed for legislative
131 approval by the board pursuant to this article.

132 (35) "State" means any state of the United States, the
133 District of Columbia, Puerto Rico, the U.S. Virgin Islands or
134 Guam.

135 (36) "Substantial equivalency" or "substantially equivalent"
136 means or refers to a determination by the board that the
137 education, examination and experience requirements contained
138 in the statutes or rules of another state are comparable to or
139 exceed the education, examination and experience requirements
140 contained in the uniform accountancy act, or that an individual
141 certified public accountant's education, examination and
142 experience qualifications are comparable to or exceed the
143 education, examination and experience requirements contained
144 in the uniform accountancy act.

145 (37) "Substantial equivalency practitioner" means any
146 individual holding an out-of-state certificate who has notified
147 the board of his or her intent to practice accountancy in the state
148 under the provisions of this article and has complied with the
149 provisions of section sixteen of this article.

150 (38) "Uniform accountancy act" means the uniform
151 accountancy act, third edition, revised (November 1999), jointly
152 published by the American institute of certified public account-
153 tants and the national association of state boards of account-
154 tancy.

**§30-9-3. Board of accountancy; appointment; terms, qualifica-
tions of members; removal of members; compensa-
tion of members.**

1 (a) The West Virginia board of accountancy is hereby
2 continued.

3 (b) (1) Commencing with the board terms beginning the
4 first day of July, two thousand one, the board shall consist of
5 seven members appointed for terms of three years by the
6 governor with the advice and consent of the Senate. Five
7 members must be certified public accountants; one member
8 must be a public accountant so long as twenty-five or more
9 public accountants are registered by the board, but if there are
10 fewer than twenty-five public accountants registered by the
11 board, then the member may be either a public accountant or a
12 certified public accountant; and one member must be a citizen
13 member who is a resident of this state, who is not licensed
14 under the provisions of this article and who also is not a
15 bookkeeper, enrolled agent or a person who provides or offers
16 to provide to the public any bookkeeping, tax preparation,
17 financial advisory or insurance service: *Provided*, That the
18 members of the board in office on the first day of July, two

19 thousand one, shall continue to serve until their respective
20 terms expire.

21 (2) Each licensed member of the board, at the time of his or
22 her appointment, must have held a license in this state for a
23 period of not less than five years immediately preceding the
24 appointment and each member must be a resident of this state
25 during the appointment term.

26 (3) Each appointment of a public accountant, whether for
27 a full term or to fill a vacancy, must be made by the governor
28 from among three nominees selected by the West Virginia
29 public accountants association and each appointment of a
30 certified public accountant, whether for a full term or to fill a
31 vacancy, must be made by the governor from among three
32 nominees selected by the West Virginia society of certified
33 public accountants: *Provided*, That when the appointment of a
34 certified public accountant is to fill the seat held on the first day
35 of July, two thousand one, by a public accountant, then the
36 appointment, whether for a full term or to fill a vacancy, must
37 be made by the governor from among three nominees selected
38 by the West Virginia public accountants association. When the
39 appointment is for a full term, the nominations must be submit-
40 ted to the governor not later than eight months prior to the date
41 on which the appointment will become effective. When the
42 appointment is to fill a vacancy, the nominations must be
43 submitted to the governor within ten days after a request for the
44 nominations has been made by the governor to the president of
45 the West Virginia society of certified public accountants or
46 president of the West Virginia public accountants association.
47 If the society or the association fails to submit to the governor
48 nominations for an appointment in accordance with the require-
49 ments of this section, the governor may make the appointment
50 without the nominations.

51 (c) No member may serve more than two consecutive full
52 terms, and any member having served two full terms may not
53 be appointed for one year after completion of his or her second
54 full term. A member shall continue to serve until his or her
55 successor has been appointed and qualified.

56 (d) If a board member is unable to complete a term, the
57 governor shall appoint a person of similar qualifications to
58 complete the unexpired term: *Provided*, That if the board
59 member is a certified public accountant or public accountant,
60 the governor shall appoint a person from any nominees submit-
61 ted pursuant to subdivision (3), subsection (b) of this section.
62 Each vacancy occurring on the board must be filled by appoint-
63 ment within sixty days after the vacancy is created.

64 (e) The governor may remove any member from the board
65 for neglect of duty, incompetency or official misconduct.

66 (f) Any member of the board shall immediately and
67 automatically forfeit his or her membership if he or she has his
68 or her certificate or registration suspended or revoked by the
69 board, is convicted of a felony under the laws of any state or the
70 United States, or becomes a nonresident of this state.

71 (g) Each member of the board shall receive compensation
72 and expense reimbursement in accordance with section eleven,
73 article one of this chapter.

§30-9-4. Powers of the board.

1 The board has all the powers set forth in article one of this
2 chapter, and in addition may:

3 (1) Sue and be sued in its official name as an agency of this
4 state;

5 (2) Hire, fix the compensation of and discharge the employ-
6 ees necessary for the administration of this article;

7 (3) Examine and determine the qualifications of any
8 applicant for a license;

9 (4) Issue, renew, deny, suspend, revoke or reinstate licenses
10 and take disciplinary action against licensees;

11 (5) Investigate alleged violations of the provisions of this
12 article, reasonable rules promulgated hereunder and orders and
13 final decisions of the board;

14 (6) Conduct hearings upon charges calling for the revoca-
15 tion or suspension of a license or take disciplinary action
16 against a licensee, firm or substantial equivalency practitioner;

17 (7) Cooperate with the appropriate authorities in other
18 states in the investigation and enforcement of violations of this
19 article or comparable acts of other states;

20 (8) Propose rules in accordance with the provisions of
21 article three, chapter twenty-nine-a of this code; and

22 (9) Take all other actions necessary and proper to effectuate
23 the purposes of this article.

§30-9-5. Rule-making authority.

1 (a) The board shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to implement the provisions of this
4 article, including, but not limited to, the following:

5 (1) The education required of an applicant;

6 (2) The experience required of an applicant;

- 7 (3) The examination administered under this article;
- 8 (4) Issuing or renewing a certificate, registration, permit or
9 authorization;
- 10 (5) Denying, suspending, revoking, or reinstating a certifi-
11 cate, registration, permit or authorization;
- 12 (6) The conduct of investigations;
- 13 (7) Firm ownership requirements;
- 14 (8) Accounting corporations;
- 15 (9) Substantial equivalency requirements;
- 16 (10) Continuing professional education requirements for
17 licensees, including exemptions;
- 18 (11) Peer review requirements;
- 19 (12) Professional conduct requirements;
- 20 (13) Identifying professional services required to be
21 performed in accordance with the applicable statements on
22 standards;
- 23 (14) Use of the titles “certified public accountant,” “CPA,”
24 “public accountant” and “PA”;
- 25 (15) Use of commissions, referral fees and contingent fees;
- 26 (16) Fees for the issuance and renewal of a certificate,
27 registration, permit or authorization and other fees authorized
28 by this article; and
- 29 (17) Other rules the board considers necessary and proper
30 for implementing the provisions of this article.

31 (b) All rules in effect on the first day of July, two thousand
32 one, will remain in effect until they are superseded.

§30-9-6. Fees; special fund; administrative fines.

1 (a) All fees and other moneys, except administrative fines,
2 received by the board must be deposited in the separate special
3 fund which has been established for the board in the state
4 treasury and must be used for the administration of this article.
5 Except as may be provided in section eleven, article one of this
6 chapter, the board shall retain the amounts in the special fund
7 from year to year. No compensation or expense incurred under
8 this article is a charge against the general revenue fund.

9 (b) Any amounts received as administrative fines imposed
10 pursuant to this article must be deposited into the general
11 revenue fund of the state treasury.

**§30-9-7. Issuance of certificate; certificates issued prior to the
first day of July, two thousand one.**

1 (a) The board shall issue a certificate to an applicant of
2 good moral character who demonstrates that:

3 (1) He or she meets the qualifications for a certificate set
4 forth in section eight of this article;

5 (2) He or she holds an out-of-state certificate and meets the
6 requirements of section nine of this article;

7 (3) He or she holds an out-of-state certificate, does not meet
8 the requirements of section nine of this article but does meet the
9 requirements of section ten of this article; or

10 (4) He or she holds a substantially equivalent foreign
11 designation and meets the requirements of section eleven of this
12 article.

13 (b) Certificates will initially be issued for a period to expire
14 on the thirtieth day of June following the date of issue.

15 (c) Applications for the issuance of certificates must be
16 made in the form specified by the board by rule: *Provided*, That
17 the application must require an applicant to list all states in
18 which he or she has applied for or holds an out-of-state certifi-
19 cate and any past denial, revocation or suspension of an out-of-
20 state certificate.

21 (d) The board shall charge an application fee in an amount
22 specified by rule.

23 (e) A certificate issued by the board prior to the first day of
24 July, two thousand one, will for all purposes be considered a
25 certificate issued under this section: *Provided*, That a person
26 holding a certificate issued prior to the first day of July, two
27 thousand one, must renew the certificate pursuant to section
28 twelve of this article.

§30-9-8. Education, examination and experience certificate requirements.

1 The board shall issue a certificate to an applicant of good
2 moral character who meets the following requirements:

3 (1) Before applying for the examination prescribed in
4 subdivision (2) of this section, the applicant has met the
5 following educational requirements:

6 (A) For an applicant making his or her initial application
7 for examination prior to the fifteenth day of February, two
8 thousand, a baccalaureate degree or its equivalent; or

9 (B) For an applicant making his or her initial application for
10 examination on or after the fifteenth day of February, two
11 thousand, at least one hundred fifty semester hours of college

12 education including a baccalaureate or higher degree conferred
13 by a college or university;

14 (2) Has passed the uniform certified public accountant
15 examination published by the American institute of certified
16 public accountants or its successor and any additional examina-
17 tion required by the board by rule that tests the applicant's
18 knowledge of subjects related to the practice of accounting; and

19 (3) Demonstrates that he or she has had one year of
20 experience in providing any type of service or advice involving
21 the use of accounting, attest, compilation, management advi-
22 sory, financial advisory, tax or consulting skills. The experience
23 requirement may be satisfied by employment in private
24 practice, government, industry, academia or public practice. An
25 applicant's experience must be verified by a licensee and must
26 meet requirements specified by rule.

§30-9-9. Substantial equivalency certificate requirements.

1 The board shall issue a certificate to an applicant who holds
2 a valid out-of-state certificate if the state of issuance extends
3 similar privileges to holders of certificates under circumstances
4 similar to those described in this section and if the board
5 determines that:

6 (1) The state of issuance of the out-of-state certificate has
7 certified public accountant certification requirements that are
8 substantially equivalent to the certified public accountant
9 certification requirements of the uniform accountancy act; or

10 (2) The applicant has individual qualifications that are
11 substantially equivalent to the certified public accountant
12 certification requirements of the uniform accountancy act.

§30-9-10. Not substantially equivalent certificate requirements.

1 The board shall issue a certificate to an applicant of good
2 moral character who holds a valid out-of-state certificate but

3 who does not qualify for a certificate under the provisions of
4 section nine of this article if the applicant meets the education,
5 experience, examination and continuing education requirements
6 specified by the board by rule.

§30-9-11. Foreign designation certificate requirements.

1 The board shall issue a certificate to an applicant of good
2 moral character who holds a foreign designation in public
3 accountancy if:

4 (1) The foreign authority that granted the designation
5 regulates the practice of public accountancy and allows a
6 person holding a certificate issued by this state to obtain the
7 foreign authority's comparable designation; and

8 (2) The applicant meets the education, examination,
9 experience and continuing education requirements specified by
10 the board by rule.

§30-9-12. Certificate renewal; conditions of renewal.

1 (a) The board shall renew a certificate for a one-year period
2 beginning on the first day of July of each year after its issuance
3 in accordance with renewal procedures and fees specified by
4 rule: *Provided*, That an applicant for renewal of a certificate
5 shall list on his or her application all states and foreign jurisdic-
6 tions in which he or she has applied for or held an out-of-state
7 certificate or foreign designation and any denial, revocation or
8 suspension of an out-of-state certificate or foreign designation.

9 (b) The board shall require as a condition for the renewal of
10 a certificate that each certified public accountant participate in
11 continuing professional education in accordance with the
12 requirements specified by rule, subject to the following
13 exemptions and limitations:

14 (1) The board shall by rule exempt from the continuing
15 professional education requirements set forth in this subsection
16 any certified public accountant who does not perform or offer
17 to perform any professional service to the public, either directly
18 or indirectly through his or her employer.

19 (2) Any certified public accountant receiving the exemption
20 from continuing professional education requirements must
21 place the word "inactive" adjacent to his or her "CPA" title on
22 any business card, telephone directory listing, letterhead or any
23 other similar document or device, with the exception of the
24 licensee's certificate on which the "CPA" title appears: *Pro-*
25 *vided*, That a certified public accountant receiving the exemp-
26 tion from continuing professional education requirements who
27 has completely discontinued his or her performance of profes-
28 sional services, who has no active management or supervisory
29 responsibilities in a firm, and who is at least sixty-two years of
30 age is not required to place the word "inactive" or any other
31 word adjacent to his or her "CPA" title on any business card,
32 telephone directory listing, letterhead or any other similar
33 document or device.

34 (3) The board may by rule phase in continuing professional
35 education requirements over a period of three years for any
36 certified public accountant who, as of the first day of July, two
37 thousand one, has not been subject to continuing professional
38 education requirements and who subsequently elects to perform
39 or offers to perform any professional service to the public
40 during a subsequent certificate renewal period within the three-
41 year phase-in period.

**§30-9-13. Duty to inform board of denials, suspensions, revoca-
tions, limitations.**

1 Each licensee and each substantial equivalency practitioner
2 must notify the board, within thirty days of its occurrence, of

3 any denial, suspension or revocation of or any limitation placed
4 on a license or out-of-state certificate.

**§30-9-14. Holder of out-of-state certificate establishing principal
place of business in state.**

1 A holder of an out-of-state certificate who intends to
2 establish his or her principal place of business in this state must
3 first apply for the issuance of a certificate.

§30-9-15. Public accountants.

1 A person who on the first day of July, two thousand one,
2 holds a registration as a public accountant issued under prior
3 law is entitled to have the registration renewed under the same
4 terms, upon fulfillment of the same continuing professional
5 education requirements, on the same renewal schedule and
6 subject to the same restrictions and the payment of the same
7 fees that are required for the renewal of a certificate under
8 section twelve of this article. Any registration not so renewed
9 will expire on the thirtieth day of June, two thousand two.

§30-9-16. Substantial equivalency practice privileges.

1 (a) An individual whose principal place of business is not
2 in this state and who holds an out-of-state certificate has all the
3 rights and privileges of a certificate holder of this state without
4 the need to obtain a certificate if the other state extends similar
5 privileges to a holder of a certificate, and:

6 (1) The board has determined by rule that the state that
7 issued the out-of-state certificate has certification requirements
8 that are substantially equivalent to the certification require-
9 ments of the uniform accountancy act; or

10 (2) The board has verified that the individual's qualifica-
11 tions are substantially equivalent to the certification require-
12 ments of the uniform accountancy act.

13 (b) No less than ten days prior to performing or offering to
14 perform any services in the state, an individual seeking to
15 practice under the provisions of this section must file a notice
16 with the board that: (A) Includes the individual's name,
17 principal business address, out-of-state certificate number and
18 state of issuance, and any other information that the board may
19 require by rule; (B) discloses any pending disciplinary action or
20 any past denial, revocation or suspension of the out-of-state
21 certificate; and (C) attaches any fee that the board may require
22 by rule.

23 (c) No later than the first day of July of the second calendar
24 year following the substantial equivalency practitioner's most
25 recent filing of the notice required under subsection (b) of this
26 section or with greater or lesser frequency as the board may
27 require by rule, a substantial equivalency practitioner must file
28 a notice with the board containing the information and attaching
29 the fee, if any, required in subsection (b) of this section if the
30 substantial-equivalency practitioner expects or intends to
31 continue to offer services in the state.

32 (d) Any individual performing or offering to perform any
33 services in the state as a substantial equivalency practitioner is
34 subject to the following:

35 (1) Jurisdiction of the board concerning all matters within
36 the scope of this article;

37 (2) Compliance with the provisions of this article and
38 applicable rules;

39 (3) The appointment of the secretary of state as his or her
40 agent upon whom process may be served in any action or
41 proceeding against the individual arising out of any transaction
42 or operation connected with or incidental to services performed
43 in this state; and

44 (4) The appointment of the state board of accountancy of
45 the state of issuance of his or her out-of-state certificate as his
46 or her agent upon which process may be served in an action or
47 proceeding by the board.

§30-9-17. Issuance and renewal of permits.

1 (a) The board shall issue a permit to a firm that demon-
2 strates that:

3 (1) Each partner, officer, shareholder, member or manager
4 of the firm whose principal place of business is in this state and
5 who performs or offers to perform professional services in this
6 state holds a certificate or a registration; and

7 (2) The firm meets firm ownership requirements.

8 (b) An application for the issuance of a permit must be
9 made in the form specified by the board by rule and must
10 include the following information:

11 (1) The names of all partners, officers, shareholders,
12 members or managers of the firm whose principal place of
13 business is in this state;

14 (2) The location of each office of the firm within this state
15 and the name of the certified public accountant or public
16 accountant in charge of each office; and

17 (3) Any issuance, denial, revocation or suspension of an
18 out-of-state permit.

19 (c) Permits will initially be issued for a period to expire on
20 the thirtieth day of June following the date of issue.

21 (d) The board shall renew a permit for a one-year period
22 beginning on the first day of July of each year after initial

23 issuance in accordance with the requirements for initial
24 issuance of a permit in this section.

25 (e) The board shall charge an application fee for the initial
26 issuance or renewal of a permit in an amount specified by rule.

§30-9-18. Notification of changes in firm ownership; revocation of permit.

1 (a) A permit holder must notify the board in writing, within
2 thirty days after its occurrence, of any change in the identities
3 of partners, officers, shareholders, members or managers whose
4 principal place of business is in this state, any change in the
5 number or location of offices within this state, any change in
6 the identity of the persons in charge of those offices, and any
7 issuance, denial, revocation or suspension of a permit or
8 equivalent designation by any other state.

9 (b) The board shall suspend or revoke the permit of any
10 firm that ceases to meet firm ownership requirements due to
11 changes in firm ownership or personnel due to the death or
12 retirement of a partner, officer, shareholder, member or
13 manager and that fails to take corrective action in the manner
14 and during the time period specified by rule.

§30-9-19. Issuance and renewal of authorizations.

1 (a) Commencing with the first day of July, two thousand
2 one, no person or business entity may provide attest or compila-
3 tion services without having first obtained an authorization
4 issued by the board. An applicant may apply to provide attest
5 services or compilation services or both.

6 (b) Applications for the issuance of authorizations must be
7 made in the form specified by the board by rule.

8 (c) Authorizations will initially be issued for a period to
9 expire on the thirtieth day of June following the date of initial
10 issuance.

11 (d) The board shall issue an authorization to a permit holder
12 that demonstrates that:

13 (1) Any certified public accountant or public accountant
14 who signs or authorizes someone to sign a report on financial
15 statements on behalf of the permit holder meets the competency
16 requirements set forth in the professional standards for those
17 services specified by rule;

18 (2) All attest and compilation services rendered by the
19 permit holder in this state are verified by a certified public
20 accountant or a public accountant; and

21 (3) The permit holder is undergoing a peer review program
22 that conforms with applicable rules.

23 (e) A firm may simultaneously apply for the issuance or
24 renewal of a permit and the issuance or renewal of an authoriza-
25 tion by demonstrating that the firm meets the requirements of
26 section seventeen of this article and subsection (d) of this
27 section.

28 (f) The board shall issue an authorization to an individual
29 practitioner who demonstrates that he or she:

30 (1) Signs attest and compilation reports as a certified public
31 accountant or public accountant, as applicable; and

32 (2) Is undergoing a peer review program that conforms with
33 applicable rules.

34 (g) The board shall renew an authorization for a one year
35 period beginning on the first day of July of each year after
36 initial issuance in accordance with the requirements for initial
37 issuance of an authorization in this section.

38 (h) The board shall charge an application fee for the initial
39 issuance or renewal of an authorization in an amount specified
40 by rule.

**§30-9-20. Refuse to issue or renew; suspension, revocation of
license; disciplinary action.**

1 (a) The board may refuse to issue, refuse to renew, suspend,
2 revoke or limit any license or practice privilege of any licensee,
3 substantial equivalency practitioner or firm and may take
4 disciplinary action against a licensee or substantial equivalency
5 practitioner practicing in this state who, after hearing, has been
6 adjudged by the board as unqualified because of any of the
7 following reasons:

8 (1) Fraud or deceit in obtaining or maintaining a license or
9 substantial equivalency practice privilege;

10 (2) Cancellation, revocation, suspension or refusal to renew
11 an out-of-state certificate, an out-of-state permit or substantial
12 equivalency practice privilege for disciplinary reasons in any
13 other state for any cause other than a failure to pay an annual
14 fee for the renewal of an out-of-state certificate or out-of-state
15 permit in the other state;

16 (3) Failure by any licensee to maintain compliance with
17 requirements for issuance or renewal of a license or to timely
18 notify the board as required under section eighteen of this
19 article;

20 (4) Revocation or suspension of the right of a licensee or
21 substantial equivalency practitioner to practice before any state
22 or federal agency;

23 (5) Dishonesty, fraud, professional negligence in the
24 performance of services as a licensee or substantial equivalency
25 practitioner or in the filing or failure to file the licensee's or

26 substantial equivalency practitioner's own income tax returns,
27 or a willful departure from accepted standards of professional
28 conduct applicable to licensees and substantial equivalency
29 practitioners;

30 (6) Violation of any provision of this article or any rule,
31 including the violation of any professional standard or rule of
32 professional conduct;

33 (7) Conviction of a felony or any crime an element of
34 which is dishonesty or fraud under the laws of the United States
35 or this state, or conviction of any similar crime under the laws
36 of any other state if the underlying act or omission involved
37 would have constituted a crime under the laws of this state;

38 (8) Performance of any fraudulent act by any licensee or
39 substantial equivalency practitioner;

40 (9) Any conduct adversely reflecting upon the licensee's or
41 substantial equivalency practitioner's fitness to perform
42 professional services;

43 (10) Making any false or misleading statement or verifica-
44 tion in support of an application for a license filed by another
45 person or firm; or

46 (11) Engaging in the unlawful practice of law as defined by
47 the West Virginia supreme court of appeals.

48 (b) If the board suspends, revokes, refuses to issue, refuses
49 to renew or limits any license or practice privilege, the board
50 shall give written notice of the denial, including a statement of
51 charges setting forth the reasons for the denial, and notice of the
52 date, time and place for hearing. The hearing must be held in
53 accordance with the provisions of section twenty-two of this
54 article.

55 (c) Disciplinary action includes, but is not limited to, a
56 reprimand, censure, probation, administrative fine not to exceed
57 one thousand dollars per day per violation, and mandatory
58 attendance at continuing professional education seminars.

§30-9-21. Complaints; investigation.

1 (a) Upon receipt of a written complaint filed against any
2 licensee, substantial equivalency practitioner or firm, the board
3 shall provide a copy of the complaint to the licensee, substantial
4 equivalency practitioner or firm.

5 (b) The board may investigate the complaint. If the board
6 finds upon investigation that probable cause exists that the
7 licensee, substantial equivalency practitioner or firm has
8 violated any provision of this article or the rules, the board shall
9 serve the licensee, substantial equivalency practitioner or firm
10 with a written statement of charges and a notice specifying the
11 date, time and place of hearing. The hearing must be held in
12 accordance with section twenty-two of this article.

13 (c) The board may review the publicly available profes-
14 sional work of a licensee, substantial equivalency practitioner,
15 or firm on a general and random basis, without any requirement
16 of a formal complaint or suspicion of impropriety. If the board
17 discovers reasonable grounds, the board may conduct an
18 investigation and upon its own motion, may file a written
19 statement of charges, including a notice specifying the date,
20 time and place of hearing, against the licensee, firm or substan-
21 tial equivalency practitioner.

**§30-9-22. Hearing; judicial review; notification to out-of-state
board of accountancy; costs of proceedings.**

1 (a) A hearing on a statement of charges must be held in
2 accordance with the provisions for hearing set forth in section
3 eight, article one of this chapter and procedures specified by
4 rule.

5 (b) Any licensee, substantial equivalency practitioner or
6 firm adversely affected by any decision of the board entered
7 after a hearing may obtain judicial review of the decision in
8 accordance with section four, article five, chapter twenty-nine-a
9 of this code, and may appeal any ruling resulting from judicial
10 review in accordance with article five, chapter twenty-nine-a of
11 this code.

12 (c) If the board renders a decision refusing to issue, refusing
13 to renew, suspending or revoking a license, or the board takes
14 disciplinary action, the board shall determine whether the
15 licensee, substantial equivalency practitioner or firm holds an
16 out-of-state certificate or permit, and if so, the board shall
17 notify the board of accountancy of the state of issuance of its
18 decision in the manner, under the circumstances and within the
19 time specified by rule.

20 (d) In addition to other sanctions imposed, the board shall
21 require a licensee, firm or substantial equivalency practitioner
22 to pay the costs of the proceeding.

§30-9-23. Reinstatement.

1 If the board has suspended, revoked or refused to renew a
2 license or has revoked the practice privileges of a substantial
3 equivalency practitioner, the licensee, firm or substantial
4 equivalency practitioner against whom action has been taken
5 under the provisions of this article, must be afforded an
6 opportunity to demonstrate the qualifications to resume
7 practice. The application for reinstatement must be in writing
8 and is subject to the procedures specified by rule.

§30-9-24. Licensees' working papers; clients' records.

1 (a) Any statement, record, schedule, working paper, and
2 memorandum made by a licensee or a partner, shareholder,
3 officer, director, member, manager or employee of a licensee

4 incident to, or in the course of, rendering services to a client
5 while a licensee, remains the property of the licensee in the
6 absence of an express agreement between the licensee and the
7 client to the contrary: *Provided*, That this subsection does not
8 apply to a report submitted by the licensee to the client or to a
9 statement, record, schedule, working paper or memorandum
10 provided by the client to the licensee or to a partner, share-
11 holder, officer, director, member, manager or employee of a
12 licensee.

13 (b) No statement, record, schedule, working paper, or
14 memorandum made by a licensee or a partner, shareholder,
15 officer, director, member, manager or employee of a licensee
16 incident to, or in the course of, rendering services to a client
17 while a licensee may be sold, transferred or bequeathed,
18 without the consent of the client or the client's personal
19 representative or assignee, to anyone other than one or more
20 surviving partners, stockholders, members or new partners, new
21 stockholders, or new members of the licensee, or any combined
22 or merged firm or successor in interest to the licensee.

23 (c) Nothing in this section may be construed to prohibit any
24 temporary transfer of a workpaper or other material necessary
25 in the course of carrying out a peer review or as otherwise
26 interfering with the disclosure of information as authorized by
27 rule.

28 (d) In addition to any statement, record, schedule, working
29 paper, memorandum or report required to be furnished or
30 returned to a client in accordance with subsection (a) of this
31 section, a licensee shall furnish to a client or former client, upon
32 request made within a reasonable time after original issuance of
33 the document in question:

34 (1) A copy of the tax return of the client;

35 (2) A copy of any report or other document issued by the
36 licensee to or for the client and not formally withdrawn or
37 disavowed by the licensee prior to the request;

38 (3) A copy of any working paper, to the extent that it would
39 ordinarily constitute part of the client's records and is not
40 otherwise available to the client; and

41 (4) Any accounting or other record belonging to, or
42 obtained from or on behalf of, a client that the licensee removed
43 from the client's premises or received for the client's account:
44 *Provided*, That a licensee may make and retain copies of the
45 documents of the client when they form the basis for work done
46 by the licensee.

47 (e) Nothing in this section requires a licensee to keep any
48 workpaper beyond the period prescribed in any other applicable
49 statute.

§30-9-25. Commissions, referral fees and contingent fees.

1 (a) To the extent specified by rule, a licensee may for a
2 contingent fee represent a client before a taxing authority within
3 the scope of practice of public accounting: *Provided*, That this
4 provision may not be construed either to limit or to expand the
5 scope of practice of public accounting, and may not be con-
6 strued to permit the unauthorized practice of law.

7 (b) All agreements or arrangements in which a licensee is
8 to be paid a commission, referral fee or contingent fee must be
9 in writing, state the method by which the fee is to be deter-
10 mined, must be signed by both the licensee and the client, and
11 must be delivered to the client before the performance of any
12 services or the delivery of any product to which the commis-
13 sion, referral fee or contingent fee relates. A contingent fee
14 arrangement must state the method of calculation of the fee,
15 including the percentage or percentages which accrue to the

16 licensee in the event of all foreseeable outcomes, the expenses
17 to be deducted from any recovery, collection or other amount
18 on which the fee may be based, and whether the expenses are to
19 be deducted before or after the contingent fee is calculated.

§30-9-26. Unlawful acts.

1 (a) No authorization holder or substantial equivalency
2 practitioner may perform attest or compilation services in a
3 manner other than pursuant to the statements on standards
4 relating to those services specified by rule.

5 (b) (1) No licensee or substantial equivalency practitioner
6 may, for a commission or referral fee, recommend or refer to a
7 client any product or service or refer any product or service to
8 be supplied by a client, or perform for a contingent fee any
9 professional services for or receive a referral fee, commission
10 or contingent fee from a client for whom the licensee, the
11 substantial equivalency practitioner or any firm with which
12 either of them works or associates or any firm in which either
13 of them owns an interest performs for that client:

14 (A) An audit or review of a financial statement;

15 (B) A compilation of a financial statement when the
16 licensee or substantial equivalency practitioner expects, or
17 reasonably might expect, that a third party will use the financial
18 statement and the compilation report does not disclose a lack of
19 independence; or

20 (C) An examination of prospective financial information.

21 (2) The prohibition in subdivision one of this subsection
22 applies only during the period in which the licensee or substan-
23 tial equivalency practitioner is engaged to perform any of the
24 services listed in subdivision (1) of this subsection and the

25 period covered by any historical financial statements involved
26 in any of those listed services.

27 (c) No licensee or substantial equivalency practitioner may
28 for a contingent fee prepare an original or amended tax return
29 or claim for a tax refund or serve as an expert witness.

30 (d) No licensee may use a professional or firm name or
31 designation that: (1) Is deceptive or misleading about the legal
32 form of the firm, or about the persons who are partners,
33 officers, members, managers or shareholders of the firm, or
34 about any other matter; or (2) contains a name or term other
35 than past or present partners, officers, members, managers or
36 shareholders of the firm or of a predecessor firm engaged in the
37 practice of accounting.

38 (e) No person or firm that does not hold an authorization to
39 perform attest services may perform or offer to perform attest
40 services, and no person or firm that does not hold an authoriza-
41 tion to perform compilation services may perform or offer to
42 perform compilation services.

43 (f) No individual practitioner who holds an authorization
44 may perform or offer to perform attest services for a client of
45 his or her employer through or on behalf of his or her employer.

46 (g) No person who is not a certified public accountant, a
47 public accountant or a substantial equivalency practitioner may:

48 (1) Issue a report on financial statements of any other
49 person, business entity, or governmental unit or otherwise
50 render or offer to render any attest or compilation service:
51 *Provided*, That this subdivision does not prohibit any act of a
52 public official or public employee in the performance of that
53 person's duties or the performance by any person of other
54 services involving the use of accounting skills, including the
55 preparation of tax returns, management advisory services, and

56 the preparation of financial statements without the issuance of
57 reports thereon: *Provided, however,* That this subdivision does
58 not prohibit any person who is not a certified public accountant,
59 a public accountant or a substantial equivalency practitioner to
60 prepare financial statements or issue nonattest transmittals of
61 information thereon that do not purport to have been performed
62 in accordance with the applicable statements on standards;

63 (2) Claim to hold a certificate, registration or authorization
64 or make any other claim of licensure or approval related to the
65 preparation of financial statements or the issuance of reports
66 thereon that is false or misleading;

67 (3) Claim to have used “generally accepted accounting
68 principles,” “generally accepted accounting standards,” “public
69 accountancy standards,” “public accountancy principles,”
70 “generally accepted auditing principles” or “generally accepted
71 auditing standards” in connection with the preparation of any
72 financial statement, or use any of these terms to describe any
73 complete or partial variation from those standards or principles
74 or to imply complete or partial conformity with those standards
75 or principles;

76 (4) State or imply that he or she is tested, competent,
77 qualified or proficient in financial standards established by the
78 American institute of certified public accountants or any agency
79 thereof, the governmental accounting standards board or any
80 agency thereof, the securities and exchange commission or any
81 agency thereof, the financial accounting standards board or any
82 agency thereof, or any successor entity to any of these entities;

83 (5) Assume or use the titles “certified accountant,”
84 “chartered accountant,” “enrolled accountant,” “licensed
85 accountant,” “registered accountant,” “auditor,” “independent
86 auditor” or any other title or designation that a reasonable
87 person may confuse with the titles “certified public accountant”

88 or “public accountant,” or assume or use the abbreviations
89 “CA,” “LA,” “RA,” or similar abbreviation that a reasonable
90 person may confuse with the abbreviations “CPA” or “PA”:
91 *Provided*, That the title “Enrolled Agent” and the abbreviation
92 “EA” may only be used by individuals so designated by the
93 Internal Revenue Service;

94 (6) Use language in any statement relating to the financial
95 affairs of a person or entity that is conventionally used by a
96 licensee in a report on a financial statement;

97 (7) Use the words “audit,” “audit report,” “independent
98 audit,” “examine,” “examination,” “opinion” or “review” in a
99 report on a financial statement;

100 (8) Assume or use any title that includes the words
101 “accountant,” “auditor,” or “accounting” in connection with any
102 other language (including the language of a report) that implies
103 that the person or business entity holds a license or has special
104 competence in accounting or auditing: *Provided*, That this
105 subdivision does not prohibit any officer, partner, member,
106 manager or employee of any business entity from affixing that
107 person’s own signature to any statement in reference to the
108 financial affairs of the business entity with any wording
109 designating the position, title, or office that the person holds
110 therein, nor does it prohibit any act of a public official or
111 employee in the performance of the person’s duties;

112 (9) Use or assume the title “certified public accountant,” the
113 abbreviation “CPA,” or any other title, designation, word,
114 combination of letters, abbreviation, sign, card or device that
115 may lead a reasonable person to believe that the person is a
116 certified public accountant or the holder of an out-of-state
117 certificate; or

118 (10) Assume or use the title “public accountant,” the
119 abbreviation “PA,” or any other title, designation, word,
120 combination of letters, abbreviation, sign, card or device that
121 may lead a reasonable person to believe that the person is a
122 public accountant.

123 (h) No business entity that does not hold a permit may
124 assume or use the designations “certified public accountants,”
125 “CPA firm,” “public accountants,” or “PA firm” or the abbrevi-
126 ations “CPAs,” or “PAs,” or any other title, designation, word,
127 combination of letters, abbreviation, sign, card or device that
128 may lead a reasonable person to believe that the business entity
129 is a firm or holds a permit.

130 (i) The display or uttering by a person of any printed,
131 engraved or written instrument, bearing the name of the person
132 in conjunction with any of the claims, titles, words or phrases
133 listed in this section is, for purposes of this section, prima facie
134 evidence that the person has engaged in the acts.

§30-9-27. Injunctions against unlawful acts.

1 When, as a result of an investigation under this article or
2 otherwise, the board or any other interested person believes that
3 any person or business entity has engaged, is engaging, or is
4 about to engage in any acts or practices that constitute or will
5 constitute a violation of section twenty-six of this article, the
6 board or any other interested person may make application to
7 any court of competent jurisdiction for an order enjoining the
8 acts or practices, and upon a showing that the person or
9 business entity has engaged or is about to engage in any act or
10 practice, an injunction, restraining order, or another appropriate
11 order may be granted by the court without bond.

§30-9-28. Criminal proceedings; penalties.

1 (a) When, by reason of an investigation under section
2 twenty-one of this article or otherwise, the board has reason to
3 believe that any person or firm has knowingly engaged in acts
4 or practices that constitute a violation of section twenty-six of
5 this article, the board may bring its information to the attention
6 of the attorney general or other appropriate law enforcement
7 officer who may cause appropriate criminal proceedings to be
8 brought thereon.

9 (b) Any person or firm who knowingly violates any
10 provision of section twenty-six of this article is guilty of a
11 misdemeanor and, upon conviction thereof, shall be fined not
12 more than one thousand dollars or imprisoned in the county or
13 regional jail not more than one year, or both fined and impris-
14 oned.

§30-9-29. Single act evidence of practice.

1 In any action or proceeding brought under sections twenty-
2 seven or twenty-eight of this article or any proceeding initiated
3 under section twenty-one of this article, evidence of the
4 commission of a single act prohibited by this article is sufficient
5 to justify a penalty, injunction, restraining order or conviction,
6 respectively, without evidence of a general course of conduct.

§30-9-30. Accounting corporations.

1 (a) All accounting corporations created prior to the first day
2 of July, two thousand one, are hereby continued.

3 (b) On or after the first day of July, two thousand one, one
4 or more certified public accountants or public accountants may
5 organize and become a shareholder or shareholders of an
6 accounting corporation domiciled within this state under the
7 terms and conditions and subject to the limitations and restric-
8 tions specified by rule.

9 (c) When the secretary of state receives a certification of
10 authorization to act as an accounting corporation, he or she
11 shall attach the authorization to the corporation application and,
12 upon compliance with the applicable provisions of chapter
13 thirty-one of this code, the secretary of state shall issue to the
14 incorporators a certificate of incorporation for the accounting
15 corporation.

§30-9-31. Inapplicability of article.

1 (a) Nothing contained in this article may be construed to
2 prevent any person from describing himself or herself as an
3 “accountant” or a “bookkeeper” or from stating that he or she
4 practices accountancy or bookkeeping; nor, subject to certifica-
5 tion and registration requirements herein imposed, may this
6 article be construed to prevent any person from: (1) Performing
7 services involving the use of accounting skills; (2) rendering tax
8 services, management advisory or consulting services; (3)
9 keeping of books of account and related accounting records; or
10 (4) preparing, compiling or assembling financial statements
11 without the expression of an assurance.

12 (b) The prohibitions of this section and the other provisions
13 of this article may not be construed to preclude a person or
14 business entity not holding a certificate or registration from
15 using the following or substantially similar language: “I (We)
16 have compiled the accompanying (financial statements) of
17 (name of entity) as of (time period) for the (period) then ended.
18 A compilation is limited to presenting in the form of financial
19 statements information that is the representation of management
20 (owners). I (We) have not audited or reviewed the accompany-
21 ing financial statements and, accordingly, do not express an
22 opinion or any other form of assurance on them. Management
23 has elected to omit substantially all (or certain) required
24 disclosures (and the statement of changes in financial position).
25 If omitted disclosures were included in the financial statements,

26 they might influence the user's conclusions about the (entity's)
27 financial position, results of operations and changes in financial
28 position. Accordingly, these financial statements are not
29 designed for those who are not informed about these matters."

30 (c) Nothing contained in this article may be construed to
31 prohibit an employee from furnishing services to his or her
32 employer.

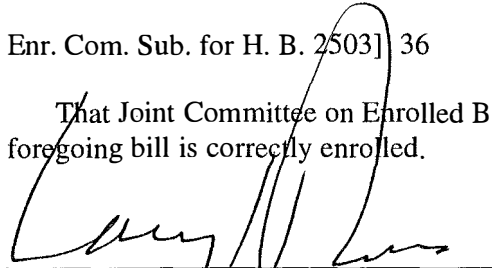
33 (d) Nothing in this article prohibits a practicing attorney or
34 group of attorneys from preparing or presenting records or
35 documents customarily prepared by an attorney or group of
36 attorneys in connection with the attorney's professional work
37 in the practice of law.

§30-9-32. Termination date.

1 The board shall terminate on the first day of July, two
2 thousand five, pursuant to the provisions of article ten, chapter
3 four of this code.

Enr. Com. Sub. for H. B. 2503] 36

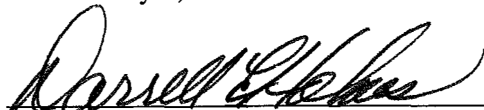
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

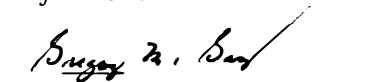

Chairman Senate Committee

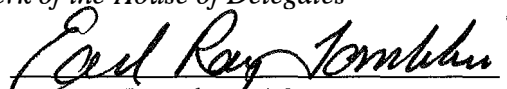

Chairman House Committee

Originating in the House.

In effect July 1, 2001.

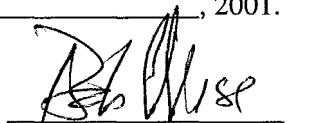

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 24th
day of April, 2001.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/01

Time 5:00 pm

5