

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Senate Bill 271

BY SENATORS FERNS AND GAUNCH

[Passed March 7, 2016; in effect 90 days from passage]

1 AN ACT to amend and reenact §30-9-2, §30-9-3 and §30-9-7 of the Code of West Virginia, 1931,
2 as amended, and to amend said code by adding thereto two new sections, designated as
3 §30-9-33 and §30-9-34, all relating to regulation of the practice of accountancy; redefining
4 attest services; protecting board members from civil liability; revising requirements for
5 issuance of certificate as certified public accountant including criminal background check;
6 requiring Mandatory Training in federal antitrust law and state action immunity for
7 members of the board of accountancy and their representatives from the Attorney
8 General's office; and providing for indemnification for board members.

Be it enacted by the Legislature of West Virginia:

1 That §30-9-2, §30-9-3 and §30-9-7 of the Code of West Virginia, 1931 as amended, be
2 amended and reenacted, and that said Code be amended by adding thereto two new sections,
3 designated as §30-9-33 and §30-9-34, all to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-2. Definitions.

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

3 (1) "Affiliated entity" means an entity that controls, is controlled by, or is under common
4 control with, a firm. For purposes of this definition, an entity controls another entity if the entity
5 directly or indirectly or acting in concert with one or more other affiliated entities, or through one
6 or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing,
7 more than fifty percent of the voting interest in such entity.

8 (2) "Assurance" means any act or action, whether written or oral, expressing an opinion
9 or conclusion about the reliability of a financial statement or about its conformity with any financial
10 accounting standards.

11 (3) "Attest services" means providing the following services:

12 (A) Any audit or other engagement to be performed in accordance with the statements on

13 Auditing Standards (SAS);

14 (B) Any review of a financial statement to be performed in accordance with the statements
15 on Standards for Accounting and Review Services (SSARS);

16 (C) Any examination of prospective financial information to be performed in accordance
17 with applicable Statements on Standards for Attestation Engagements (SSAE);

18 (D) Any engagement to be performed in accordance with the Auditing Standards of the
19 Public Company Accounting Oversight Board (PCAOB); or

20 (E) Any examination, review or agreed upon procedures engagement to be performed in
21 accordance with the statements on Standards for Attestation Engagements (SSAE), other than
22 an examination described in paragraph (C) of this subdivision.

23 (4) "Audit" means expressing an opinion about the fairness of presentation of financial
24 statements in accordance with the statements on Auditing Standards.

25 (5) "Authorization" means an authorization issued pursuant to this article that entitles a
26 permit holder or an individual practitioner to perform attest or compilation services.

27 (6) "Board" means the West Virginia Board of Accountancy.

28 (7) "Business entity" means any corporation, partnership, limited partnership, limited
29 liability partnership, professional limited liability partnership, limited liability company, professional
30 limited liability company, joint venture, business trust or any other form of business organization.
31 The term "business entity" includes a firm.

32 (8) "Certificate" means a certificate as a certified public accountant issued or renewed by
33 the board pursuant to this article or corresponding provisions of prior law.

34 (9) "Certified public accountant" or "CPA" means the holder of a certificate.

35 (10) "Client" means a person or entity that agrees with a licensee or licensee's employer
36 to receive any professional service.

37 (11) "Commission" means compensation, except a referral fee, for recommending or
38 referring any product or service to be supplied by another person.

39 (12) “Compilation services” means providing a service performed in accordance with the
40 statements on Standards for Accounting and Review Services that presents, in the form of a
41 financial statement, information that is the representation of management without an expression
42 of assurance on the statement: *Provided*, That this definition does not apply to the use of the term
43 “compilation” in section thirty-one of this article.

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

48 (14) “Examination”, when used with reference to prospective financial statements, means
49 expressing an opinion about the fairness of presentation of financial information in accordance
50 with the statements on Standards for Attestation Engagements.

51 (15) “Financial statement” means a writing or other presentation, including accompanying
52 notes, which presents, in whole or in part, historical or prospective financial position, results of
53 operations or changes in financial position of any person, corporation, partnership or other entity.

54 (16) “Firm” means any business entity, including, but not limited to, accounting
55 corporations and professional limited liability companies, in which two or more certified public
56 accountants or public accountants hold an ownership or membership interest, in terms of the
57 financial interests and voting rights of all partners, officers, shareholders, members or managers,
58 and the primary business activity of which is the provision of professional services to the public
59 by certified public accountants or public accountants.

60 (17) “Firm ownership requirements” means, with respect to:

61 (A) Any professional limited liability company organized pursuant to article thirteen,
62 chapter thirty-one-b of this code, consisting of one or more licensed certified public accountants
63 or licensed public accountants;

64 (B) Any other firm where:

65 (i) A simple majority of ownership of the firm, in terms of financial interests and voting
66 rights of all partners, officers, shareholders, members or managers, belongs either to:

67 (I) Certified public accountants holding a certificate under section twelve of this article or
68 the equivalent provision of another state; or

69 (II) Public accountants who have met the continuing professional education requirements
70 of subsection (b), section twelve of this article and who are not subject to the exemption or
71 limitation set forth in subdivisions (1) or (2), subsection (b), section twelve of this article or similar
72 provisions of another state.

73 (ii) All owners of the firm who are not certified public accountants or public accountants
74 are active participants in the firm or in affiliated entities.

75 (18) "Foreign" means any country other than the United States.

76 (19) "Good moral character" means lack of a history of dishonesty or felonious activity.

77 (20) "Home office" means the client's office address.

78 (21) "Individual practitioner" means a certified public accountant or a public accountant
79 who offers professional services to the public but who does not practice in a firm.

80 (22) "License" means a certificate, permit, registration or authorization.

81 (23) "Licensee" means the holder of a license.

82 (24) "Manager" means a manager of a professional limited liability company.

83 (25) "Member" means a member of a professional limited liability company.

84 (26) "Nonlicensee" means a person or business entity that does not hold a license.

85 (27) "Out-of-state certificate" means a valid certificate as a certified public accountant or
86 equivalent designation issued or renewed under the laws of another state: *Provided*, That "out-
87 of-state certificate" does not include any certificate as a certified public accountant or equivalent
88 designation that was issued or renewed solely by virtue of a holder's prior status as a public
89 accountant or its equivalent in the state of issuance and not by virtue of the holder's having met
90 the certification requirements of the state of issuance.

91 (28) "Out-of-state permit" means a valid permit as a firm of certified public accountants or
92 another designation equivalent to a permit issued or renewed by the board and that is issued or
93 renewed under the laws of another state.

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

97 (30) "Permit" means a permit issued to a firm pursuant to this article.

98 (31) "Principal place of business" means the licensee's office location in the state where
99 the licensee holds a certificate or registration.

100 (32) "Professional services" means those services that involve the specialized knowledge
101 and skills of a certified public accountant or a public accountant delivered by any means, including
102 but not limited to, in person, by mail, telephone or by electronic means.

103 (33) "Public accountant" means a person holding a registration who is not a certified public
104 accountant.

105 (34) "Referral fee" means compensation for recommending or referring any service of a
106 licensee to any person.

107 (35) "Registration" means a registration as a public accountant issued by the board
108 pursuant to prior law governing the registration of public accountants and renewed by the board
109 pursuant to this article.

110 (36) "Report", when used with reference to financial statements, means an opinion or
111 disclaimer of opinion or other form of language or representation which states or implies any form
112 of assurance or denial of assurance.

113 (37) "Rule" means any rule proposed for legislative approval by the board pursuant to this
114 article.

115 (38) "State" means any state of the United States, the District of Columbia, Puerto Rico,
116 the U.S. Virgin Islands or Guam.

117 (39) "Substantial equivalency" or "substantially equivalent" means or refers to a
118 determination by the board or its designee that the education, examination and experience
119 requirements contained in the statutes or rules of another state are comparable to or exceed the
120 education, examination and experience requirements contained in the Uniform Accountancy Act,
121 or that an individual certified public accountant's education, examination and experience
122 qualifications are comparable to or exceed the education, examination and experience
123 requirements contained in the Uniform Accountancy Act.

124 (40) "Substantial equivalency practitioner" means any individual whose principal place of
125 business is not in this state, who holds a certificate from another state and has complied with the
126 provisions of section sixteen of this article.

127 (41) "Uniform Accountancy Act" means the Uniform Accountancy Act, fifth edition, revised
128 (July 2007), jointly published by the American Institute of Certified Public Accountants and the
129 National Association of State Boards of Accountancy.

**§30-9-3. Board of accountancy; appointment; terms, qualifications of members; removal
of members; compensation of members; civil liability protection for members.**

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

2 (b) (1) Commencing with the board terms beginning July 1, 2001, the board shall consist
3 of seven members appointed for terms of three years by the Governor with the advice and consent
4 of the Senate. Five members must be certified public accountants; one member must be a public
5 accountant so long as twenty-five or more public accountants are registered by the board, but if
6 there are fewer than twenty-five public accountants registered by the board, then the member
7 may be either a public accountant or a certified public accountant; and one member must be a
8 citizen member who is a resident of this state, who is not licensed under the provisions of this
9 article and who also is not a bookkeeper, enrolled agent or a person who provides or offers to
10 provide to the public any bookkeeping, tax preparation, financial advisory or insurance service:
11 *Provided*, That the members of the board in office on July 1, 2001, shall continue to serve until

12 their respective terms expire.

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

16 (3) Each appointment of a public accountant, whether for a full term or to fill a vacancy,
17 must be made by the Governor from among three nominees selected by the West Virginia Public
18 Accountants Association and each appointment of a certified public accountant, whether for a full
19 term or to fill a vacancy, must be made by the Governor from among three nominees selected by
20 the West Virginia Society of Certified Public Accountants: *Provided*, That when the appointment
21 of a certified public accountant is to fill the seat held on July 1, 2001, by a public accountant, then
22 the appointment, whether for a full term or to fill a vacancy, must be made by the Governor from
23 among three nominees selected by the West Virginia Public Accountants Association. When the
24 appointment is for a full term, the nominations must be submitted to the Governor not later than
25 eight months prior to the date on which the appointment will become effective. When the
26 appointment is to fill a vacancy, the nominations must be submitted to the Governor within ten
27 days after a request for the nominations has been made by the Governor to the president of the
28 West Virginia Society of Certified Public Accountants or president of the West Virginia Public
29 Accountants Association. If the society or the association fails to submit to the Governor
30 nominations for an appointment in accordance with the requirements of this section, the Governor
31 may make the appointment without the nominations.

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

36 (d) If a board member is unable to complete a term, the Governor shall appoint a person
37 of similar qualifications to complete the unexpired term: *Provided*, That if the board member is a

38 certified public accountant or public accountant, the Governor shall appoint a person from any
39 nominees submitted pursuant to subdivision (3), subsection (b) of this section. Each vacancy
40 occurring on the board must be filled by appointment within sixty days after the vacancy is created.

41 (e) The Governor may remove any member from the board for neglect of duty,
42 incompetency or official misconduct.

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

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

49 (h) Board members are exempt from civil liability for any decision made or any act done
50 in good faith in the performance of any duty or the exercise of any power granted under this article.

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

(a) The board shall issue an original certificate to an applicant who demonstrates that:

(1) He or she has met one of the following qualifications for a certificate:

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

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

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

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

(2) He or she has submitted an application, in writing, on a form prescribed by the board:

Provided, That the application must require an applicant to list all states in which he or she has applied for or holds an out-of-state certificate and any past denial, revocation or suspension of an out-of-state certificate;

(3) He or she is trustworthy and of good moral character;

(4) He or she has paid the appropriate fee prescribed by the board;

(5) He or she has submitted to a state and national criminal history record check, as set forth in this subdivision.

(A) This requirement is found not to be against public policy.

(B) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(C) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(i) Submitting fingerprints for the purposes set forth in this subsection; and

(ii) Authorizing the board, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a certificate.

(D) The results of the state and national criminal history record check may not be released to or by a private entity except:

(i) To the individual who is the subject of the criminal history record check;

(ii) With the written authorization of the individual who is the subject of the criminal history record check; or

(iii) Pursuant to a court order.

(E) The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

(F) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(G) The board may propose rules to implement the provisions of this section for legislative approval in accordance with article three, chapter twenty-nine-a of this code. The rules must be consistent with standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact as authorized by 42 U. S. C. §14611, *et seq.*

(b) Certificates will initially be issued for a period to expire on June 30 following the date of issue.

(c) A certificate issued by the board prior to July 1, 2001, will for all purposes be considered a certificate issued under this section: *Provided*, That a person holding a certificate issued prior to July 1, 2001, must renew the certificate pursuant to section twelve of this article.

§30-9-33. Mandatory training in federal antitrust law and state action immunity.

1 It shall be required of the West Virginia Board of Accountancy, and their representatives
2 from the Attorney General's office, to obtain initial training on the subject of federal antitrust law
3 and state action immunity by July 1, 2016, and thereafter on an annual basis. The purpose of the
4 training is to provide those members with the knowledge to be able to identify the risks of any
5 action that may be taken by the board that could be construed as possible antitrust violations.

§30-9-34. Indemnification.

1 In the event that a lawsuit is filed alleging violation of federal antitrust laws, the board may
2 indemnify its board members and current and former employees for expenses reasonably
3 incurred in connection with judicial or administrative proceedings to which they are or may
4 become parties by reason of the performance of their official duties.