

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4656**

(BY DELEGATES R. SMITH, CADLE, P. WHITE, ARVON,  
HAMRICK AND MCGEEHAN)

[Introduced February 22, 2016;  
referred to the Committee on Government Organization.]



1 A BILL to amend and reenact §30-9-2, §30-9-3, §30-9-4 and §30-9-5 of the Code of West Virginia,  
 2 1931, as amended, all relating to granting the Finance Division within the Department of  
 3 Administration supervisory control over the board of Accountancy; defining a term;  
 4 clarifying the board is an advisory body; requiring board acts and recommendations be  
 5 authorized by the division; and providing for the review of board rules prior to submission.

*Be it enacted by the Legislature of West Virginia:*

1 That §30-9-2, §30-9-3, §30-9-4 and §30-9-5 of the Code of West Virginia, 1931, as  
 2 amended, be amended and reenacted, 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 ~~(4)~~ "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 any:

12 (A) Audit or other engagement to be performed in accordance with the statements on  
 13 Auditing Standards;

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

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

18 (D) Engagement to be performed in accordance with the Auditing Standards of the Public  
19 Company Accounting Oversight Board.

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

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

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

25 ~~(7)~~ "Business entity" means any corporation, partnership, limited partnership, limited  
26 liability partnership, professional limited liability partnership, limited liability company, professional  
27 limited liability company, joint venture, business trust or any other form of business organization.

28 The term "business entity" includes a firm.

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

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

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

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

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

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

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

48           “Division” means the Finance Division within the Department of Administration.

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

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

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

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

62           (B) Any other firm where:

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

65           (l) Certified public accountants holding a certificate under section twelve of this article or  
66 the equivalent provision of another state; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

95           ~~(30)~~ “Permit” means a permit issued to a firm pursuant to this article.

96           ~~(31)~~ “Principal place of business” means the licensee’s office location in the state where  
97 the licensee holds a certificate or registration.

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

101           ~~(33)~~ “Public accountant” means a person holding a registration who is not a certified public  
102 accountant.

103           ~~(34)~~ “Referral fee” means compensation for recommending or referring any service of a  
104 licensee to any person.

105           ~~(35)~~ “Registration” means a registration as a public accountant issued by the board  
106 pursuant to prior law governing the registration of public accountants and renewed by the board  
107 pursuant to this article.

108           ~~(36)~~ “Report,” when used with reference to financial statements, means an opinion or  
109 disclaimer of opinion or other form of language or representation which states or implies any form  
110 of assurance or denial of assurance.

111           ~~(37)~~ “Rule” means any rule proposed for legislative approval by the board pursuant to this  
112 article.

113           ~~(38)~~ “State” means any state of the United States, the District of Columbia, Puerto Rico,  
114 the U.S. Virgin Islands or Guam.

115           ~~(39)~~ “Substantial equivalency” or “substantially equivalent” means or refers to a  
116 determination by the board or its designee that the education, examination and experience  
117 requirements contained in the statutes or rules of another state are comparable to or exceed the

118 education, examination and experience requirements contained in the Uniform Accountancy Act,  
119 or that an individual certified public accountant's education, examination and experience  
120 qualifications are comparable to or exceed the education, examination and experience  
121 requirements contained in the Uniform Accountancy Act.

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

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

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

1 (a) On July 1, 2016, the West Virginia board of accountancy is hereby continued as an  
2 advisory board to the Finance Division within the Department of Administration.

3 (b) (1) Commencing with the board terms beginning July 1, ~~2004~~ 2016, the board shall  
4 consist of seven members appointed for terms of three years by the Governor with the advice and  
5 consent of the Senate. Five members must be certified public accountants; one member must be  
6 a public accountant so long as twenty-five or more public accountants are registered by the board,  
7 but if there are fewer than twenty-five public accountants registered by the board, then the  
8 member may be either a public accountant or a certified public accountant; and one member must  
9 be a citizen member who is a resident of this state, who is not licensed under the provisions of  
10 this article and who also is not a bookkeeper, enrolled agent or a person who provides or offers  
11 to provide to the public any bookkeeping, tax preparation, financial advisory or insurance service.  
12 ~~Provided, That the members of the board in office on July 1, 2001, shall continue to serve until~~  
13 ~~their respective terms expire~~

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

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

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

37           (d) If a board member is unable to complete a term, the Governor shall appoint a person  
38 of similar qualifications to complete the unexpired term: *Provided*, That if the board member is a  
39 certified public accountant or public accountant, the Governor shall appoint a person from any

40 nominees submitted pursuant to subdivision (3), subsection (b) of this section. Each vacancy  
41 occurring on the board must be filled by appointment within sixty days after the vacancy is created.

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

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

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

#### **§30-9-4. Powers of the board.**

1 The board may not take any action pursuant to this article or pursuant to article one,  
2 chapter thirty of this code, but shall instead propose recommendations to the Finance Division  
3 within the Department of Administration. The division shall review each recommendation of the  
4 board and may approve, amend, or reject any action or recommendation proposed by the board.  
5 The division may conduct its own investigation of any board action or recommendation. The board  
6 shall follow all determinations made by the division. The division has all the powers set forth in  
7 article one of this chapter. and in addition The board may:

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

9 (2) Hire, fix the compensation of and discharge the employees necessary for the  
10 administration of this article;

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

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

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

16 (6) Conduct hearings upon charges calling for the revocation or suspension of a license  
17 or take disciplinary action against a licensee, firm or substantial equivalency practitioner;

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

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

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

**§30-9-5. Rule-making authority.**

1 (a) The board shall propose rules for legislative approval which shall be submitted to the  
2 division for review. The division may approve, amend or reject the submission of the board  
3 legislative rules, prior to the proposed rule being filed with the Secretary of State in accordance  
4 with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions  
5 of this article, including, but not limited to, the following:

6 (1) The education required of an applicant;

7 (2) The experience required of an applicant;

8 (3) The examination administered under this article;

9 (4) Issuing or renewing a certificate, registration, permit or authorization;

10 (5) Denying, suspending, revoking, or reinstating a certificate, registration, permit or  
11 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 licensees, including exemptions;

17 (11) Peer review requirements;

18 (12) Professional conduct requirements;

19 (13) Identifying professional services required to be performed in accordance with the  
20 applicable statements on standards;

21 (14) Use of the titles "certified public accountant," "CPA," "public accountant" and "PA";

22 (15) Use of commissions, referral fees and contingent fees;

23 (16) Fees for the issuance and renewal of a certificate, registration, permit or authorization  
24 and other fees authorized by this article; and

25 (17) Other rules the board considers necessary and proper for implementing the  
26 provisions of this article.

27 (b) All rules in effect on July 1, ~~2004~~ 2016, will remain in effect until they are superseded:  
28 Provided, That beginning July 1, 2016, all legislative rules shall be promulgated by the division on  
29 behalf of the board.

NOTE: The purpose of this bill is to provide that the board of Accountancy is an advisory board under the Finance Division within the Department of Administration.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.