

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1478

By: Case

AS INTRODUCED

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 15.1A, as last amended by Section 2, Chapter 125, O.S.L. 2004, 15.2, as amended by Section 3, Chapter 125, O.S.L. 2004, 15.9, as last amended by Section 9, Chapter 125, O.S.L. 2004, and 15.14, as last amended by Section 17, Chapter 125, O.S.L. 2004 (59 O.S. Supp. 2004, Sections 15.1A, 15.2, 15.9 and 15.14), which relate to the Oklahoma Accountancy Act; adding definition; modifying certain definition; extending certain expiration date; modifying membership representation of certain board; modifying qualifications of certain members; specifying method of filling membership terms upon vacancy; authorizing the board to utilize certain grading service; modifying examination requirements for public accountants; modifying certain verification process; deleting reference to certain examination procedures; allowing a registration period for a certain type of renewal for public accountants; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2001, Section 15.1A, as last amended by Section 2, Chapter 125, O.S.L. 2004 (59 O.S. Supp. 2004, Section 15.1A), is amended to read as follows:

Section 15.1A As used in the Oklahoma Accountancy Act:

1. "Accountancy" means the profession or practice of accounting;
2. "ACAT" means the Accreditation Council for Accountancy and Taxation;
3. "AICPA" means the American Institute of Certified Public Accountants;

~~3.~~ 4. "Applicant" means an individual or entity that has made application to the Board for a certificate, license, or permit or an

individual who has made application to take the examination and said application has not been approved;

~~4.~~ 5. "Assurance" means independent professional services that improve the quality of information, or its context, for decision makers;

~~5.~~ 6. "Attest" means providing the following financial statement services:

- a. any audit or other engagement to be performed in accordance with generally accepted auditing standards,
- b. any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS), and
- c. any report performed in accordance with the Statements on Standards for Attestation Engagements (SSAE).

The statements on standards specified in this definition shall be adopted by reference by the Board pursuant to rulemaking and shall be those developed for general application by recognized national accountancy organizations;

~~6.~~ 7. "Audit" can only be performed by an individual or entity who is registered with the Board and holding a valid permit issued pursuant to the Oklahoma Accountancy Act and means a systematic investigation or appraisal of information, procedures, or operations performed in accordance with generally accepted auditing standards in the United States, for the purpose of determining conformity with established criteria and communicating the results to interested parties;

~~7.~~ 8. "Board" means the Oklahoma Accountancy Board;

~~8.~~ 9. "Candidate" means an individual who has been qualified and approved by the Board to take an examination for a certificate or license;

~~9.~~ 10. "Certificate" means the Oklahoma document issued by the Board to a candidate upon successful completion of the certified

public accountant examination designating the holder as a certified public accountant pursuant to the laws of Oklahoma. "Certificate" shall also mean the Oklahoma document issued by reciprocity to an individual who has previously been certified in another jurisdiction;

~~10.~~ 11. "Certified public accountant" means any person who has received a certificate from the Board or other jurisdictions;

~~11.~~ 12. "Client" means the individual or entity which retains a registrant to perform professional services;

~~12.~~ 13. "Compilation" when used with reference to financial statements, means presenting information in the form of financial statements which is the representation of management or owners without undertaking to express any assurance on the statements;

~~13.~~ 14. "CPA" or "C.P.A." means certified public accountant;

~~14.~~ 15. "Designated manager" means the individual domiciled in Oklahoma and appointed by the firm partners or shareholders to be responsible for the administration of the office;

~~15.~~ 16. "Designee" means the National Association of State Boards of Accountancy (NASBA), American Institute of Certified Public Accountants (AICPA) or other professional bodies approved as acceptable to the Board to provide a qualification appraisal in determining whether any jurisdiction's qualifications for certificate or license are substantially equivalent to Oklahoma's requirements;

~~16.~~ 17. "Entity" means an organization whether for profit or not, recognized by the State of Oklahoma to conduct business;

~~17.~~ 18. "Examination" means the test administered, supervised, and graded by, or at the direction of, the Board or other jurisdiction that is required for a certificate as a certified public accountant or a license as a public accountant;

~~18.~~ 19. "Executive director" means the chief administrative officer of the Board;

~~19.~~ 20. "Financial statements" means statements and footnotes related thereto that undertake to present an actual or anticipated financial position as of a point in time, or results of operations, cash flow, or changes in financial position for a period of time, in conformity with generally accepted accounting principles or another comprehensive basis of accounting. The term does not include incidental financial data included in management advisory service reports to support recommendations to a client; nor does it include tax returns and supporting schedules;

~~20.~~ 21. "Firm" means an entity that is either a sole proprietorship, partnership, professional limited liability company, professional limited liability partnership, limited liability partnership or professional corporation, or any other professional form of organization recognized by the State of Oklahoma and issued a permit in accordance with Section 15.15A of this title, including individual partners or shareholders, that is engaged in accountancy;

~~21.~~ 22. "Holding out" means any representation by an individual that he or she holds a certificate or license and a valid permit, or by an entity that it holds a valid permit. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate or license and valid permit in connection with the services or products offered;

~~22.~~ 23. "Individual" means a human being;

~~23.~~ 24. "Jurisdiction" means any state or territory of the United States and the District of Columbia;

~~24.~~ 25. "License" means the Oklahoma document issued by the Board to a candidate upon successful completion of the public accountant examination designating the holder as a public accountant pursuant to the laws of Oklahoma. "License" shall also mean the Oklahoma document issued by the Board by reciprocity to a public accountant who has previously been licensed by examination in another jurisdiction;

~~25.~~ 26. "Management advisory services", also known as "management consulting services", "management services", "business advisory services" or other similar designation, hereinafter collectively referred to as "MAS", means the function of providing advice and/or technical assistance, performed in accordance with standards for MAS engagements and MAS consultations such as those issued by the American Institute of Certified Public Accountants, where the primary purpose is to help the client improve the use of its capabilities and resources to achieve its objectives including but not limited to:

- a. counseling management in analysis, planning, organizing, operating, risk management and controlling functions,
- b. conducting special studies, preparing recommendations, proposing plans and programs, and providing advice and technical assistance in their implementation,
- c. reviewing and suggesting improvement of policies, procedures, systems, methods, and organization relationships, and
- d. introducing new ideas, concepts, and methods to management.

MAS shall not include recommendations and comments prepared as a direct result of observations made while performing an audit, review, or compilation of financial statements or while providing tax services, including tax consultations;

~~26.~~ 27. "NASBA" means the National Association of State Boards of Accountancy;

~~27.~~ 28. "PA" or "P.A." means public accountant;

~~28.~~ 29. "Partnership" means a contractual relationship based upon a written, oral, or implied agreement between two or more individuals who combine their resources and activities in a joint enterprise and share in varying degrees and by specific agreement in

the management and in the profits or losses. A partnership may be general or limited as the laws of this state define those terms;

~~29.~~ 30. "Peer Review" means a review performed pursuant to a set of peer review rules established by the Board. The term "peer review" also encompasses the term "quality review";

~~30.~~ 31. "Permit" means the written authority granted annually by the Board to individuals or firms to practice public accounting in Oklahoma, which is issued pursuant to the Oklahoma Accountancy Act;

~~31.~~ 32. a. "Practice of public accounting", also known as "practice public accounting", "practice" and "practice accounting", refers to the activities of a registrant in reference to accountancy. An individual or firm shall be deemed to be engaged in the practice of public accounting if the individual or firm holds itself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting and auditing, taxation and management advisory services and is qualified to render such professional services as a certified public accountant or public accountant, and performs the following:

- (1) maintains an office for the transaction of business as a certified public accountant or public accountant,
- (2) offers to prospective clients to perform or who does perform on behalf of clients professional services that involve or require an audit, verification, investigation, certification, presentation, or review of financial transactions and accounting records or an attestation concerning any other written assertion,

- (3) prepares or certifies for clients reports on audits or investigations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports which are to be used for publication or for the purpose of obtaining credit, or for filing with a court of law or with any governmental agency, or for any other purpose,
 - (4) generally or incidentally to the work described herein, renders professional services to clients in any or all matters relating to accounting procedure and to the recording, presentation, or certification of financial information or data,
 - (5) keeps books, or prepares trial balances, financial statements, or reports, all as a part of bookkeeping services for clients,
 - (6) prepares or signs as the tax preparer, tax returns for clients, consults with clients on tax matters, conducts studies for clients on tax matters and prepares reports for clients on tax matters, unless the services are uncompensated and are limited solely to the registrant's, or the registrant's spouse's lineal and collateral heirs,
 - (7) prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans, or
 - (8) provides management advisory services to clients.
- b. An individual or firm not holding a certificate, license or permit shall not be deemed to be engaged in

the practice of public accounting if the individual or firm does not hold itself out, solicit, or advertise for clients using the certified public accountant or public accountant designation and engages only in the following services:

- (1) keeps books, or prepares trial balances, financial statements, or reports, provided such instruments do not use the terms "audit", "audited", "exam", "examined", "review" or "reviewed" or are not exhibited as having been prepared by a certified public accountant or public accountant. Nonregistrants may use the following disclaimer language in connection with financial statements to not be in violation of the Oklahoma Accountancy Act: "I (we) have not audited, examined or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.",
- (2) prepares or signs as the tax preparer, tax returns for clients, consults with clients on tax matters, conducts studies for clients on tax matters and prepares reports for clients on tax matters,
- (3) prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans, or
- (4) provides management advisory services to clients.

c. Only permit holders may render or offer to render any attest service, as defined herein, or issue a report on financial statements which purport to be in

compliance with the Statements on Standards for Accounting and Review Services (SSARS). This restriction shall not prohibit any act of a public official or public employee in the performance of that person's duties. This restriction shall not be construed to prohibit the performance by any unlicensed individual of other services as set out in subparagraph b of this paragraph~~7~~.

d. A person is not deemed to be practicing public accounting within the meaning of this section solely by displaying a CPA certificate or a PA license in an office, identifying himself or herself as a CPA or PA on letterhead or business cards, or identifying himself or herself as a CPA or PA. However, the designation of CPA or PA on such letterheads, business cards, public signs, advertisements, publications directed to clients or potential clients, or financial or tax documents of a client constitutes the practice of public accounting and requires a permit.

e. On and after July 1, 2005, a public accountant individual or firm shall not be authorized to offer to prospective clients, or to perform on behalf of clients, professional services that involve or require an audit;

~~32.~~ 33. "Principal place of business" means that physical location identified by an individual to another jurisdiction's accountancy regulatory agency where substantial administrative or management activities are conducted. For purposes of substantial equivalency, the physical location cannot be in this state.

~~33.~~ 34. "Professional corporation" means a corporation organized pursuant to the laws of this state;

~~34.~~ 35. "Professional" means arising out of or related to the specialized knowledge or skills associated with CPAs or PAs;

~~35.~~ 36. "Public accountant" means any individual who has received a license from the Board;

~~36.~~ 37. "Public interest" means the collective well-being of the community of people and institutions the profession serves;

~~37.~~ 38. "Registrant" means a CPA, PA, or firm composed of certified public accountants or public accountants or combination of both currently registered with the Board pursuant to the authority of the Oklahoma Accountancy Act;

~~38.~~ 39. "Report", when used with reference to financial statements, or specified elements, accounts or items of a financial statement, means an opinion, report or other form of language that states or implies assurance as to the reliability of any financial statements, or specified elements, accounts or items of a financial statement, and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. This definition is not intended to include a report on financial statements prepared by a person not holding a certificate or license. However, such report shall not refer to "audit", "audited", "exam", "examined", "review" or "reviewed", nor use the

language "in accordance with standards established by the American Institute of Certified Public Accountants" or successor of said entity, or governmental agency approved by the Board, except for the Internal Revenue Service. Nonregistrants may use the following disclaimer language in connection with financial statements to not be in violation of the Oklahoma Accountancy Act: "I (we) have not audited, examined, or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.";

~~39.~~ 40. "Representation" means any oral or written communication including but not limited to the use of title or legends on letterheads, business cards, office doors, advertisements, and listings conveying the fact that an individual or entity holds a certificate, license or permit;

~~40.~~ 41. "Review", when used with reference to financial statements, means a registrant performing inquiry and analytical procedures that provide the registrant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or if applicable, with another comprehensive basis of accounting; and

~~41.~~ 42. "Substantial equivalency" is a determination by the Oklahoma Accountancy Board or its designee that:

- a. the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed, the education, examination and experience requirements contained in the Oklahoma Accountancy Act and rules of the Board, or
- b. that an individual certified public accountant's or public accountant's education, examination and

experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the Oklahoma Accountancy Act and rules of the Board.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 15.2, as amended by Section 3, Chapter 125, O.S.L. 2004 (59 O.S. Supp. 2004, Section 15.2), is amended to read as follows:

Section 15.2 A. There is hereby re-created, to continue until July 1, ~~2004~~ 2010, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma Accountancy Board. The Oklahoma Accountancy Board shall have the responsibility for administering and enforcing the Oklahoma Accountancy Act. The Oklahoma Accountancy Board shall be composed of seven (7) members, who shall have professional or practical experience in the use of accounting services and financial matters, so as to be qualified to make judgments about the qualifications and conduct of persons and firms subject to regulation under this act to be appointed by the Governor and confirmed by the Senate. The number of registrant, enrolled agent, or ACAT credential holder members shall not be more than ~~six~~ five, not including a firm, who shall serve terms of five (5) years. No member who has served two successive complete terms shall be eligible for reappointment, but an appointment to fill an unexpired term shall not be considered a complete term for this purpose. The public ~~member~~ members shall serve coterminously with the Governor appointing the public member.

B. One member shall be a public accountant licensed and holding a permit pursuant to the provisions of the Oklahoma Accountancy Act. A list of qualified persons shall be compiled and submitted to the Governor by the Oklahoma Society of Public Accountants from time to time as appointment of the public accountant Board member is required to be made. A list of three names shall be submitted for each single appointment from which the Governor may make the

appointment. In the event there are no public accountants available for appointment, the Governor may appoint a member qualified pursuant to the provisions of subsection D of this section.

C. ~~Five~~ Three members shall be certified public accountants holding certificates and ~~four~~ two shall hold permits issued pursuant to the provisions of the Oklahoma Accountancy Act, at least ~~four~~ two of whom shall have been engaged in the practice of public accounting as a certified public accountant continuously for not less than five (5) out of the last fifteen (15) years immediately preceding their appointments. A list of qualified persons shall be compiled and submitted to the Governor by the Oklahoma Society of Certified Public Accountants from time to time as appointments of the certified public accountant Board members are required. A list of three names shall be submitted for each single appointment from which the Governor may make the appointment.

D. One member shall be an enrolled agent as defined by the Internal Revenue Service or a holder of a credential issued by the Accreditation Council for Accountancy and Taxation, or its successor organization.

E. Two members, each of whom shall be a public member who is not a certified public accountant ~~or~~, licensed public accountant, or enrolled agent. The public ~~member~~ members shall be appointed by the Governor to a term coterminous with the Governor. The public ~~member~~ members shall serve at the pleasure of the Governor.

~~E.~~ F. It is intended that the continuity of the terms, as they exist at the time of passage of the amendments to this section, be continued. After the effective date of this act, when the term of a certified public accountant member expires, that position shall be filled by the member provided for in subsection D of this section. When the term of the next certified public accountant member expires, that position shall be filled by a public member as provided in subsection E of this section.

G. Upon the expiration of the term of office, a member shall continue to serve until a qualified successor has been appointed. Confirmation by the Senate is required during the next regular session of the Oklahoma Senate for the member to continue to serve. The beginning date of the terms of the new member provided for in subsection F of this section and the new public member shall be the same as if the positions had been filled with a certified public accountant member. No member shall serve more than two terms.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 15.9, as last amended by Section 9, Chapter 125, O.S.L. 2004 (59 O.S. Supp. 2004, Section 15.9), is amended to read as follows:

Section 15.9 A. Upon payment of appropriate fees, the Oklahoma Accountancy Board shall grant a certificate or license to any individual of good character who meets the applicable education, experience and testing requirements provided for in this section and in Sections 15.8 and 15.10 of this title. For purposes of this subsection, good character means an individual who does not have a history of dishonest acts as demonstrated by documented evidence and has not been convicted, pled guilty, or pled nolo contendere to a felony charge. The Board may refuse to grant a certificate or license to an applicant for failure to satisfy the requirement of good character. The Board shall provide to the denied applicant written notification specifying grounds for denial of a certificate or license including failure to meet the good character criterion. Appeal of the action of the Board may be made in accordance with the provisions of the Administrative Procedures Act.

B. The Board shall issue certificates as certified public accountants to those applicants who have met the qualifications required by the provisions of the Oklahoma Accountancy Act and the applicable rules of the Board, and have passed an examination in accounting, auditing and related subjects as the Board determines appropriate with such grades that satisfy the Board that each

applicant is competent to practice as a certified public accountant. The Board may make use of all or any part of the Uniform Certified Public Accountant's Examination and Advisory Grading Service as it deems appropriate.

C. The Board shall, upon request, issue licenses as public accountants only to those applicants who shall have qualified and complied with the provisions of this act and the rules of the Board, and shall have passed an examination in accounting, ~~auditing tax,~~ and other related subjects ~~not to exceed~~ with a passing grade of seventy-five percent (75%) or above of the ~~CPA Examination examination~~ subjects with such grades that satisfy the Board that each applicant is competent to practice as a public accountant. ~~The subjects examined shall be covered by the same examination, and grading thereon for passing, as those used by the Board to test candidates for the certified public accountant's certificate~~ Board may make use of all or any part of the Accreditation Council for Accountancy Examination or its equivalent in content and length and grading services as it deems appropriate.

D. An applicant for initial issuance of a certificate or license under this section shall show that the applicant has had one (1) year of experience. Experience shall be defined by the Board by rule and shall include providing ~~a~~ the applicable type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, and be satisfied through work experience in government, industry, academia or public practice, all of which shall be verified by a certificate or license holder employer of an applicant, or ~~an~~ any other individual approved by the Board with proof of services. Upon completion of the requirements of Section 15.8 of this title, a qualified applicant for the examination may take the certified public accountant or public accountant examination prior to earning

the experience required in this subsection, but shall not be issued a certificate until the experience requirement has been met.

E. On or after July 1, 2005, every applicant for the certificate of certified public accountant or license of public accountant shall provide evidence of successful completion of an ethics examination prescribed by the Board.

~~F. The Board may make use of all or any part of the Uniform Certified Public Accountant's Examination and any organization that assists in providing this examination.~~

SECTION 4. AMENDATORY 59 O.S. 2001, Section 15.14, as last amended by Section 17, Chapter 125, O.S.L. 2004 (59 O.S. Supp. 2004, Section 15.14), is amended to read as follows:

Section 15.14 A. In addition to obtaining a certificate or license, certified public accountants and public accountants shall register with the Oklahoma Accountancy Board and pay a registration fee.

B. All valid certificates and licenses ending in an odd number shall expire on July 31 of each odd-numbered year. All valid certificates and licenses ending in an even number shall expire on July 31 of each even-numbered year. All such registrations shall expire on the last day of July and may be renewed for a period of two (2) years. The Board shall implement rules for the scheduling of expiration and renewal of certificates and licenses, including the prorating of fees.

C. After the initial registration, renewal of registrations shall be accomplished by registrants in good standing upon filing of the registration and upon payment of the registration fee not later than July 31. Interim registration shall be at full rates. For only the two-year registration period beginning July 1, 2005, a public accountant registrant shall be permitted to renew registration as a public accountant or as a certified public accountant subject to the provisions of Section 15.9 of this title.

D. Not less than thirty (30) calendar days before the expiration of a valid certificate or license, written notice of the expiration date shall be mailed to the individual holding the valid certificate or license at the last-known address of such individual according to the official records of the Board.

E. A certificate or license shall be renewed by payment of a registration renewal fee set by the Board which shall not exceed Two Hundred Dollars (\$200.00) for each two-year period.

1. Upon failure of an individual to pay registration fees on or before July 31, the Board shall notify the individual in writing by certified mail to the last known address of the individual, as reflected in the records of the Board, of the individual's failure to comply with the Oklahoma Accountancy Act.

2. A certificate or license granted under authority of the Oklahoma Accountancy Act shall automatically be revoked if the individual fails to pay registration fees on or before August 31.

3. Any individual whose certificate or license is automatically revoked by this provision may be reinstated by the Board upon payment of:

- a. a fee set by the Board which shall not exceed Three Hundred Dollars (\$300.00) for a renewal within one (1) year of the due date, or
- b. a fee set by the Board which shall not exceed Six Hundred Dollars (\$600.00) for a renewal after the expiration of a year.

However, an individual whose certificate or license has been expired under this section for five (5) years or more may not renew the certificate or license. The individual may obtain a new certificate or license by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate or license. This provision shall not apply to

an individual who is licensed to practice in another jurisdiction five (5) years prior to reapplication.

F. The Board shall establish rules whereby the registration fee for certified public accountants and public accountants may, upon written application to the Board, be reduced or waived by the Board for registrants who have retired upon reaching retirement age, or who have attained the age of sixty-five (65) years, or who have become disabled to a degree precluding the continuance of their practice for six (6) months or more prior to the due date of any renewal fee. The Board shall use its discretion in determining conditions required for retirement or disability.

G. All changes of professional status, employment or mailing address shall be reported to the Board within thirty (30) calendar days of such changes becoming effective.

H. At the direction of the Board, a register may be printed and/or published in any media format the Board considers appropriate for public distribution. Any such publication shall contain the names arranged alphabetically of all individuals and firms holding valid certificates, licenses, permits, the names of the members of the Board, and such other information as may be deemed appropriate by the Board.

SECTION 5. This act shall become effective July 1, 2005.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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