

Legislative Analysis



REVISIONS TO CPA ACT

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House Bill 5936 as introduced
Sponsor: Rep. Andy Coulouris
Committee: Banking and Financial Services

Complete to 4-24-08

A SUMMARY OF HOUSE BILL 5936 AS REPORTED BY COMMITTEE 4-22-08

BACKGROUND INFORMATION:

According to information supplied by various industry members, certified public accountants (CPAs) face many regulatory hurdles in providing services to clients located outside their licensing jurisdiction and to clients with offices in multiple states. Because each state has its own set of rules and regulations that govern how an out-of-state CPA can conduct business in that state, the result has been a patchwork system (with 54 licensing jurisdictions) that is difficult for individual CPAs as well as small and large CPA firms to navigate. The advent of the electronic age, in which many types of business transactions can be managed via phone, fax, and by computer, has brought the situation to a head. Clients want the freedom to seek the CPA best suited for their needs, and CPAs need the flexibility to conduct business across state lines without the inefficiencies created by trying to adhere to 54 different regulatory structures.

Recently, the American Institute of CPAs, the National Association of State Boards of Accountants, and state CPA societies worked together to develop a model regulatory system expected to resolve the issues faced by CPAs and their clients. Under the model language, CPAs meeting certain educational and experience criteria will be able to practice across state lines without having to obtain additional state licenses or temporary permits. At the same time, individual state boards of accountancy will retain full disciplinary powers over all CPAs practicing in their home states. This will allow the state boards to continue to protect the public.

Currently, 19 states have already enacted the model system, bills passed in three other states are awaiting the signature of their governors, and legislation is under consideration in 11 other states. Enactment of the bill is seen as crucial by industry members, who cite increasing interstate commerce and virtual technologies as requiring a uniform system. Proponents of the model act say that all Michigan-based CPAs, whether in individual practice or employed by a large or small CPA firm, could serve clients more efficiently and more cost effectively if relieved of the nightmare of trying to comply with multiple licensing structures. Further, failure to put a similar system in place could disadvantage Michigan-based CPAs from serving their out-of-state clients as well as Michigan businesses utilizing out-of-state CPAs.

CONTENT:

The bill would make numerous revisions to Article 7 of the Occupational Code (MCL 339.720 et al.), which governs the profession of Certified Public Accountants (CPAs). In general, the bill would adopt model legislation proposed by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy intended to remove barriers created by varying state laws that make it cumbersome for CPAs licensed in one jurisdiction to serve clients located in another.

Significant revisions to the act include the following provisions.

Individuals. A CPA licensed in another state would be considered to have qualifications substantially equivalent to Michigan requirements, have all the privileges of a Michigan-licensed CPA, and could practice public accountancy without needing to obtain a certificate, license, or temporary practice permit if he or she met either or both of the following:

- Holds a valid license as a CPA from another jurisdiction that requires the individual have at least 150 semester hours of college, including a baccalaureate (or higher) degree; pass the national Uniform Certified Public Accountant Examination; and have at least one year experience in public accountancy.
- Holds a valid license as a CPA from another jurisdiction that does not meet the above requirements, but his or her CPA qualifications are substantially equivalent to those requirements. Any individual who passed the national examination and holds a valid license by another licensing jurisdiction prior to January 1, 2012 would be exempt from the above educational requirements.

A CPA rendering professional services under the above provisions, whether in person or by mail, telephone, or electronic means would be granted practice privileges in the state. No notice, fee, or other submission would be required from that CPA.

A CPA who had met either or both of the above provisions could perform certain engagements included in the definition of "attest" (i.e., audits) for an entity with its home office in this state only through a firm that has obtained a license under the act.

Firms. A firm that offered public accounting services would only have to obtain a Michigan license if it established or maintained an office in the state or an individual representing the firm performed certain services, including audits, as specified in the bill. In addition to current requirements to obtain a license under the act, owners of firms applying for licensure who were not CPAs would have to be active individual participants in the firm or its affiliated entities. The firm would also have to file the required certificate of authority with the Department of Labor and Economic Growth under provisions of the Business Corporations Act, if applicable.

A firm not required to obtain a Michigan license could perform a review engagement for a client having its home office in this state; could use the title "CPA" or "CPA Firm"; and

could practice public accountancy without a license under specific conditions, including performing such services through an individual with practice privileges under the bill.

Penalties and disciplinary actions. The bill would apply existing penalty provisions for conduct prohibited under the act, such as engaging in fraudulent business practices, to individuals licensed in other jurisdictions granted practice privileges under the bill and also to the firms employing those individuals.

The individual granted practice privileges under the bill and the firm who employs the individual are declared by the bill as consenting to several stipulations as a condition of the exercise of the practice privilege. The stipulations include:

- Personal and subject matter jurisdiction and disciplinary authority of the State Board of Accountancy and DLEG.
- Compliance with the act and applicable rules.
- If the license of an individual granted practice privileges under the bill becomes invalid, the individual would have to cease offering or rendering professional services in this state both individually and on behalf of a firm.
- Appointment of the state board or other licensing authority issuing the individual's license as the agent for process of service.

A Michigan licensee who offered or rendered services or used the CPA title in another licensing jurisdiction or before a state or federal agency would be subject to disciplinary action in this state for acts committed in that other jurisdiction that would be subject to discipline in that licensing jurisdiction. DLEG would have to examine any complaint made by another licensing jurisdiction and could accept, as prima facie evidence of a violation of this act, the final order of violation issued by another state board or other licensing jurisdictional authority.

Definitions. The bill would define several new terms, including "attest," "client," "compilation," "home office," "principal place of business," and "report." It also would revise the definition of "certified public accountant."

FISCAL IMPACT:

The bill would reduce revenue for the Department of Labor and Economic Growth by an indeterminate, though not likely significant, amount. In most cases, the bill would no longer require out-of-state CPA firms and individual licensees to obtain a temporary permit (\$100 fee) for the periodic and temporary practice of public accountancy in Michigan. In 2007, there were 74 temporary permits issued, generating revenue of \$7,400 (To date there have been about 54 temporary permits issued in FY 2007-08). To the extent temporary permits would no longer be required, the bill would reduce revenue by a relatively insignificant amount, likely less than \$10,000. Additionally, the bill could result in a number of out-of-state CPA firms and individual licensees opting to forego licensure in Michigan. The department indicates that there are currently 2,400 out-of-state individual CPA licensees, 2,200 out-of-state registrations, and another 154 out-of-

state firms. The department indicates that, at most, the potential revenue loss resulting from out-of-state licensees and firms to be approximately \$309,000. However, both the department and industry experts have noted that while the exact number of licensees that would (or could) opt to forego licensure is not known, the experience of other states that have enacted similar legislation indicates the number of licensees likely to do so would not be significant and, as a result, would not materially impact revenue for the department.

Any revenue loss resulting from the bill would reduce revenue for the Accountancy Enforcement Fund as well as Licensing and Regulation Fee revenue. The Accountancy Enforcement Fund was created with the enactment of 2005 PA 277. The State License Fee Act (1979 PA 152) provides that the fund is to receive, among other things, revenue resulting from the increase in accountancy fees stemming from PA 277. The fund supports the department's activities relative to unlicensed activity, disciplinary actions against licensees and registrants, and reimburses the Attorney General for any costs related to unlicensed activity and disciplinary actions. Public Act 277 raised the application processing fee from \$35 to \$100; raised the license fee for individuals from \$40 to \$100; raised the licensee fee for firms from \$35 to \$100; and raised the fee for a temporary practice permit from \$15 to \$100. Licensing and Regulation Fee revenue primarily supports the occupational licensing functions of the DLEG, Bureau of Commercial Services.

POSITIONS:

The Department of Labor and Economic Growth supports the bill. (4-22-08)

The Michigan Association of Certified Public Accountants supports the bill. (4-22-09)

The American Institute of Certified Public Accountants supports the bill. (4-22-08)

The Michigan State Board of Accountancy supports the bill. (4-22-08)

The Detroit Metro Chapter of the National Association of Black Accountants supports the bill. (4-22-08)

The Bovitz CPA, P.C., a small firm CPA practitioner, supports the bill. (4-22-08)

The Rehmann Group supports the bill. (4-22-08)

A representative of the Detroit office of Ernst & Young, LLP, testified in support of the bill. (4-22-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.