

Act No. 161
Public Acts of 2008
Approved by the Governor
June 11, 2008
Filed with the Secretary of State
June 11, 2008
EFFECTIVE DATE: June 11, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Coulouris, Bieda, Griffin, Moore, Huizenga and Mayes

ENROLLED HOUSE BILL No. 5936

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 720, 723, 724, 728, and 734 (MCL 339.720, 339.723, 339.724, 339.728, and 339.734), sections 720 and 724 as added by 1997 PA 10, sections 723 and 734 as amended by 2005 PA 278, and section 728 as amended by 2000 PA 334, and by adding sections 727a and 734a.

The People of the State of Michigan enact:

Sec. 720. (1) As used in this article:

(a) "Attest" means providing the following financial statement services:

(i) Any audit or other engagement to be performed in accordance with the statements on auditing standards.
(ii) Any review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.

(iii) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements.

(iv) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

(b) "Certified public accountant" means an individual who is either of the following:

(i) Qualified by education, examination, and experience to engage or offer to engage in the practice of public accounting as evidenced by the issuance of a certificate as a certified public accountant under section 725 or 726 and a license or registration issued under section 727.

(ii) An individual whose principal place of business is not in this state and who satisfies the requirements set forth in section 727a.

(c) “Client” means a person or entity that engages a licensee or licensee’s employer to receive any service in the practice of public accounting.

(d) “Compilation” means providing a service to be performed in accordance with statements on standards for accounting and review services that are presenting, in the form of financial statements, information that is the representation of management or owners without undertaking to express any assurance on the statements.

(e) “Firm” means a corporation, partnership, limited liability company, unincorporated association, sole proprietorship operating under an assumed name, or other legal entity.

(f) “Home office” means the location specified by the client as the address to which a service described in subdivision (a) or (d) is directed.

(g) Subject to subsection (2), “practice of public accounting” means rendering or offering to render an opinion on or attesting to or offering to attest to the reliability of a representation or estimate, including, but not limited to, the giving of an opinion in substance that financial information as set forth presents fairly the condition of the entity reviewed or audited, in regard to an entity embracing 1 or more of the following:

(i) Financial information.

(ii) Facts respecting compliance with conditions established by law or contract, including, but not limited to, a statute, ordinance, regulation, grant, loan, or appropriation.

(iii) The scope of the accounting procedures rendered in connection with the presentation of a financial statement.

(h) “Principal place of business” means the office location designated by the licensee for the purposes of substantial equivalency and reciprocity.

(i) “Report”, when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements 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. Report includes any form of language which disclaims an opinion when that form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language, or both, and includes any other form of language that is conventionally understood to imply that assurance or special knowledge and competence, or both.

(2) In addition to the definition set forth in subsection (1)(g), practice of public accounting includes 1 or more of the following activities when performed or offered to be performed by a person holding himself or herself out as a certified public accountant for a client or a potential client:

(a) The issuance of reports on financial statements.

(b) One or more kinds of management advisory, financial advisory, or consulting services.

(c) The preparation of tax returns.

(d) The furnishing of advice on tax matters.

Sec. 723. (1) Each individual having complied with the requirements described in section 720(1)(b) shall be known as a certified public accountant and any other person shall not use that title or the abbreviation “CPA” or any other word, words, letters, or figures to indicate that the person using them is a certified public accountant unless the use is specifically approved by the board. Use of the terms “certified accountant”, “chartered accountant”, “public accountant”, and “registered accountant” and the abbreviations “C.A.”, “P.A.”, and “R.A.” is specifically prohibited as being prima facie misleading to the public.

(2) Except as provided in section 724, a person shall not engage in the practice of public accounting either in the person’s own name, under an assumed name, or as a member of a firm or as an employee, unless the person holds a Michigan license as a certified public accountant issued under this article or is practicing public accounting in this state pursuant to section 727a.

(3) Unless use of a term is specifically approved by the board, the display or uttering by a person of a card, sign, advertisement, directory listing, or other printed, engraved, or written instrument or device bearing a person’s name in conjunction with a title described in subsection (1) shall be prima facie evidence that the person whose name is so displayed caused or procured the display or uttering of the card, sign, advertisement, directory listing, or other printed, engraved, or written instrument or device. Evidence of the commission of a single act prohibited by this section is sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

(4) Each licensed firm may use the designation “certified public accountants” in connection with the firm name, except that a licensed firm having only 1 member may use only the designation “certified public accountant”. An unlicensed firm shall not use the designation “certified public accountants”, “certified accountants”, “chartered accountants”, “public accountants”, or “registered accountants” or the abbreviation “C.P.A.”, “CPA”, “CPAs”, “C.A.”,

“P.A.”, or “R.A.” in connection with the firm name unless the firm is licensed under the laws of another licensing jurisdiction and is permitted to practice in this state without obtaining a license as described in section 728.

(5) A person that violates this section or a rule or order promulgated or issued under or related to this section is liable for an administrative fine payable to the department of not more than \$25,000.00 per violation.

(6) The department may conduct an investigation and proceed under article 5 to enforce this section.

Sec. 724. This article does not prohibit the following:

(a) An individual who is not a certified public accountant from serving as an employee of, or an assistant to, a certified public accountant or firm composed of certified public accountants licensed to practice under this article if the individual does not issue an accounting or financial statement over his or her name.

(b) A licensed certified public accountant of another licensing jurisdiction who does not meet the requirements of section 727a, or an accountant who is licensed in a foreign country for the practice of public accounting in that country, from temporarily and periodically engaging in the practice of public accounting in this state if all of the following requirements are met:

(i) The individual is conducting a regular practice of public accounting in another licensing jurisdiction or foreign country.

(ii) The temporary practice is conducted in conformity with section 736 and applicable rules promulgated by the director, if any.

(iii) The individual secures a temporary permit from the department to conduct the practice in this state.

(c) A practicing attorney from preparing reports or presenting records customarily prepared by an attorney in connection with the attorney's professional work.

(d) A person from preparing a financial report or tax return, not requiring the expression of an opinion on the report or return, for filing with a federal, state, or local governmental unit.

(e) An officer, employee, partner, or principal of an organization from signing a statement or report in reference to the financial affairs of the organization with wording designating the position, title, or office which the officer, employee, partner, or principal of an organization holds in that organization.

(f) An act of a public official or public employee in the performance of that individual's official duties.

(g) An individual who may be employed by more than 1 person or firm from keeping books, making trial balances or statements, and preparing audits or reports, if the audits or reports are not used or issued by the employer as having been prepared by a certified public accountant.

(h) A firm that does not hold a valid license under section 728 and that does not have an office in this state from providing its professional services in this state in the practice of public accountancy and from using the certified public accountant designation so long as it complies with the requirements of section 728(5) or (6), whichever is applicable.

Sec. 727a. (1) An individual whose principal place of business is not in this state shall be considered to have qualifications substantially equivalent to this state's requirements, shall have all the privileges of licensees of this state, and may practice public accountancy without the need to obtain a certificate, license, or temporary practice permit under this article, if the individual meets either or both of the following:

(a) Holds a valid license as a certified public accountant from another licensing jurisdiction that requires, as a condition of licensure, that the individual meets all of the following:

(i) Has at least 150 semester hours of college education including a baccalaureate or higher degree conferred by a college or university.

(ii) Achieves a passing grade on the uniform certified public accountant examination.

(iii) Possesses at least 1 year of experience including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, all of which may be obtained through government, industry, academic, or public practice as verified by a licensee.

(b) Holds a valid license as a certified public accountant from another licensing jurisdiction that does not meet the requirements of subdivision (a), but such individual's certified public accountant qualifications are substantially equivalent to those requirements. Any individual who passed the uniform certified public accountant examination and holds a valid license issued by another licensing jurisdiction prior to January 1, 2012 is exempt from the education requirement in subdivision (a)(i) for purposes of this subdivision.

(2) Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person or by mail, telephone, or electronic means under this section shall be granted practice privileges in this state, and no notice, fee, or other submission shall be required of any such individual. Such an individual is subject to the requirements of section 734a.

Sec. 728. (1) A firm organized for the practice of public accounting shall apply for and obtain a Michigan license under this article in order to engage in the practice of public accounting in this state if either of the following apply:

(a) The firm establishes or maintains an office in this state.

(b) An individual representing the firm performs any engagement described in section 720(1)(a)(i), (iii), or (iv) for any client having its home office in this state.

(2) Reports produced pursuant to engagements in subsection (1)(b) may be supervised or signed, or the report's signature may be authorized for the firm, by an individual practicing public accounting in Michigan pursuant to section 727a.

(3) A firm applying for licensure under this article shall meet all of the following requirements:

(a) At least a simple majority of the equity and voting rights of the firm are held directly or beneficially by individuals who are licensed in good standing as certified public accountants of this or another state or the equivalent in another licensing jurisdiction acceptable to the board. Owners who are not certified public accountants as defined by section 720(1)(b) must be active individual participants in the firm or its affiliated entities. An individual with practice privileges under section 727a who performs services for which a firm permit is required under this section is not required to obtain a certificate under section 726 or a registration or license under section 727.

(b) The principal officer of the firm and each officer or director having authority for the practice of public accounting by the firm are licensed in good standing as certified public accountants in this or another state or the equivalent in another licensing jurisdiction acceptable to the board.

(c) Has filed the required certificate of authority with the department pursuant to the business corporations act, 1972 PA 284, MCL 450.2001 to 450.2098, if applicable.

(4) A firm shall provide a change in address to the department within 30 days of the change.

(5) A firm not required to obtain a Michigan license under subsection (1) may perform a review engagement in accordance with the statements on standards for accounting and review services or a compilation for a client having its home office in this state, may use the title "CPA" or "CPA firm", and may practice public accountancy as authorized in this section without a license issued under subsection (1) only if it meets both of the following conditions:

(a) It has met the requirements in subsection (3)(a) and (b) and section 729(2).

(b) It performs such services through an individual with practice privileges under section 727a.

(6) A firm not required to obtain a Michigan license under subsection (1) and that is not seeking to practice under subsection (5) may perform other professional services within the practice of public accountancy while using the title "CPA" or "CPA firm" in this state without a license issued under subsection (1) only if it meets both of the following conditions:

(a) It performs such services through an individual with practice privileges under section 727a.

(b) It can lawfully do so in the licensing jurisdiction where such individuals with practice privilege have their principal place of business.

Sec. 734. (1) A holder of a certificate, registration, or license as a certified public accountant or an individual exercising the practice privilege granted under section 727a and the firm employing that individual is subject to the penalties of section 602 for 1 or more of the following:

(a) Fraud or deceit in obtaining a certificate or registration as a certified public accountant, a license to practice public accounting, or a practice privilege under this article.

(b) Dishonesty, fraud, or negligence in the practice of public accounting.

(c) Violation of a rule of professional conduct promulgated under this article.

(d) Conviction of a felony under the laws of this or another state or the United States or conviction of a crime, an element of which is dishonesty, fraud, or negligence, under the laws of this or another state or of the United States, including, but not limited to, the failure to file a personal federal, state, or local income tax return.

(e) Cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant by another state for a cause other than failure to pay a licensure or other required fee in that state.

(f) Suspension or revocation for cause of the right to engage in the practice of public accounting before a state or federal agency.

(g) Conduct discreditable to the public accounting profession.

(h) Determination of mental incompetency by a court of law.

(i) A violation of this article or a rule promulgated under this article.

(j) A violation of the provisions of section 604.

(k) A violation of professional standards regarding the issuance of reports on financial statements; 1 or more kinds of management advisory, financial advisory, or consulting services; the preparation of tax returns; or the furnishing of advice on tax matters.

(2) Notwithstanding section 602(e), a person that violates this article or a rule or order promulgated or issued under or related to this article is liable for an administrative fine payable to the department of not more than \$25,000.00 per violation.

(3) Within 30 days after a final determination rendered by a federal or state administrative agency or a judgment or conviction issued by a federal court, a state court, or any other court of record, a licensee or registrant shall report to the department in writing or electronically a determination, order, judgment, or conviction regarding a violation in which dishonesty, fraud, or negligence is an element of that determination, order, judgment, or conviction.

Sec. 734a. (1) An individual, having met the requirements of, and exercising the practice privilege granted by, section 727a, and the firm employing that individual, simultaneously consent to all of the following as a condition of the exercise of that privilege:

(a) To the personal and subject matter jurisdiction and disciplinary authority of the board and the department.

(b) To comply with this act and the applicable rules.

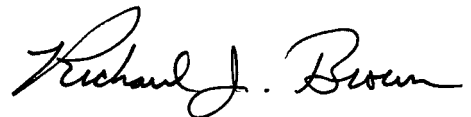
(c) In the event the license from the licensing jurisdiction of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a firm.

(d) To the appointment of the state board or other licensing authority issuing his or her license as the agent upon whom process may be served in any action or proceeding by this board against the individual or the firm employing that individual.

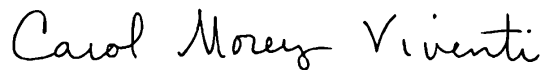
(2) An individual having met the requirements as described by section 727a may perform an engagement described in section 720(1)(a)(i), (iii), or (iv) for an entity with its home office in this state only through a firm that has obtained a license under section 728.

(3) A licensee of this state offering or rendering services or using the certified public accountant title in another licensing jurisdiction or before a state or federal agency is subject to the disciplinary action in this state for an act committed in another licensing jurisdiction or before a state or federal agency for which the licensee would be subject to discipline for an act committed in another licensing jurisdiction or before a state or federal agency. The department is required to examine any complaint made by the state board or other licensing jurisdictional authority and may 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.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor