

LEGISLATIVE BILL 957

Approved by the Governor April 4, 1994

Introduced by Landis, 46

AN ACT relating to accountants; to amend sections 1-111 and 1-169, Reissue Revised Statutes of Nebraska, 1943, and sections 1-126, 1-133, 1-135, and 1-148, Revised Statutes Supplement, 1993; to provide for partial ownership of accounting firms by persons not licensed as accountants; to provide for rules and regulations; to change notice requirements to the Nebraska State Board of Public Accountancy regarding admission or withdrawal of a partner or member; to change provisions relating to and provide responsibilities for managers; to provide for the imposition and disposition of certain costs and civil penalties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Notwithstanding the provisions of the Nebraska Professional Corporation Act or the Public Accountancy Act of 1957 or any other provision of law inconsistent with this section, partnerships, professional corporations, limited liability companies, and any other form of business entity engaged in the practice of public accounting in Nebraska entitled to register with the board as a business entity of certified public accountants or public accountants may have persons as owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(1) Such persons shall not exceed forty-nine percent of the total number of owners of such business entity;

(2) Such persons shall not hold, in the aggregate, more than thirty-three percent of such business entity's equity capital or voting rights or receive, in the aggregate, more than thirty-three percent of such business entity's profits or losses;

(3) Such persons shall not hold themselves out as certified public accountants or public accountants;

(4) Such persons shall not hold themselves out to the general public or to any client as an owner, partner, shareholder, limited liability company member, director, officer, or other official of the business entity except in a manner specifically permitted by the rules and regulations of the board;

(5) Such persons shall not have ultimate responsibility for the performance of any audit, review, or compilation of financial statements or other forms of attestation related to financial information;

(6) Such persons shall not be owners of a business engaged in the practice of accounting without board approval if such persons (a) have been convicted of any felony under the laws of any state, of the United States, or of any other jurisdiction, (b) have been convicted of any crime, an element of which is dishonesty or fraud, under the laws of any state, of the United States, or of any other jurisdiction, (c) have had their professional or vocational licenses, if any, suspended or revoked by a licensing agency of any state of the United States or of any other jurisdiction or such persons have otherwise been the subject of other final disciplinary action by any such agency, or (d) are in violation of any rule or regulation regarding character or conduct promulgated by the board relating to owners who are not certified public accountants or public accountants; and

(7) Such persons, regardless of where located, shall be individuals who actively participate in the business.

The board shall adopt and promulgate rules and regulations for purposes of interpretation and enforcement of compliance with this section.

Sec. 2. That section 1-111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

1-111. (1) All fees collected under the provisions of the Public Accountancy Act of 1957 and all costs collected under subdivision (8) of section 1-148 shall be paid remitted by the secretary of the board, as collected, into the state treasury, and to the State Treasurer shall enter and carry on his records all such collections in a separate fund to be designated as for credit to the Public Accountants Fund which is hereby created. Such fund shall, if and when specifically appropriated by the Legislature during any biennium for that purpose, be paid out from time to time by the State Treasurer upon warrants drawn by the Director of Administrative Services on vouchers signed by the secretary of the board, and such office and expense

thereof shall not be supported or paid from any other fund of the state. Any money in the Public Accountants Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259 72-1276.

(2) All civil penalties collected under subdivision (5) of section 1-148 shall be remitted by the secretary of the board to the State Treasurer for credit to the permanent school fund.

Sec. 3. That section 1-126, Revised Statutes Supplement, 1993, be amended to read as follows:

1-126. A partnership or limited liability company engaged in this state in the practice of public accounting may register with the board as a partnership or limited liability company of certified public accountants if it meets the following requirements:

(1) At least one general partner or member thereof must shall be a certified public accountant of this state in good standing;

(2) Each partner of the partnership who is a certified public accountant or member of the limited liability company who is a certified public accountant thereof personally engaged within this state in the practice of public accounting as a partner or member thereof must shall be a certified public accountant of this state in good standing;

(3) Each partner of the partnership who is a certified public accountant or member of the limited liability company who is a certified public accountant shall thereof must be a certified public accountant of some state in good standing; and

(4) Each resident manager in charge of an office of the firm in this state must shall be a certified public accountant of this state in good standing.

An application for such registration must shall be made upon the affidavit of a general partner of such partnership or a member of such limited liability company who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership or limited liability company which is so registered and which holds a permit issued under section 1-136 may use the words certified public accountants or the abbreviation C.P.A.'s in connection with its partnership or limited liability company name. Notification shall be given to the board, within one month, after pursuant to board rules and regulations, regarding the admission to or withdrawal of a partner from any partnership or a member from any limited liability company so registered.

Sec. 4. That section 1-133, Revised Statutes Supplement, 1993, be amended to read as follows:

1-133. A partnership or limited liability company engaged in this state in the practice of public accounting may register with the board as a partnership or limited liability company of public accountants if it meets the following requirements:

(1) At least one general partner or member thereof must shall be a certified public accountant or a public accountant of this state in good standing;

(2) Each partner of the partnership who is a certified public accountant or public accountant or member of the limited liability company who is a certified public accountant or public accountant thereof personally engaged within this state in the practice of public accounting as a partner or member thereof must shall be a certified public accountant or a public accountant of this state in good standing; and

(3) Each resident manager in charge of an office of a firm in this state must shall be a certified public accountant or a public accountant of this state in good standing.

An application for such registration must shall be made upon the affidavit of a general partner of such partnership or a member of such limited liability company who holds a permit to practice in this state as a certified public accountant or as a public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership or limited liability company which is so registered and which holds a partnership or limited liability company permit issued under section 1-136 may use the words public accountants in connection with its partnership or limited liability company name. Notification shall be given to the board, within one month, after pursuant to board rules and regulations, regarding the admission to or withdrawal of a partner from any partnership or member from any limited liability company so registered.

Sec. 5. That section 1-135, Revised Statutes Supplement, 1993, be amended to read as follows:

1-135. Each office established or maintained in this state for the

practice of public accounting in this state by a certified public accountant, by a partnership of certified public accountants, by a limited liability company of certified public accountants, by a public accountant, by a partnership of public accountants, by a limited liability company of public accountants, by one registered under section 1-125, or by a corporation shall be registered annually under the Public Accountancy Act of 1957 with the board, but no fee shall be charged for registration of the first office. An annual fee shall be charged for the registration of the second and each additional office registered by such accountant or accountants. Such fee shall be in an amount to be determined, from time to time, by the board, not to exceed fifty dollars. The board shall by rule and regulation prescribe the procedure to be followed in effecting such registrations.

Each office shall be under the supervision of a manager who may be either a principal or a staff employee holding a permit under the provisions of section 1-136 which is in full force and effect. The title or designation certified public accountant or the abbreviation C.P.A. shall not be used in connection with such office unless such manager is the holder of a certificate as a certified public accountant under sections 1-114 to 1-124 and a permit issued under section 1-136, both of which are in full force and effect. Such manager may serve in such capacity at one office only. Such manager shall be directly responsible for the supervision and management of the office and may be subject to disciplinary action for the actions of the business entity or any individuals employed by that office of the business entity within the State of Nebraska which relate to the practice of public accountancy. The board shall by regulation prescribe the procedure to be followed in effecting such registrations:

Sec. 6. That section 1-148, Revised Statutes Supplement, 1993, be amended to read as follows:

1-148. Upon the completion of any hearing, the board, by majority vote, shall have the authority through entry of a written order to take in its discretion any or all of the following actions:

- (1) Issuance of censure or reprimand;
- (2) Suspension of judgment;
- (3) Placement of the permitholder, certificate holder, or holder of a registration on probation;
- (4) Placement of a limitation or limitations on the permit, certificate, or registration and upon the right of the permitholder, certificate holder, or holder of a registration to practice the profession to such extent, scope, or type of practice for such time and under such conditions as are found necessary and proper;
- (5) Imposition of a civil penalty not to exceed ten thousand dollars. The amount of the penalty shall be based on the severity of the violation;
- (6) Entrance of an order of suspension of the permit, certificate, or registration;
- (7) Entrance of an order of revocation of the permit, certificate, or registration; or
- (8) Imposition of costs as in ordinary civil actions in the district court, which may include attorney and hearing officer fees incurred by the board and the expenses of any investigation undertaken by the board; or
- (9) Dismissal of the action.

Sec. 7. That section 1-169, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

1-169. Sections 1-105.01 to 1-171 and section 1 of this act shall be known and may be cited as the Public Accountancy Act of 1957.

Sec. 8. That original sections 1-111 and 1-169, Reissue Revised Statutes of Nebraska, 1943, and sections 1-126, 1-133, 1-135, and 1-148, Revised Statutes Supplement, 1993, are repealed.