

6307--B

2009-2010 Regular Sessions

I N S E N A T E

November 20, 2009

Introduced by Sens. STAVISKY, C. JOHNSON, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the practice of public accountancy by accountants who are not licensed in New York state; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 7406 of the education law, as amended by chapter
2 651 of the laws of 2008, is amended to read as follows:
3 S 7406. Limited permits and [temporary] practice [permits] PRIVILEGE.
4 1. Limited permits. On recommendation of the board, the department may
5 issue a limited permit to an applicant of good moral character, who is
6 the holder of a certificate, license or degree in a foreign country
7 constituting a recognized qualification for the performance in such
8 country of the acts set forth in section seventy-four hundred one of
9 this article, provided the applicant has professional qualifications
10 that are determined by the board to be [significantly comparable]
11 SUBSTANTIALLY EQUIVALENT to the licensure requirements for certified
12 public accountancy pursuant to this article, and the applicant resides
13 or has a place for the regular transaction of business within the state,
14 and equal recognition is granted by the foreign country concerned to
15 certified public accountants or public accountants licensed in the
16 United States. Such limited permit shall be valid for a period of two
17 years and may be renewed on recommendation of the board. Such permit
18 shall authorize the applicant to use only the title or designation under
19 which he or she is generally known in his or her own country, followed

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 by the name of the country from which he or she received his or her
2 certificate, license or degree, notwithstanding the provisions of subdi-
3 vision two of section seventy-four hundred eight of this article. THE
4 FEE FOR EACH LIMITED PERMIT AND EACH RENEWAL SHALL BE ESTABLISHED IN
5 REGULATION BY THE BOARD OF REGENTS.

6 2. [Temporary practice permits] PRACTICE PRIVILEGE. a. [On recommenda-
7 tion of the board] EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH TWO OR
8 THREE OF PARAGRAPH F OF THIS SUBDIVISION, a certified public accountant,
9 licensed by another state which the board of regents OR ITS DESIGNEE has
10 determined to have [significantly comparable] SUBSTANTIALLY EQUIVALENT
11 certified public accountant licensure requirements, or whose individual
12 licensure qualifications are verified by the department OR ITS DESIGNEE
13 to be [significantly comparable] SUBSTANTIALLY EQUIVALENT to New York's
14 requirements, and in good standing, who intends to perform ANY OF the
15 services in [subdivisions] SUBDIVISION one [and], two OR THREE of
16 section seventy-four hundred one of this article may [temporarily] prac-
17 tice public accountancy in this state, if the certified public account-
18 ant:

19 (1) holds a valid license to practice public accountancy in the other
20 state, AND

21 (2) practices public accountancy in another state that is his or her
22 principal place of business[, and

23 (3) obtains from the department a temporary practice permit].

24 b. The [temporary] practice [permit] PRIVILEGE allows such certified
25 public accountant, who meets the requirements of paragraph a of this
26 subdivision to practice public accountancy in this state. [Each tempo-
27 rary practice permit shall allow the holder to practice in this state
28 for an aggregate total of one hundred eighty days during the twelve
29 month period beginning on the effective date of the permit.]

30 c. [Applications for the temporary practice permit shall be submitted
31 to the department through an electronic means as prescribed by the
32 commissioner. After the department renders a timely initial determi-
33 nation that the applicant has submitted the information necessary to
34 verify that the requirements of paragraph a of this subdivision are
35 satisfied, applications for temporary practice permits shall be proc-
36 essed by the department within thirty days. During such thirty day proc-
37 essing period, the applicant may practice; provided, however, that if
38 the application is denied the applicant shall cease the practice of
39 public accountancy in the state of New York.] AN INDIVIDUAL WHO HAS BEEN
40 GRANTED PRACTICE PRIVILEGES UNDER THIS SECTION WHO PERFORMS ANY OF THE
41 SERVICES IN SUBDIVISION ONE OF SECTION SEVENTY-FOUR HUNDRED ONE OF THIS
42 ARTICLE MAY ONLY DO SO THROUGH A FIRM WHICH HAS OBTAINED A REGISTRATION
43 UNDER SECTION SEVENTY-FOUR HUNDRED EIGHT OF THIS ARTICLE. SUCH AN INDI-
44 VIDUAL, AS WELL AS AN INDIVIDUAL WITH A NEW YORK LICENSE WHO DOES NOT
45 HAVE A PRINCIPAL PLACE OF BUSINESS IN NEW YORK, MAY PROVIDE SERVICES IN
46 SUBDIVISION TWO OR THREE OF SECTION SEVENTY-FOUR HUNDRED ONE OF THIS
47 ARTICLE THROUGH A FIRM OF CERTIFIED PUBLIC ACCOUNTANTS THAT DOES NOT
48 HAVE A REGISTRATION IN THIS STATE BUT THAT HOLDS A VALID LICENSE, REGIS-
49 TRATION, OR PERMIT IN ANOTHER STATE.

50 d. Any certified public accountant who practices in this state pursu-
51 ant to this section, and any firm that employs such certified public
52 accountant to provide such services in New York, consents to all of the
53 following as a condition of the exercise of such [temporary] practice
54 privilege:

55 (1) to the personal and subject matter jurisdiction and disciplinary
56 authority of the board of regents UNDER SECTIONS SIXTY-FIVE HUNDRED

1 NINE THROUGH SIXTY-FIVE HUNDRED ELEVEN OF THIS TITLE, AS IF THE PRACTICE
2 PRIVILEGE IS A LICENSE, AND AN INDIVIDUAL WITH A PRACTICE PRIVILEGE A
3 LICENSEE, FOR PURPOSES OF THOSE SECTIONS;

4 (2) to comply with this article, the rules of the board of regents and
5 the regulations of the commissioner; and

6 (3) to the appointment of the secretary of state or other public offi-
7 cial acceptable to the department, in the certified public accountant's
8 state of licensure or the state in which the firm has its principal
9 place of business, as the certified public accountant or firm's agent
10 upon whom process may be served in any action or proceeding by the
11 department against such certified public accountant or firm.

12 e. [No more than one temporary practice permit may be issued to any
13 individual applicant provided that each permit may be renewed by the
14 department up to three times such that an individual shall practice for
15 no more than four years within a five year time period under the
16 provisions of this section. Such renewals may be granted upon receipt of
17 written notice from the permit holder, provided that the applicant
18 remains in good standing and in compliance with all applicable laws,
19 rules and regulations.] FOR PURPOSES OF THIS SUBDIVISION, THE BOARD OF
20 REGENTS MAY DETERMINE THAT NATIONALLY-RECOGNIZED CERTIFIED PUBLIC
21 ACCOUNTANT LICENSURE REQUIREMENTS ARE SUBSTANTIALLY EQUIVALENT TO NEW
22 YORK'S REQUIREMENTS, SUCH THAT AN INDIVIDUAL LICENSED IN A STATE DETER-
23 MINED TO HAVE LICENSURE REQUIREMENTS SUBSTANTIALLY EQUIVALENT TO THE
24 NATIONALLY-RECOGNIZED CPA LICENSURE REQUIREMENTS, OR AN INDIVIDUAL WHOSE
25 LICENSURE QUALIFICATIONS ARE DETERMINED TO BE SUBSTANTIALLY EQUIVALENT
26 TO THE NATIONALLY-RECOGNIZED CPA LICENSURE REQUIREMENTS, MAY PRACTICE
27 UNDER THE PRACTICE PRIVILEGE CONTAINED IN PARAGRAPH A OF THIS SUBDIVI-
28 SION.

29 f. (1) A person who wishes to practice public accountancy in this
30 state but does not meet the requirements of paragraph a of this subdivi-
31 sion is subject to the full licensing and registration requirements of
32 this article.

33 (2) In the event the license from the other state of the certified
34 public accountant's principal place of business is no longer valid or in
35 good standing, or that the certified public accountant has had any final
36 disciplinary action taken [against his or her license] by the licensing
37 or disciplinary authority of any other state concerning the practice of
38 public accountancy THAT HAS RESULTED IN THE SUSPENSION OR REVOCATION OF
39 HIS OR HER LICENSE, the certified public accountant shall cease offering
40 to perform or performing such services in this state individually and on
41 behalf of his or her firm.

42 (3) ANY CERTIFIED PUBLIC ACCOUNTANT WHO, WITHIN THE LAST SEVEN YEARS,
43 IMMEDIATELY PRECEDING THE DATE ON WHICH HE OR SHE WISHES TO BEGIN PRAC-
44 TICE IN NEW YORK, (I) HAS BEEN THE SUBJECT OF ANY FINAL DISCIPLINARY
45 ACTION TAKEN AGAINST HIM OR HER BY THE LICENSING OR DISCIPLINARY AUTHOR-
46 ITY OF ANY OTHER JURISDICTION WITH RESPECT TO ANY PROFESSIONAL LICENSE
47 OR HAS ANY CHARGES OF PROFESSIONAL MISCONDUCT PENDING AGAINST HIM OR HER
48 IN ANY OTHER JURISDICTION, OR (II) HAS HAD HIS OR HER LICENSE IN ANOTHER
49 JURISDICTION REINSTATED AFTER A SUSPENSION OR REVOCATION OF SAID
50 LICENSE, OR (III) HAS BEEN DENIED ISSUANCE OR RENEWAL OF A PROFESSIONAL
51 LICENSE OR CERTIFICATE IN ANY OTHER JURISDICTION FOR ANY REASON OTHER
52 THAN AN INADVERTENT ADMINISTRATIVE ERROR, OR (IV) HAS BEEN CONVICTED OF
53 A CRIME OR IS SUBJECT TO PENDING CRIMINAL CHARGES IN ANY JURISDICTION,
54 SHALL SO NOTIFY THE DEPARTMENT, ON A FORM PRESCRIBED BY THE DEPARTMENT,
55 AND SHALL NOT PRACTICE PUBLIC ACCOUNTANCY IN THIS STATE UNDER PARAGRAPH
56 A OF THIS SUBDIVISION UNTIL HE OR SHE HAS RECEIVED FROM THE DEPARTMENT

1 WRITTEN PERMISSION TO DO SO. IN DETERMINING WHETHER THE CERTIFIED PUBLIC
2 ACCOUNTANT SHALL BE ALLOWED TO PRACTICE IN THIS STATE, THE DEPARTMENT
3 SHALL FOLLOW THE PROCEDURE TO DETERMINE WHETHER AN APPLICANT FOR LICEN-
4 SURE IS OF GOOD MORAL CHARACTER. ANYONE FAILING TO PROVIDE THE NOTICE
5 REQUIRED BY THIS PARAGRAPH SHALL BE DEEMED TO BE PRACTICING IN VIOLATION
6 OF SECTION SIXTY-FIVE HUNDRED TWELVE OF THIS TITLE.

7 g. (1) Notwithstanding subparagraph two of paragraph a of this subdi-
8 vision or any other inconsistent law or rule to the contrary, a certi-
9 fied public accountant licensed by another state and in good standing
10 who [obtains a temporary] MEETS THE practice [permit] PRIVILEGE REQUIRE-
11 MENTS under this section and files an application for licensure under
12 section seventy-four hundred four of this article [on or before the
13 expiration date of such temporary practice permit] may continue to prac-
14 tice under such [permit] PRIVILEGE for a period coterminous with the
15 period during which his or her application for licensure remains pending
16 with the department, INCLUDING ANY PERIOD AFTER THE CERTIFIED PUBLIC
17 ACCOUNTANT ESTABLISHES A PRINCIPAL PLACE OF BUSINESS IN NEW YORK WHILE
18 HIS OR HER APPLICATION IS PENDING.

19 (2) Nothing in this section shall limit the applicability of section
20 seventy-four hundred seven of this article.

21 [h. Fees. The fee for each limited permit and temporary practice
22 permit and each renewal shall be established in regulation by the board
23 of regents.]

24 S 2. Section 7406-a of the education law is REPEALED.

25 S 3. Subdivision 2 of section 7408 of the education law, as amended by
26 chapter 651 of the laws of 2008, is amended to read as follows:

27 2. No firm shall use the words "certified public accountant" or
28 "certified public accountants" or the letters "CPA" or "CPAs" in
29 connection with its name unless:

30 A. the sole proprietor of such firm or each partner of a partnership
31 or limited liability partnership, member of a limited liability company
32 or shareholder of a professional service corporation engaged within the
33 United States in the practice of public accountancy is in good standing
34 as a certified public accountant of one or more of the states of the
35 United States; OR

36 B. THE FIRM DOES NOT HAVE AN OFFICE IN THIS STATE, HOLDS A LICENSE,
37 REGISTRATION, OR PERMIT AS A FIRM OF CERTIFIED PUBLIC ACCOUNTANTS IN
38 ANOTHER STATE AND DOES NOT PERFORM ANY OF THE SERVICES DESCRIBED IN
39 SUBDIVISION ONE OF SECTION SEVENTY-FOUR HUNDRED ONE OF THIS ARTICLE.

40 S 4. Paragraph a of subdivision 3 of section 7408 of the education
41 law, as amended by chapter 651 of the laws of 2008, is amended to read
42 as follows:

43 a. (1) Any firm that is established for the business purpose of
44 lawfully engaging in the practice of public accountancy pursuant to
45 [subdivisions] SUBDIVISION one [and two] of section seventy-four hundred
46 one of this article [or] MUST REGISTER WITH THE DEPARTMENT.

47 (2) ANY FIRM WITH AN OFFICE IN THIS STATE THAT uses the title "CPA" or
48 "CPA firm" or the title "PA" or "PA firm" must register with the depart-
49 ment.

50 (3) A firm of certified public accountants or public accountants
51 engaged in the practice of public accountancy pursuant to subdivision
52 TWO OR three of section seventy-four hundred one of this article, but
53 not engaged in the practice of public accountancy pursuant to [subdivi-
54 sions] SUBDIVISION one [and two] of section seventy-four hundred one of
55 this article, may register with the department under this subdivision.

1 (4) As a condition of registration or renewal, the firm shall affirm
2 that it has not violated the provisions of this article, any other
3 applicable laws and such other requirements as the department may
4 impose, consistent with this article, except that the provisions of
5 section seventy-four hundred ten of this article shall not apply on
6 initial registration.

7 S 5. Subparagraph 1 of paragraph b of subdivision 3 of section 7408 of
8 the education law, as amended by chapter 651 of the laws of 2008, is
9 amended to read as follows:

10 (1) At least one partner of a partnership or limited liability part-
11 nership, member of a limited liability company or shareholder of a
12 professional service corporation or the sole proprietor is licensed or
13 otherwise authorized to practice under this article and his or her
14 license to practice is not currently suspended, annulled or revoked in
15 any jurisdiction and he or she is regularly engaged in practice on
16 behalf of the firm within the state OR, IN THE CASE OF A FIRM THAT HOLDS
17 A LICENSE, REGISTRATION, OR PERMIT AS A FIRM OF CERTIFIED PUBLIC
18 ACCOUNTANTS IN ANOTHER STATE AND IS REQUIRED TO REGISTER IN THIS STATE,
19 AN INDIVIDUAL WITH PRACTICE PRIVILEGES UNDER SUBDIVISION TWO OF SECTION
20 SEVENTY-FOUR HUNDRED SIX OF THIS ARTICLE;

21 S 6. Subdivision 3 of section 7408 of the education law is amended by
22 adding a new paragraph h to read as follows:

23 H. AN INDIVIDUAL LICENSEE OR INDIVIDUAL PRACTICING UNDER SUBDIVISION
24 TWO OF SECTION SEVENTY-FOUR HUNDRED SIX OF THIS ARTICLE WHO SIGNS OR
25 AUTHORIZES SOMEONE TO SIGN THE ACCOUNTANT'S REPORT ON THE FINANCIAL
26 STATEMENTS ON BEHALF OF A FIRM SHALL MEET THE COMPETENCY REQUIREMENTS
27 SET OUT IN THE PROFESSIONAL STANDARDS FOR SUCH SERVICES, AS RECOGNIZED
28 IN SUBDIVISION ONE OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF THIS ARTI-
29 CLE, AND AS SET OUT IN THE RULES OF THE BOARD OF REGENTS.

30 S 7. This act shall take effect on the ninetieth day after it shall
31 have become a law.