S T A T E O F N E W Y O R K

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I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. GLICK -- read once and referred to the Committee on Higher Education

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:

Section 1. Subdivisions 5, 6, and 7 of section 7401-a of the education law, as added by chapter 651 of the laws of 2008, are amended to read as follows:

5. "HOME OFFICE" IS THE LOCATION SPECIFIED BY THE CLIENT AS THE ADDRESS TO WHICH A SERVICE DESCRIBED IN PARAGRAPH C OF SUBDIVISION TWO OF SECTION SEVENTY-FOUR HUNDRED SIX OF THIS ARTICLE IS DIRECTED.

6. "Principal place of business" means the office location designated by the licensee from which the person directs, controls, and coordinates his or her professional services.

[6.] 7. "Public accountant" or "PA" means any person who has received a license from the department as a public accountant for the practice of public accountancy.

[7.] 8. "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

S 2. Section 7406 of the education law, as amended by chapter 651 of the laws of 2008, is amended to read as follows:

S 7406. Limited permits and [temporary] practice [permits] PRIVILEGE. 1. Limited permits. On recommendation of the board, the department may issue a limited permit to an applicant of good moral character, who is the holder of a certificate, license or degree in a foreign country constituting a recognized qualification for the performance in such country of the acts set forth in section seventy-four hundred one of this article, provided the applicant has professional qualifications that are determined by the board to be significantly comparable to the licensure requirements for certified public accountancy pursuant to this article, and the applicant resides or has a place for the regular trans-

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

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action of business within the state, and equal recognition is granted by the foreign country concerned to certified public accountants or public accountants licensed in the United States. Such limited permit shall be valid for a period of two years and may be renewed on recommendation of the board. Such permit shall authorize the applicant to use only the title or designation under which he or she is generally known in his or her own country, followed by the name of the country from which he or she received his or her certificate, license or degree, notwithstanding the provisions of subdivision two of section seventy-four hundred eight of this article. THE FEE FOR EACH LIMITED PERMIT AND EACH RENEWAL SHALL BE ESTABLISHED IN REGULATION BY THE BOARD OF REGENTS.

2. [Temporary practice permits] PRACTICE PRIVILEGE. a. [On recommendation of the board, a] A certified public accountant, licensed by another state which the board of regents OR ITS DESIGNEE has determined to have significantly comparable certified public accountant licensure requirements, or whose individual licensure qualifications are verified by the department OR ITS DESIGNEE to be significantly comparable to New York's requirements, and in good standing, who intends to perform the services in subdivisions one and two of section seventy-four hundred one of this article may [temporarily] practice public accountancy in this state, if the certified public accountant:

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

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

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

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

c. [Applications for the temporary practice permit shall be submitted to the department through an electronic means as prescribed by the commissioner. After the department renders a timely initial determination that the applicant has submitted the information necessary to verify that the requirements of paragraph a of this subdivision are satisfied, applications for temporary practice permits shall be processed by the department within thirty days. During such thirty day processing period, the applicant may practice; provided, however, that if the application is denied the applicant shall cease the practice of public accountancy in the state of New York.] AN INDIVIDUAL WHO HAS BEEN GRANTED PRACTICE PRIVILEGES UNDER THIS SECTION WHO, FOR ANY ENTITY WITH ITS HOME OFFICE IN THIS STATE, PERFORMS ANY OF THE SERVICES IN PARAGRAPH A, C, OR D OF SUBDIVISION ONE OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF THIS ARTICLE MAY ONLY DO SO THROUGH A FIRM WHICH HAS OBTAINED A PERMIT UNDER SECTION SEVENTY-FOUR HUNDRED EIGHT OF THIS ARTICLE.

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

(1) to the personal and subject matter jurisdiction and disciplinary authority of the board of regents UNDER SECTIONS SIXTY-FIVE HUNDRED NINE THROUGH SIXTY-FIVE HUNDRED ELEVEN OF THIS TITLE, AS IF THE PRACTICE

PRIVILEGE IS A "LICENSE," AND AN INDIVIDUAL WITH A PRACTICE PRIVILEGE A "LICENSEE," FOR PURPOSES OF THOSE SECTIONS;

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

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

e. [No more than one temporary practice permit may be issued to any individual applicant provided that each permit may be renewed by the department up to three times such that an individual shall practice for no more than four years within a five year time period under the provisions of this section. Such renewals may be granted upon receipt of written notice from the permit holder, provided that the applicant remains in good standing and in compliance with all applicable laws, rules and regulations.] FOR PURPOSES OF THIS SUBDIVISION, THE BOARD OF REGENTS MAY DETERMINE THAT NATIONALLY-RECOGNIZED CERTIFIED PUBLIC ACCOUNTANT LICENSURE REQUIREMENTS ARE SIGNIFICANTLY COMPARABLE TO NEW YORK'S REQUIREMENTS, SUCH THAT A STATE DETERMINED TO HAVE LICENSURE REQUIREMENTS SIGNIFICANTLY COMPARABLE TO THE UNIFORM REQUIREMENTS, OR AN INDIVIDUAL WHOSE LICENSURE QUALIFICATIONS ARE DETERMINED TO BE SIGNIFICANTLY COMPARABLE TO THE UNIFORM REQUIREMENTS, MAY QUALIFY FOR THE PRACTICE PRIVILEGE UNDER PARAGRAPH A OF THIS SUBDIVISION.

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

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

(3) ANY CERTIFIED PUBLIC ACCOUNTANT WHO, WITHIN THE LAST TWO YEARS, EITHER (I) HAS HAD ANY FINAL DISCIPLINARY ACTION TAKEN BY THE LICENSING OR DISCIPLINARY AUTHORITY OF ANY OTHER STATE CONCERNING THE PRACTICE OF PUBLIC ACCOUNTANCY THAT HAS RESULTED IN SOME SANCTION LESS THAN SUSPENSION OR REVOCATION, OR (II) HAS HAD HIS OR HER LICENSE IN ANOTHER STATE REINSTATED AFTER A SUSPENSION OR REVOCATION OF SAID LICENSE, MAY PRACTICE PUBLIC ACCOUNTANCY IN THIS STATE UNDER PARAGRAPH A OF THIS SUBDIVISION ONLY IF SUCH CERTIFIED PUBLIC ACCOUNTANT SUBMITS TO THE DEPARTMENT, CONTEMPORANEOUSLY WITH COMMENCING PRACTICE IN THE STATE, NOTIFICATION OF THE COMMENCEMENT OF PRACTICE AND THE DISCIPLINE PREVIOUSLY RECEIVED.

g. (1) Notwithstanding subparagraph two of paragraph a of this subdivision or any other inconsistent law or rule to the contrary, a certified public accountant licensed by another state and in good standing who [obtains a temporary] HAS A practice [permit] PRIVILEGE under this section and files an application for licensure under section seventy-four hundred four of this article [on or before the expiration date of such temporary practice permit] may continue to practice under such [permit] PRIVILEGE for a period coterminous with the period during which

his or her application for licensure remains pending with the department, INCLUDING ANY PERIOD AFTER THE CERTIFIED PUBLIC ACCOUNTANT ESTABLISHES A PRINCIPAL PLACE OF BUSINESS IN NEW YORK WHILE HIS OR HER APPLICATION IS PENDING.

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

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

S 3. Section 7406-a of the education law is REPEALED.

S 4. Subdivision 2 of section 7408 of the education law, as amended by chapter 651 of the laws of 2008, is amended to read as follows:

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

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

B. THE FIRM IS LICENSED IN SOME STATE, DOES NOT HAVE AN OFFICE IN THIS STATE, AND DOES NOT PERFORM THE SERVICES DESCRIBED IN SUBDIVISIONS ONE OR THREE OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF THIS ARTICLE FOR A CLIENT WHOSE HOME OFFICE IS IN THIS STATE.

S 5. Paragraph a of subdivision 3 of section 7408 of the education law, as amended by chapter 651 of the laws of 2008, is amended to read as follows:

a. Any firm WITH AN OFFICE IN THIS STATE that is established for the business purpose of lawfully engaging in the practice of public accountancy pursuant to subdivisions one and two of section seventy-four hundred one of this article or uses the title "CPA" or "CPA firm" or the title "PA" or "PA firm" must register with the department. A firm of certified public accountants or public accountants WITH AN OFFICE IN THIS STATE engaged in the practice of public accountancy pursuant to subdivision three of section seventy-four hundred one of this article, but not engaged in the practice of public accountancy pursuant to subdivisions one and two of section seventy-four hundred one of this article, may register with the department under this subdivision. ANY FIRM OF CERTIFIED PUBLIC ACCOUNTANTS WITHOUT AN OFFICE IN THIS STATE THAT ENGAGES IN THE SERVICES DESCRIBED IN PARAGRAPHS A, C, OR D OF SUBDIVISION ONE OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF THIS ARTICLE FOR A CLIENT WITH ITS HOME OFFICE IN THIS STATE MUST REGISTER WITH THE DEPARTMENT. ANY FIRM OF CERTIFIED PUBLIC ACCOUNTANTS WITHOUT AN OFFICE IN THIS STATE THAT ENGAGES IN THE SERVICES DESCRIBED IN PARAGRAPH B OF SUBDIVISION ONE, OR SUBDIVISION THREE, OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF THIS ARTICLE, FOR A CLIENT WITH A HOME OFFICE IN THIS STATE, MUST COMPLY WITH SUBDIVISION TWO OF THIS SECTION AND SECTION SEVENTY-FOUR HUNDRED TEN OF THIS ARTICLE AND PERFORM SUCH SERVICES THROUGH AN INDIVIDUAL WITH PRACTICE PRIVILEGES UNDER SUBDIVISION TWO OF SECTION SEVENTY-FOUR HUNDRED SIX OF THIS ARTICLE. ANY FIRM OF CERTIFIED PUBLIC ACCOUNTANTS WITHOUT AN OFFICE IN THIS STATE THAT ENGAGES IN ANY SERVICE WITHIN THE PRACTICE OF PUBLIC ACCOUNTANCY NOT DESCRIBED IN SUBDIVISIONS ONE OR THREE OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF THIS ARTICLE FOR A CLIENT WITH A HOME OFFICE IN THIS STATE MUST PERFORM SUCH SERVICES THROUGH AN INDIVIDUAL WITH PRACTICE PRIVILEGES UNDER SUBDIVISION TWO OF SECTION

SEVENTY-FOUR HUNDRED SIX OF THIS ARTICLE AND BE AUTHORIZED TO PERFORM SUCH SERVICES IN THE PRINCIPAL PLACE OF BUSINESS OF SUCH INDIVIDUAL. As a condition of registration or renewal, the firm shall affirm that it has not violated the provisions of this article, any other applicable laws and such other requirements as the department may impose, consistent with this article, except that the provisions of section seventy-four hundred ten of this article shall not apply on initial registration.

S 6. Subparagraph 1 of paragraph b of subdivision 3 of section 7408 of the education law, as amended by chapter 651 of the laws of 2008, is amended to read as follows:

(1) At least one partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation or the sole proprietor is licensed or otherwise authorized to practice under this article and his or her license to practice is not currently suspended, annulled or revoked in any jurisdiction and he or she is regularly engaged in practice on behalf of the firm within the state OR, IN THE CASE OF A FIRM WITHOUT AN OFFICE IN THIS STATE REQUIRED TO REGISTER IN THIS STATE, AN INDIVIDUAL WITH PRACTICE PRIVILEGES UNDER SUBDIVISION TWO OF SECTION SEVENTY-FOUR HUNDRED SIX OF THIS ARTICLE;

S 7. Subdivision 3 of section 7408 of the education law is amended by adding a new paragraph h to read as follows:

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

S 8. This act shall take effect July 1, 2010.