

9432

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:

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

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

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

10 [6.] 7. "Public accountant" or "PA" means any person who has received  
11 a license from the department as a public accountant for the practice of  
12 public accountancy.

13 [7.] 8. "State" means any state of the United States, the District of  
14 Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

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

17 S 7406. Limited permits and [temporary] practice [permits] PRIVILEGE.

18 1. Limited permits. On recommendation of the board, the department may  
19 issue a limited permit to an applicant of good moral character, who is  
20 the holder of a certificate, license or degree in a foreign country  
21 constituting a recognized qualification for the performance in such  
22 country of the acts set forth in section seventy-four hundred one of  
23 this article, provided the applicant has professional qualifications  
24 that are determined by the board to be significantly comparable to the  
25 licensure requirements for certified public accountancy pursuant to this  
26 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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1 action of business within the state, and equal recognition is granted by  
2 the foreign country concerned to certified public accountants or public  
3 accountants licensed in the United States. Such limited permit shall be  
4 valid for a period of two years and may be renewed on recommendation of  
5 the board. Such permit shall authorize the applicant to use only the  
6 title or designation under which he or she is generally known in his or  
7 her own country, followed by the name of the country from which he or  
8 she received his or her certificate, license or degree, notwithstanding  
9 the provisions of subdivision two of section seventy-four hundred eight  
10 of this article. THE FEE FOR EACH LIMITED PERMIT AND EACH RENEWAL SHALL  
11 BE ESTABLISHED IN REGULATION BY THE BOARD OF REGENTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 a. Any firm WITH AN OFFICE IN THIS STATE that is established for the  
30 business purpose of lawfully engaging in the practice of public accoun-  
31 tancy pursuant to subdivisions one and two of section seventy-four  
32 hundred one of this article or uses the title "CPA" or "CPA firm" or the  
33 title "PA" or "PA firm" must register with the department. A firm of  
34 certified public accountants or public accountants WITH AN OFFICE IN  
35 THIS STATE engaged in the practice of public accountancy pursuant to  
36 subdivision three of section seventy-four hundred one of this article,  
37 but not engaged in the practice of public accountancy pursuant to subdivi-  
38 sions one and two of section seventy-four hundred one of this article,  
39 may register with the department under this subdivision. ANY FIRM OF  
40 CERTIFIED PUBLIC ACCOUNTANTS WITHOUT AN OFFICE IN THIS STATE THAT  
41 ENGAGES IN THE SERVICES DESCRIBED IN PARAGRAPHS A, C, OR D OF SUBDIVI-  
42 SION ONE OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF THIS ARTICLE FOR A  
43 CLIENT WITH ITS HOME OFFICE IN THIS STATE MUST REGISTER WITH THE DEPART-  
44 MENT. ANY FIRM OF CERTIFIED PUBLIC ACCOUNTANTS WITHOUT AN OFFICE IN THIS  
45 STATE THAT ENGAGES IN THE SERVICES DESCRIBED IN PARAGRAPH B OF SUBDIVI-  
46 SION ONE, OR SUBDIVISION THREE, OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF  
47 THIS ARTICLE, FOR A CLIENT WITH A HOME OFFICE IN THIS STATE, MUST COMPLY  
48 WITH SUBDIVISION TWO OF THIS SECTION AND SECTION SEVENTY-FOUR HUNDRED  
49 TEN OF THIS ARTICLE AND PERFORM SUCH SERVICES THROUGH AN INDIVIDUAL WITH  
50 PRACTICE PRIVILEGES UNDER SUBDIVISION TWO OF SECTION SEVENTY-FOUR  
51 HUNDRED SIX OF THIS ARTICLE. ANY FIRM OF CERTIFIED PUBLIC ACCOUNTANTS  
52 WITHOUT AN OFFICE IN THIS STATE THAT ENGAGES IN ANY SERVICE WITHIN THE  
53 PRACTICE OF PUBLIC ACCOUNTANCY NOT DESCRIBED IN SUBDIVISIONS ONE OR  
54 THREE OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF THIS ARTICLE FOR A CLIENT  
55 WITH A HOME OFFICE IN THIS STATE MUST PERFORM SUCH SERVICES THROUGH AN  
56 INDIVIDUAL WITH PRACTICE PRIVILEGES UNDER SUBDIVISION TWO OF SECTION

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

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

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

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

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

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