

2628

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. LAVALLE, STAVISKY, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed 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. 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
20 by the name of the country from which he or she received his or her
21 certificate, license or degree, notwithstanding the provisions of subdi-
22 vision two of section seventy-four hundred eight of this article. THE

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

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1 FEE FOR EACH LIMITED PERMIT AND EACH RENEWAL SHALL BE ESTABLISHED IN
2 REGULATION BY THE BOARD OF REGENTS.

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

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

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

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

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

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

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

52 (1) to the personal and subject matter jurisdiction and disciplinary
53 authority of the board of regents UNDER SECTIONS SIXTY-FIVE HUNDRED
54 NINE THROUGH SIXTY-FIVE HUNDRED ELEVEN OF THIS TITLE, AS IF THE PRACTICE
55 PRIVILEGE IS A LICENSE, AND AN INDIVIDUAL WITH A PRACTICE PRIVILEGE A
56 LICENSEE, FOR PURPOSES OF THOSE SECTIONS;

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

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

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

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

1 SURE IS OF GOOD MORAL CHARACTER. ANYONE FAILING TO PROVIDE THE NOTICE
2 REQUIRED BY THIS PARAGRAPH SHALL BE DEEMED TO BE PRACTICING IN VIOLATION
3 OF SECTION SIXTY-FIVE HUNDRED TWELVE OF THIS TITLE.

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

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

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

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

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

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

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

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

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

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

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

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

53 (4) As a condition of registration or renewal, the firm shall affirm
54 that it has not violated the provisions of this article, any other
55 applicable laws and such other requirements as the department may
56 impose, consistent with this article, except that the provisions of

1 section seventy-four hundred ten of this article shall not apply on
2 initial registration.

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

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

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

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

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