

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

2628--A

2011-2012 Regular Sessions

I N S E N A T E

January 27, 2011

Introduced by Sens. LAVALLE, STAVISKY, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 to the
11 licensure requirements for certified public accountancy pursuant to this
12 article, and the applicant resides or has a place for the regular trans-
13 action of business within the state, and equal recognition is granted by
14 the foreign country concerned to certified public accountants or public
15 accountants licensed in the United States. Such limited permit shall be
16 valid for a period of two years and may be renewed on recommendation of
17 the board. Such permit shall authorize the applicant to use only the
18 title or designation under which he or she is generally known in his or
19 her own country, followed by the name of the country from which he or

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

LBD08393-05-1

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

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

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

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

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

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

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

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 AS IF THE PRACTICE PRIVILEGE IS A
55 LICENSE, AND AN INDIVIDUAL WITH A PRACTICE PRIVILEGE IS A LICENSEE;

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 PURSUANT TO THE REQUIREMENTS CONTAINED IN
25 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 (I) THE SUSPENSION OR REVOCATION
36 OF HIS OR HER LICENSE, OR (II) OTHER DISCIPLINARY ACTION AGAINST HIS OR
37 HER LICENSE THAT ARISES FROM (A) GROSS NEGLIGENCE, RECKLESSNESS OR
38 INTENTIONAL WRONGDOING RELATING TO THE PRACTICE OF PUBLIC ACCOUNTANCY,
39 (B) FRAUD OR MISAPPROPRIATION OF FUNDS RELATING TO THE PRACTICE OF
40 PUBLIC ACCOUNTANCY, OR (C) PREPARATION, PUBLICATION, OR DISSEMINATION OF
41 FALSE, FRAUDULENT, OR MATERIALLY INCOMPLETE OR MISLEADING FINANCIAL
42 STATEMENTS, REPORTS OR INFORMATION RELATING TO THE PRACTICE OF PUBLIC
43 ACCOUNTANCY, the certified public accountant shall cease offering to
44 perform or performing such services in this state individually and on
45 behalf of his or her firm, UNTIL AND UNLESS SUCH CERTIFIED PUBLIC
46 ACCOUNTANT RECEIVES WRITTEN PERMISSION FROM THE DEPARTMENT TO RESUME THE
47 PRACTICE OF PUBLIC ACCOUNTANCY IN THIS STATE PURSUANT TO SUBPARAGRAPH
48 THREE OF THIS PARAGRAPH.

49 (3) ANY CERTIFIED PUBLIC ACCOUNTANT WHO, WITHIN THE LAST SEVEN YEARS,
50 IMMEDIATELY PRECEDING THE DATE ON WHICH HE OR SHE WISHES TO PRACTICE IN
51 NEW YORK, (I) HAS BEEN THE SUBJECT OF ANY FINAL DISCIPLINARY ACTION
52 TAKEN AGAINST HIM OR HER BY THE LICENSING OR DISCIPLINARY AUTHORITY OF
53 ANY OTHER JURISDICTION WITH RESPECT TO ANY PROFESSIONAL LICENSE OR HAS
54 ANY CHARGES OF PROFESSIONAL MISCONDUCT PENDING AGAINST HIM OR HER IN ANY
55 OTHER JURISDICTION, OR (II) HAS HAD HIS OR HER LICENSE IN ANOTHER JURIS-
56 DICTION REINSTATED AFTER A SUSPENSION OR REVOCATION OF SAID LICENSE, OR

1 (III) HAS BEEN DENIED ISSUANCE OR RENEWAL OF A PROFESSIONAL LICENSE OR
2 CERTIFICATE IN ANY OTHER JURISDICTION FOR ANY REASON OTHER THAN AN INAD-
3 VERTENT ADMINISTRATIVE ERROR, OR (IV) HAS BEEN CONVICTED OF A CRIME OR
4 IS SUBJECT TO PENDING CRIMINAL CHARGES IN ANY JURISDICTION, SHALL SO
5 NOTIFY THE DEPARTMENT, ON A FORM PRESCRIBED BY THE DEPARTMENT, AND SHALL
6 NOT PRACTICE PUBLIC ACCOUNTANCY IN THIS STATE UNDER PARAGRAPH A OF THIS
7 SUBDIVISION UNTIL HE OR SHE HAS RECEIVED FROM THE DEPARTMENT WRITTEN
8 PERMISSION TO DO SO. IN DETERMINING WHETHER THE CERTIFIED PUBLIC
9 ACCOUNTANT SHALL BE ALLOWED TO PRACTICE IN THIS STATE, THE DEPARTMENT
10 SHALL FOLLOW THE PROCEDURE TO DETERMINE WHETHER AN APPLICANT FOR LICEN-
11 SURE IS OF GOOD MORAL CHARACTER. ANYONE FAILING TO PROVIDE THE NOTICE
12 REQUIRED BY THIS PARAGRAPH SHALL BE SUBJECT TO THE PERSONAL AND SUBJECT
13 MATTER JURISDICTION AND DISCIPLINARY AUTHORITY OF THE BOARD OF REGENTS
14 AS IF THE PRACTICE PRIVILEGE IS A LICENSE, AND AN INDIVIDUAL WITH A
15 PRACTICE PRIVILEGE IS A LICENSEE, AND MAY BE DEEMED TO BE PRACTICING IN
16 VIOLATION OF SECTION SIXTY-FIVE HUNDRED TWELVE OF THIS TITLE.

17 g. (1) Notwithstanding subparagraph two of paragraph a of this subdi-
18 vision or any other inconsistent law or rule to the contrary, a certi-
19 fied public accountant licensed by another state and in good standing
20 who [obtains a temporary] OTHERWISE MEETS THE practice [permit] PRIVI-
21 LEGES REQUIREMENTS under this section and files an application for licen-
22 sure under section seventy-four hundred four of this article [on or
23 before the expiration date of such temporary practice permit] may
24 continue to practice under such [permit] PRIVILEGE for a period cotermi-
25 nous with the period during which his or her application for licensure
26 remains pending with the department, INCLUDING ANY PERIOD AFTER THE
27 CERTIFIED PUBLIC ACCOUNTANT ESTABLISHES A PRINCIPAL PLACE OF BUSINESS IN
28 NEW YORK WHILE HIS OR HER APPLICATION IS PENDING.

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

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

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

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

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

49 S 4. Subdivision 3 of section 7408 of the education law is amended by
50 adding a new paragraph h to read as follows:

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

1 IN SUBDIVISION ONE OF SECTION SEVENTY-FOUR HUNDRED ONE-A OF THIS ARTI-
2 CLE, AND AS SET OUT IN THE RULES OF THE BOARD OF REGENTS.
3 S 5. This act shall take effect on the ninetieth day after it shall
4 have become a law.