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DEPARTMENT OF CONSUMER AFFAIRS

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**DEPARTMENT OF CONSUMER AFFAIRS**
CALIFORNIA BOARD OF ACCOUNTANCY

**FINAL**

# MINUTES OF THE NOVEMBER 20-21, 2008 BOARD MEETING

The Westin LAX
5400 West Century Boulevard
Los Angeles, CA 90045
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I. Call to Order.

President Donald Driftmier called the meeting to order at 2:00 p.m. on Thursday, November 20, 2008, at the Westin LAX Hotel and the Board heard Agenda Items VI.A. – D. and V.B. – C. The meeting adjourned at 4:52 p.m. Mr. Driftmier reconvened the meeting to order at 8:32 a.m. on Friday, November 21, 2008, and the Board and Administrative Law Judge (ALJ) Daniel Juarez heard Agenda Item XII.A. The Board convened into closed session at 9:07 a.m. to deliberate Agenda Item XII.A. The meeting reconvened into open session at 9:20 a.m., and the Board and ALJ Daniel Juarez heard Agenda Item XII.B. The Board again convened into closed session at 9:46 a.m. to deliberate Agenda Item XII.B. and also to consider Agenda Items XII.C-F. The meeting reconvened into open session at 10:30 a.m. and adjourned at 2:27 p.m.

| Board Members | November 20, 2008 |
|---|---|
| Donald Driftmier, President | 2:00 p.m. to 4:52 p.m. |
| Robert Petersen, Vice President | 2:00 p.m. to 4:52 p.m. |
| Rudy Bermúdez, Secretary-Treasurer | 2:00 p.m. to 4:52 p.m. |
| Sally Anderson | 2:00 p.m. to 4:52 p.m. |
| Angela Chi | 2:00 p.m. to 4:52 p.m. |
| Herschel Elkins | 2:00 p.m. to 4:52 p.m. |
| Lorraine Hariton | 2:00 p.m. to 4:52 p.m. |
| Louise Kirkbride | Absent |
| Leslie LaManna | 2:00 p.m. to 4:52 p.m. |
| Bill MacAloney | 2:40 p.m. to 4:52 p.m. |
| Marshal Oldman | 2:00 p.m. to 4:52 p.m. |
| Manuel Ramirez | 2:00 p.m. to 4:52 p.m. |

| | |
|---|---|
| David Swartz | 2:00 p.m. to 4:52 p.m. |
| Lenora Taylor | 2:00 p.m. to 4:52 p.m. |
| Stuart Waldman | Absent |

| Board Members | November 21, 2008 |
|---|---|
| Donald Driftmier, President | 8:32 a.m. to 2:27 p.m. |
| Robert Petersen, Vice President | 8:32 a.m. to 2:27 p.m. |
| Rudy Bermúdez, Secretary-Treasurer | 10:40 a.m. to 2:27 p.m. |
| Sally Anderson | 8:32 a.m. to 2:27 p.m. |
| Angela Chi | 8:32 a.m. to 2:27 p.m. |
| Herschel Elkins | 8:32 a.m. to 2:27 p.m. |
| Lorraine Hariton | 8:32 a.m. to 2:27 p.m. |
| Louise Kirkbride | 8:32 a.m. to 2:27 p.m. |
| Leslie LaManna | 8:32 a.m. to 2:27 p.m. |
| Bill MacAloney | 8:32 a.m. to 2:27 p.m. |
| Marshal Oldman | 8:32 a.m. to 2:27 p.m. |
| Manuel Ramirez | 8:32 a.m. to 2:27 p.m. |
| David Swartz | 8:32 a.m. to 2:27 p.m. |
| Lenora Taylor | 8:32 a.m. to 2:27 p.m. |
| Stuart Waldman | 8:32 a.m. to 2:27 p.m. |

Staff and Legal Counsel

Marisa Becerra-Garcia, Executive Analyst
Patti Bowers, Executive Officer
Gary Duke, Legal Counsel, Department of Consumer Affairs
Dominic Franzella, Renewal Coordinator
Scott Harris, Deputy Attorney General, Department of Justice
Lauren Hersh, Information and Planning Officer
Kris McCutchen, Licensing Manager
Gregory Newington, Chief, Enforcement Division
Deanne Pearce, Licensing Manager
Dan Rich, Assistant Executive Officer
Theresa Siepert, Manager, Administrative Division
Matthew Stanley, Legislative/Regulation Analyst
Liza Walker, Practice Privilege Coordinator

Committee Chairs and Members

Harish Khanna, Chair, Administrative Committee
Tracy Garone, Chair, Qualifications Committee

Other Participants

Bruce Allan, California Society of Certified Public Accountants (CalCPA)
Ken Bishop, National Association of State Boards of Accountancy (NASBA)
Mike Duffy, Ernst & Young, LLP

Bowers to proceed with the "zero-based" approach and that the Board should await the results.

Mr. Stanley stated that language can be drafted by the Legislative Counsel by January 2009, and the Board may wish to hold onto the draft language through the end of February 2009, leaving the option open to entertain further discussion at the January 2009 Board meeting.

See Agenda Item IX.D.3.e. for action on this item.

d. Elimination of Pathway 1.

Mr. Stanley presented three options related to the elimination of Pathway 1 for licensure **(see Attachment 13)**. The first option would be to introduce the study bill language. The second would be to not sponsor legislation, but to have the Board re-examine all of its policy decisions. The third option would be to not pursue legislation at this time.

The Legislative Committee recommended that the Board adopt Option 3 as recommended by staff.

See Agenda Item IX.D.3.e. for action on this item.

e. Mobility.

Mr. Stanley presented draft statutory language to implement mobility in California. He also presented alternative language that would create a study bill to allow an outside entity to examine the topic of mobility and report its findings and recommendations to the Legislature. He also outlined three options. The first option would be to introduce the study bill language. The second would be to not sponsor legislation, but to have the Board re-examine all of its policy decisions. The third option would be to not pursue legislation at this time.

The Legislative Committee recommended that the Board adopt Option 3 to not pursue legislation at this time.

**It was moved by Ms. Hariton, seconded by Mr. Elkins, and carried with two abstentions to approve the Legislative Committee's recommendations, as well as direct Ms. Bowers to collaborate with DCA to determine an appropriate avenue to work with labor unions in order to highlight the issues surrounding the ICPA salary increase legislation and to garner support for this legislation. Ms. Kirkbride and Ms. Hariton abstained from this vote.**

State of California
Department of Consumer Affairs

California Board of Accountancy
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# Memorandum

Board Agenda Item XIII.D.
November 20-21, 2008

To : Board Members

Date : November 12, 2008

Telephone : (916) 561-1754
Facsimile : (916) 263-3672
E-mail : lwalker@cba.ca.gov

From : Liza Walker, Coordinator
Practice Privilege Unit

Subject : Further Discussion of Cross-Border Practice

Attached for consideration is the background paper related to cross-border practice in California. The issue of cross-border practice was placed on the agenda for deliberation at this meeting based on direction by the Board at the September 2008 meeting. During the discussion at that meeting, Board members identified a number of bills they wanted to support in the upcoming legislative cycle, including cross-border practice in California.

At the Board retreat in October, staff presented a document titled *Legislation and the Legislative Process* (**See Attachment 1**) related to the legislative process and the Board's role. During the discussion members discussed the strategic move of possibly postponing Board action related to submission of statutory language pertaining to cross-border practice to remove a potential obstacle impeding success of the Board's Peer Review legislation that will be introduced in the 2009 legislative cycle.

Under Board Agenda Item IX.D.3.e at its meeting on November 20, 2008, the Legislative Committee will be discussing whether to pursue cross-border legislation at this time. Staff have presented the Legislative Committee with the following three options for deliberation:

Option 1 – Sponsor legislation using the proposed study bill language knowing that such language will become more specific and detailed with the help of legislative staff.

Option 2 – Do not pursue legislation at this time, but take some time to deliberate past policy decisions made with regard to this issue.

Option 3 – Do not pursue legislation at this time. Take this issue off of the agenda until such time as the Board believes the timing is right to pursue appropriate legislation.

Staff's recommendation to the Legislative Committee is to recommend that the Board adopt either Option 1 or Option 3.

Although it is recognized the Board may postpone action related to cross-border practice at this time, the background material in this paper is presented in a manner that would assist newer members should the Board decide to presently consider a transition from California Practice Privilege to cross-border practice.

I will be available at the meeting to answer any questions related to this agenda item.

Attachment

# BACKGROUND PAPER

## FURTHER DISCUSSION OF CROSS-BORDER PRACTICE

### Introduction

In 2007 and early 2008, the CPC and California Board of Accountancy (Board) deliberated on issues related to cross-border practice, which resulted in the introduction of Assembly Bill (AB) 2473 (**See Attachment 2**). As reported at the May 2008 Board meeting, AB 2473 was removed from the legislative calendar in the Assembly Business and Professions Committee by the bill's authors.

Provided below is background information related to actions that led to the discussion of cross-border practice in California during 2007 and 2008. Included in the paper is background information to assist new members in deliberations as the Board further considers a transition from California Practice Privilege and limited temporary and incidental practice to cross-border practice in California.

### Background

Prior to implementation of the California Practice Privilege provisions, out-of-state licensees were allowed to temporarily practice public accountancy in California without notifying the Board, provided the practice was incident to his or her regular practice in another state. This practice was deemed "temporary and incidental." The term was subject to various interpretations throughout the nation's accounting profession, and it was believed the option was used more broadly in California than the Board intended, as it was unclear what was meant by "incident" to the CPA's regular practice, and practitioners interpreted the meaning of the provision in their own way. This broad interpretation, combined with the fact that practitioners were not required to notify the Board of their "temporary and incidental" practice, led to a significant concern regarding the Board's ability to protect California consumers who use the services of practitioners not licensed or registered by the Board.

Effective January 1, 2006, the Practice Privilege provisions were implemented in California and notification of practice of public accountancy in California by an out-of-state licensee was required pursuant to Sections 5096 through 5096.15 of the California Accountancy Act and Sections 26 through 35.1 of the California Board of Accountancy Regulations (**See Attachment 3**).

#### Implementation of Practice Privilege

The UAA Task Force (later the Practice Privilege Task Force) met for the first time on December 17, 2003. The Task Force was established to consider cross-border issues related to the Sarbanes-Oxley Act requirement for audit partner rotation and finding from a United States General Accounting Office study that smaller firms were having

difficulties competing with larger firms when having to comply with different licensing requirements from state-to-state.

The initial objectives of the Task Force were to:

- Review and evaluate relevant information on current practices in California and on states' implementation of substantial equivalency; and

- Develop recommendations to the Board regarding whether and how substantial equivalency can be implemented in California consistent with the Board's mission of protecting the public welfare.

At its meeting on May 14, 2004, the Board adopted statutory language to eliminate temporary and incidental practice in California, and added Sections 5096 through 5096.11 to the Accountancy Act, the Practice Privilege statutes. This language was presented to the Legislature in Senate Bill (SB) 1543 (Figueroa), which was signed by the Governor on September 29, 2004. The signing of SB 1543 amended Sections 5050 and 5088 of the California Accountancy Act. The Practice Privilege statutes authorize an individual whose principal place of business is not in California, and who has a valid and current license, certificate, or permit to practice public accountancy from another state to engage in the practice of public accountancy in California once notification is received.

Throughout 2005 and 2006, the Task Force and Board deliberated on several policy issues that resulted in legislation subsequent to the enactment of SB 1543.

*Senate Bill 229 – Practice Privilege Tax Return Exemption*

Following the March 2005 Task Force meeting, a working group was established to develop a proposal for an approach to address issuance of reports under the name of non-registered firms as the practice privilege is issued to an individual, not the firm. At the May 5, 2005, Board meeting, statutory language was adopted to include a narrow exception to the California Practice Privilege requirements and the California firm registration requirements for preparation of tax returns for natural persons and state tax returns for persons who were clients at the time of the client's death. On October 7, 2005, the Governor signed SB 229 into law and Section 5054 was added to the California Accountancy Act (**See Attachment 4**). Section 5054, Exception for Certain Tax Preparers, authorizes a licensed accountant from another state to prepare individual or estate tax returns without obtaining a California Practice Privilege provided:

- The individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051 of the California Accountancy Act.

- The individual or firm does not solicit California clients.

- The individual or firm does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

*Assembly Bill 1868 – Reinstatement of Temporary/Incidental Practice – Allowance of Firm Issuance of Reports without California Licensure*

During the months following the implementation of California Practice Privilege, there were a number of unintended consequences that arose from the implementation of the practice privilege provisions – the fact that an individual can hold a practice privilege but an out-of-state firm still has to be registered to practice in California; incidental and temporary practice by out-of-state accountants; and incidental and temporary practice by accountants practicing in other countries.

At its February 2006 meeting, the Board approved proposed language to reinstate temporary/incidental practice under Section 5050 of the California Accountancy Act, Practice Without Permit, Temporary Practice, to permit a person who has a foreign authorization to practice public accountancy in California incident to an engagement in that country, provided the person is working under the accounting and auditing standards of that country, and not holding out as being licensed. The proposed language also provided for temporary and incidental practice by CPAs, PAs, and accountancy firms lawfully practicing in another state provided the individual or firm did not solicit clients or assert or imply that they are licensed or registered to practice in California. The reinstatement of the temporary and incidental statute addressed unintended consequences with the implementation of practice privilege and provided practitioners a means of practicing in California lawfully without notification as long as the temporary practice is incident to practice in another state.

Assembly Bill (AB) 1868 (Bermúdez), which amended Sections 5050 and 5134 and added Sections 5035.3, 5050.2, 5096.12, 5096.13, 5096.14, and 5096.15 of the Business and Professions Code, was signed by the Governor on September 25, 2006. The highlights of these sections are as follows:

- Allows a practice privilege holder to practice in California and sign in the name of his or her firm without having to register the firm with the Board.

- Permits out-of-state CPAs, PAs, and public accounting firms to temporarily practice in California incident to practice in another state provided that the individual or out-of-state firm does not solicit California clients, does not assert or imply that the practitioner or firm is licensed or registered to practice public accountancy in California, and does not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transactions.

- Permits foreign accountants to engage in temporary and incidental practice related to engagements in the foreign country, regulated by the foreign country, and

performed under the accounting or auditing standards of that country provided the accountant does not hold out as a holder of a California license or Practice Privilege.

- Affirms the Board's disciplinary authority over any individual or firm performing any act which is the practice of public accountancy in California.

- Provides for a reduced fee for practice privilege holders who do not sign attest reports.

- Requires that the "safe harbor" period for late practice privilege notification remain in effect until December 31, 2010.

Provided below are the current requirements for an out-of-state licensee to practice public accountancy in this state under the California Practice Privilege.

Current Practice Privilege Requirements

To be eligible for California Practice Privilege, an out-of-state licensee must meet one of the following requirements:

- Possess a valid and active license, certificate, or permit from a state deemed by the Board as substantially equivalent. **OR**

- Possess individual education, examination, and experience qualifications that have been determined by the Board to be substantially equivalent. **OR**

- Have continually practiced public accountancy as a CPA under a current, valid license issued by any state for four of the last 10 years.

In order to practice under the current Practice Privilege in California, out-of-state licensees are required to submit the Board's Notification Form, which is available for submission on-line or via hardcopy. Practice rights under the California Practice Privilege are automatic upon submission of the Notification Form, unless prior Board approval is required. The fee for California Practice Privilege is due within 30 days of submission of the Notification Form. The privilege is valid for a maximum of one year from the date of submission of the form, at which time the holder can either let the privilege expire or resubmit a new Notification Form.

An out-of-state licensee may not practice under a California Practice Privilege without prior approval of the Board if the individual has, or acquires at any time during the term of the California Practice Privilege, a disqualifying condition. Examples of disqualifying conditions are as follows:

- Conviction of a crime other than a minor traffic violation.

- The revocation, suspension, denial, surrender, placement on probationary status, or other sanctioned or limited license or other authority to practice a profession issued by a state, federal, or local agency or court or the Public Company Accounting Oversight Board (PCAOB) except for the following occurrences:
    - An action by a state board of accountancy in which the only sanction was a requirement that the individual complete specified continuing education courses.
    - The revocation of a license solely because of the failure to complete continuing education or failure to renew.

- Pendency of any investigation, inquiry, or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving professional conduct.

- Failure to respond to the satisfaction of the Board to a request for information from the Board regarding a matter related to a current or prior California Practice Privilege.

- Any judgment or arbitration award in an amount greater that $30,000 entered against him or her in a civil matter involving the professional conduct of the individual.

An out-of-state licensee must report to the Board any disqualifying conditions. The Board reviews the reported information and notifies the individual in writing of its decision regarding the issuance of the practice privilege.

An out-of-state licensee can obtain the California Practice Privilege either with the authorization to sign attest reports or without that authorization. To sign an attest report under the California Practice Privilege, the holder must have completed a minimum of 500 hours of experience in attest services as required of California licensure applicants requesting licensure with the attest authority.

A practice privilege holder is not required to provide any supporting documentation at the time the Notification Form is submitted. However, the Board has the authority to request documentation from the out-of-state licensee and verify any of the information that was provided on the Notification Form, including whether the attest experience requirement has been fulfilled.

Under the practice privilege provisions, the Board is authorized to take immediate action against anyone who runs afoul of the notification requirements or applicable laws: specifically, the Board may suspend, without notice or hearing, an individual's practice privilege pursuant to Section 5096.4 of the California Accountancy Act, Administrative Suspension of a Practice Privilege.

Since inception of the California Practice Privilege on January 1, 2006, staff have processed approximately 3,100 Notification Forms annually. This number includes new Practice Privilege holders and holders who resubmit after the expiration of the one-year

period of the prior practice privilege. Further, with the implementation of the audit process in April 2008, 13 individuals have been suspended due to issues uncovered during the audit. The audit process also revealed an additional 44 practice privilege holders who requested the authority to sign attest reports in California without fulfilling the experience requirement, which may result in the Board taking action against these holders.

Provided below is a synopsis of the actions to date taken by the Board regarding cross-border practice in California.

Cross-Border Practice in California

At the March 22-23, 2007, Board meeting, representatives of the National Association of State Boards of Accountancy (NASBA) and the American Institute of Certified Public Accountant (AICPA) made a presentation to the Board regarding the need to ease cross-border practice. The presentation covered proposed revisions to the Uniform Accountancy Act (UAA) intended to increase the uniformity of states' laws underpinning cross-border practice. Points made during the presentation in favor of cross-border practice regarding the no notice/no fee/no escape concept included:

- Consumers want access to service and access to their preferred providers of service. CPAs need access to their clients and clients need access to their CPAs, wherever they reside.
- Notification is not the key factor in protecting the public and requiring notification penalizes the compliant CPA, not the non-compliant CPA.
- New provisions in the UAA provide strong language and support for the enforcement of regulations and laws.
- "Mobility" is defined as the ability for CPAs to cross state lines in order to serve clients without the impediments of numerous requirements for notice, reciprocal licensing, and other processes and procedures.
- Mobility provisions are important because lack of uniformity between jurisdictions is creating problems for licensees attempting to work outside of their home state.
- Under the UAA, CPAs from substantially equivalent states or who individually meet the substantial equivalency requirements would be able to enter and practice in the visited state without notification or fee.

Discussions regarding the implementation of cross-border practice in California were continued at the May 2007 meetings of the CPC and the Board. The CPC placed on its July 2007 agenda consideration of whether California law should be modified to incorporate the "no notice/no fee/no escape" approach similar to the UAA. Based upon

recommendation from the CPC, the Board adopted the following policy decisions regarding cross-border practice in California:

- Elimination of the requirement for notification and the fee associated with California Practice Privilege, but only permit a practitioner to perform the same services he or she is legally authorized to perform in his or her state of principal place of business.

- Elimination of the temporary/incidental practice provision from the California Accountancy Act for United States practitioners.

- Provide an alternative form of firm registration for firms performing audits of entities with a home office in California. The alternative firm registration would require that one partner or shareholder who qualifies for practice privilege provide the Board with his/her name, state of principal place of business, license number, and the identifying information about the firm currently required for the firm to practice through a practice privilege holder.

AB 2473 (Niello) was introduced on February 21, 2008. Statutory language was adopted by the Board at the March 2008 meeting and incorporated into the bill. AB 2473 was scheduled for hearing on April 9, 2008; however, due to the controversy surrounding the concept, the hearing was cancelled at the request of the author.

As indicated previously in this memo, staff was directed by the Board to place cross-border practice on the agenda for this meeting.

## Options for Consideration

Provided below are options provided by staff for Board consideration:

**Option 1a – Retain the current California Practice Privilege provisions.**

Issues for consideration in support of retaining the current California Practice Privilege provisions:

- The lack of "front-end checks" was identified during deliberations as a major issue as there was no resource for consumers to verify licensure status or disciplinary history of a licensee through many state board Web sites.

- According to a NASBA press release dated September 17, 2008 (**See Attachment 5**), presently there are only 18 of the 55 jurisdictions participating in the Accountancy Licensee Database (ALD). Another nine jurisdictions have committed to participate in the near future, including California. The purpose of the ALD is to provide a source of current license information for boards and consumers, facilitate communication among boards, aid in the boards' enforcement efforts and facilitate

substantial equivalency. While NASBA is encouraging 100 percent participation, to date only half of the jurisdictions are participating or have committed to participate.

In addition, according to ALD Task Force Member Patti Bowers, the task force has elected to roll-out ALD in two phases. The first phase of the project will provide state board access only. During the second phase of the project the task force will investigate providing accessibility for other government agencies and public access. Dates have not yet been established for either phase.

- The Board will be required to demonstrate to the Department of Consumer Affairs (DCA) that mobility does not compromise the Board's mission of consumer protection. In a letter dated February 6, 2008 (**See Attachment 6**), Carrie Lopez, Director of DCA, officially opposed AB 2473 due to the concern that "removing the notification requirement for out-of-state licensees...could encourage unqualified individuals to practice as CPAs in California and lead to a decline in consumer protection."

**Option 1b**
**Modify the current Practice Privilege Program.**

Another option the Board may wish to consider is modifying the current Practice Privilege Program requirements. One such modification may be to require notification but eliminate the required fee. The Board should keep in mind that modifications to the current requirements will likely require a statutory change.

**Option 2a**
**Pursue cross-border practice in California as adopted by the Board at the March 2008 Board meeting.**

The Board may consider submitting legislation for this upcoming legislative cycle utilizing the statutory language included in AB 2473, excluding the section of language related to the elimination of Pathway 1.

**Option 2b**
**Amend the statutory language by revisiting the policy decisions adopted by the Board.**

In a letter dated January 10, 2008, Senator Don Perata, President pro Tempore, requested that the Board provide various items (report, legal analysis, etc.) to address and resolve concerns related to the elimination of the current notification process and possible consumer protection related issues tied to the "no notice/no fee/no escape" concept (**See Attachment 7**). The Board may wish to revisit the Board-adopted policy issues related to cross-border, which are provided on the bottom of page six and the top of page 7.

**Staff Recommendation**

Staff is recommending that the Board postpone submitting statutory language related to mobility and adopt Option 1a.

In order to be more effective in the legislative process, staff is recommending that the Board not sponsor legislation that may negatively affect the peer review bill. As explained by staff at the October retreat, unpopular legislation may have a negative effect upon other bills introduced during the same legislative cycle. Mobility, as submitted by the Board earlier this year, was considered unpopular legislation.

Staff's recommendation is also based upon the fact that the California Practice Privilege Program was only implemented in January 1, 2006 and that presently there is no evidence that demonstrates the program is flawed and needs to be modified. However, if the Board chooses to adopt Option 1b, staff can place an item on the January 2009 CPC agenda to provide possible modifications to the current California Practice Privilege Program for Committee discussion and deliberation.

Finally, until such time as the ALD or some other resource is available to provide consumers' access to licensure and disciplinary information for the licensee they intend to hire to handle their financial needs, the Board should not revisit elimination of the notification process currently required under California Practice Privilege.

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Attachment 1

# Legislation and the Legislative Process

## Review of Proposed Legislation

At its meeting of September 19, 2008, the Board determined that it would consider pursuing six pieces of legislation in the coming legislative year. The following is a brief synopsis of those proposals.

*Ethics Continuing Education*
It has been determined that this proposal, to require an Ethics CE course every two years, can be done through the regulatory process and will not require legislation. This proposal has been removed from future discussions of legislation.

*Mandatory Peer Review*
This legislation will provide an implementation date for a mandatory peer review requirement. In addition, significant modifications are proposed to B&P Code § 5076, specifically to define peer review and participation requirements, and to include an enforcement component. Finally, the legislation would also include two additional statutes: 5076.1, establishing a peer review oversight committee and 5076.2, establishing budgetary authority to implement the peer review requirement.

*ICPA Series Salary Adjustment*
This legislation would convert the existing 20% recruitment and retention pay to a 20% salary scale adjustment to be included as compensation for calculation of retirement benefits for the classifications of Investigative Certified Public Accountant, Supervising Investigative Certified Public Accountant, and Chief, Accountancy Enforcement Program.

*Restatements*
This proposal would remove the restatement reporting requirement in Business & Professions Code § 5063.

*Mobility*
Eliminates the practice privilege provisions, and implements statutes enabling cross-border practice.

*Elimination of Pathway 1*
This would repeal §5092 of the Business & Professions Code to eliminate Pathway 1 (conferred baccalaureate degree) as an option for licensure.

## Step-by-Step Through the Legislative Process

The legislative process is designed so that a bill may be fully vetted before it becomes law. Typically, a bill must pass seven votes and be signed before it can become law. Even after that, it is still subject to judicial review. **Attachment 1** gives a detailed examination of the steps of the legislative process.

## Considerations for Sponsoring a Legislative Agenda

When putting together a legislative agenda, there are several factors that must be considered. The following is a discussion of the major factors the Board will face as it considers sponsoring legislation.

*DCA Involvement*
The Department of Consumer Affairs (DCA) can be a valuable ally in the legislative process. It can help both by assuring the approved language is clear and accomplishes the desired result and by influencing the political arena as well. When DCA makes a recommendation it is called an "approved position." That approval comes from the Governor. DCA makes its recommendation to him, and then he either approves its position or not. Without his approval, DCA cannot take a position as it is a department of the executive branch. Therefore, it very important to have DCA recommend that the Governor support the proposed bill.

*Participation is Required*
As was discussed in **Attachment 1**, Board members have a significant role to play in the advancement of the Board's legislative agenda. Eight trips to Sacramento is a serious commitment. That number only increases with the number of bills being sponsored. While Board members may choose to divide the trips amongst themselves, it should be kept in mind that specialization by one or two members in each area leads to proficiency by the time a bill reaches its conclusion.

Board members also have connections that they should call upon. Every member has some form of relationship with their appointing authority. At the appropriate time, Board members need to contact these people personally and express the views of the Board to them.

Board members, Qualifications Committee members, and Administrative Committee members also are constituents of a legislative district. Members should personally write a letter of support for each piece of legislation and mail or fax it to their own Assembly Member and Senator. In addition, these members have friends and associates in their places of business whom they should ask to write letters of support to their individual legislators as well. As the timing of these letters can be important, staff is willing to prompt members by email at the appropriate times should the Board so request.

*Beware of Interactions*
Some bills do not do well when introduced with other bills. Ms. Bowers was told by one of the consultants she met with about peer review that the Board needs to carefully consider what it introduces next year. He cautioned that certain unpopular bills can be "radioactive;" in other words killing good bills as they head to the own demise due to their extreme unpopularity. A good bill can easily die due to its association, real or perceived, with a "radioactive" bill. While this maybe unfair, it is, unfortunately, how the Legislature operates at times.

*Be Willing to Compromise*
Throughout the legislative process, various committees and legislators will attempt to amend bills. The Board needs to be aware that the bill introduced is almost never the bill signed by the Governor.

In addition, while the Board may sponsor a given bill, it is not the author. Frequently, the author will defer to the sponsor of a bill when deciding whether or not to accept an amendment. However, that is not always the case. If an author takes an amendment that the Board does not like, it has three options.

The first option is to accept the amendment for what it is. It may not be exactly what the Board would like, but it is something it can adjust to.

The second option is to ask the author to attempt to amend the bill back to an acceptable form. This can be very tricky. Once an author accepts an amendment from the committee or another member, the spirit of that amendment must be maintained or the author is seen by fellow legislators as going back on their word. This is certain death for the bill. Therefore, in amending the bill again to make it more palatable, the author still must maintain the spirit of the original amendment. If that spirit is entirely unacceptable to the Board, there is only one remaining option.

The final option is to remove sponsorship of the bill. The Board has no power to stop the author from going forward with the bill if they so choose, but it is not required to continue its sponsorship. It can even issue a letter of opposition if it gets that bad.

*Prioritize*
Sponsoring legislation is a large undertaking. It requires a significant amount of time and effort from Board members, committee members and staff in order to be effective. That time and effort is multiplied for every bill that is sponsored.

It should be kept in mind that bills that are not pursued in this legislative year can be pursued at a later time. The Board will be asked to prioritize its needs for the coming legislative year.

*Some Bills Just Die*
In the end, it must be realized that despite members' and staff's best efforts, sometimes bills die. They may be unpopular to an important committee chair, they may be too expensive, they may get caught in legislative maneuvering; but sometimes, bills just die.

Last session (a two year cycle), 4865 bills were introduced in the Legislature. Of those, only 1771 (36%) made it through the entire process to the Governor's desk. Even then, the Governor vetoed 548 of those 1771 (31%). Of the original 4865 bills that were introduced, only 1223 were signed into law (25%).

*Conclusion*

There are no guarantees in the legislative process, but there are good ways to advance an agenda and there are ways that are not as good. By participating in the process, being aware of how some bills can affect others, being willing to compromise and to prioritize, the Board will be able to steer its legislative agenda down the proper path.

Attachment

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

# ASSEMBLY BILL No. 2473

**Introduced by Assembly Members Niello and Ma**

February 21, 2008

An act to amend Sections 5035.3, 5050, 5050.2, 5088, 5096, 5096.2, 5096.3, 5096.4, 5096.6, 5096.7, 5096.10, 5096.12, 5109, 5116.6, and 5134 of, to amend and repeal Section 5092 of, to repeal Sections 5054, ~~5096.1,~~ 5096.5, 5096.11, 5096.14, and 5096.15 of, and to repeal and add ~~Section~~ *Sections 5096.1 and* 5096.13 of, the Business and Professions Code, relating to accountancy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2473, as amended, Niello. Accountancy: licensure.

Existing law provides for the licensure and regulation of accountants by the California Board of Accountancy in the Department of Consumer Affairs. Existing law prohibits a person from engaging in the practice of public accountancy in this state unless he or she holds either a valid permit issued by the board or a practice privilege, which the board may, until January 1, 2011, issue to an accountant licensed in another state who meets specified requirements, and a violation of this provision is a crime. Existing law exempts from the prohibition the temporary practice of accountancy in California incident to practice in another state or foreign country in which a person is licensed or authorized to practice accountancy, as specified, and the filing of specified tax returns by an accountant licensed in another state.

This bill would repeal on January 1, 2012, the provisions governing education, examination, and experience requirements for licensure as a certified public accountant. The bill would delete the exception from

the practice prohibition for practice incidental to lawful practice in another state and for the filing of the tax returns by a licensee of another state, and would revise the exception from the practice prohibition for practice incidental to lawful practice in a foreign country by imposing additional requirements in order for that exception to apply.

This bill would delete the practice privilege provisions for out of state accountants, including related fees, and would instead authorize an individual who has a valid and current license, certificate, or permit to practice public accountancy from another state and who meets specified requirements to engage in the cross-border practice of accountancy in this state without obtaining a certificate or license, subject to specified conditions and limitations. The bill would authorize an accounting firm or sole proprietor that performs nonattest services for entities headquartered in this state to engage in the practice of public accountancy in this state without a firm registration, and would authorize an accounting firm or sole proprietor that performs attest services for entities headquartered in this state to engage in the practice of accountancy through an alternative firm registration, subject to certain conditions. The bill would ~~authorize~~ *provide for automatic suspension or revocation of the cross-border practice authorization in certain circumstances, and would require* the board to revoke or suspend the ~~above authorizations to practice,~~ *cross-border practice authorization if the board or its executive officer makes certain findings* and *authorize the board* to take disciplinary action, as specified.

Because this bill would delete or revise certain exceptions to the accountancy licensing provisions, the violation of which are a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5035.3 of the Business and Professions
2 Code is amended to read:

5035.3. For purposes of Sections 5050.2, 5096.12, and 5096.13, "firm" includes any entity that is authorized or permitted to practice public accountancy as a firm under the laws of another state or country.

SEC. 2. Section 5050 of the Business and Professions Code is amended to read:

5050. Except as provided in Section 5050.2, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or practicing in this state under cross-border practice pursuant to Article 5.1 (commencing with Section 5096).

SEC. 3. Section 5050.2 of the Business and Professions Code is amended to read:

5050.2. (a) Nothing in this chapter shall prohibit a person or firm that holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country, provided that the individual or firm:

(1) Is regulated by the foreign country and is performing the temporary practice in this state under accounting or auditing standards of that country.

(2) Does not represent or hold himself, herself, or itself out as being the holder of a valid California permit to practice public accountancy.

(3) Is authorized to practice in another country and does not have an office in this state.

(4) Shall be deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state that the individual or firm is not legally authorized to perform in the country of principal place of business.

(b) The board may issue a fine pursuant to Article 6.5 (commencing with Section 5116), or revoke, suspend, or otherwise restrict the right to practice in this state or otherwise discipline a person with a license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country for any act that would be a violation of this code ~~or~~, grounds for discipline against a licensee, or grounds for denial of a license under this code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice has been revoked under this section may apply for reinstatement of the authorization to practice not less than one year after the effective date of the board's decision revoking the authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the authorization to practice.

(c) The board may administratively suspend the authorization of any person to practice under this section for any act that would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that section.

SEC. 4. Section 5054 of the Business and Professions Code is repealed.

SEC. 5. Section 5088 of the Business and Professions Code is amended to read:

5088. Any individual who is the holder of a current and valid license, certificate, or permit as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, until the time the application for a license is granted or denied, practice public accountancy in this state only under the cross-border practice provisions of Article 5.1 (commencing with Section 5096), except that, for purposes of this section, the individual is not disqualified from cross-border practice during the period the application is pending by virtue of maintaining an office or principal place of business, or both, in this state.

SEC. 6. Section 5092 of the Business and Professions Code is amended to read:

5092. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

(e) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 7. Section 5096 of the Business and Professions Code is amended to read:

5096. (a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under cross-border practice without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license, certificate, or permit issued by any state for at least four of the last 10 years.

(2) The individual has a license, certificate, or permit from a state that has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure that are substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) An individual who practices under cross-border practice in this state:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under cross-border practice in this state, except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements ~~and ethics examination requirements~~ of this state when the individual has met the continuing education requirements of the state in which the individual holds the valid license, certificate, or permit as provided in subdivision (a).

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a

firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of each state in which he or she holds a certificate, license, or permit as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state under cross-border practice that he or she is not legally authorized to perform in his or her state of principal place of business.

(d) (1) No individual may practice under cross-border practice without prior approval of the board if the individual has any disqualifying condition under paragraph (2) of this subdivision.

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater within the last 10 years.

(E) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

*(4) In no event may the board approve an applicant for cross-border practice if he or she, within the 12 months preceding the filing of his or her application, has been the subject of a final order of conviction of any felonies specified in subdivision (b) of Section 5096.1 or designated by board regulations pursuant to subdivision (e) of Section 5096.1.*

(e) An individual who acquires any disqualifying condition described in paragraph (2) of subdivision (d) while practicing under cross-border practice in this state shall immediately notify the board in writing of the nature and details of the disqualifying condition.

SEC. 8. Section 5096.1 of the Business and Professions Code is repealed.

*SEC. 9. Section 5096.1 is added to the Business and Professions Code, to read:*

*5096.1. (a) The right of an individual to engage in cross-border practice without prior approval of the board is a privilege that, among other things, is conditioned on both of the following:*

*(1) The existence of legal authorization to perform professional services as a certified public accountant from the state in which his or her principal place of business is located.*

*(2) The absence of any disqualifying conditions listed in subdivision (d) of Section 5096 or specified in regulations adopted by the board.*

*(b) In order to protect the paramount interests of the public and the consumers of the State of California, the Legislature finds that if an individual fails to meet certain conditions, he or she shall be considered conclusively disqualified from engaging in cross-border practice. In addition, an immediate forfeiture of the individual's privilege to engage in cross-border practice shall occur as a matter of law when any of the following conditions exist, and no hearing shall be held nor shall the board have any discretion regarding whether or not to terminate the individual's cross-border practice:*

*(1) The individual's legal authorization to perform professional services as a certified public accountant is revoked, canceled, suspended, or otherwise terminated by the state in which his or her principal place of business is located. A certified copy of the order, decision, or judgment revoking, canceling, suspending, or otherwise terminating the legal authorization of the individual to*

*perform professional services as a certified public accountant by the tribunal, court, or agency in the state of his or her principal place of business shall be conclusive proof of the fact that the individual no longer has authorization to provide professional services in that state.*

*(2) The individual is convicted of any of the following felonies:*

*(A) Murder.*

*(B) Robbery.*

*(C) Grand theft.*

*(D) Embezzlement.*

*After receiving a certified copy of the record of conviction, the board shall suspend the individual's cross-border practice privileges. After the judgment of conviction has become final, either because the time for appeal has elapsed or the judgment of conviction has been affirmed or has otherwise become final, the individual's cross-border practice shall be summarily revoked. If the conviction is reversed, the individual's cross-border practice privileges shall be immediately reinstated.*

*(c) For purposes of paragraph (2) of subdivision (b), a crime is a felony if it is specifically declared to be so by statute or is charged as a felony, irrespective of whether, in a particular case, the crime may be considered a misdemeanor as a result of postconviction proceedings.*

*(d) For purposes of this section, a certified copy of the criminal conviction shall be conclusive proof of the fact of the conviction.*

*(e) The board may, by regulation, designate additional felonies that result in summary revocation of cross-border practice pursuant to this section.*

*(f) An individual whose cross-border practice privileges have been suspended or terminated under this section may petition the board to be reinstated not less than one year from the date of suspension or termination.*

*(g) An individual whose cross-border practice privileges have been suspended or terminated under this section may, at any time, petition the board to reinstate his or her privilege to engage in cross-border practice if the legal authorization to provide services as a certified public accountant is restored by the state where his or her principal place of business is located.*

1 ~~SEC. 9.~~
2 *SEC. 10.* Section 5096.2 of the Business and Professions Code
3 is amended to read:
4 5096.2. (a) An individual licensed out of state may be denied
5 cross-border practice in this state for failure to qualify under or
6 comply with the provisions of this article or implementing
7 regulations, or for any act that if committed by an applicant for
8 licensure would be grounds for denial of a license under Section
9 480 or if committed by a licensee would be grounds for discipline
10 under Section 5100, or for any act committed outside of this state
11 that would be a violation if committed within this state.
12 (b) The board may deny cross-border practice in this state using
13 either of the following procedures:
14 (1) Notifying the individual in writing of all of the following:
15 (A) That the cross-border practice is denied.
16 (B) The reasons for denial.
17 (C) The earliest date on which the individual is eligible for
18 cross-border practice in this state.
19 (D) The individual has a right to appeal the notice and request
20 a hearing under the provisions of the Administrative Procedure
21 Act if a written notice of appeal and request for hearing is made
22 within 15 days.
23 (E) Should the individual not submit a notice of appeal and
24 request for hearing within 15 days, the board's action set forth in
25 the notice shall become final.
26 (2) Filing a statement of issues under the Administrative
27 Procedure Act.
28 (c) An individual licensed out of state who had been denied
29 cross-border practice in this state may petition for board approval
30 to practice under cross-border practice not less than one year after
31 the effective date of the notice or decision denying practice in this
32 state, unless a longer time period, not to exceed three years, is
33 specified in the notice or decision denying practice in this state.
34 ~~SEC. 10.~~
35 *SEC. 11.* Section 5096.3 of the Business and Professions Code
36 is amended to read:
37 5096.3. (a) The cross-border practice of an individual licensed
38 out of state, practicing or who practiced in this state under
39 cross-border practice, may besubject to revocation, suspension,
40 fines, or other disciplinary sanctions for any conduct that would

be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article.

(b) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against an individual who is licensed in another state and who is practicing or has practiced under cross-border practice in this state.

(c) An individual licensed out of state whose cross-border practice has been revoked may petition for board approval to practice in this state not less than one year after the effective date of the board's decision revoking the individual's cross-border practice unless a longer time period, not to exceed three years, is specified in the board's decision revoking practice in this state.

(d) The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply under this article.

(e) If the board takes disciplinary action against an individual licensed in another state who is practicing or practiced in this state under cross-border practice, the board shall notify each state in which the individual holds a license, certificate, or permit of that action.

~~SEC. 11.~~

*SEC. 12.* Section 5096.4 of the Business and Professions Code is amended to read:

5096.4. (a) The right of an individual to engage in cross-border practice may be administratively suspended at any time by an order issued by the board or its executive officer, without prior notice or hearing, ~~for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the representations made in the notice, the individual's competence or qualifications to practice under cross-border practice, failure to timely respond to a board inquiry or request for information or documents, or under other conditions and circumstances provided for by board regulation.~~ *if the board or its executive officer finds both of the following:*

*(1) The individual meets one of the following requirements:*

*(A) Acquired a disqualifying condition described in paragraph (2) of subdivision (d) of Section 5096.*

*(B) Committed any act that, if committed by an applicant, would be grounds for denial of a license or, if committed by a licensee, would be grounds for discipline under Section 5100.*

*(C) Committed any act outside of this state that would be a violation if committed within this state.*

*(2) Serious injury will result to the public before the matter could be heard on notice.*

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

(1) The reason for the suspension.

(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing, *and that failure to do so will result in the order becoming permanent.*

(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act applicable to individuals ~~who are denied licensure~~ *whose license is subject to revocation, suspension, limitation, or imposition of conditions*, including the filing of ~~a statement of issues~~ *an accusation* by the board setting forth the reasons for the administrative suspension of cross-border practice and specifying the statutes and rules ~~with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the denial of cross-border practice.~~

~~(d) The burden is on the individual whose cross-border practice is suspended to establish both qualification and fitness to practice under cross-border practice.~~ *on which the action is based.*

*(d) Hearings shall be conducted within 90 days of the board's reception of the individual's appeal of the administrative suspension order. A final decision shall be issued no later than 45 days after submission of the matter. If the decision sustains the board's suspension order, it shall become permanent. Otherwise, it shall be immediately vacated.*

(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer; *however, any suspension order that has been appealed shall be*

*vacated by operation of law, unless a final decision upholding the order is issued within 135 days of the appeal.*

~~(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state.~~

~~(g) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for denial of an individual's authority to engage in cross-border practice or discipline of an individual who has engaged in cross-border practice.~~

~~SEC. 12.~~

*SEC. 13.* Section 5096.5 of the Business and Professions Code is repealed.

~~SEC. 13.~~

*SEC. 14.* Section 5096.6 of the Business and Professions Code is amended to read:

5096.6. In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf of the board, including, but not limited to, issuing a notice of denial of cross-border practice and an interim suspension order, subject to the right of the individual licensed in another state to timely appeal and request a hearing as provided for in this article.

~~SEC. 14.~~

*SEC. 15.* Section 5096.7 of the Business and Professions Code is amended to read:

5096.7. Except as otherwise provided in this article, the following definitions apply:

(a) The terms"license," "licensee," "permit," or "certificate" as used in this chapter or Division 1.5 (commencing with Section 475) shall include persons, as defined in Section 5035, performing cross-border practice or practicing under an alternative firm registration under this article, unless otherwise inconsistent with the provisions of the article.

(b) The term "employee" as used in this article shall include, but is not limited to, partners, shareholders, and other owners.

~~SEC. 15.~~

*SEC. 16.* Section 5096.10 of the Business and Professions Code is amended to read:

5096.10. The provisions of this article shall only be operative if there is an appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

~~SEC. 16.~~

*SEC. 17.* Section 5096.11 of the Business and Professions Code is repealed.

~~SEC. 17.~~

*SEC. 18.* Section 5096.12 of the Business and Professions Code is amended to read:

5096.12. (a) Anaccounting firm, as defined in Section 5035.3, or sole proprietor, that performs attest services for entities headquartered in this state, may engage in the practice of public accountancy in this state through an alternative firm registration provided that the firm or sole proprietor:

(1) Isauthorized to practice in another state and does not have an office in this state.

(2) Has one partner, shareholder, or owner who qualifies for cross-border practice in this state, and provides to the board his or her name, state of principal place of business, license number, and firm identifying information.

(3) Is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(4) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to cross-border practice.

(5) Is deemed to have appointed the regulatory agency of each state in which the firm or sole proprietor holds a certificate, license, or permit as the agent on whom notices, subpoenas, or other process may be served in any action or proceeding by the board against the firm or sole proprietor.

(6) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(7) Shall not perform any services in this state under alternative firm registration that the firm or sole proprietor is not legally authorized to perform in its or his or her state of principal place of business.

(b) "Attest services" include any audit or other engagement to be performed in accordance with the Statements on Auditing Standards, any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements, and any engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board. "Attest services," for purposes of this article, do not include any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services.

(c) The board may revoke or suspend an alternative firm registration, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm or sole proprietor for any act that would be grounds for discipline against a licensee or grounds for denial of a license.

~~SEC. 18.~~

*SEC. 19.* Section 5096.13 of the Business and Professions Code is repealed.

~~SEC. 19.~~

*SEC. 20.* Section 5096.13 is added to the Business and Professions Code, to read:

5096.13. (a) An accounting firm, as defined in Section 5035.3, or sole proprietor that performs nonattest services for entities headquartered in this state may engage in the practice of public accountancy in this state without any form of firm registration provided that the firm or sole proprietor:

(1) Is authorized to practice in another state and does not have an office in this state.

(2) Is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(3) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under cross-border practice.

(4) Is deemed to have appointed the regulatory agency of each state in which the firm or sole proprietor holds a certificate, license, or permit as the agent on whom notices, subpoenas, or other process may be served in any action or proceeding by the board against the firm or sole proprietor.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state under cross-border practice that the firm or sole proprietor is not legally authorized to perform in their state of principal place of business.

(b) The board may revoke or suspend authorization to practice under this section, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm or sole proprietor for any act that would be grounds for discipline against a licensee or grounds for denial of a license.

~~SEC. 20.~~

*SEC. 21.* Section 5096.14 of the Business and Professions Code is repealed.

~~SEC. 21.~~

*SEC. 22.* Section 5096.15 of the Business and Professions Code is repealed.

~~SEC. 22.~~

*SEC. 23.* Section 5109 of the Business and Professions Code is amended to read:

5109. The expiration, cancellation, forfeiture, or suspension of a license or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

~~SEC. 23.~~

*SEC. 24.* Section 5116.6 of the Business and Professions Code is amended to read:

5116.6. Anywhere the term "licensee" is used in the article it shall include certified public accountants, public accountants, partnerships, corporations, individuals licensed out of state

practicing in this state under cross-border practice, holders of alternative firm registrations, other persons licensed, registered, or otherwise authorized to practice public accountancy under this chapter, and persons who are in violation of any provision of Article 5.1 (commencing with Section 5096).

~~SEC. 24.~~

*SEC. 25.* Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600). The board may charge a reexamination fee not to exceed seventy-five dollars ($75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee shall be made by regulation upon a determination by the board that additional moneys are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur.

The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars ($25).

(j) The board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in a fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(k) It is the intent of the Legislature that, to ease entry into the public accounting profession in California, any administrative cost to the board related to the certified public accountant examination or issuance of the certified public accountant certificate that exceeds the maximum fees authorized by this section shall be covered by the fees charged for the biennial renewal of the permit to practice.

*SEC. 26. The Legislature hereby finds and declares that it is the intent of the California Board of Accountancy to provide those consumers who elect to use the services of certified public accountants and firms licensed in the other 54 jurisdictions with access to licensing information for each of those jurisdictions through the board's Web site.*

~~SEC. 25.~~

*SEC. 27.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O

## California Accountancy Act

## Business and Professions Code Sections 5096 – 5096.15

### 5096. Practice Privilege General Requirements

(a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:

(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.

(2) Pay a fee as provided in Article 8 (commencing with Section 5130).

(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.

(e) An individual who holds a practice privilege under this article:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under practice privileges in this state except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when such individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit on which the substantial equivalency is based.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of the state that issued the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(f) A practice privilege expires one year from the date of the notice, unless a shorter period is set by board regulation.

(g) (1) No individual may practice under a practice privilege without prior approval of the board if the individual has, or acquires at any time during the term of the practice privilege, any disqualifying condition under paragraph (2) of this subdivision.

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other disciplinary or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater.

(E) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

**5096.1. Practice Without Notice**

(a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who has not given notice of intent to practice under practice privileges and paid the fee required pursuant to the provisions of this article, and who has a license, certificate or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:

(1) Deemed to be practicing public accountancy unlawfully in this state.

(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.

(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(b) The board may prospectively deny a practice privilege to any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.

**5096.2. Denial of a Practice Privilege**

(a) Practice privileges may be denied for failure to qualify under or comply with the provisions of this article or implementing regulations, or for any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480 or if committed by a licensee would be grounds for discipline under Section 5100, or for any act committed outside of this state that would be a violation if committed within this state.

(b) The board may deny practice privileges using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the practice privilege is denied.

(B) The reasons for denial.

(C) The earliest date on which the individual is eligible for a practice privilege.

(D) That the individual has a right to appeal the notice and request a hearing under the provisions of the dministrative Procedure Act if a written notice of appeal and request for hearing is made within 60 days.
(E) That, if the individual does not submit a notice of appeal and request for hearing within 60 days, the board's action set forth in the notice shall become final.
(2) Filing a statement of issues under the Administrative Procedure Act.
(c) An individual who had been denied a practice privilege may apply for a new practice privilege not less than one year after the effective date of the notice or decision denying the practice privilege unless a longer time period, not to exceed three years, is specified in the notice or decision denying the practice privilege.

**5096.3. Discipline of a Practice Privilege**

(a) Practice privileges are subject to revocation, suspension, fines or other disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article.
(b) Practice privileges are subject to discipline during any time period in which they are valid, under administrative suspension, or expired.
(c) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against the holder of a practice privilege.
(d) An individual whose practice privilege has been revoked may apply for a new practice privilege not less than one year after the effective date of the board's decision revoking the individual's practice privilege unless a longer time period, not to exceed three years, is specified in the board's decision revoking the practice privilege.
(e) The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply under this article.

**5096.4. Administrative Suspension of a Practice Privilege**

(a) The right of an individual to practice in this state under a practice privilege may be administratively suspended at any time by an order issued by the board or its executive officer, without prior notice or hearing, for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the representations made in the notice, the individual's competence or qualifications to practice under practice privileges, failure to timely respond to a board inquiry or request for information or documents, or under other conditions and circumstances provided for by board regulation.
(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.
(c) The administrative suspension order shall contain the following:
(1) The reason for the suspension.
(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing.
(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act applicable to individuals who are denied licensure, including the filing of a statement of issues by the board setting forth the reasons for the administrative suspension of practice privileges and specifying the statutes and rules with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the denial of practice privileges.
(d) The burden is on the holder of the suspended practice privilege to establish both qualification and fitness to practice under practice privileges.
(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer or expiration of the practice privilege under administrative suspension.

(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state or from applying for a new practice privilege upon expiration of the one under administrative suspension, except that the new practice privilege shall not be effective until approved by the board.

(g) Notwithstanding any administrative suspension, a practice privilege expires one year from the date of notice unless a shorter period is set by board regulation.

(h) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for denial or discipline of a practice privilege.

### 5096.5. Signing Attest Reports

Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095 and completes any continuing education or other conditions required by the board regulations implementing this article.

### 5096.6. Delegation of Authority, Executive Officer

In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf of the board, including, but not limited to, issuing a notice of denial of a practice privilege and an interim suspension order, subject to the right of the individual to timely appeal and request a hearing as provided for in this article.

### 5096.7. Definitions

Except as otherwise provided in this article, the following definitions apply:

(a) Anywhere the term "license," "licensee," "permit," or "certificate" is used in this chapter or Division 1.5 (commencing with Section 475), it shall include persons holding practice privileges under this article, unless otherwise inconsistent with the provisions of the article.

(b) Any notice of practice privileges under this article and supporting documents is deemed an application for licensure for purposes of the provisions of this code, including, but not limited to, the provisions of this chapter and the provisions of Division 1.5 (commencing with Section 475) related to the denial, suspension and revocation of licenses.

(c) Anywhere the term "employee" is used in this article it shall include, but is not limited to, partners, shareholders, and other owners.

### 5096.8. Investigative Powers

In addition to the authority otherwise provided by this code, all investigative powers of the board, including those delegated to the executive officer, shall apply to investigations concerning compliance with, or actual or potential violations of, the provisions of this article or implementing regulations, including, but not limited to, the power to conduct investigations and hearings by the executive officer under Section 5103 and to issuance of subpoenas under Section 5108.

### 5096.9. Authority to Adopt Regulations

The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

### 5096.10. Expenditure Authority to Implement Practice Privileges

The provisions of this article shall only be operative if commencing July 1, 2005, and continuing during the period provided in Section 5096.11, there is an appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

### 5096.11. Sunset Date of This Article

This article shall become operative on January 1, 2006. It shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends that date.

### 5096.12. Limited Firm Practice

(a) A certified public accounting firm that is authorized to practice in another state and that does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege.

(2) A firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm for any act that would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

### 5096.13. Firm Information

The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its federal taxpayer identification number.

### 5096.14. Safe Harbor Extension

The board shall amend Section 30 of Article 4 of Division 1 of Title 16 of the California Code of Regulations to extend the current "safe harbor" period from December 31, 2007, to December 31, 2010.

**5096.15. Practice Privilege Fees**

It is the intent of the Legislature that the board adopt regulations providing for a lower fee or no fee for out-of-state accountants who do not sign attest reports for California clients under the practice privilege. These regulations shall ensure that the practice privilege program is adequately funded. These regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and, for purposes of that chapter, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

## California Board of Accountancy Regulations

## CCR Sections 26 – 35.1

**Section 26. Purpose of this Article**

This Article implements Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) related to Practice Privileges.

**Section 27. Qualifications for the Practice Privilege**

To be eligible for a practice privilege, an individual whose principal place of business is not in California and who holds a valid, current license, certificate, or permit to practice public accountancy issued by another state shall meet the requirements of Business and Professions Code Section 5096 including, but not limited to, satisfying one of the following:

(a) Hold a current, valid license, certificate, or permit issued by another state, if the requirements under which that license, certificate, or permit was issued are deemed by the Board to be substantially equivalent to the requirements in Business and Professions Code Section 5093;

(b) Possess education, examination, and experience qualifications that have been determined by the Board to be substantially equivalent to the qualifications under Business and Professions Code Section 5093. Pursuant to subdivision (b) of Business and Professions Code Section 5096, the Board accepts individual qualification evaluations ofsubstantial equivalency by the National Association of State Boards of Accountancy's (NASBA's) CredentialNet. Prior to seeking a practice privilege under this paragraph, an individual shall apply to NASBA's CredentialNet, pay the required fee, and obtain the required substantial equivalency determination. The individual shall report the NASBA file number on the Notification Form submitted pursuant to Section 28 and shall authorize the Board to review the NASBA file upon request; or

(c) Have continually practiced public accountancy as a Certified Public Accountant under a current, valid license issued by any state for four of the last ten years.

**Section 28. Notification**

(a) To obtain a practice privilege, an individual meeting the requirements of Section 27 shall notify the Board by submitting the fully completed Notification Form provided at the end of this Section or the electronic equivalent provided by the Board on its Web site, and shall pay the fee as required by Sections 31 and 70. Except for the electronic signature which is provided for in subsection (c), the electronic version of the form shall be identical in content to the paper version of the Notification Form provided at the end of this section.

(b) The license which shall be reported on Item 3 of "Qualification Requirements" on the Notification Form and "the license upon which the substantial equivalency is based" referenced in subdivision (e) of Business and Professions Code Section 5096 is the license under which an individual qualifies for a practice privilege pursuant to subsection (a) of Section 27, or the license in the state of the principal place of business for an individual who qualifies for a practice privilege under subsection (b) or (c) of Section 27.

(c) The electronic version of the Notification Form shall provide for a certification and electronic signature as follows:

I understand that any misrepresentation or omission in connection with this notification disqualifies me from the California practice privilege and is cause for termination. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. By typing my name in the box below and clicking the "I Agree" button I certify under penalty of perjury under the laws of the State of California that the forgoing information is true and correct. If I am not prepared to so certify, I understand that I should click the "Cancel" button to discontinue the notification process.

Full name _____
I Agree _____
Cancel _____

**Section 29. Term of the Practice Privilege**

(a) Except when prior approval by the Board is required pursuant to Section 32, the practice privilege commences on the date the Notification Form is electronically submitted to the Board, on the postmark date of a Notification Form submitted to the Board by mail, or on the date a Notification Form is submitted to the Board via facsimile. When prior approval by the Board is required pursuant to Section 32, the practice privilege commences on the date the practice privilege is approved by the Board.

(b) Except as provided in subsection (c), a practice privilege, including a practice privilege that is or has been on administrative suspension pursuant to Business and Professions Code Section 5096.4, expires one year from the date the Notification Form is submitted to the Board or on the date a subsequent Notification Form is submitted to the Board, whichever occurs first.

(c) A practice privilege held by an applicant for a California license expires one year from the date the Notification Form is submitted to the Board or on the date the California license is issued by the Board, whichever occurs first.

**Section 30. Safe Harbor – Period of the Notice**

(a) Notwithstanding Section 29, during the period January 1, 2006, through December 31, 2010, an individual shall not be deemed to be in violation of this Article or Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) solely because he or she begins the practice of public accounting in California prior to submitting the Notification Form, provided the Notification Form is submitted within five business days of the date practice begins. An individual who properly submits the Notification Form to the Board within the five-day period provided for in this Section shall be deemed to have a practice privilege from the first day of practice in California unless the individual fails to timely submit the required fee pursuant to Section 31.

(b) Subsection (a) of this section does not apply in those instances in which prior approval by the Board is required pursuant to Section 32.

(c) In addition to any other applicable sanction, the Board may issue a fine of $250 to $5,000 for notifying the Board more than five business days after beginning practice in California. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

**Section 31. Payment of the Fee**

The fee required by Section 70(h) must be received by the Board within 30 days of the date the Notification Form is submitted to the Board.

(a) In addition to any other applicable sanction, an individual is subject to a fine of $100 to $500 for the first failure to pay the practice privilege fee within 30 days of the commencement of the practice privilege, including attempting to pay with a check that is subsequently dishonored. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

(b) In addition to any other applicable sanction, an individual is subject to a fine of $250 to $1,000 for any subsequent occurrence of failure to pay the practice privilege fee within 30 days, including attempting to pay with a check that is subsequently dishonored. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

(c) In addition to the fines described in this Section and any other applicable sanction, an individual is also subject to an administrative suspension for failure to pay the fee, including attempting to pay with a check that is subsequently dishonored. This administrative suspension shall remain in effect until the Board gives its approval for the individual to resume practice and shall not extend the term of the practice privilege.

**Section 32. Board Approval Required**

(a) An individual submitting a Notification Form pursuant to Section 28 who has any of the conditions listed in subsection (c) of this Section may not commence practice under a practice privilege without prior approval of the Board.

(b) A holder of a practice privilege who acquires any of the conditions listed in subsection

(c) of this Section during the term of the practice privilege shall cease practicing immediately and shall not begin practicing again without prior approval of the Board.

(c) Conditions requiring Board approval to practice under a practice privilege:

(1) The individual is convicted of a crime other than a minor traffic violation.

(2) The individual has had a revocation, suspension, denial, surrender, or other discipline or sanction involving any license or other authority to practice any profession in California or in any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board (PCAOB), except for the following occurrences:

(A) An action by a state board of accountancy in which the only sanction was a requirement that the individual complete specified continuing education courses.

(B) The revocation of a license or other authority to practice public accountancy, other than the license identified in Item 3 of the Qualification Requirements on the Notification Form, solely because of failure to complete continuing education or failure to renew.

(3) The individual is the subject of an investigation, inquiry, or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving his or her professional conduct.

(4) The individual held a practice privilege in California that expired while under administrative suspension or with an unpaid fine.

(5) The individual has failed to respond to the satisfaction of the Board to a request for information from the Board regarding a matter related to a current or prior practice privilege.

(6) The individual has been notified by the Board that prior Board approval is required before practice under a new practice privilege may commence.

(7) The individual has had a judgment or arbitration award in an amount of $30,000 or greater entered against him or her in a civil matter involving the professional conduct of the individual.

**Section 33. Changes to Information on the Notification**

(a) An individual shall report in writing to the Board changes in the information reported on the Notification Form within 30 days of the change.
(b) In addition to any other applicable sanctions, an individual is subject to a fine of $250 to $5,000 for failure to comply with the requirements of this Section. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

**Section 34. Response to Board Inquiry**

(a) In addition to any other applicable sanction, failure to comply with the obligation to respond to Board inquiry pursuant to Section 5096(e)(5) could result in one or more of the following:
(1) Issuance of a fine of $250 to $5,000;
(2) An administrative suspension of a current practice privilege pursuant to Business and Professions Code Section 5096.4; or
(3) The requirement to obtain the approval of the Board before commencing to practice under a future practice privilege.
(b) In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

**Section 35. Continuing Education Requirement**

An individual practicing under a practice privilege shall meet the continuing education requirements of the state of licensure identified in Item 3 of the Qualification Requirements on the Notification Form.

**Section 35.1. Notice of Intent to Administratively Suspend**

(a) Prior to the issuance of an Administrative Suspension Order pursuant to Business and Professions Code Section 5096.4, the Executive Officer may issue to the holder of a practice privilege a Notice of Intent to Administratively Suspend. The Notice of Intent to Administratively Suspend shall be in writing and shall be mailed to the practice privilege holder's address of record.
(b) The Notice of Intent to Administratively Suspend shall include a description of the contents of the Administrative Suspension Order pursuant to subdivision (c) of Section 5096.4.
(c) The Notice of Intent to Administratively Suspend shall provide the holder with a specified period of time in which to respond in writing by showing cause to the Executive Officer why the Administrative Suspension Order should not be issued.
(d) The Executive Officer shall determine whether or not the Administrative Suspension Order shall be issued and shall so inform the practice privilege holder in writing.

## Business and Professions Code, Division 3, Chapter 1, Article 3

### 5054. Exception for Certain Tax Preparers

(a) Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) provided that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(b) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).

Attachment 5

National Association of State Boards of Accountancy

♦ 150 Fourth Avenue North ♦ Suite 1300 ♦ Nashville, TN 37219 ♦ Tel 615-880-4200 ♦

September 17, 2008

ANNOUNCING THREE NEW ALD PARTICIPATING STATES

Dear State Board Chairs, Presidents, and Executive Directors:

As you know, NASBA appointed a new Accountancy Licensee Database (ALD) Task Force this past April. The Task Force has been busy contacting state boards of accountancy to determine how it might help state boards overcome any obstacles they may face in participating in the ALD. As these contacts have taken place many boards have indicated their enthusiasm for participating in the ALD and three have formally been added to the database – Montana, South Carolina and Washington. They join the original pilot states (LA, MO, OK, TN, & TX) and the other states who have joined prior to the Task Force being formed (AK, AR, ID, IN, KS, NM, NV, PR, WV & WY). This brings the active total to 18 states. In addition, 9 more states (CA, CO, IA, MA, MD, NE, NY, OH, & SD) have committed to participate but have some last minute issues (for example, data transfer method) that are being resolved. This brings to 27 the total number of state boards who have either started feeding licensee data to the ALD or committed to doing so as soon as they can.

The primary purpose of this communication is to recognize the three most recent states to join the ALD and the other 24 states who joined earlier or have committed to join. The secondary purpose is to encourage the other state boards to help us reach our goal of 100% participation. We do not believe there are any legal, technical, privacy or other issues that cannot be overcome to bring every state board onto the ALD. The Task Force has established a Strategy Strike Force to contact every state board. Viki Windfeldt (NV) chairs that group, which also includes Heidi Patterson (IA) and Rick Sweeney (WA) and is staffed by Linda Biek. If you have not yet been contacted by one of them, please reach out to any one of them. We are prepared to provide the legal, technical or whatever type of help you need. We will gladly make a presentation at one of your board meetings.

Thank you in advance for helping create an important tool that will put accountancy regulators at the forefront of professional regulation and ahead of their peers in other professions.

Sincerely,

Dan Sweetwood
Chair, ALD Task Force

Joseph T. Cote, CPA
Executive Vice President & COO

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
EXECUTIVE OFFICE
1625 North Market Boulevard, Suite S-308, Sacramento, CA 95834
P 916.574.8200 F 916.574.8613 | www.dca.ca.gov

Attachment 6

February 6, 2008

Donald A. Driftmier
President, California Board of Accountancy
2000 Evergreen Street, Suite 250,
Sacramento, CA 95815-3832

RE: Proposed Practice Privilege Policy - OPPOSE

Dear Board President Driftmier:

As you know, the Department of Consumer Affairs and its regulatory agencies are principally charged by statute with promoting consumer protection. As the Department Director, I take this obligation very seriously.

The Department of Consumer Affairs (Department) must respectfully oppose the California Board of Accountancy's (CBA) proposed revisions to the Business and Professions Code proposed at the November 2007 meeting of the CBA's Committee on Professional Conduct, in regards to the Board's practice privilege policy, also known as cross border practice.

The Department is seriously concerned about moving to a "no notification" practice privilege policy in California. By removing the notification requirement for out-of-state licensees the CBA will have no way of knowing who and how many out-of-state licensees are practicing in California. The Department fears that this policy could encourage unqualified individuals to practice as CPAs in California and lead to a decline in consumer protection.

Should you have any questions regarding our position, please contact me at (916) 574-8200.

Sincerely,

Carrie Lopez
Director, Department of Consumer Affairs

cc: Antonette Sorrick, Deputy Director Board Relations
Carol Sigman, Executive Officer, Board of Accountancy
Angela Chi, Accountancy Board Member
David Swartz, Accountancy Board Member
Donald Driftimier, Accountancy Board Member
Lenora Taylor, Accountancy Board Member
Leslie LaManna, Accountancy Board Member
Lorraine Hariton, Accountancy Board Member

Manuel Ramirez, Accountancy Board Member
Marshal Oldman, Accountancy Board Member
Richard Charney, Accountancy Board Member
Robert Petersen, Accountancy Board Member
Rudy Bermudez, Accountancy Board Member
Sarah Anderson, Accountancy Board Member
Stuart Waldman, Accountancy Board Member
William MacAloney, Accountancy Board Member

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# California State Senate

SENATOR DON PERATA
PRESIDENT PRO TEMPORE

COMMITTEES
RULES
CHAIRMAN

Attachment 7

January 10, 2008

Donald A. Driftmier, CPA, President
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, California 95815-3832

Via: US Mail & Facsimile (916) 263-3675

RE: Out-of-State Residents and the Practice of Accountancy in California

Dear Mr. Driftmier:

It is my understanding that the Board will be sponsoring legislation to eliminate the requirement that out-of-state residents/accountants notify the Board of their intent to practice accountancy in California, thereby, foreclosing the Board's ability to affirm the competence, honesty, and qualifications of out-of-state CPAs before they provide services to Californians. In 2005, the Board supported AB 1868 (Bermudez) which was sponsored by the California Society of Certified Public Accountants. The intent of your current proposal seems somewhat similar to AB 1868.

AB 1868 caused much confusing and conflicting debate and discussion about the proper oversight needed for out-of-state accountancy including tax services. As you know, this issue has been very controversial. To avoid such continued controversy and to facilitate a debate based on facts, it is critical, that as the Board sponsors such legislation, the Board also provides the data necessary by which to consider that legislation.

Your proposal contemplates reliance on regulators and disclosure policies of other states to guarantee the honesty, competence, and integrity of those claiming to be CPAs prior to them providing vital accounting services in California. Therefore, the author of this legislation and the Board, as sponsor, should provide the following:

1. A comprehensive report, preferably prepared by the California Research Bureau (or other independent research body), to include all of the following:

   - An analysis of accountancy disciplinary statutes and systems of the other states including, but not limited to, their statutory standards for discipline, their record of enforcement over the previous five years, and their resources, all in and of themselves and as compared to those of California.
   - A report of the Internet disclosure policies and statutes of other states as they relate to disclosure of the qualifications, competence, and integrity of out-of-state licensees. This review should include, but not be limited to, an assessment of how the other states' Internet disclosures compare to California's and the ease with which a consumer can find such information on the Internet.
   - A report of what is required by each state's laws and regulatory bodies before the state permits a resident of that state to practice including an assessment of testing, education, and other qualifications compared to California's.
   - Data on out sourcing of California tax return preparation. This should include outsourcing by in state and out-of-state CPAs and the countries to which California tax return preparation is outsourced.
   - An analysis of whether current notification requirements (filling out the practice privilege form and paying a fee of no more that $100 annually) frustrate or impede the willingness of qualified out-of-state CPAs from practicing in California. This analysis should include data on CPAs who have been dissuaded from practicing in California and the reasons they have been dissuaded.

2. A legal analysis by the Attorney General reviewing efficacy and cost of potential enforcement of California laws and other states' laws against residents of other states. (It is important that this analysis be done by the Attorney General since it is the Attorney General that litigates on the Board's behalf.) This analysis should include the following:
   - The ability and cost of the Board to impair the license of an out-of-state CPA from practicing in their home state based on a violation of California law or harm to California consumers.
   - The ability and cost of the Board to prevent by state court order, an out-of-state citizen or CPA to practice in California.
   - The ability and cost of a California consumer to sue in state court to obtain damages for harm caused to them by an out-of-state citizen or CPA.
   - The ability and cost of the Board to designate another state's board as an agent for service of process on the out-of-state CPA.

- An overall cost estimate of an enforcement program against out-of-state citizens or CPAs, including the costs of service of process, fees paid to the Attorney General, interviewing witnesses, obtaining documents, and enforcing orders, as compared to the cost of revoking or denying an out-of-state individual's right to practice in California under existing law by denying them a practice privilege.
- An analysis of timeliness; namely, an analysis of the respective time frames by which the Board will be able to definitively block an out-of-state individual's ability to practice in California under the proposal as compared to the time frame under current law by denying them a practice privilege.

3. A detailed description of how the Board and California consumers will be made aware that an out-of-state individual who has been banned under the Board's proposal may be practicing in California unlawfully. This is important given that California families and businesses will no longer be able to rely on a California website to distinguish between those out-of-state individuals who are and are not allowed to practice here.

4. A legal analysis of the Board's authority and the means by which it could reconsider relying on another state's standards if another state changed its statutes regarding CPA discipline, qualification, and disclosure in a manner that the Board believes to insufficiently protect California families and businesses.

It is my hope that this information addresses and resolves the following potential concerns:

1. The proposed legislation may impede efforts of the Board and California's consumers to ensure that out-of-state accountants are duly licensed, have no criminal record, or have no record of prior discipline so that harm to California families and businesses may be avoided in the first place.

2. It is unclear how the Board would be able to verify that an out-of state individual performing tax services for California families and small businesses is actually a licensed CPA without the current notification requirement. Further, under this proposal, Californians would no longer be able to check a California website to ensure that the out-of-state CPA is in good standing in their home state.

3. It is essential for California's licensing standards and laws to be vigorously enforced to protect California families and businesses.

4. The overarching backdrop of recent actions against Enron, WorldCom, and Tyco, the criminal prosecution of Arthur Andersen, the recent $1 million fine against Deloitte & Touche, and the significant fines levied recently against KPMG, as measured against whether there is any evidence that any individual has been dissuaded from practicing in California because of the existence of the practice privilege form.

I am sending this letter now to provide the Board sufficient opportunity to provide these materials well in advance of legislative deliberations. Please provide this information to my office and to the Senate Business, Professions, and Economic Development Committee prior to any legislative hearings on this issue.

Thank you, in advance, for your cooperation on this important matter. Please feel free to contact any of our offices with any questions that you may have about this request.

Sincerely,

DON PERATA
Senate President pro Tempore

DP:mm

**State of California**
Department of Consumer Affairs

**California Board of Accountancy**
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

# emorandum

Leg. Com. Agenda Item II.E.
November 20, 2008

Board Agenda Item IX.D.3.e
November 20-21, 2008

To : Board Members
Legislative Committee Members

Date: November 3, 2008
Telephone : (916) 561-1792
Facsimile : (916) 263-3678
E-mail: mstanley@cba.ca.gov

From : Matthew Stanley
Legislation/Regulation Coordinator

Subject : Mobility Legislation

**Background:**

At the September 2008 Board meeting, the Board requested that legislation pursuing the goal of mobility be crafted for possible sponsorship.

The proposed language for the bill (see **Attachment 1**) is a reintroduction of the previously approved language that was in last year's AB 2473 without the portion dealing with the elimination of Pathway 1. Alternative language is proposed in **Attachment 2**, which lays out a rough outline of a study bill to further examine the issue of mobility. This language would be amended with assistance from legislative staff to specify who would do the study, as it should not be done by the Board staff to eliminate any perception of bias. Further amendments would also specify the scope of the study and the financial aspects of the study. Finally, the study bill would likely reflect most of the items that were requested in the letter sent to the Board by Senate President Pro Tempore Don Perata earlier this year (see **Attachment 3**).

The benefits of pursuing a study bill are that it shows a good faith effort on the part of the Board to handle the issue in a fair manner, in accordance with solid evidence, and following the wishes of the Legislature; and the study will provide a guideline upon which to base future legislation. The potential negative effect of a study bill is that future legislation regarding this topic will be expected to conform to the study. Any deviation will be very closely scrutinized.

**Options:**

While the Board may pursue any options it deems appropriate, in light of the Board's desire to be more effective in the legislative process, it is recommended that the Board pursue one of the following options:

*Option 1:*
Sponsor legislation using the proposed study bill language knowing that such language will become more specific and detailed with the help of legislative staff. If the study bill passes, the Board will await the results of the study before any further discussion of mobility.

*Option 2:*
Do not pursue legislation at this time, but take some time to deliberate past policy decisions made with regard to this issue. These deliberations may or may not result in eventual legislation on this issue. Should the Board decide to pursue this option, it should be noted that there is an item on the Board's Agenda (XIII.D.1.) that would begin this process.

*Option 3:*
Do not pursue legislation at this time. Take this issue off of the agenda until such time as the Board believes the timing is right to pursue appropriate legislation.

**Recommendation:**

Staff recommends pursuing either Option 1 or Option 3 at this time. Option 1 would send a signal to the Legislature that the Board is serious about mobility and is willing to listen to recommendations from outside sources on the matter. However, Option 1 would also require more time commitments from both the Board and staff.

Option 3 would allow the Board to pursue a study bill next year after peer review has been passed. However, Option 3 would also push the timeline for mobility back by another year as well.

Attachments

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

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**Attachment 1**

SECTION 1. Section 5035.3 of the Business and Professions Code is amended to read:

5035.3. For purposes of ~~subdivision (b) of Section 5050 and Sections 5054 and 5096.12~~ *Sections 5050.2, 5096.12, and 5096.13* , "firm" includes any entity that is authorized or permitted to practice public accountancy as a firm under the laws of another state *or country.*

SEC. 2. Section 5050 of the Business and Professions Code is amended to read:

5050. ~~(a)~~ - Except as provided in ~~subdivisions (b) and (c) of this section, in subdivision (a) of Section 5054, and in Section 5096.12~~ *Section 5050.2* , no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or ~~a holder of a practice privilege~~ *practicing in this state under cross-border practice* pursuant to Article 5.1 (commencing with Section 5096).

~~(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state, provided that an individual providing services under this subdivision may not solicit California clients, may not assert or imply that the individual is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to ifornia consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients, may not assert or imply that the firm is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. This subdivision shall become inoperative on January 1, 2011.~~

~~(c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country, provided that:~~

~~(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.~~

~~(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).~~

SEC. 3. Section 5050.2 of the Business and Professions Code is amended to read:

5050.2. *(a) Nothing in this chapter shall prohibit a person or firm that holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country, provided that the individual or firm:*

*(1) Is regulated by the foreign country and is performing the temporary practice in this state under ounting or auditing standards of that country.*

*(2) Does not represent or hold himself, herself, or itself out as being the holder of a valid California permit to practice public accountancy.*

*(3) Is authorized to practice in another country and does not have an office in this state.*

*(4) Shall be deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.*

*(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.*

*(6) Shall not perform any services in this state that the individual or firm is not legally authorized to perform in the country of principal place of business.*

~~(a)~~

*(b)* The board may ~~revoke, suspend,~~ issue a fine pursuant to Article 6.5 (commencing with Section 5116), or *revoke, suspend, or* otherwise restrict *the right to practice in this state* or *otherwise* discipline ~~the holder of an authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12~~ *a person with a license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country* for any act that would be a violation of this code or grounds for discipline against a licensee ~~or holder of a practice privilege~~ , or grounds for denial of a license ~~or practice privilege~~ under this code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice ~~under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12~~ has been revoked *under this section* may apply for reinstatement of the authorization to practice ~~under subdivision (b) or (c) of Section 5050, subdivision (b) of Section 5054, or Section 5096.12~~ not less than one year after the effective date of the board's decision revoking the authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the authorization to practice.

~~(b)~~

*(c)* The board may administratively suspend the authorization of any person to practice under ~~subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12~~ *this section* any act that would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that section.

SEC. 4. Section 5054 of the Business and Professions Code is repealed.

~~5054. (a) Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) provided that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.~~

~~(b) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).~~

SEC. 5. Section 5088 of the Business and Professions Code is amended to read:

5088. ~~(a)~~ - Any individual who is the holder of a current and valid license *, certificate, or permit* as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, until the time the application for a license is granted or denied, practice public accountancy in this state only under ~~a~~ *the cross-border* practice ~~privilege pursuant to the~~ provisions of Article 5.1 (commencing with Section 5096), except that, for purposes of this section, the individual is not disqualified from ~~a~~ *cross-border* practice ~~privilege~~ during the period the application is pending by virtue of maintaining an office or principal place of business, or both, in this state. ~~The board may by regulation provide for exemption, credit, or proration of fees to avoid duplication of fees.~~

~~(b) This section shall become operative on January 1, 2006.~~

SEC. 6. Section 5092 of the Business and Professions Code is amended to read:

092. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the ctice of public accountancy.

*(e) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.*

SEC. 7. Section 5096 of the Business and Professions Code is amended to read:

5096. (a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate , or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under ~~a~~ *cross-border* practice ~~privilege~~ without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license *, certificate, or permit* issued by any state for at least four of the last ~~ten~~ *10* years.

(2) The individual has a license, certificate, or permit from a state ~~which~~ *that* has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure ~~which have been determined by the board to be~~ *that are* substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

~~(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:~~

~~(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.~~

~~(2) Pay a fee as provided in Article 8 (commencing with Section 5130).~~

~~(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.~~

~~(c)~~

*(c)* An individual who ~~holds a practice privilege under this article~~ *practices under cross-border practice in this state* :

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under *cross-border* practice ~~privileges~~ in this state , except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when ~~such~~ *the* individual has met the ~~examination and~~ continuing education requirements of the state in which the individual holds the valid license, certificate, or permit ~~on which the substantial equivalency is based~~ *as provided in subdivision (a)* .

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of ~~the~~ *each* state ~~that issued the individual's~~ *in which he or she holds a* certificate, license, or permit ~~upon which substantial equivalency is based~~ as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

*(6) Shall not perform any services in this state under cross-border practice that he or she is not legally authorized to perform in his or her state of principal place of business.*

~~(f) A practice privilege expires one year from the date of the notice, unless a shorter period is set by board regulation.~~

~~(g)~~

*(d)* (1) No individual may practice under ~~a~~ *cross-border* practice ~~privilege~~ without prior approval of the board if the individual has ~~, or acquires at any time during the term of the practice privilege,~~ any disqualifying condition under paragraph (2) of this subdivision.

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater *within the last 10 years* .

(E) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

*(e) An individual who acquires any disqualifying condition described in paragraph (2) of subdivision (d) while practicing under cross-border practice in this state shall immediately notify the board in writing of the ure and details of the disqualifying condition.*

SEC. 8. Section 5096.1 of the Business and Professions Code is repealed.

~~5096.1. (a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who has not given notice of intent to practice under practice privileges and paid the fee required pursuant to the provisions of this article, and who has a license, certificate or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:~~

~~(1) Deemed to be practicing public accountancy unlawfully in this state.~~

~~(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.~~

~~(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.~~

~~(b) The board may prospectively deny a practice privilege to any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.~~

SEC. 9. Section 5096.2 of the Business and Professions Code is amended to read:

5096.2. (a) ~~Practice privileges~~ *An individual licensed out of state* may be denied *cross-border practice in this state* for failure to qualify under or comply with the provisions of this article or implementing regulations, or for any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480 or if committed by a licensee would be grounds for discipline under Section 5100, or for any act committed outside of this state that would be a violation if committed within this state.

(b) The board may deny *cross-border* practice ~~privileges~~ *in this state* using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the *cross-border* practice ~~privilege~~ is denied.

(B) The reasons for denial.

(C) The earliest date on which the individual is eligible for ~~a~~ *cross-border* practice ~~privilege~~ *in this state* .

(D) ~~That the~~ *The* individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act if a written notice of appeal and request for hearing is made within ~~60~~ *15* days.

(E) ~~That, if~~ *Should* the individual ~~does~~ not submit a notice of appeal and request for hearing within ~~60~~ *15* days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act.

(c) An individual *licensed out of state* who had been denied ~~a~~ *cross-border* practice ~~privilege~~ *in this state* may ~~apply~~ *petition* for ~~a new~~ *board approval to practice under cross-border* practice ~~privilege~~ not less than one year after the effective date of the notice or decision denying ~~the~~ practice ~~privilege~~ *in this state* , unless a longer time period, not to exceed three years, is specified in the notice or decision denying ~~the~~ practice ~~privilege~~ *in this state* .

SEC. 10. Section 5096.3 of the Business and Professions Code is amended to read:

5096.3. (a) ~~Practice privileges are~~ *The cross-border practice of an individual licensed out of state , practicing or who practiced in this state under cross-border practice , may be* subject to revocation, suspension, fines , or other disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article.

~~(b) Practice privileges are subject to discipline during any time period in which they are valid, under administrative suspension, or expired.~~

~~(c)~~

*(b)* The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against ~~the holder of a practice privilege~~ *an individual who is licensed in another state and who is practicing or has practiced under cross-border practice in this state* .

~~(d)~~

*(c)* An individual *licensed out of state* whose *cross-border* practice ~~privilege~~ has been revoked may ~~apply for a new practice privilege~~ *petition for board approval to practice in this state* not less than one year after the effective date of the board's decision revoking the individual's *cross-border* practice ~~privilege~~ unless a longer time period, not to exceed three years, is specified in the board's decision revoking ~~the~~ practice ~~privilege~~ *in this state* .

~~(e)~~

*(d)* The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply under this article.

*(e) If the board takes disciplinary action against an individual licensed in another state who is practicing or practiced in this state under cross-border practice, the board shall notify each state in which the individual holds a license, certificate, or permit of that action.*

SEC. 11. Section 5096.4 of the Business and Professions Code is amended to read:

5096.4. (a) The right of an individual to ~~practice in this state under a practice privilege~~ *engage in cross-border practice* may be administratively suspended at any time by an order issued by the board or its executive officer, without prior notice or hearing, for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the representations made in the notice, the individual's competence or qualifications to practice under ~~practice privileges~~ *cross-border practice* , failure to timely respond to a board inquiry or request for information or documents, or under other conditions and circumstances provided for by board regulation.

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

(1) The reason for the suspension.

(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing.

(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act applicable to individuals who are denied licensure, including the filing of a statement of issues by the board setting forth the reasons for the administrative suspension of ~~practice privileges~~ *cross-border practice* and specifying the statutes and rules with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the denial of ~~practice privileges~~ *cross-border practice* .

(d) The burden is on the ~~holder of the suspended practice privilege~~ *individual whose cross-border practice is suspended* to establish both qualification and fitness to practice under ~~practice privileges~~ *cross-border practice* .

(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer ~~or expiration of the practice privilege under administrative suspension~~ .

(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state ~~or from applying for a new practice privilege upon expiration of the one under administrative suspension, except that the new practice privilege shall not be effective until approved by the board~~ .

~~(g) Notwithstanding any administrative suspension, a practice privilege expires one year from the date of notice unless a shorter period is set by board regulation.~~

~~(h)~~

*(g)* Proceedings to appeal an administrative suspension order may be combined or coordinated with ceedings for denial *of an individual's authority to engage in cross-border practice* or discipline of ~~a practice privilege~~ *an individual who has engaged in cross-border practice* .

SEC. 12. Section 5096.5 of the Business and Professions Code is repealed.

~~5096.5. Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095 and completes any continuing education or other conditions required by the board regulations implementing this article.~~

SEC. 13. Section 5096.6 of the Business and Professions Code is amended to read:

5096.6. In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf of the board, including, but not limited to, issuing a notice of denial of ~~a~~ *cross-border* practice ~~privilege~~ and an interim suspension order, subject to the right of the individual *licensed in another state* to timely appeal and request a hearing as provided for in this article.

SEC. 14. Section 5096.7 of the Business and Professions Code is amended to read:

5096.7. Except as otherwise provided in this article, the following definitions apply:

(a) ~~Anywhere the term~~ *The terms* "license," "licensee," "permit," or "certificate" ~~is~~ *as* used in this chapter or Division 1.5 (commencing with Section 475) ~~, it~~ shall include persons ~~holding practice privileges~~ *, as defined in Section 5035, performing cross-border practice or practicing under an alternative firm registration* under this article, unless otherwise inconsistent with the provisions of the article.

~~(b) Any notice of practice privileges under this article and supporting documents is deemed an application for licensure for purposes of the provisions of this code, including, but not limited to, the visions of this chapter and the provisions of Division 1.5 (commencing with Section 475) related to the nial, suspension and revocation of licenses.~~

~~(c) Anywhere the~~

*(b) The* term "employee" ~~is~~ *as* used in this article ~~it~~ shall include, but is not limited to, partners, shareholders, and other owners.

SEC. 15. Section 5096.10 of the Business and Professions Code is amended to read:

5096.10. The provisions of this article shall only be operative if ~~commencing July 1, 2005, and continuing during the period provided in Section 5096.11,~~ there is an appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

SEC. 16. Section 5096.11 of the Business and Professions Code is repealed.

~~5096.11. This article shall become operative on January 1, 2006. It shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends that date.~~

SEC. 17. Section 5096.12 of the Business and Professions Code is amended to read:

5096.12. (a) ~~A certified public~~ *An* accounting firm ~~that is authorized to practice in another state and that does not have an office in this state~~ *, as defined in Section 5035.3, or sole proprietor, that performs attest services for entities headquartered in this state,* may engage in the practice of public accountancy in this state through ~~the holder of a practice privilege~~ *an alternative firm registration* provided that *the firm or sole proprietor* :

(1) ~~The practice of public accountancy by the firm is limited to~~ *Is* authorized *to* practice ~~by the holder of the practice privilege~~ *in another state and does not have an office in this state* .

*(2) Has one partner, shareholder, or owner who qualifies for cross-border practice in this state, and vides to the board his or her name, state of principal place of business, license number, and firm identifying information.*

~~(2) A firm that engages in practice under this section is~~

*(3) Is* deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

*(4) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, an professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to cross-border practice.*

*(5) Is deemed to have appointed the regulatory agency of each state in which the firm or sole proprietor holds a certificate, license, or permit as the agent on whom notices, subpoenas, or other process may be served in any action or proceeding by the board against the firm or sole proprietor.*

*(6) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.*

*(7) Shall not perform any services in this state under alternative firm registration that the firm or sole proprietor is not legally authorized to perform in its or his or her state of principal place of business.*

*(b) "Attest services" include any audit or other engagement to be performed in accordance with the Statements on Auditing Standards, any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements, and any engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board. "Attest services," for purposes of this article, do not include any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services.*

~~(b)~~

*(c)* The board may revoke ~~,~~ *or* suspend *an alternative firm registration* , issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm *or sole proprietor* for any act that would be grounds for discipline against a ~~holder of a practice privilege through which the firm practices~~ *licensee or grounds for denial of a license* .

~~(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.~~

SEC. 18. Section 5096.13 of the Business and Professions Code is repealed.

~~5096.13. The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its federal taxpayer identification number.~~

SEC. 19. Section 5096.13 is added to the Business and Professions Code, to read:

5096.13. (a) An accounting firm, as defined in Section 5035.3, or sole proprietor that performs nonattest services for entities headquartered in this state may engage in the practice of public accountancy in this state without any form of firm registration provided that the firm or sole proprietor:

(1) Is authorized to practice in another state and does not have an office in this state.

(2) Is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(3) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under cross-border practice.

(4) Is deemed to have appointed the regulatory agency of each state in which the firm or sole proprietor holds a certificate, license, or permit as the agent on whom notices, subpoenas, or other process may be served in any action or proceeding by the board against the firm or sole proprietor.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state under cross-border practice that the firm or sole proprietor is not legally authorized to perform in their state of principal place of business.

(b) The board may revoke or suspend authorization to practice under this section, issue a fine pursu to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm or sole proprietor for any act that would be grounds for discipline against a licensee or grounds for denial of a license.

SEC. 20. Section 5096.14 of the Business and Professions Code is repealed.

~~5096.14. The board shall amend Section 30 of Article 4 of Division 1 of Title 16 of the California Code of gulations to extend the current "safe harbor" period from December 31, 2007, to December 31, 2010.~~

SEC. 21. Section 5096.15 of the Business and Professions Code is repealed.

~~5096.15. It is the intent of the Legislature that the board adopt regulations providing for a lower fee or no fee for out-of-state accountants who do not sign attest reports for California clients under the practice privilege. These regulations shall ensure that the practice privilege program is adequately funded. These regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and, for purposes of that chapter, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.~~

SEC. 22. Section 5109 of the Business and Professions Code is amended to read:

5109. The expiration, cancellation, forfeiture, or suspension of a license ~~, practice, privilege,~~ or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

SEC. 23. Section 5116.6 of the Business and Professions Code is amended to read:

5116.6. Anywhere the term "licensee" is used in the article it shall include certified public accountants, public accountants, partnerships, corporations, ~~holders of practice privileges~~ *individuals licensed out of state practicing in this state under cross-border practice*, *holders of alternative firm registrations*, other persons licensed, registered, or otherwise authorized to practice public accountancy under this chapter, and persons who are in violation of any provision of Article 5.1 (commencing with Section 5096).

SEC. 24. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600). The board may charge a reexamination fee not to exceed seventy-five dollars ($75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars ($600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount not to exceed two hundred fifty dollars ($250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee shall be made by regulation upon a determination by the board that additional moneys are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date ore the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the

last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

~~(i) (1) On and after the enactment of Assembly Bill 1868 of the 2005-06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars ($125).~~

~~(2) On and after enactment of Assembly Bill 1868 of the 2005-06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).~~

~~(j)~~

*(i)* The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars ($25).

~~(k)~~

*(j)* The board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in a fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

~~(l)~~

*(k)* It is the intent of the Legislature that, to ease entry into the public accounting profession in California, any administrative cost to the board related to the certified public accountant examination or issuance of the certified public accountant certificate that exceeds the maximum fees authorized by this section shall be covered by the fees charged for the biennial renewal of the permit to practice.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the Califo. Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

TATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

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**Attachment 2**

(a) The Board shall conduct a study related to the options by which out of state accountants may more freely practice in California while maintaining board oversight of their practice within the state. The purpose of the study is to determine the best course to pursue cross-border practice while maintaining vital consumer protections provided by board oversight. The results from the study will be used to determine how the Legislature should proceed.

(b) The board shall report its findings and recommendations to the Legislature no later than October 1, 2010.

(c) The sum of fifty thousand dollars ($50,000) is hereby appropriated from the Accountancy Fund to fund the studies in Subdivision (a).

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# California State Senate

SENATOR DON PERATA
PRESIDENT PRO TEMPORE

COMMITTEES
RULES
CHAIRMAN

Attachment 3

January 10, 2008

Donald A. Driftmier, CPA, President
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, California 95815-3832

Via: US Mail & Facsimile (916) 263-3675

RE: Out-of-State Residents and the Practice of Accountancy in California

Dear Mr. Driftmier:

It is my understanding that the Board will be sponsoring legislation to eliminate the requirement that out-of-state residents/accountants notify the Board of their intent to practice accountancy in California, thereby, foreclosing the Board's ability to affirm the competence, honesty, and qualifications of out-of-state CPAs before they provide services to Californians. In 2005, the Board supported AB 1868 (Bermudez) which was sponsored by the California Society of Certified Public Accountants. The intent of your current proposal seems somewhat similar to AB 1868.

AB 1868 caused much confusing and conflicting debate and discussion about the proper oversight needed for out-of-state accountancy including tax services. As you know, this issue has been very controversial. To avoid such continued controversy and to facilitate a debate based on facts, it is critical, that as the Board sponsors such legislation, the Board also provides the data necessary by which to consider that legislation.

Your proposal contemplates reliance on regulators and disclosure policies of other states to guarantee the honesty, competence, and integrity of those claiming to be CPAs prior to them providing vital accounting services in California. Therefore, the author of this legislation and the Board, as sponsor, should provide the following:

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1. A comprehensive report, preferably prepared by the California Research Bureau (or other independent research body), to include all of the following:

   - An analysis of accountancy disciplinary statutes and systems of the other states including, but not limited to, their statutory standards for discipline, their record of enforcement over the previous five years, and their resources, all in and of themselves and as compared to those of California.
   - A report of the Internet disclosure policies and statutes of other states as they relate to disclosure of the qualifications, competence, and integrity of out-of-state licensees. This review should include, but not be limited to, an assessment of how the other states' Internet disclosures compare to California's and the ease with which a consumer can find such information on the Internet.
   - A report of what is required by each state's laws and regulatory bodies before the state permits a resident of that state to practice including an assessment of testing, education, and other qualifications compared to California's.
   - Data on out sourcing of California tax return preparation. This should include outsourcing by in state and out-of-state CPAs and the countries to which California tax return preparation is outsourced.
   - An analysis of whether current notification requirements (filling out the practice privilege form and paying a fee of no more that $100 annually) frustrate or impede the willingness of qualified out-of-state CPAs from practicing in California. This analysis should include data on CPAs who have been dissuaded from practicing in California and the reasons they have been dissuaded.

2. A legal analysis by the Attorney General reviewing efficacy and cost of potential enforcement of California laws and other states' laws against residents of other states. (It is important that this analysis be done by the Attorney General since it is the Attorney General that litigates on the Board's behalf.) This analysis should include the following:
   - The ability and cost of the Board to impair the license of an out-of-state CPA from practicing in their home state based on a violation of California law or harm to California consumers.
   - The ability and cost of the Board to prevent by state court order, an out-of-state citizen or CPA to practice in California.
   - The ability and cost of a California consumer to sue in state court to obtain damages for harm caused to them by an out-of-state citizen or CPA.
   - The ability and cost of the Board to designate another state's board as an agent for service of process on the out-of-state CPA.

- An overall cost estimate of an enforcement program against out-of-state citizens or CPAs, including the costs of service of process, fees paid to the Attorney General, interviewing witnesses, obtaining documents, and enforcing orders, as compared to the cost of revoking or denying an out-of-state individual's right to practice in California under existing law by denying them a practice privilege.
- An analysis of timeliness; namely, an analysis of the respective time frames by which the Board will be able to definitively block an out-of-state individual's ability to practice in California under the proposal as compared to the time frame under current law by denying them a practice privilege.

3. A detailed description of how the Board and California consumers will be made aware that an out-of-state individual who has been banned under the Board's proposal may be practicing in California unlawfully. This is important given that California families and businesses will no longer be able to rely on a California website to distinguish between those out-of-state individuals who are and are not allowed to practice here.

4. A legal analysis of the Board's authority and the means by which it could reconsider relying on another state's standards if another state changed its statutes regarding CPA discipline, qualification, and disclosure in a manner that the Board believes to insufficiently protect California families and businesses.

It is my hope that this information addresses and resolves the following potential concerns:

1. The proposed legislation may impede efforts of the Board and California's consumers to ensure that out-of-state accountants are duly licensed, have no criminal record, or have no record of prior discipline so that harm to California families and businesses may be avoided in the first place.

2. It is unclear how the Board would be able to verify that an out-of state individual performing tax services for California families and small businesses is actually a licensed CPA without the current notification requirement. Further, under this proposal, Californians would no longer be able to check a California website to ensure that the out-of-state CPA is in good standing in their home state.

3. It is essential for California's licensing standards and laws to be vigorously enforced to protect California families and businesses.

4. The overarching backdrop of recent actions against Enron, WorldCom, and Tyco, the criminal prosecution of Arthur Andersen, the recent $1 million fine against Deloitte & Touche, and the significant fines levied recently against KPMG, as measured against whether there is any evidence that any individual has been dissuaded from practicing in California because of the existence of the practice privilege form.

I am sending this letter now to provide the Board sufficient opportunity to provide these materials well in advance of legislative deliberations. Please provide this information to my office and to the Senate Business, Professions, and Economic Development Committee prior to any legislative hearings on this issue.

Thank you, in advance, for your cooperation on this important matter. Please feel free to contact any of our offices with any questions that you may have about this request.

Sincerely,

DON PERATA
Senate President pro Tempore

DP:mm