~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

February 10, 2015

**H. 3179**

Introduced by Reps. Toole, Sandifer, Bales and Anthony

S. Printed 2/10/15--H.

Read the first time January 13, 2015.

**A** **BILL**

TO AMEND SECTION 40‑2‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MEMBERS OF THE SOUTH CAROLINA BOARD OF ACCOUNTANCY, SO AS TO REVISE THE BOARD COMPOSITION; TO AMEND SECTION 40‑2‑35, RELATING TO CERTIFIED PUBLIC ACCOUNTANT LICENSURE REQUIREMENTS, SO AS TO ALSO REQUIRE APPLICANTS TO UNDERGO STATE AND FEDERAL CRIMINAL RECORDS CHECKS AND TO REQUIRE CONTINUING EDUCATION OR ADDITIONAL EXPERIENCE, AS APPLICABLE, FOR APPLICANTS WHO DELAY SUBMITTING AN APPLICATION FOR A SUBSTANTIAL PERIOD OF TIME AFTER PASSING THE CERTIFIED PUBLIC ACCOUNTING EXAMINATION OR OBTAINING ACCOUNTING EXPERIENCE; TO AMEND SECTION 40‑2‑40, RELATING TO QUALIFICATIONS FOR REGISTRATION OF A CERTIFIED PUBLIC ACCOUNTING FIRM, SO AS TO PROVIDE THAT A SIMPLE MAJORITY OF THE FIRM OWNERSHIP MUST BE CERTIFIED PUBLIC ACCOUNTANTS, TO FURTHER PROVIDE QUALIFICATIONS AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS FOR NONCERTIFIED PUBLIC ACCOUNTANT OWNERS, AND TO GIVE THE BOARD OF ACCOUNTANCY THE DISCRETION TO CHARGE REGISTRATION AND RENEWAL FEES; TO AMEND SECTION 40‑2‑80, AS AMENDED, RELATING TO THE INVESTIGATION OF COMPLAINTS AND DISCIPLINARY PROCEEDINGS, SO AS TO PROVIDE THAT IN CONDUCTING INVESTIGATIONS AND PROCEEDINGS THE DEPARTMENT OF LABOR, LICENSING AND REGULATION MAY REQUIRE STATE AND FEDERAL CRIMINAL RECORDS CHECKS; TO AMEND SECTION 40‑2‑250, AS AMENDED, RELATING TO APPLICATIONS FOR LICENSE RENEWAL, SO AS TO PROVIDE THAT APPLICATIONS MUST BE FILED ON OR BEFORE FEBRUARY FIRST AND TO PROVIDE THAT LATE FILINGS MAY RESULT IN REINSTATEMENT FEES AND SANCTIONING OF THE LICENSEE; AND TO AMEND SECTION 40‑2‑255, RELATING TO APPLICATIONS FOR REGISTRATION RENEWAL, SO AS TO PROVIDE THAT APPLICATIONS MUST BE FILED ON OR BEFORE FEBRUARY FIRST AND TO PROVIDE THAT LATE FILINGS MAY RESULT IN SANCTIONING OF THE REGISTRANT.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 40‑2‑10(A) of the 1976 Code amended to read:

“Section 40‑2‑10. (A)(1) There is created the South Carolina Board of Accountancy which is responsible for the administration and enforcement of this chapter. The board shall consist of ~~nine~~ eleven members appointed by the Governor, all of whom must be residents of this State~~;~~ and:

(a) ~~five of whom must be~~ there must be one resident licensed certified public ~~accountants~~ accountant from each congressional district;

(b) two ~~of whom~~ members must be a licensed public ~~accountants~~ accountant or a licensed accounting ~~practitioners~~ practitioner; and

(c) two ~~of whom must be~~ members must be from the public at large ~~of the public~~, one of whom must be an attorney licensed in this State, who:

(i) are not engaged in the practice of public accounting~~,~~; (ii) have no financial interest in the profession of public accounting~~,~~; and

(iii) have no immediate family member in the profession of public accounting. As used in this section, ‘immediate family member’ is defined in Section 8‑13‑100(18).

(2) Members are appointed for terms of four years and serve until their successors are appointed and qualify. Vacancies must be filled by the Governor for the unexpired portions of the term in the manner of the original appointment. The Governor shall remove a member of the board in accordance with Section 1‑3‑240.

(3) Failure by a licensed certified public accountant to maintain residency in the district for which he is appointed shall result in the forfeiture of his office.”

SECTION 2. A. Section 40‑2‑20(2) of the 1976 Code is amended to read:

“(2) ‘Attest’ means providing the following ~~financial statement~~ services:

(a) an audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(b) a review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);

(c) an examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); ~~or~~

(d) any engagement to be performed in accordance with Public Company Accounting Oversight Board (PCAOB) Auditing Standards~~.~~; or

(e) any examination, review, or agreed upon procedure to be performed in accordance with the SSAE, other than an examination described in item (c).”

B. Section 40‑2‑20(15) of the 1976 Code is amended to read:

“(15) ‘Practice of accounting’ means:

(a) Issuing a report on financial statements of a person, firm, organization, or governmental unit or offering to render or rendering any attest or compilation service. This restriction does not prohibit any act of a public official or public employee in the performance of that person’s duties or prohibit the performance by a nonlicensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports ~~on the financial statement~~; or

(b) using or assuming the title ‘Certified Public Accountant’ or the abbreviation ‘CPA’ or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.”

C. SECTION 40‑2‑20(17) of the 1976 Code is amended to read:

“(17) ‘Report’, when used with reference to ~~financial statements~~ any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of ~~a~~ the attested information or compiled financial statement and that also includes or is accompanied by a statement or implication that the person or firm issuing it has special knowledge or competency in accounting or auditing. This statement or implication of special knowledge or competency may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor. The term ‘report’ includes any form of language which disclaims an opinion when the form of language is conventionally understood to imply positive assurance as to the reliability of the attested information or compiled financial statements referred to or special competency on the part of the person or firm issuing such language, or both; and it includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competency, or both.”

SECTION 3. A. Section 40‑2‑30(B) of the 1976 Code is amended to read:

“(B) Only licensed certified public accountants or public accountants or individuals qualifying for a practice privilege pursuant to Section 40‑2‑245 may issue a report on financial statements of a person, firm, organization, or governmental unit or offer to render or render any attest or compilation service as defined, except as provided in Section 40‑2‑340. This restriction does not prohibit an act of a public official or public employee in the performance of that person’s duties or prohibit the performance by any nonlicensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports ~~on the financial statements~~.”

B. Section 40‑2‑30(H) and (I) of the 1976 Code is amended to read:

“(H) This section does not apply to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder to engage in the practice of public accountancy or its equivalent in that country; whose activities in this State are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds the entitlement; who performs no attest or compilation services and who issues no reports, as defined in this chapter, with respect to the ~~financial statements~~ information of any other persons, firms, or governmental units in this State; and who does not use in this State any title or designation other than the one under which the person practices in their country, followed by a translation of the title or designation into the English language, if it is in a different language, and by the name of the country.

(I)(1) Firms that do not have an office in this State, and that do not perform the services described in Section 40‑2‑20(2)(a) (audits), (c) (examinations), or (d) (services under PCAOB Auditing Standards) for a client having its home office in this State, may engage in the practice of accounting, without obtaining a registration pursuant to Section 40‑2‑40, as specified in this subsection.

(2) A firm described in subsection (I)(1) may perform services described in Section 40‑2‑20(2)(b), 2(e) or (5) for a client having its home office in this State, may engage in the practice of accounting, as specified in this section, and may use the title ‘CPA’ or ‘CPA firm’ only if the firm:

(a) has the qualifications described in Section 40‑2‑40(C) and Section 40‑2‑255(C); and

(b) performs these services through an individual with practice privileges under Section 40‑2‑245.

(3) A firm described in subsection (I)(1) that is not subject to the requirements of subsection (I)(2) may perform other professional services within the practice of accounting while using the title ‘CPA’ or ‘CPA firm’ in this State only if the firm:

(a) performs these services through an individual with practice privileges under Section 40‑2‑245; and

(b) can lawfully do so in the state where these individuals with practice privileges have their principal place of business.

(4) Notwithstanding any other provision of this section, it is not a violation of this section for a firm that does not hold a valid permit under Section 40‑2‑40 and which does not have an office in this State to provide its professional services or to engage in the practice of accounting so long as it complies with the requirements of subsection (I)(2) or (3), whichever is applicable.”

SECTION 4. Section 40‑2‑35(B) through (G) of the 1976 Code is amended to read:

“(B)(1) In addition to other requirements established by law and for the purpose of determining an applicant’s eligibility for licensure to practice as a certified public accountant, the board may require a state criminal records check, including fingerprints, performed by the South Carolina Law Enforcement Division, and a national criminal records check, including fingerprints, performed by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the board. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the board regarding criminal charges. The board shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as may be necessary to support the administrative action.

(2) Notwithstanding any other provision of law to the contrary, the dismissal of a prosecution of fraudulent intent in drawing a dishonored check by reason of want of prosecution or proof of payment of restitution and administrative costs must not be used as evidence of a lack of good moral character for the purposes of disqualifying a person seeking licensure or renewal of licensure pursuant to this chapter.

(3) The applicant must bear all costs associated with conducting criminal record checks.

(C) To meet the educational requirement as part of the one hundred fifty semester hours of education, the applicant must demonstrate successful completion of:

(1) at least thirty‑six semester hours of accounting in courses that are applicable to a baccalaureate, masters, or doctoral degree and which cover financial accounting, managerial accounting, taxation, and auditing, of which at least twenty‑four semester hours must be taught at the junior level or above; and

(2) at least thirty‑six semester hours of business courses that are applicable to a baccalaureate, masters, or doctoral degree and which may include macro and micro economics, finance, business law, management, computer science, marketing, and accounting hours not counted in item (1).

~~(C)~~(D) The board shall accept a transcript from a college or university accredited by the Southern Association of Colleges and Schools or another regional accrediting association having the equivalent standards or an independent senior college in South Carolina certified by the State Department of Education for teacher training, and accounting and business programs accredited by the American Assembly of Collegiate Schools of Business (AACSB) or any other accrediting agency having equivalent standards. Official transcripts signed by the college or university registrar and bearing the college or university seal must be submitted to demonstrate education and degree requirements. Photocopies of transcripts must not be accepted.

~~(D)~~(E) An applicant may apply for examination by submitting forms approved by the board. In order for an application to be considered a completed application, all blanks and questions on the application form must be completed and answered and all applicable documentation must be attached and:

(1) the application must be accompanied by the submission of photo identification, fingerprints, or other identification information as considered necessary to ensure the integrity of the exam administration;

(2) application fees must accompany the application. Fees for the administration of the examination must recover all costs for examination administration. The fees required for each examination must be published to applicants on the application form. If a check in payment of examination fees fails to clear the bank, the application is considered incomplete and the application must be returned to the candidate;

(3) the applicant must have on record with the board official transcripts from a college or university approved by the board demonstrating successful completion of one hundred twenty semester hours credit, including:

(a) at least twenty‑four semester hours of accounting in courses that are applicable to a baccalaureate, masters, or doctoral degree and which cover financial accounting, managerial accounting, taxation, and auditing; and

(b) at least twenty‑four semester hours of business courses that are applicable to a baccalaureate, masters, or doctoral degree and which may include macro and micro economics, finance, business law, management, computer science, marketing, and accounting hours not counted in item (a).

~~(E)~~(F) A candidate must pass all sections of the examination provided for in Section 40‑2‑35(A)(2) in order to qualify for a certificate.

(1) Upon the implementation of a computer‑based examination, a candidate may take the required test sections individually and in any order. Credit for any test section passed is valid for eighteen months from the actual date the candidate took that test section, without having to attain a minimum score on any failed test section and without regard to whether the candidate has taken other test sections.

(a) A candidate must pass all four test sections of the Uniform CPA Examination within a rolling eighteen‑month period, which begins on the date that the first test section is passed. The board by regulation may provide additional time to an applicant on active military service. The board also may accommodate any hardship which results from the conditions of administration of the examination.

(b) A candidate cannot retake a failed test section in the same examination window. An examination window refers to a three‑month period in which candidates have an opportunity to take the CPA examination. If all four test sections of the Uniform CPA Examination are not passed within the rolling eighteen‑month period, credit for any test section passed outside the eighteen‑month period expires and that test section must be retaken.

(c) A candidate who applies for a license more than three years after the date upon which the candidate passed the past section of the Uniform CPA Examination must document one hundred and twenty hours of acceptable continuing professional education in order to qualify, in addition to all other requirements imposed by this section.

(2) A candidate may arrange to have credits for passing sections of the examination under the jurisdiction of another state or territory of the United States transferred to this State. Credits transferred for less than all sections of the examination are subject to the same conditional credit rules as if the examination had been taken in South Carolina.

~~(F)~~(G) An applicant may demonstrate experience as follows:

(1) Experience may be gained in either full‑time or part‑time employment. Two thousand hours of part‑time accounting experience is equivalent to one year. Experience may not accrue more rapidly than forty hours per week.

(2) The five years of teaching experience provided for in Section 40‑2‑35(A)(4)(b) consists of five years of full‑time teaching of accounting courses at a college or university accredited by the Southern Association of Colleges and Schools or another regional accrediting association having equivalent standards or an independent senior college in South Carolina certified by the State Department of Education for teacher training.

(a) In order for teaching experience to qualify as full‑time teaching, the applicant must have been employed on a full‑time basis as defined by the educational institution where the experience was obtained; however, teaching ~~less~~ fewer than twelve ~~semester~~ hours per ~~year~~ semester, or the equivalent in quarter hours, must not be considered as full‑time teaching experience.

(b) Experience credit for teaching on a part‑time basis qualifies on a pro rata basis based upon the number of semester hours required for full‑time teaching at the educational institution where the teaching experience was obtained.

(c) Teaching experience may not accrue more rapidly than elapsed chronological time.

(d) An applicant must not be granted credit for full‑time teaching completed in less than one academic year.

(e) An applicant must not be granted more than one full‑time teaching year credit for teaching completed within one calendar year.

(f) Teaching experience must not be granted for teaching subjects outside the field of accounting. Subjects considered to be outside the field of accounting include, but are not limited to, business law, finance, computer applications, personnel management, economics, and statistics.

(g) Of the five years of full‑time teaching experience, credit for teaching accounting principles courses or fundamental accounting (below intermediate accounting) may not exceed two full‑time teaching years and the remaining three full‑time teaching years’ experience must be obtained in teaching courses above accounting principles.

(h) Accounting courses considered to be above accounting principles include, but are not limited to, intermediate accounting, advanced accounting, auditing, income tax, financial accounting, management accounting, and cost accounting.

(i) Experience other than public accounting experience counts only in proportion to duties which, in the opinion of the board, contribute to competence in public accounting.

(j) The board may require other information as it considers necessary to determine the acceptability of experience including, but not limited to, review of work papers and other work products, review of time records, and interviews with applicants and supervisors.

(3) For purposes of this subsection, ‘experience’ shall have the same meaning as ‘appropriate experience’ in Section 40‑2‑35(A)(4); however, if the applicant obtained the experience seven or more years before submitting an application, the applicant shall have obtained an additional six months of experience within two years before submitting the application.”

SECTION 5. Section 40‑2‑40 of the 1976 Code is amended to read:

“Section 40‑2‑40. (C) Qualifications for registration as a certified public accountant firm are as follows:

(1) A ~~super majority, sixty‑six and two‑thirds percent~~ simple majority of the ownership of the firm in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers must belong to certified public accountants currently licensed in some state. Although firms may include nonlicensed owners, the firm and its ownership must comply with regulations promulgated by the board. ~~The noncertified public accountant owner~~ All nonlicense owners must be ~~actively engaged as a member of the firm~~ active individual participants in the firm or ~~its~~ affiliated entities ~~in providing services to the firm’s clients. Ownership by investors or commercial enterprises is prohibited~~.

(2) Partners, officers, shareholders, members, or managers whose principal place of business is in this State, and who perform professional services in this State, must hold a valid license issued pursuant to this section. An individual who has practice privileges under Section 40‑2‑245 who performs services for which a firm permit is required pursuant to Section 40‑2‑245(D) must not be required to obtain a license from this State pursuant to Section 40‑2‑35.

(3) For firms registering under subsection (B)(1)(a) or (b), there must be a designated resident manager in charge of each office in this State who must be a certified public accountant licensed in this State.

(4) Noncertified public accountant owners must not assume ultimate responsibility for any financial statement, attest, or compilation engagement.

(5) Noncertified public accountant owners shall abide by the code of professional ethics adopted pursuant to this chapter.

(6) Owners shall at all times maintain ownership equity in their own right and must be the beneficial owners of the equity capital ascribed to them. Provision must be made for the ownership to be transferred to the firm or to other qualified owners if the noncertified public accountant ceases to be ~~actively engaged a~~ an active individual participant in the firm.

(7)(a) This section applies only to noncertified public accountant owners who are residents of this State.

(b) Noncertified public accountant owners must complete the same number of hours of continuing professional education as licensed certified public accountants in this State.

(c) Noncertified public accountant owners who are licensed professionals subject to continuing education requirements applicable to that profession may complete the required number of continuing professional education hours in courses offered or accepted by organizations or regulatory bodies governing that profession, and also must complete the same number of hours of continuing professional education as licensed certified public accountants in this State.

(8) A certified public accountant firm and its designated resident manager under subitem (3) are responsible for the following in regards to a noncertified public accountant owner:

(a) a noncertified public accountant owner shall comply with all applicable accountancy statutes and regulations; and

(b) a noncertified public accountant owner shall be of good moral character and shall not engage in any conduct that, if committed by a licensee, would constitute a violation of the regulations promulgated by the board.

(D) Registration must be initially issued and renewed annually. Applications for registration must be made in such form, and in the case of applications for renewal, between such dates as the board by regulation may specify, and the board shall grant or deny any such application after filing in proper form.

(E) An applicant for initial issuance or renewal of a registration to practice pursuant to this chapter shall register each ~~office of the~~ firm within this State with the board and shall demonstrate that all attest and compilation services rendered in this State are under the charge of a person holding a valid license issued pursuant to this section or the corresponding provision of prior law or of some other state.

(F) The board ~~shall~~ may charge a fee for each application for initial issuance or renewal of a registration issued pursuant to this section.”

SECTION 6. Section 40‑2‑80 of the 1976 Code is amended by adding:

“(H)(1) In an investigation or disciplinary proceeding concerning a licensee, the department may require a state criminal records check, including fingerprints, performed by the South Carolina Law Enforcement Division, and a national criminal records check, including fingerprints, performed by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. The department shall keep information received pursuant to this section confidential, except that information relied upon in an administrative action may be disclosed as may be necessary to support the administrative action.

(2) Notwithstanding any other provision of this section or any other provision of law, the dismissal of a prosecution of fraudulent intent in drawing a dishonored check by reason of want of prosecution or proof of payment of restitution and administrative costs must not be used as evidence of performance of a fraudulent act for disciplinary purposes.

(3) Costs of conducting a criminal records check are the responsibility of the department and may be recovered as administrative costs associated with an investigation or hearing pursuant to this chapter unless ordered by the department as a cost in a disciplinary proceeding.”

SECTION 7. Section 40‑2‑250 of the 1976 Code is amended to read:

“Section 40‑2‑250. (A) A licensee shall file an application for renewal on or before ~~January~~ February first of ~~each calendar~~ the following year.

(B) The application for renewal of a license must include:

(1) current information concerning practice status;

(2) a verified continuing education report;

(3) renewal fee, if any.

(C) ~~The~~ A licensee shall file a verified report of continuing education ~~must~~ on or before February first and document forty hours of acceptable continuing education ~~each~~ during the immediately preceding calendar year. Not more than twenty percent of the required hours may be in personal development subjects. A licensee is not required to report continuing education for the year in which the initial license was obtained. The board by regulation may provide for the carryover of excess hours of continuing education not to exceed twenty hours a year. No carryover is allowed from a year in which continuing education was not required.

(D) ~~A license not renewed~~ If a licensee does not file an application for renewal on or before ~~January~~ February first, the license is considered ~~revoked~~ lapsed. Continued practice after ~~January~~ February fifteenth ~~must~~ may be sanctioned as unlicensed practice of accounting.

(E) Renewal applications filed or completed after ~~January~~ February fifteenth are subject to a reinstatement fee in the amount of five hundred dollars. A person may not practice on a ~~revoked~~ lapsed license.”

SECTION 8. Section 40‑2‑255 of the 1976 Code is amended to read:

“Section 40‑2‑255. (A) A registrant shall file an application for renewal of the calendar‑year registration on or before ~~January~~ February first of ~~each calendar~~ the following year.

(B) The application for renewal of a registration shall include:

(1) current information concerning ownership;

(2) current information concerning the identity of the licensee in charge of the office;

(3) renewal fee, if any.

(C) As a condition of renewal of registration, an applicant who engages in attest or compilation services, or both, must provide evidence of satisfactory completion of peer review no more frequently than once every three years. Peer review must be conducted in a manner as the board specifies by regulation. This review must include a verification that individuals in the firm, who are responsible for supervising attest or compilation services, or both, and who sign or authorize someone to sign the accountant’s report on the financial statements on behalf of the firm, meet the competency requirements set out in the professional standards for these services and these regulations must:

(1) ~~include reasonable provision for compliance by~~ require an applicant ~~that can~~ to show that ~~it~~ the applicant has, within the preceding three years, undergone a peer review that is a satisfactory equivalent to peer review as generally required pursuant to this subsection;

(2) require~~, with respect to~~ peer reviews~~, that they~~ to be subject to oversight by a body established or sanctioned by the board, which shall periodically report to the board on program review effectiveness under its charge and provide to the board a listing of firms that have participated in a peer review program;

(3) require~~, with respect to peer review, that the~~ peer reviews ~~processes~~ to be ~~operated~~ conducted and that work and documents be maintained in a manner designed to preserve confidentiality of documents furnished or generated in the course of the review.

(D) ~~A registration not renewed~~ If a registrant does not file an application for renewal on or before ~~January~~ February first, the registration is considered ~~revoked~~ lapsed. Continued practice after ~~January~~ February fifteenth ~~must~~ may be sanctioned as unlicensed practice of accounting.”

SECTION 9. Section 40‑2‑560(C) of the 1976 code is amended to read:

“(C) A partnership, firm, or registrant must file an application in accordance with Section 40‑2‑40 and Section 40‑2‑255.”

SECTION 10. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑