

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

February 23, 2010  
Date

Committee on Business Affairs and Labor.

After consideration on the merits, the Committee recommends the following:

HB10-1236 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 4, line 20, strike "CERTIFIED AS A PUBLIC" and  
2 substitute "ISSUED A CERTIFICATE OF CERTIFIED PUBLIC".

3 Page 5, line 22, strike "(4), Colorado Revised Statutes, is" and substitute  
4 "(1), (4), and (6), Colorado Revised Statutes, are".

5 Page 5, strike lines 24 through 27 and substitute:

6 **"12-2-111. Examinations - reexaminations - rules.**  
7 (1) ~~Examinations provided for in this section shall be held by the board.~~  
8 ~~Examinations shall be given no less than twice a year at times and~~  
9 ~~locations set by the board.~~ THE BOARD SHALL PROVIDE LICENSURE  
10 EXAMINATIONS AS OFTEN AS NECESSARY TO PROVIDE CANDIDATES A  
11 REASONABLE OPPORTUNITY TO TAKE THE EXAMINATION. Examinations  
12 shall adequately test a candidate's knowledge of accounting, auditing, and  
13 any other related subject the board deems relevant and necessary. Any  
14 additional examination subject shall be designated by the board by rule.  
15 The board shall set the passing score for an examination at a level to  
16 adequately reflect the minimum level of competency necessary for the  
17 practice of accountancy.

18 (4) A candidate for a certificate of certified public accountant who  
19 meets the EDUCATIONAL requirements of section 12-2-109 (1) (a) (I) or  
20 (1) (e) SET BY THE BOARD BY RULE is entitled to TAKE AN examination.

1 ~~A candidate who will graduate from an accredited college or university~~  
2 ~~within sixty days after the date of an examination and who will meet the~~  
3 ~~educational requirements upon graduation is entitled to examination.~~

4 (6) If a candidate fails an examination or fails to pass in all  
5 subjects as provided in subsection (5) of this section, the board may  
6 require ~~him~~ THE CANDIDATE to take additional study before taking another  
7 examination."

8 Page 6, strike lines 1 through 3.

9 Page 7, line 23, strike "12-2-123 (5) (a)," and substitute "The introductory  
10 portion to 12-2-123 (1) and 12-2-123 (1) (b), (1) (p), (1) (r), (3), and (5)  
11 (a)," and strike "is" and substitute "are".

12 Page 7, strike line 26 and substitute "**penalties.** (1) After notice and  
13 hearing as provided in section 12-2-125, the board may deny the issuance  
14 of, refuse to renew, revoke, or suspend any certificate of a certified public  
15 accountant issued under this article or any prior law of this state or may  
16 fine, ~~censure~~, issue a letter of admonition to, or place on probation the  
17 holder of any certificate and impose other conditions or limitations for  
18 any of the following causes:

19 (b) Fraud or negligence in the practice of public accounting in  
20 Colorado or any other state or in the filing of or failure to file ~~his~~ THE  
21 CERTIFIED PUBLIC ACCOUNTANT'S own income tax returns;

22 (p) Habitual intemperance with respect to or excessive use of ~~any~~  
23 A habit-forming drug, ~~any~~ controlled substance as defined in section  
24 12-22-303 (7), or ~~any~~ alcoholic beverage ~~any of which renders him~~ THAT  
25 RENDERS THE CERTIFIED PUBLIC ACCOUNTANT unfit to practice public  
26 accounting;

27 (r) Failure of a partnership, professional corporation, or limited  
28 liability company to register with the board pursuant to section 12-2-117  
29 and to renew ~~such~~ THE registration ~~once every three years~~ as prescribed  
30 by the board.

31 (3) (a) ~~When a complaint or investigation discloses an instance of~~  
32 ~~misconduct that, in the opinion of the board, does not warrant formal~~  
33 ~~action by the board but that should not be dismissed as being without~~

1 ~~merit, a letter of admonition may be issued and sent, by certified mail, to~~  
2 ~~the certificate holder.~~

3 ~~(b) When a letter of admonition is sent by the board, by certified~~  
4 ~~mail, to a certificate holder, such certificate holder shall be advised that~~  
5 ~~he or she has the right to request in writing, within twenty days after~~  
6 ~~receipt of the letter, that formal disciplinary proceedings be initiated to~~  
7 ~~adjudicate the propriety of the conduct upon which the letter of~~  
8 ~~admonition is based.~~

9 ~~(c) If the request for adjudication is timely made, the letter of~~  
10 ~~admonition shall be deemed vacated and the matter shall be processed by~~  
11 ~~means of formal disciplinary proceedings.~~

12 (5) (a) In addition to any other penalty ~~which~~ THAT may be".

13 Page 11, strike lines 2 and 3 and substitute:

14 **"SECTION 11.** The introductory portion to 12-2-117 (1) and  
15 12-2-117 (2) (b), Colorado Revised Statutes, are amended, and the said  
16 12-2-117 is further amended BY THE ADDITION OF A NEW  
17 SUBSECTION, to read:".

18 Page 11, strike line 6 and substitute "**registration thereof - definitions.**  
19 (1) Except as provided in section 12-2-121 (2), a partnership,  
20 professional corporation, or limited liability company engaged in this  
21 state in the practice of public accounting as certified public accountants  
22 shall register ~~once every three years~~ with the board as a partnership,  
23 professional corporation, or limited liability company of certified public  
24 accountants and must meet the following requirements; and, as used in  
25 this article, "partnership" includes a registered limited partnership, limited  
26 liability partnership, limited liability limited partnership, foreign limited  
27 partnership, foreign limited liability partnership, and foreign limited  
28 liability limited partnership:

29 (2) (b) The board shall in each case".

30 Page 11, after line 11 insert:

31 "(2.2) EACH FIRM REGISTRATION EXPIRES PURSUANT TO A  
32 SCHEDULE ESTABLISHED BY THE DIRECTOR OF THE DIVISION OF

1 REGISTRATIONS WITHIN THE DEPARTMENT OF REGULATORY AGENCIES. THE  
2 REGISTRANT SHALL RENEW OR REINSTATE THE REGISTRATION TO BE  
3 CERTIFIED. THE DIRECTOR OF THE DIVISION OF REGISTRATIONS WITHIN  
4 THE DEPARTMENT OF REGULATORY AGENCIES MAY ESTABLISH RENEWAL  
5 FEES AND DELINQUENCY FEES FOR REINSTATEMENT PURSUANT TO SECTION  
6 24-34-105, C.R.S. IF A FIRM FAILS TO RENEW ITS REGISTRATION  
7 PURUSANT TO THE SCHEDULE ESTABLISHED BY THE DIRECTOR OF THE  
8 DIVISION OF REGISTRATIONS, THE REGISTRATION SHALL EXPIRE. A FIRM  
9 WHOSE REGISTRATION HAS EXPIRED SHALL BE SUBJECT TO THE PENALTIES  
10 PROVIDED IN THIS ARTICLE OR SECTION 24-34-102 (8), C.R.S."

11 Page 11, line 12, strike "**Repeal.**" and strike "and (5)," and substitute "(5),  
12 and (6) (b) (II),".

13 Page 11, strike line 13 and substitute "Revised Statutes, are amended to  
14 read:".

15 Page 12, after line 12 insert:

16 "(6) (b) The provisions of paragraph (a) of this subsection (6)  
17 shall not prohibit any officer or employee of a corporation, partner or  
18 employee of a partnership, member or employee of a limited liability  
19 company, or individual or employee of an individual from:

20 (II) Issuing or authoring ~~any such~~ AN opinion or certificate  
21 utilizing any wording designating the position, title, or office ~~which he~~  
22 THAT THE PERSON holds relating to any statement or report in reference  
23 to the financial affairs of such corporation, partnership, limited liability  
24 company, or individual."

25 Page 13, after line 24 insert:

26 "**SECTION 16.** 12-2-104 (1) (a) and (1) (g), Colorado Revised  
27 Statutes, are amended to read:

28 **12-2-104. Powers and duties of board.** (1) The board has the  
29 power and duty to:

30 (a) Elect annually from among its members a ~~president~~ CHAIR and  
31 prescribe the duties of such office;

1 (g) Prescribe forms for and receive applications for certificates  
2 and grant certificates, INCLUDING CONTRACTING WITH PEOPLE TO RECEIVE  
3 AND REVIEW THE APPLICATIONS AS THE AGENT OF THE BOARD;

4 **SECTION 17.** 12-2-106 (1), (2), (3), and (4), Colorado Revised  
5 Statutes, are amended to read:

6 **12-2-106. Fees.** (1) A fee authorized to be established pursuant  
7 to section 24-34-105, C.R.S., shall be paid for each application made to  
8 the board, whether ~~the same~~ IT is an application for examination or  
9 reexamination or for issuance, renewal, reactivation, or reinstatement of  
10 a certificate of certified public accountant, an application for registration  
11 with the board as a ~~certified public accountant~~ PUBLIC ACCOUNTING FIRM,  
12 or any other application requiring formal action or consideration by the  
13 board. The fee required shall not be returnable irrespective of the action  
14 taken by the board.

15 (2) A fee authorized to be established pursuant to section  
16 24-34-105, C.R.S., shall be paid for each examination in which the  
17 candidate is examined in the subjects prescribed by the board.  
18 ~~Examination fees required in this subsection (2) are in addition to the fee~~  
19 ~~required in subsection (1) of this section and shall be returned to the~~  
20 ~~candidate should the board deny the candidate the right to take the~~  
21 ~~examination or the candidate request in writing, not less than thirty days~~  
22 ~~prior to the date fixed by the board for the examination, that the~~  
23 ~~application be withdrawn.~~

24 (3) Any person making application for a certificate of certified  
25 public accountant under section 12-2-113 shall pay a fee authorized to be  
26 established pursuant to section 24-34-105, C.R.S., in addition to the fee  
27 required in subsection (1) of this section. ~~Should such application be~~  
28 ~~rejected by the board, the fee shall be returned to the applicant.~~

29 (4) ~~All fees shall be paid to the board and are to be paid by the~~  
30 ~~applicant in advance of examination dates or of any action by the board.~~

31 **SECTION 18.** The introductory portion to 12-2-112 (1) and  
32 12-2-112 (1) (a), Colorado Revised Statutes, are amended to read:

33 **12-2-112. Approval of schools.** (1) The board shall approve the  
34 accounting program of ~~such~~ THE schools ~~as~~ THAT meet the following

1 requirements:

2 (a) ~~Such~~ THE school ~~shall have~~ HAS a curriculum designed to give  
3 the student proficiency in those subjects in which ~~he~~ THE STUDENT must  
4 pass an examination ~~by the board~~ TO BE LICENSED.

5 **SECTION 19.** 12-2-113 (1) (b), Colorado Revised Statutes, is  
6 amended to read:

7 **12-2-113. Issuance of certificate by reciprocity or by passing**  
8 **examination of another state.** (1) The board, in its discretion, may  
9 waive the examination of persons qualified under this subsection (1) and  
10 may issue a certificate of certified public accountant to:

11 (b) ~~Any~~ A person who has passed an examination under the laws  
12 of another state and who possesses the qualifications prescribed in section  
13 12-2-108 at the time ~~he~~ THE PERSON applies for a certificate in this state  
14 or possesses substantially equivalent qualifications; or

15 **SECTION 20. Repeal.** 12-2-114, Colorado Revised Statutes, is  
16 repealed as follows:

17 **12-2-114. Existing certificates confirmed.** ~~(1) No person who,~~  
18 ~~on or before August 1, 1959, holds a certified public accountant~~  
19 ~~certificate previously issued under the laws of this state shall be required~~  
20 ~~to secure an additional certificate under this article but shall otherwise be~~  
21 ~~subject to all the provisions of this article. Such certificate previously~~  
22 ~~issued shall, for all purposes, be considered a certificate issued under this~~  
23 ~~article.~~

24 ~~(2) and (3) Repealed.~~

25 **SECTION 21. Repeal.** 12-2-116, Colorado Revised Statutes, is  
26 repealed as follows:

27 **12-2-116. Registered accountants.** ~~Any person who holds a~~  
28 ~~certificate of registered accountant issued under the laws of this state shall~~  
29 ~~be subject to all the provisions of this article. For the purposes of this~~  
30 ~~article, certified public accountant and registered accountant shall be~~  
31 ~~deemed synonymous and all references in this article to certified public~~  
32 ~~accountants shall likewise refer and pertain to registered accountants.~~

1           **SECTION 22.** 12-2-121 (2) (a), Colorado Revised Statutes, is  
2 amended to read:

3           **12-2-121. Exceptions - acts not prohibited - rules.**  
4 (2) (a) Nothing in this article shall prohibit a certified public accountant  
5 ~~or a registered public accountant~~ whose principal place of business is  
6 located in another state or jurisdiction of the United States, from  
7 practicing in this state on professional business, as defined by rules  
8 promulgated by the board. Such practice shall be conducted in  
9 conformity with rules promulgated by the board. Notwithstanding the  
10 requirements of section 12-2-117, a foreign partnership, corporation,  
11 limited partnership, limited liability limited partnership, or limited  
12 liability company may engage in the practice of accountancy in this state  
13 without registering with the board.

14           **SECTION 23.** 12-2-122.5, Colorado Revised Statutes, is  
15 amended to read:

16           **12-2-122.5. Inactive certificant.** (1) The holder of a certificate  
17 of certified public accountant, upon written notice by first class mail to  
18 the board, shall have his or her name transferred to an inactive list and  
19 shall not be required to comply with the continuing education  
20 requirements for certificate renewal pursuant to section 12-2-119 so long  
21 as he or she remains inactive. Each inactive certificant shall register once  
22 every two years with the board in the same manner as active certificate  
23 holders and pay a fee pursuant to section 12-2-108 (3). At such time as  
24 an inactive certificant wishes to resume the practice of public accounting  
25 as a certified public accountant, he or she shall file an application  
26 therefor, meet any education requirements imposed by the board, and pay  
27 a fee as established by the ~~board~~ DIRECTOR OF THE DIVISION OF  
28 REGISTRATIONS WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.

29           (2) During such time as a certified public accountant remains in  
30 an inactive status, ~~he~~ THE ACCOUNTANT shall not perform those acts  
31 restricted to active certified public accountants pursuant to section  
32 12-2-120 (6) (a). The board shall retain jurisdiction over inactive  
33 certified public accountants for the purposes of disciplinary action  
34 pursuant to section 12-2-123.

35           **SECTION 24.** 12-2-123.5, Colorado Revised Statutes, is  
36 amended to read:

1           **12-2-123.5. Response to board communication.** ~~Except as~~  
2 ~~otherwise provided in section 12-2-123 (3),~~ A certificant shall, at the  
3 request of the board, respond to communications from the board within  
4 thirty days ~~of~~ AFTER the mailing of any communication. ~~by registered or~~  
5 ~~certified mail.~~

6           **SECTION 25.** 12-2-125 (3) and (5), Colorado Revised Statutes,  
7 are amended to read:

8           **12-2-125. Hearings before board - notice - procedure - review.**  
9 (3) If, after having been served with the notice of hearing as provided for  
10 in this section, the accused fails to appear at ~~said~~ THE hearing and defend,  
11 the board may proceed to hear evidence against him OR HER and may  
12 enter such order as is justified by the evidence, which order shall be final  
13 unless he OR SHE petitions for a review thereof as provided in this section.  
14 Within thirty days after the date of any order, upon a showing of good  
15 cause for failing to appear and defend, the board may reopen ~~said~~ THE  
16 proceedings and may permit the accused to submit evidence in his OR HER  
17 behalf.

18           (5) At all hearings, the attorney general of this state or one of ~~his~~  
19 OF THE ATTORNEY GENERAL'S DESIGNATED assistants ~~designated by him~~  
20 shall appear and represent the board.

21           **SECTION 26.** 12-2-126 (1) (b) (II), Colorado Revised Statutes,  
22 is amended, and the said 12-2-126 (1) (b) is further amended BY THE  
23 ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, to read:

24           **12-2-126. Investigations, examinations, and cease-and-desist**  
25 **orders against unlawful act.** (1) (b) (II) ~~If the investigation discloses~~  
26 ~~an instance of conduct which, in the opinion of the board, does not~~  
27 ~~warrant formal action but in which the board has noticed indications of~~  
28 ~~possible errant conduct by the certificate holder that could lead to serious~~  
29 ~~consequences if not corrected, a confidential letter of concern shall be~~  
30 ~~sent to the certificate holder against whom a complaint was made. If the~~  
31 ~~board learns of second or subsequent actions of the same or similar nature~~  
32 ~~by the certificate holder, the board shall not issue a confidential letter of~~  
33 ~~concern but shall take such other course of action as it deems appropriate.~~  
34 UPON COMPLETING AN INVESTIGATION, THE DIRECTOR SHALL MAKE ONE  
35 OF THE FOLLOWING FINDINGS:

1 (A) THE COMPLAINT IS WITHOUT MERIT AND NO FURTHER ACTION  
2 NEED BE TAKEN.

3 (B) THERE IS NO REASONABLE CAUSE TO WARRANT FURTHER  
4 ACTION.

5 (C) THE INVESTIGATION DISCLOSES AN INSTANCE OF CONDUCT  
6 THAT DOES NOT WARRANT FORMAL ACTION, BUT THE INVESTIGATION  
7 DISCLOSES INDICATIONS OF POSSIBLE ERRANT CONDUCT THAT COULD LEAD  
8 TO SERIOUS CONSEQUENCES IF NOT CORRECTED. IF THIS FINDING IS MADE,  
9 THE DIRECTOR SHALL SEND A CONFIDENTIAL LETTER OF CONCERN TO THE  
10 LICENSEE.

11 (D) THE INVESTIGATION DISCLOSES AN INSTANCE OF CONDUCT  
12 THAT DOES NOT WARRANT FORMAL ACTION BUT SHOULD NOT BE  
13 DISMISSED AS BEING WITHOUT MERIT. IF THIS FINDING IS MADE, THE  
14 DIRECTOR SHALL SEND A LETTER OF ADMONITION TO THE LICENSEE BY  
15 CERTIFIED MAIL.

16 (E) THE INVESTIGATION DISCLOSES FACTS THAT WARRANT  
17 FURTHER PROCEEDINGS BY FORMAL COMPLAINT. IF THIS FINDING IS MADE,  
18 THE DIRECTOR SHALL REFER THE COMPLAINT TO THE ATTORNEY GENERAL  
19 FOR PREPARATION AND FILING OF A FORMAL COMPLAINT.

20 (III) (A) WHEN A LETTER OF ADMONITION IS SENT TO A LICENSEE,  
21 THE DIRECTOR SHALL INCLUDE IN THE LETTER A NOTICE THAT THE  
22 LICENSEE HAS THE RIGHT TO REQUEST IN WRITING, WITHIN TWENTY DAYS  
23 AFTER RECEIPT OF THE LETTER, THAT FORMAL DISCIPLINARY PROCEEDINGS  
24 BE INITIATED TO ADJUDICATE THE PROPRIETY OF THE CONDUCT UPON  
25 WHICH THE LETTER OF ADMONITION IS BASED.

26 (B) IF THE REQUEST FOR ADJUDICATION IS TIMELY MADE, THE  
27 LETTER OF ADMONITION IS VACATED AND THE DIRECTOR SHALL PROCEED  
28 BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

29 (IV) THE DIRECTOR SHALL CONDUCT ALL PROCEEDINGS PURSUANT  
30 TO THIS SUBSECTION (2) EXPEDITIOUSLY AND INFORMALLY SO THAT NO  
31 LICENSEE IS SUBJECTED TO UNFAIR AND UNJUST CHARGES AND THAT NO  
32 COMPLAINANT IS DEPRIVED OF THE RIGHT TO A TIMELY, FAIR, AND PROPER  
33 INVESTIGATION OF A COMPLAINT.

1           **SECTION 27.** 12-2-130, Colorado Revised Statutes, is amended  
2 to read:

3           **12-2-130. Ownership of accountant's working papers.** All  
4 statements, records, schedules, working papers, and memoranda made by  
5 a certified public accountant ~~or registered accountant~~ incident to or in the  
6 course of professional service to a client by ~~such certified public~~ THE  
7 accountant, ~~or registered accountant~~, except reports submitted by a  
8 certified public accountant ~~or registered accountant~~ to a client and books  
9 and records prepared for the use of the client, shall be and remain the  
10 property of ~~such certified public~~ THE accountant ~~or registered accountant~~  
11 in the absence of an express agreement to the contrary between the  
12 certified public accountant ~~or registered accountant~~ and the client."

13    Renumber succeeding sections accordingly.

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