

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1650 Session of
2007

INTRODUCED BY GERGELY, SOLOBAY, HARHART, BIANCUCCI, CALTAGIRONE,
CAPPELLI, CLYMER, COSTA, DALLY, DePASQUALE, DONATUCCI,
FABRIZIO, GEIST, GIBBONS, GOODMAN, HARKINS, KOTIK, KULA,
MANN, THOMAS AND WANSACZ, JUNE 28, 2007

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, JUNE 28, 2007

AN ACT

1 Amending the act of May 26, 1947 (P.L.318, No.140), entitled, as
2 amended, "An act relating to the practice of public
3 accounting; providing for the examination, education and
4 experience requirements for certification of certified public
5 accountants and for the licensing of certified public
6 accountants, public accountants and firms; requiring
7 continuing education and peer review; providing for the
8 organization and ownership of firms and for the procedures
9 and grounds for discipline and reinstatement of licensees;
10 prescribing the powers and duties of the State Board of
11 Accountancy and the Department of State; providing for
12 ownership of working papers and confidentiality; regulating
13 the professional responsibility of licensees; defining
14 unlawful acts and acts not unlawful; providing penalties; and
15 repealing existing laws," further providing for peer review.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. Section 8.9 of the act of May 26, 1947 (P.L.318,
19 No.140), known as the CPA Law, reenacted and amended December 8,
20 1976 (P.L.1280, No.286) and added December 4, 1996 (P.L.851,
21 No.140), is amended to read:

22 Section 8.9. Peer Review.--(a) As a condition for granting
23 a firm a renewal license, or an initial license in the case of a

1 firm that has previously been engaged in practice in another
2 jurisdiction, the board shall require that the firm undergo a
3 peer review in accordance with this section unless the firm
4 meets one of the exemptions in subsection (g). The firm shall
5 submit to the board with its license application a letter from
6 the organization administering the firm's most recent peer
7 review stating the date on which the peer review was completed.
8 The board shall not require submittal of the letter of
9 acceptance, peer review report, letter of comment, letter of
10 response or working papers related to the peer review process.
11 As used in this section, the term "firm" includes, but is not
12 limited to, a sole practitioner.

13 (b) A firm with less than three licensees shall not be
14 required to undergo a peer review more frequently than once
15 every five years and a firm with three or more licensees shall
16 not be required to undergo a peer review more frequently than
17 once every three years, except that:

18 (1) The board may order a firm that has been disciplined
19 under section 9.1 of this act or that has been ordered to take
20 remedial action under subsection (e) to undergo a peer review
21 more frequently.

22 (2) A new firm that is not subject to subsection (j) shall
23 undergo its first peer review within eighteen months after it is
24 granted its initial license.

25 (3) The regulations of the board may lengthen any of the
26 periods between required peer reviews prescribed in this
27 subsection in such manner, under such circumstances or with
28 respect to such firms as the board in its discretion may
29 consider appropriate.

30 (c) The board shall adopt regulations establishing

1 guidelines for peer reviews which shall:

2 (1) Require that a peer review be conducted pursuant to a
3 program and standards approved by the board. The board shall
4 approve only peer review programs that the board finds comply
5 with established standards for performing and reporting on peer
6 reviews. On or before June 30, 2009, the board shall establish
7 or adopt a set of standards for performing and reporting on peer
8 reviews which shall be made available to the public and may be
9 relied upon by any providers or potential providers of peer
10 review.

11 (2) Require that a peer review be conducted by a reviewer
12 that is independent of the firm reviewed, qualified pursuant to
13 board rules and approved by the organization administering the
14 peer review program.

15 (3) Other than in the peer review process, prohibit the use
16 or public disclosure of information obtained by the reviewer,
17 any organization administering an approved peer review program
18 or the board during or in connection with the peer review
19 process. The requirement that information not be publicly
20 disclosed shall not apply to a hearing before the board that the
21 firm requests be public under subsection (e) or to the
22 information described in subsection (h)(3).

23 (4) Within sixty days of the effective date of this clause,
24 prohibit peer review providers from charging fees in excess of
25 one hundred dollars (\$100) for administration or other charges
26 in any year in which an actual peer review is not being
27 performed.

28 (d) (1) The peer review of a firm that performs one or more
29 audits of historical financial statements or examinations of
30 prospective financial information shall include an onsite study

1 and evaluation of a representative selection of audit,
2 examination, review and compilation reports, the financial
3 information upon which those reports were based and the
4 associated working papers. The onsite review shall include
5 additional procedures relating to the firm's system of quality
6 control sufficient to provide the reviewer with a reasonable
7 basis upon which to issue a peer review report.

8 (2) The peer review of a firm that performs no audit or
9 examination engagements but does perform one or more review
10 engagements shall be required only to be an offsite study and
11 evaluation of a representative selection of reports issued by
12 the firm and the financial information upon which those reports
13 were based; but, if such a firm elects to have an onsite review,
14 that review shall also be acceptable. The offsite review shall
15 not be required to include a study of the associated working
16 papers but shall include procedures and inquiries sufficient to
17 provide the reviewer with a reasonable basis upon which to issue
18 a peer review report.

19 (3) A firm that does not perform any audits or reviews, or
20 performs no more than five reviews per calendar year for
21 entities with gross receipts of two million dollars (\$2,000,000)
22 or less each, regardless of whether or not the firm performs
23 compilations, shall be exempt from the requirement to undergo a
24 peer review to the extent provided in subsection (g)(2).

25 (e) If a firm does not comply with any remedial actions
26 determined appropriate by the administering organization, the
27 administering organization shall refer the matter to the board
28 to determine if further action under this subsection is
29 warranted. The board may at its discretion or shall upon
30 submission of a written application by the firm hold a hearing

1 to determine whether the firm complies with the appropriate
2 professional standards and practices. The hearing shall be
3 confidential and shall not be open to the public unless
4 requested by the firm. If the board after conducting a hearing
5 determines that the firm complies with the appropriate
6 professional standards and practices, it shall issue an order
7 requiring the reviewer and the administering organization to
8 take any necessary action to record and implement the board's
9 determination and to restore the status of compliance of the
10 firm. However, if the board after conducting the hearing
11 determines that the firm does not comply with the appropriate
12 professional standards and practices, it may issue an order that
13 requires both of the following:

14 (1) Remedial action, which may include any or all of the
15 following:

16 (i) Requiring employees of the firm to complete general or
17 specific continuing professional education courses.

18 (ii) Requiring the firm to undergo a peer review more
19 frequently than every three years.

20 (iii) Any other remedial action specified by the board.

21 (2) An affidavit from the firm submitted within the time
22 specified by the board indicating completion of the required
23 remedial actions.

24 (f) The firm reviewed shall pay for any peer review
25 performed.

26 (g) A firm shall be exempt from the requirement to undergo a
27 peer review if all of the following apply:

28 (1) Within three years before the date of application for
29 initial or renewal licensure, the firm has undergone a peer
30 review conducted in another state or foreign jurisdiction which

1 meets the requirements of subsection (c)(1) and (2). The firm
2 shall submit to the board a letter from the organization
3 administering the firm's most recent peer review stating the
4 date on which the peer review was completed.

5 (2) The firm satisfies all of the following conditions:

6 (i) During the preceding two years, the firm has not
7 accepted or performed any audit or review engagement[.] for any
8 entity with gross receipts in excess of two million dollars
9 (\$2,000,000) or more than five reviews for entities with gross
10 receipts of two million dollars (\$2,000,000) or less each.

11 (ii) Within the next two years, the firm does not intend to
12 accept or perform any audit or review engagement[.] for any
13 entity with gross receipts in excess of two million dollars
14 (\$2,000,000) or more than five reviews for entities with gross
15 receipts of two million dollars (\$2,000,000) or less each.

16 (iii) The firm agrees to notify the board within thirty days
17 of accepting an audit or review engagement for any entity with
18 gross receipts in excess of two million dollars (\$2,000,000) or
19 more than five reviews for entities with gross receipts of two
20 million dollars (\$2,000,000) or less each and to undergo a peer
21 review within eighteen months of commencing such activities.

22 (3) For reasons of personal health, military service or
23 other good cause, the board determines that the firm is entitled
24 to an exemption for a period of time not to exceed twelve
25 months.

26 (h) In any civil action, arbitration or administrative
27 proceeding, regardless of whether a licensee is a party thereto,
28 all of the following shall apply:

29 (1) The proceedings, records (including, without limitation,
30 letters of acceptance, peer review reports, letters of comment

1 and letters of response) and working papers related to the peer
2 review process of any reviewer, administering organization or
3 board member are privileged and not subject to discovery,
4 subpoena or other means of legal process and may not be
5 introduced into evidence.

6 (2) No employee, member or agent of an administering
7 organization, reviewer or board member shall be permitted or
8 required to testify as to any matters produced, presented,
9 disclosed or discussed during or in connection with the peer
10 review process or be required to testify to any finding,
11 recommendation, evaluation, opinion or other actions of any
12 person in connection with the peer review process.

13 (3) No privilege exists under this subsection:

14 (i) For information presented or considered in the peer
15 review process that was otherwise available to the public.

16 (ii) For material not prepared in connection with a peer
17 review merely because they subsequently are presented or
18 considered as part of the peer review process.

19 (iii) In connection with an administrative proceeding or
20 related civil action brought for the purpose of enforcing this
21 section.

22 (i) If a peer review report indicates that a firm complies
23 with the appropriate professional standards and practices set
24 forth in the regulations of the board, the administering
25 organization shall destroy all working papers and documents,
26 other than report-related documents, related to the peer review
27 within ninety days after issuance to the firm of the letter of
28 acceptance by the administering organization. If a peer review
29 letter of acceptance indicates that corrective action by a firm
30 is required, the administering organization may retain documents

1 and reports related to the peer review until completion of the
2 next peer review or other agreed-to corrective actions.

3 (j) In the event the practices of two or more firms are
4 merged or otherwise combined, the surviving firm shall retain
5 the peer review year of the largest firm, as determined by the
6 number of accounting and auditing hours of each of the
7 practices. In the event that the practice of a firm is divided
8 or a portion of its practice is sold or otherwise transferred,
9 any firm acquiring some or all of the practice that does not
10 already have its own review year shall retain the review year of
11 the former firm. In the event that the first peer review of a
12 firm that would otherwise be required by this subsection would
13 be less than twelve months after its previous review, a review
14 year shall be assigned by the administering organization so that
15 the firm's next peer review occurs after not less than twelve
16 months of operation, but not later than eighteen months of
17 operation.

18 (k) (1) None of the following persons shall be held to have
19 violated any criminal law or to be civilly liable by reason of
20 the performance by him or it of any duty, function or activity
21 under this section so long as the person has not engaged in
22 recklessness or willful misconduct:

23 (i) reviewers;

24 (ii) the administering organization or any of its members,
25 employees or agents or any person furnishing professional
26 counsel or services to the administering organization; or

27 (iii) board members.

28 (2) Subsection (h) shall not apply to the defense of a claim
29 alleging conduct not protected under clause (1).

30 (1) This section shall apply as follows:

1 (1) Except as provided in clause (2), this section shall
2 take effect on February 3, 1997. This clause includes without
3 limitation effectiveness for the purposes of permitting the
4 board to promulgate the regulations under subsection (c) and of
5 applying subsections (h) and (k).

6 (2) This section shall not become applicable to firms and no
7 firm shall be required to undergo a peer review under this
8 section until May 1, 2000, except that this section shall not
9 become applicable until May 1, 2004, to a firm that has not
10 accepted or performed any audit engagements during the period
11 May 1, 1998, through April 30, 2004.

12 Section 2. This act shall take effect in 60 days.