

EXPOSURE DRAFT

PROPOSED UNIFORM ACCOUNTANCY ACT

DECEMBER 2, 1990

Prepared by the State Legislation Committee Model Bill Task Force, American Institute of Certified Public Accountants; the Model Bill and Model Rules Committee, National Association of State Boards of Accountancy; and the Conference Committee on Uniformity of Regulation of the Accounting Profession Model Bill Task Force

**Comments should be received by June 30, 1991, and addressed to
AICPA State Legislation Department, 1455 Pennsylvania Ave., N.W., Ste. 400,
Washington, D.C. 20004-1007**

**or
National Association of State Boards of Accountancy, Inc., 545 Fifth Ave.,
New York, N.Y. 10017-3698**

MEMORANDUM

DATE: December 2, 1990

TO: Those Interested in State Accountancy Legislation

FROM: Thomas W. Rimerman, Chairman, AICPA
Jerome P. Solomon, President, NASBA

RE: Uniform Accountancy Act Exposure Draft

An exposure draft of the Uniform Accountancy Act accompanies this memorandum.

This draft Uniform Act was prepared by the AICPA State Legislation Committee's Model Bill Task Force, NASBA Model Bill and Model Rules Committee and the Conference Committee on Uniformity of Regulation of the Accounting Profession Model Bill Task Force. The purpose of the revisions included in the draft is to update the 1984 AICPA/NASBA Model Public Accountancy Bill.

Scope of Current Revisions

Beginning with this edition, the Uniform Accountancy Act will be designed as a living document. The current revisions address some of the most important issues facing the profession, such as the 150-hour education requirement, continuing professional education for all certificate and permit holders, quality review and legal liability issues.

The current edition does not make any revision to the 1984 Model Bill with regard to such issues as foreign reciprocity, code of conduct, commissions and contingent fees, independence, non-CPA ownership, specializations and corporate form of practice. Future editions of the Uniform Accountancy Act may revise or add sections on those subjects. To ensure that the Uniform Act will remain "evergreen," it will be published and amended in loose-leaf format.

In the exposure draft, additions to the 1984 Bill are underlined and deletions are stricken. Text of the statutory sections are in boldface type. Commentary is in ordinary type.

During the revision process, which began in 1989, comments were sought from AICPA and NASBA committees and from other interested parties. In recommending changes, the AICPA and

NASBA participants have attempted to follow the legislative policies formulated by their respective organizations rather than chart a new course.

Listed below is a synopsis of each of the issues in which changes were recommended or made to the Uniform Act.

Title/Preface

The Title has been changed to emphasize the goal of uniformity and to reflect the broader scope of the revised Uniform Act. A sentence outlining the objectives of the Act has been added to the Preface. Further changes to the Preface will be made after the exposure period.

Introduction, Purpose and Format

The purpose and introduction have been slightly modified to reflect the broader scope of the Uniform Act revisions. For example, the introduction now includes reference to the need for continuing professional education for those certificate holders not in public practice. The new format for the Uniform Act is set out along with an explanation of the scope of the current revisions and statement of issues which have not been dealt with in the current round of revisions.

Definition of Practice - Section 3

Language has been added to the definition of practice of public accountancy to include financial planning. The change will make it clear that financial advisory services are a part of the practice of public accountancy.

Education - Section 5

Two changes have been made to the education section of the Uniform Act. The first changes the language of the minimum education required to become a CPA from a baccalaureate degree plus thirty additional hours of study to at least 150 hours of college education including a baccalaureate or higher degree. This change was made to conform with the new model 150-hour education statute.

The second change removes the provision which allows candidates to sit for the examination before completing their education. The change is in accord with a recommendation made by the Accounting Education Change Commission. In addition, the AICPA education policy has been changed to require completion of education requirements before candidates may apply to take the examination. The change will make it easier for boards to determine whether candidates have completed their education. The change will also allow students to concentrate on their

senior-year curriculum rather than prepare for the CPA examination.

Examinations - Section 5

The language of the current Model Bill under which state boards "may" use the AICPA Uniform Examination and Advisory Grading Service has been retained; however the comments have been modified to stress the need for uniformity regarding the examination. The section has been modified to provide flexibility as to exam subjects to accommodate changes that will be made to the examination. The changes are minor and were made at the request of the Board of Examiners so that the Act will conform to the terminology to be used in the restructured examination.

Continuing Professional Education - Section 5 & 6

The committees reviewing the Uniform Act recommend a number of changes to the provisions which deal with the continuing professional education requirements. The first change would recognize the importance of specialized CPE courses to CPAs who offer services other than traditional public accounting courses to their clients. The provision would also meet the needs of CPAs in industry and assist them in maintaining their professional expertise. This provision will permit maximum flexibility regarding CPE credit and eliminate barriers to reciprocity.

The committees also recommend changes to Section 5 and 6 of the Uniform Act to require CPAs not in public practice to complete 90 hours of CPE every three years, as well as CPAs in public practice to complete 120 hours of CPE every three years. These changes were made by adding a new subsection, (i), to Section 5. This new subsection would make the CPA certificate subject to renewal on a one, two or three year basis in the same way the permit to practice will be renewed. In order for people not in public practice to keep their certificates they would be required to take 90 hours of CPE in the previous three years, with a minimum of 15 hours each year. Those CPAs in public practice would renew their permits. In renewing their permits, their certificates would automatically be renewed. To renew a permit 120 hours of CPE would be required with a minimum of 20 hours each year.

Reciprocity - Section 6

The committees made two additional changes to Section 6 of the Uniform Act. These two changes deal with reciprocity of individual permits. The first is to change from four to five years the experience requirement for receiving a reciprocal

permit to prevent the problem of candidates going to a state without the 150-hour education requirement to receive a certificate and then returning to the 150-hour state to receive a permit.

The second change is to make the certificate as well as the permit to practice reciprocal. This change will accommodate those licensees who have received their initial certificate from a one-tier state. One-tier states require the renewal of both the certificate and permit to practice. The current Model Bill only provides of reciprocity for permits. Under the current Model Bill, those who hold certificates in one-tier states would be required to keep their certification in effect in the original state even after relocating to a two-tier state.

Quality Review - Section 7

Optional Section 7(g) has been modified to specify that quality reviews which may be required under the subsection need be performed no more frequently than once every three years. The commentary has been rewritten to state the policies of the AICPA and NASBA. The commentary notes that the AICPA believes quality review materials should be confidential and that the board should not have access to reports, workpapers, the letter of comments and response developed in the course of equivalent reviews that are accepted by the board.

Temporary Transfer and Retention of Workpapers - Section 19

A minor change has been made to Section 19(a) to make clear that CPAs must temporarily transfer material needed to perform quality reviews. A new subsection has been added to Section 19 to make clear that the section does not impose any additional record-keeping burden. The CPA or firm need only retain workpapers for the period already required under applicable state law.

Legal Liability - New Sections

Two new sections on legal liability are recommended for inclusion in the Uniform Act. These two new sections will fall at the end of the Act, just before the Old Section 20 - Construction; Severability. The first new Section is privity and the second is a statute of limitations. The statute of limitations is set at one year from the date of discovery of the alleged act or omission or three years from the date of the service, whichever comes first.

Comments or suggestions on any aspect of the draft Act will be welcomed, but those directed to the particular features of the Act described above will be of particular interest.

Comments should be sent to the AICPA State Legislation Department, 1455 Pennsylvania Ave., NW, Ste. 400, Washington, D.C. 20004 or to National Association of State Boards of Accountancy, Inc., 545 Fifth Avenue, New York, NY 10017-3698 and should be received by June 30, 1991 for consideration by the Committees.



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- o Officers and members of selected NASBA committees
- o State CPA society presidents, chairmen of legislation committees, and executive directors
- o Members of the AICPA State Legislation Committee, State Legislation Area Planning Subcommittees and other selected committees
- o National accounting firms and a sample of smaller firms
- o Members of IFAC Committee on Education
- o Others who have requested copies

Foreword

This ~~Model Bill~~ Uniform Accountancy Act was approved for publication by the Boards of Directors of the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA). ~~It was prepared by the AICPA-NASBA Special Committee on Model Accountancy Bill.~~

_____, 1990

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Preface

The modern public accounting profession originated in Great Britain during the latter half of the nineteenth century. In 1896 the New York state legislature passed the first law creating the title "certified public accountant," thereby setting the pattern for state government regulation of the public accounting profession in the United States.

As with other professions, the public accounting profession is built upon a statutory foundation providing for the examination and licensing of members of the profession, and for the regulation of their professional conduct. All CPAs are examined, licensed, and regulated under state accountancy laws, and there is such a law in every American jurisdiction.

A model bill to regulate the practice of public accountancy was first published in 1916 by the American Institute of Accountants, the predecessor of the American Institute of Certified Public Accountants (AICPA), the national membership organization of certified public accountants. A substantial majority of the state accountancy laws now in force follow, in their principal provisions, the example provided by AICPA model accountancy bills.

The National Association of State Boards of Accountancy (NASBA) in April 1980 published a Model Public Accountancy Act reflecting legislative policies that had been worked out over the course of a number of years. It was appropriate that NASBA develop legislative policies because its members, the individual state boards, which have responsibility for administering existing laws, are often called upon to make recommendations to the state legislatures with regard to possible amendments to such laws, both in connection with "Sunset Law" reviews and otherwise.

In January 1983, a Committee of AICPA and NASBA was formed and charged with combining and harmonizing, to the extent possible, the models separately developed by the AICPA and NASBA, so that a single bill could be jointly issued by both organizations: The present Model Public Accountancy Bill is the result of that effort. It is intended as a forward-looking document, with provisions that both the public accounting profession and the general public should deem worthy of adoption as law.

Differing requirements for CPA certification, reciprocity, temporary practice, and other aspects of state accountancy legislation in the fifty-four American licensing jurisdictions (the fifty states, Puerto Rico, the District of Columbia, the U.S. Virgin Islands, and Guam) constitute artificial barriers to the interstate practice and mobility of certified public accountants. The ~~Model Bill~~ Uniform Act seeks to eliminate such differences and the barriers that they pose to effective practice of public accountancy under modern conditions.

Many of the organizations requiring the professional services of public accountants transact business on an interstate, and even on an international, basis; as a result, the practice of public

accountancy typically extends across state lines, and often, international boundaries as well. Thus, there is compelling need for the enactment of uniform state accountancy laws that foster rather than inhibit interstate professional practice and for laws that provide appropriately for international practice.

The ~~Model Bill~~ Uniform Act here offered is drafted as a single comprehensive piece of legislation that could be adopted in place of existing public accountancy laws. Because there is an accountancy law now in effect in every jurisdiction, however, the ~~Model Bill~~ Uniform Act is also designed to the extent possible with separable provisions, so that particular parts of this bill could, with appropriate amendments, be added to existing laws instead of replacing such laws entirely.

The ~~Model Bill~~ Uniform Act reflects applicable AICPA and NASBA legislative policies. The principal AICPA legislative policy, as approved by its governing Council, is set out (in annotated form) in Appendix A.

The Uniform Accountancy Act is designed to achieve several objectives. As the name of the Act suggests, the Act advances the goal of uniformity. In addition the Act's provisions protect the public interest and promote high professional standards.

Introductory Comments

The Fundamental Principles That Should Govern the Regulation of Public Accountancy

The fundamental principles of the AICPA's and NASBA's legislative policies, and of the resulting ~~Model Bill~~ Uniform Act, are few, and can be simply stated.

First, statutory regulation of public accountancy, as of any other profession or occupation, is justified only by considerations of the public interest. The public interest must be a substantial one, since regulation necessarily involves restrictions on who can practice public accountancy and the manner in which it is practiced. The conventional formulation is that regulatory legislation must be reasonably designed to protect the public health, safety, or welfare; the practice of public accountancy has a significant impact on the public welfare.

Second, appropriately designed regulation of public accountancy serves to protect the public welfare in two principal ways: (a) by providing reasonable assurance of competence on the part of persons and entities that perform those services that require a substantial degree of skill and competence for proper performance and regarding which the consequences of inadequate performance may be of serious dimension; and (b) by preventing deception of the public regarding the level of competence that may reasonably be expected of a given practitioner. A central element in the protection of the public welfare through the regulation of public accountancy is prevention of circumstances in which persons who are not themselves in a position to judge the competence of a particular practitioner or the reliability of particular financial information may be induced to rely on assurances of such competence or reliability (explicit or implied) that are not reasonably supported in fact. Third-party reliance--reliance by persons not themselves clients of the public accountants whose professional work is relied on--is characteristic of public accountancy, giving particular force to the need for its regulation in the public interest.

Third, although an expectation of some minimal level of competence is involved when a person or entity is engaged to perform services for hire, whatever the services may be, the degree to which such an expectation involves a substantial public interest and, in consequence, the degree to which it justifies legal regulation, varies significantly with both the level of skill required for adequate performance of the service, and the range and severity of adverse consequences that may derive from inadequate performance. Among the many different professional services included in the practice of public accountancy, one is, to a far greater degree than any other, affected by considerations of competence, namely, the expression of formal professional opinions

upon financial statements--familiarily known as the audit function. Not only does the expression of opinions on financial statements call for the greatest breadth and most intense development of the professional skills employed in the practice of public accountancy, but it invites the highest degree of reliance by the widest segment of the public. When auditing services are not competently and properly performed, the breadth and severity of the possible adverse consequences are far greater than those attendant upon other public accountancy services.

For these reasons, the keystone of the ~~Model-Bill~~ Uniform Act is reservation of the audit function to licensees. The ~~Model-Bill~~ Uniform Act does not include provisions for licensing any other class of practitioner than those who have demonstrated their qualifications to perform the audit function.

A professional service similar in nature to the audit function, although differing in the level of assurance implied, is the conduct of "reviews" of financial statements and the issuance of reports upon such reviews. Formal standards have been promulgated by the AICPA in a series of Statements on Standards for Accounting and Review Services (SSARS), and reviews conducted in accordance with such standards may call upon the same level of knowledge as does an audit. Although the degree of assurance (explicit and implied) in reports upon reviews purporting to comply with AICPA's formal standards is less than that expressed and implied by reports represented to be based upon an audit, the issuance of such reports is restricted to persons who have demonstrated the qualifications necessary to perform the audit function.

Still another professional service, founded on the same array of skills and the same level of knowledge as audits, but not involving any explicit assurance, is the issuance of reports on "compilations" of financial statements. Again, formal standards have been promulgated in the SSARS pronouncements for the conduct of such compilations and for reports thereon. A danger of innocent reliance on the implicit representations of skill and assurances of reliability of such reports exists if they are issued by persons not having the professional qualifications that such reports imply.

Accordingly, this ~~Model-Bill~~ Uniform Act extends the reservation of the audit function to include the issuance of reports on both reviews and compilations when those reports are in standard form, and prescribed by authoritative pronouncements, so as to imply assurances and the professional qualifications underlying such assurances.

Fourth, the requirements for licensing persons to perform the professional services thus reserved should be designed to provide significant assurance that those who undertake to perform such services have at least a minimum level of professional qualification for adequate performance. Two means are commonly employed to provide this kind of assurance of competence (not only with respect to the public accounting profession, but other professions as well): (a) Reserve the performance of the services in question to persons licensed to do so; and (b) require, as a condition of such licensing, demonstration of skill and knowledge,

typically by means of examinations, education requirements, and, in some instances, experience requirements. Uniformity of the required demonstration of skill and competence among licensees within a given state and those of different states is obviously desirable from the public interest point of view. In the interest of equity, legislatures of most jurisdictions have made provisions for "grandfathering" persons who, though they had not met the requirements for issuance of a certificate as certified public accountant, were nonetheless engaged in unregulated audit work when the licensing law became effective. Because relatively few jurisdictions exist without "grandfathering" provisions, this ~~Model Bill~~ Uniform Act does not include a provision for a new "grandfathered" entitlement to perform the audit function. It does, however, contain provisions to deal with such a class of public accountants where the prior law established such a class.

Fifth, an effective regulatory plan will also prohibit persons who have not met the licensing requirements from representing to the public that they have done so, thus protecting the public against incompetence and deception. Provisions should be designed to prevent would-be practitioners from representing to the public, directly or indirectly, that they have a higher degree of competence than they in fact command.

Sixth, the need to assure the public of reasonable competence and the need to protect the public against deception combine to support regulation of the conduct of persons who have been licensed for the audit function, even in their performance of non-audit work, which unlicensed persons may also perform. If a given person has demonstrated the high level of competence required for licensure, even though the license has its central justification and purpose in the performance of the audit function, nonetheless the qualifications required to be demonstrated in order to merit such a license will reasonably support expectations that the licensee has special competence in other areas of practice as well. Such a reasonable expectation of special competence in other areas than the one for which a license is specifically required calls for regulation of the professional conduct of licensees in all of the areas to which such an expectation applies.

Seventh, the need to assure the public of reasonable competence supports the requirement that all certificate and permit holders, including those not in public practice, maintain professional competence in their area of responsibility through continuing professional education. Also, the public interest demands that those not in public practice take continuing professional education because they may return to public practice. The provisions for such education should provide for wide latitude in selection of continuing education courses and should prescribe full credit for any course that contributes to the general professional competence of the licensee.

~~Seventh~~ Eighth, and finally, it is desirable that there be, to the maximum extent feasible, uniformity among jurisdictions with regard to those aspects of the regulatory structure that bear upon the qualifications required of licensees. Because many of the

clients for public accountancy services are multistate enterprises, much of the practice of public accountancy has an interstate character; consequently, practitioners must be able to move freely between states. The need for interstate mobility and maintenance of high minimum standards of competence in the public interest requires uniform licensing qualifications, insofar as possible, among the states.

In the interest of obtaining maximum uniformity, interstate mobility and to assure that CPAs are subject to only one regulatory scheme, the Uniform Act should be adopted as the exclusive source of regulation for certificate holders.

Implementation of the Governing Principles in the ~~Model Bill~~ Uniform Accountancy Act

Reflecting the fundamental principles just discussed, following are the key features of the ~~Model Bill~~ Uniform Act.

1. The only kinds of professional services for which licensing is required are (a) the audit function--the expression of opinions on financial statements; (b) the issuance of reports in standard form upon reviews of financial statements; and (c) the issuance of reports in standard form upon compilations of financial statements. (See section 3(i), defining the term "report"; and sections 14(a), (b) and (c), respectively prohibiting unlicensed persons from issuing reports on audits, reviews, and compilations of financial statements.) Anyone, whether licensed or not, may offer and perform any other kind of accounting service, including tax services, management advisory services, and the preparation of financial statements without such reports. (See section 14(a).)

2. In order to perform the audit function, one must have a permit to practice (under section 6 for individuals or section 7 for firms). A principal qualification for a permit to practice is a certificate as certified public accountant (issuance of which is governed by section 5). The process of granting this certificate is the principal means of determining the professional qualifications of persons who are to be licensed to perform the audit function. However, since not everyone who obtains a certificate will necessarily wish to engage in (or remain in) the practice of public accountancy, the certificate itself does not constitute the license necessary to practice. In order to secure an individual permit, one may be required to have, in addition to a certificate, a specified amount of experience in the practice of public accountancy (shown as an optional provision, section 6(c)(2), in this ~~Model Bill~~ Uniform Act); and in order to renew the permit, which must be done every ~~two~~ three years, one must have completed a specified amount of continuing professional education(~~section 6(e).~~) regardless of whether one is in public practice (section 6(e)) or not in public practice (section 5(i)). In thus providing for both certificates and permits, the ~~Model Bill~~ Uniform Act, like some, though not all, existing accountancy laws, involves a "two-tier" system.

3. In order to facilitate interstate practice and free movement of practitioners between states, a provision is made for reciprocal recognition of licenses issued by other states. This is done by providing for the issuance of a certificate and/or a permit to practice to a holder of a certificate of another state upon a demonstration that the qualifications for the other state's certificate were comparable to those of the state where the permit is to be issued, or, if they are not closely comparable, allowing for a demonstration of experience in the practice of public accountancy as a substitute for the comparable qualifications (section 6(d)).

4. The ~~Model-Bill~~ Uniform Act includes provisions that would preserve a class of "grandfathered" practitioners licensed to use the title "public accountant" and to perform the audit function, where an existing accountancy law to be superseded by the ~~Model-Bill~~ Uniform Act has provided for such licensing (section 8), but would not provide for the creation of any new such class where it had not existed under prior law. There are six states where the accountancy law currently in effect, though providing for the issuance of CPA certificates, does not restrict unlicensed persons from performing any sort of professional accounting service, including the audit function. If those states should decide to change to a form of accountancy law that restricts the audit function to licensees, like all other American jurisdictions, the recommendation implicit in this ~~Model-Bill~~ Uniform Act is that they not create any second class of licensees, "grandfathered" or other. There are some states where a provision is currently made for a second class of licensees, given exclusive right to use a particular title but not the right to perform the audit function. Because no public interest is served by such a second class of licensees, this ~~Model-Bill~~ Uniform Act contains no such provision.

5. Once licensed, holders of permits to practice are subject to regulation in their performance of the full array of professional services constituting the practice of public accountancy, even with respect to those services for which a license is not required and regarding which, in consequence, other persons are entirely unregulated under the ~~Bill~~ Act; although in the interest of avoiding unduly broad application of such regulation, the definition of the practice of public accountancy requires a holding out to the public that one has a certificate or permit. (See section 3(g), defining the "practice of public accountancy"; section 14(j), prohibiting only holders of certificates from practicing public accountancy without a permit; section 4(h)(4), directing the State Board of Accountancy to promulgate rules of professional conduct governing the practice of public accountancy; section 10(a)(5), providing that dishonesty, gross negligency, or fraud in the practice of public accountancy is grounds for disciplinary action.)

6. In order to prevent misleading the public regarding the qualifications or licensure status of persons who are not licensed, the ~~Model-Bill~~ Uniform Act contains a series of prohibitions on the use by unlicensed persons or firms of titles restricted to holders

of certificates or permits under the Act, or titles misleadingly similar to such titles (see sections 14(d)-(i)).

7. The ~~Model-Bill~~ Uniform Act contemplates that, as with most accountancy laws now in effect, responsibility for administration and implementation will be vested in a state Board of Accountancy (section 4). The board administers examinations and issues certificates (section 5); issues permits (sections 6 and 7); promulgates rules that govern the conduct of licensees and that otherwise implement the Act (section 4(h)); and has principal responsibility for disciplinary enforcement (sections 10-13, 15).

8. The desirability of uniformity among jurisdictions, mentioned above as one of the fundamental principles of both the AICPA's and NASBA's legislative policies, is recognized in the ~~Model-Bill~~ Uniform Act provisions dealing with such matters as education and experience requirements for initial licensing (sections 5(c) and 6(c)), and the continuing professional education requirements for the renewal of certificates and permits to practice (sections 5(i) and 6(e)). As mentioned in the comments following several of these provisions, they are framed in a substantially more detailed fashion than might otherwise be expected (dealing with matters that might often be addressed by regulation rather than statute) in order to encourage uniformity among the various states.

A Note About Format

Beginning with this edition, the Uniform Accountancy Act will be designed as a living document. The current revision addresses some of the most important issues facing the profession, such as the 150-hour education requirement, continuing professional education for all certificate and permit holders, quality review and legal liability issues. The current edition does not make any revisions in the 1984 edition of the Model Bill with regard to such issues as foreign reciprocity, code of conduct, commissions and contingent fees, independence, non-CPA ownership, specializations and corporate form of practice. Future editions of the Uniform Accountancy Act may revise or add sections on those subjects. To ensure that the ~~Model-Bill~~ Uniform Act will remain "Evergreen," it will be published and amended in looseleaf format.

The ~~Model-Bill~~ Uniform Act comprises the complete text of a statute that could be adopted in place of any accountancy law now in effect, with explanatory comments (not intended to be enacted as part of the law) following some provisions and printed in sans serif type. It may happen that a particular legislature will be interested in considering, not a complete new law but only certain provisions, to be substituted for or added to provisions of the law already in effect. An effort has been made to make the provisions of the ~~Model-Bill~~ Uniform Act readily adaptable for this purpose. However, in the event of piecemeal adoption, it is likely that changes in particular provisions will be required in order to

tailor them to the terminology and structure of the existing legislation. The comments attempt to identify important matters that might need to be considered in such circumstances, but no effort has been made to identify every point regarding which adaptation might be required; that can better be done (and in any event would have to be done) when particular legislation is actually under consideration.

Whether the ~~Model-Bill~~ Uniform Act is considered for adoption wholly or only in part, adjustments may also be appropriate in light of other laws in effect in the particular state in question. Some provisions included in the ~~Model-Bill~~ Uniform Act may be unnecessary, for example, because they are covered by other laws of general applicability, such as a state administrative procedure act. Other provisions may be at odds with the way a particular matter is generally dealt with in the state--for example, the authority of licensing boards, or their procedures, or their composition. Again, the comments attempt to identify the principal points requiring consideration in this regard.

Two provisions in the ~~Model-Bill~~ Uniform Act are presented as optional ones, because they are ones on which the legislative policies of the two sponsoring organizations differ. One such optional provision is an experience requirement as a condition of issuance of an individual permit to practice (section 6(c)(2)). This provision, like certain lesser matters on which this ~~Model-Bill~~ Uniform Act presents specific choices, is flagged by brackets. The other optional provision is one contemplating a requirement for quality reviews as a condition of renewal of firm permits (section 7(g)), which appears in a footnote following section 7(f).

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2
3 **~~Model Public Accountancy Bill~~**

4
5 **Uniform Accountancy Act**

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8
9 An Act to provide for the issuance of certificates as certified
10 public accountants and the issuance of permits to practice public
11 accountancy; to regulate the practice of public accountancy in the
12 public interest; and to establish a Board of Accountancy and
13 prescribe its powers and duties.
14

15
16
17 **SECTION 1**
18 **TITLE**

19
20 This Act may be cited as the "Public Accountancy Act of 19__."
21

22
23 **SECTION 2**
24 **PURPOSE**

25
26 It is the policy of this State, and the purpose of this Act, to
27 promote the reliability of information that is used for guidance
28 in financial transactions or for accounting for or assessing the
29 financial status or performance of commercial, noncommercial, and
30 governmental enterprises. The public interest requires that persons
31 professing special competence in accountancy or offering assurance
32 as to the reliability or fairness of presentation of such
33 information shall have demonstrated their qualifications to do so,
34 and that no persons who have not demonstrated and maintained such
35 qualifications, including certificate holders not in public
36 practice, be permitted to hold themselves out as having such
37 special competence or to offer such assurance that the professional
38 conduct of persons licensed as having special competence in
39 accountancy be regulated in all aspects of the practice of public
40 accountancy; that a public authority competent to prescribe and
41 assess the qualifications and to regulate the professional conduct
42 of practitioners of public accountancy be established; and that the
43 use of titles relating to the practice of public accountancy that
44 are likely to mislead the public as to the status or competence of
45 the persons using such titles be prohibited.
46

47 COMMENT. This statement of legislative purposes reflects the
48 fundamental principles governing the regulation of public
49 accountancy and holders of certificates as certified public
50 accountants who are not in public practice discussed in the
51 introductory comments.
52

1
2
3 **SECTION 3**
4 **DEFINITIONS**

5
6 When used in this Act, the following terms have the meanings
7 indicated:

8
9 (a) "Board" means the _____ Board of Accountancy established
10 under Section 4 of this Act or its predecessor under prior
11 law.

12
13 COMMENT. The general purpose of references to prior law, in this
14 provision and others below, is to assure maximum continuity in the
15 regulatory system, except where particular changes are specifically
16 intended to be brought about by amendment of the law.

17
18 (b) "Certificate" means a certificate as "certified public
19 accountant" issued under Section 5 of this Act or
20 corresponding provisions of prior law, or a corresponding
21 certificate as certified public accountant issued after
22 examination under the law of any other state.

23
24 COMMENT. The term here defined is used in section 3(h), defining
25 the term quality review; section 4(a), regarding the composition
26 of the board of accountancy; section 4(h)(6), regarding board rules
27 governing use, by holders of certificates who do not also hold
28 permits, of the titles certified public accountant and CPA; section
29 6(c), regarding the prerequisites for a permit to practice; section
30 10(a), regarding enforcement proceedings; section 14(d),
31 prohibiting use of the titles certified public accountant and CPA
32 by persons not holding certificates; and section 14(j), regarding
33 the practice of public accountancy by certificate holders who do
34 not hold a permit.

35 In a few states the law allows for the issuance of "certificates"
36 to certain practitioners who have not passed the examination
37 ordinarily required (and provided for by section 5 of this ~~Model~~
38 Uniform Act). The definition of the term certificate, insofar
39 as it has reference to those issued by other states, excludes any
40 certificate for which an examination was not required.

41
42 (c) "Firm" means a sole proprietorship, a corporation, or a
43 partnership.

44
45 COMMENT. This defined term is used in section 7, on permits to
46 practice for firms, in such a way as to allow the ~~Model Bill~~
47 Uniform Act, unlike some accountancy laws now in effect, to treat
48 both partnerships and corporations in a single provision rather
49 than in two separate but parallel provisions for the two different
50 forms of organization. It is also used in section 12(j), on rights
51 of appeal from an adverse board decision in an enforcement
52 proceeding; sections 14(a)-(c), prohibiting issuance of reports on

1 financial statements by unlicensed persons and firms; sections
2 14(e), (g), (h), and (i), regarding use of certain titles by
3 unlicensed persons and firms; section 14(k), regarding misleading
4 firm names; and section 14(l), defining certain rights of foreign
5 licensees to serve foreign clients.

6 Inclusion of sole proprietorships in the definition of the term
7 firm has the effect of requiring sole practitioners to secure both
8 individual permits to practice under section 6 and firm permits to
9 practice under section 7. This will assure that all practice units
10 have firm permits. The board would have the power to alleviate the
11 burden of duplicate permit applications (where the same person must
12 secure both an individual and a firm permit) by providing for joint
13 application forms.

14
15 **(d) "He," "his," and "him" mean, where applicable, the**
16 **corresponding feminine and neuter pronouns also.**

17
18 COMMENT. In some states there may be a statute of general
19 application which specifies that personal pronouns are
20 interchangeable whenever used in a statute; in such a state, this
21 provision would not be necessary in the public accountancy act.

22
23 **(e) "Licensee" means the holder of a certificate issued under**
24 **Section 5 of this Act, or of a permit issued under Sections**
25 **6 or 7; or, in each case, a certificate or permit issued under**
26 **corresponding provisions of prior law.**

27
28 COMMENT. This term is intended simply to allow for briefer
29 references in provisions that apply to both holders of certificates
30 and holders of permits: See section 3(g), defining practice of
31 public accountancy; section 4(h), regarding rules to be promulgated
32 by the board of accountancy; section 5(b), regarding the meaning
33 of "good character" in relation to the professional responsibility
34 of a licensee; sections 11(c) and (d), regarding board
35 investigations; sections 12(a)-(c), (i), and (k), relating to
36 hearings by the board; section 18, relating to confidential
37 communications; and sections 19(a) and (b), regarding licensees'
38 working papers and clients' records.

39 One place where the term is not used even though it could be is
40 the caption of section 10, Enforcement Against Holders of
41 Certificates and Permits; there, it seems desirable to use the
42 fuller, more informative phrase.

43
44 **(f) "Permit" means a permit to practice public accountancy issued**
45 **under Sections 6 or 7 of this Act or corresponding provisions**
46 **of prior law or under corresponding provisions of the laws of**
47 **other states.**

48
49 **(g) "Practice of (or practicing) public accountancy" means the**
50 **performance or the offering to perform by a person or firm**
51 **holding itself out to the public as a licensee, for a client**
52 **or potential client, of one or more kinds of services**

1 involving the use of accounting or auditing skills, including
2 the issuance of reports on financial statements, or of one or
3 more kinds of management advisory, financial advisory or
4 consulting services, or the preparation of tax returns or the
5 furnishing of advice on tax matters.
6

7 COMMENT. The principal purpose of this definition is to describe,
8 inclusively, the range of services with respect to which licensees
9 under the bill are subject to regulation. The term is used, and the
10 definition has operative significance, for this purpose in section
11 4(h)(4), regarding rules of professional conduct to be promulgated
12 by the board; section 10(a)(5), specifying dishonesty, fraud, or
13 gross negligence in the practice of public accountancy as grounds
14 for sanctions against licensees; section 10(a)(10), regarding
15 conduct reflecting adversely on a licensee's fitness to practice;
16 section 14(j), requiring certificate holders to hold a permit as
17 well before engaging in the practice of public accountancy; section
18 14(k), prohibiting use of misleading professional or firm names by
19 holders of permits; and section 14(l), making clear the
20 entitlements of holders of foreign licenses whose activities are
21 limited to serving foreign clients. The term is also used in a
22 more general, shorthand descriptive fashion, in section 3(f),
23 defining permit, and sections 6(a) and 7(a) providing for issuance
24 of permits; section 3(h), defining the term quality review; the
25 optional provision section 6(c)(2), regarding the experience
26 required for an individual permit to practice; section 6(d)(2)(C),
27 regarding experience requirements for certain applicants for
28 "reciprocal" permits to practice; section 7(f), requiring
29 applicants for firm permits to list other states in which they are
30 practicing public accountancy; section 10(a)(2), which makes
31 reference, in an enforcement context, to licenses to practice in
32 another state; and section 14(l), dealing with the permissible
33 scope of activities by holders of foreign licenses.

34 It bears emphasis that, by reason of the broad definition of
35 practice of public accountancy, and the manner in which the defined
36 term is used in operative provisions of the bill, licensees are
37 subject to regulation in a wide range of activities as to which
38 nonlicensees are subject to no regulation at all. The key provision
39 in this regard is section 14(j), which prohibits any holder of a
40 certificate, but no one else, from engaging in the practice of
41 public accountancy without a permit. This requirement that
42 certificate holders have a permit applies to any aspect of the
43 practice of public accountancy as broadly defined, even though it
44 may be other than audit practice and even though it may be
45 ancillary to some other principal occupation. However, the
46 definition of practice of public accountancy is not so broad as to
47 extend to otherwise unrestricted services when they are performed
48 or offered by a person who, although holding a certificate, is not
49 encouraging clients or customers to rely on that fact, by holding
50 himself out to the public as a certificate holder. This requirement
51 of "holding out" is intended to prevent application of the law to
52

1
2 regulate persons who, though they have a certificate, are not
3 making use of it in connection with their business activities.
4 Section 4(h)(5) gives the board authority to issue rules specifying
5 actions and circumstances constituting such a "holding out."
6

7 **(h) "Quality Review" means a study, appraisal, or review of one**
8 **or more aspects of the professional work of a person or firm**
9 **in the practice of public accountancy, by a person or persons**
10 **who hold certificates and who are not affiliated with the**
11 **person or firm being reviewed.**
12

13 COMMENT. This defined term, which includes but is not limited to
14 what is sometimes also referred to as a peer review, is employed
15 in section 4(h)(7), which empowers the board to issue rules
16 prescribing how such reviews are to be performed; the optional
17 provision, section 7(g) (which appears in a footnote following
18 section 7(f)), contemplating such reviews in connection with
19 renewals of firm permits; section 10(b), specifying that such
20 reviews are available as remedies in enforcement proceedings;
21 section 13(c), providing that the board may require such reviews
22 as a condition of reinstatement after a suspension or revocation
23 of a certificate or permit; and section 18, on confidential
24 communications, which recognizes an exception for quality reviews.
25 The rules issued by the board under section 4(h)(7) would
26 presumably prescribe, among other things, how the requirement of
27 independence, or nonaffiliation, of the reviewer to the person or
28 firm being reviewed is to be implemented.
29

30 **(i) "Report," when used with reference to financial statements,**
31 **means an opinion, report, or other form of language that**
32 **states or implies assurance as to the reliability of any**
33 **financial statements and that also includes or is accompanied**
34 **by any statement or implication that the person or firm**
35 **issuing it has special knowledge or competence in accounting**
36 **or auditing. Such a statement or implication of special**
37 **knowledge or competence may arise from use by the issuer of**
38 **the report of names or titles indicating that he or it is an**
39 **accountant or auditor, or from the language of the report**
40 **itself. The term "report" includes any form of language which**
41 **disclaims an opinion when such form of language is**
42 **conventionally understood to imply any positive assurance as**
43 **to the reliability of the financial statements referred to**
44 **and/or special competence on the part of the person or firm**
45 **issuing such language; and it includes any other form of**
46 **language that is conventionally understood to imply such**
47 **assurance and/or such special knowledge or competence.**
48
49

50 COMMENT. As has been explained in the introductory comments, the
51 audit function, which this term is intended to define, is the
52 principal kind of professional accounting service for which a

1 license would be required under the ~~Model-Bill~~ Uniform Act. The
2 term has its most important operative use in section 14(a) of the
3 Bill, which prohibits persons not licensed from performing that
4 function. See also sections 14(b) and (c).

5 It is a point of fundamental significance that the audit function
6 is defined, not in terms of the work actually done, but rather in
7 terms of the issuance of an opinion or a report--that is, the
8 making of assertions, explicit or implied--about work that has been
9 done. It is such reports, or assertions, upon which persons using
10 financial statements (whether clients or third parties) rely,
11 reliance being invited by the assertion, whether explicit or by
12 implication, of expertise on the part of the person or firm issuing
13 the opinion or report. Thus, this definition is sought to be drawn
14 broadly enough to encompass all those cases where either the
15 language of the report itself, or other language accompanying the
16 report, carries both a positive assurance regarding the reliability
17 of the financial information in question, and an implication (which
18 may be drawn from the language of the report itself) that the
19 person or firm issuing the report has special competence which
20 gives substance to the assurance.

21 The definition includes disclaimers of opinion when they are
22 phrased in a fashion which is conventionally understood as implying
23 some positive assurance, because authoritative accounting
24 literature contemplates several circumstances in which a disclaimer
25 of opinion in standard form implies just such assurances.

26 The same reasoning that makes it appropriate to include
27 disclaimers of opinion in conventional form within the definition
28 of this term makes it appropriate to apply the prohibition on the
29 issuance by unlicensed persons of reports, as so defined, on
30 "reviews" and "compilations" within the meaning of the AICPA's
31 Statement on Standards for Accounting and Review Services No. 1
32 (SSARS 1), when the language in which the report is phrased is that
33 prescribed by SSARS 1. This is done in sections 14(b) and (c).
34 These prohibitions, again, do not apply to the services actually
35 performed--which is to say that there is no prohibition on the
36 performance by unlicensed persons of either reviews or
37 compilations, in the sense contemplated by SSARS 1, but only on
38 the issuance of reports asserting or implying that their author has
39 complied with the SSARS 1 standards for such reviews and
40 compilations and has the demonstrated capabilities so to comply.

41
42 (j) "Rule" means any rule, regulation, or other written directive
43 of general application duly adopted by the Board.

44
45 (k) "State" means any state of the United States, the District of
46 Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam;
47 except that "this State" means the State of _____.

1
2 SECTION 4
3 STATE BOARD OF ACCOUNTANCY
4

5 (a) There is hereby created the _____ Board of Accountancy,
6 which shall have responsibility for the administration and
7 enforcement of this Act. The Board shall consist of _____
8 members, appointed by the Governor, all of whom shall be
9 residents of this State. At least [a majority plus one] of
10 such members shall be holders of certificates and of currently
11 valid permits issued under Section 6 of this Act or
12 corresponding provisions of prior law; and any members of the
13 Board not having such qualifications shall have had
14 professional or practical experience in the use of accounting
15 services and financial statements, so as to be qualified to
16 make judgments about the qualifications and conduct of persons
17 and firms subject to regulation under this Act. The term of
18 each member of the Board shall be four years; except that,
19 of the members first to be appointed, _____ shall hold
20 office for one year, _____ for two years, and _____ for
21 three years from the effective date of this Act, the term of
22 each to be designated by the Governor. [Alternatively: except
23 that members of the _____ Board of Accountancy appointed
24 and serving as such under prior law at the effective date of
25 this Act shall serve out the terms for which they were
26 appointed, as members of the Board created by this Section.]
27 Vacancies occurring during a term shall be filled by
28 appointment by the Governor for the unexpired term. Upon the
29 expiration of his term of office, a member shall continue to
30 serve until his successor shall have been appointed and taken
31 office. Any member of the Board whose permit under Section
32 6 of this Act is revoked or suspended shall automatically
33 cease to be a member of the Board, and the Governor may, after
34 a hearing, remove any member of the Board for neglect of duty
35 or other just cause. No person who has served two successive
36 complete terms shall be eligible for reappointment, but
37 appointment to fill an unexpired term shall not be considered
38 a complete term for this purpose.
39

40 COMMENT. A number of decisions have to be made with regard to the
41 structure and composition of licensing bodies such as state boards
42 of accountancy, and these decisions will vary from state to state
43 according to the patterns prevailing in the different states with
44 respect to other licensing boards. This provision of the Model
45 Bill Uniform Act is intended to identify the principal decision
46 points and to suggest, on the basis of general experience, what
47 seem to be the preferable solutions.

48 As respects the number of board members, it is suggested that
49 the appropriate range is from five to nine, and that the number
50 should be an odd one, so as to minimize the likelihood of tie
51 votes.
52

1
2 This provision assumes that, as is ever more widely the case,
3 one or more members of the board will be other than licensees
4 (sometimes called "public" members). It also reflects the view
5 that, in light of the technical nature of much of the board's
6 responsibilities, it is desirable that an effective majority of
7 the board be permit holders: This would be achieved by the
8 requirement that one more than a majority of the board be permit
9 holders.

10 As respects the terms of board members, it is desirable that the
11 terms be staggered; that they be long enough to allow effective
12 service, though not so long that a board member who proves
13 ineffective remains in office any longer than necessary; and that
14 they be renewable, that there be a limit on the number of times
15 they may be renewed. This provision reflects the view that the
16 length of the term should be four years rather than three years,
17 as is now more commonly the case. Although there seems to be an
18 increasing trend toward not reappointing board members for a second
19 term, it takes any new board member some time in office before he
20 is fully effective. A somewhat longer term seems an appropriate
21 way of balancing these two considerations.
22

23 **(b) The Board shall elect annually from among its members a**
24 **chairman and such other officers as the Board may determine**
25 **to be appropriate. The Board shall meet at such times and**
26 **places as may be fixed by the Board. Meetings of the Board**
27 **shall be open to the public except insofar as they are**
28 **concerned with investigations under Section 11 of this Act**
29 **and except as may be necessary to protect information that is**
30 **required to be kept confidential by Board rules or by the laws**
31 **of this State. A majority of the Board members then in office**
32 **shall constitute a quorum at any meeting duly called. The**
33 **Board shall have a seal which shall be judicially noticed. The**
34 **Board shall retain or arrange for the retention of all**
35 **applications and all documents under oath that are filed with**
36 **the Board and also records of its proceedings, and it shall**
37 **maintain a registry of the names and addresses of all**
38 **licensees under this Act. In any proceeding in court, civil**
39 **or criminal, arising out of or founded upon any provision of**
40 **this Act, copies of any of said records certified as true**
41 **copies under the seal of the Board shall be admissible in**
42 **evidence as tending to prove the contents of said records.**
43

44 COMMENT. This subsection, like the preceding one, presents a number
45 of decision points that may vary according to state practice, and
46 it includes some provisions (notably the ones regarding open
47 meetings and confidential information) that may be unnecessary in
48 the accountancy law because they are covered by state laws of
49 general application. Subject to such variances, the provisions
50 recommended appear to be desirable ones in the light of general
51 experience.
52

1
2
3 (c) Each member of the Board shall be paid an amount established
4 by law for each day or portion thereof spent in the discharge
5 of his official duties and shall be reimbursed for his actual
6 and necessary expenses incurred in the discharge of his
7 official duties.

8
9 (d) All moneys collected by the Board from fees authorized to be
10 charged by this Act shall be received and accounted for by
11 the Board and shall be deposited in the State Treasury to the
12 credit of the Board. Appropriation shall be made for the
13 expenses of administering the provisions of this Act, which
14 may include, but shall not be limited to, the costs of
15 conducting investigations and of taking testimony and
16 procuring the attendance of witnesses before the Board or its
17 committees; all legal proceedings taken under this Act for the
18 enforcement thereof; and educational programs for the benefit
19 of the public and licensees and their employees.

20
21 COMMENT. A provision of this kind, effectively providing that at
22 least a substantial portion of the revenues raised from fees
23 required to be paid by applicants and licensees will be applied to
24 defraying the expenses of administering the law, has proved a
25 desirable one in those jurisdictions where the statute contains
26 such a provision. The typical pattern is that the regulation of
27 public accountancy is, from the state's point of view,
28 self-supporting. The extent to which the Board has adequate staff
29 to assist it (as provided in subsection (f) below) and other
30 resources necessary to do its job effectively may well depend on
31 the extent to which such revenues are available for use in the
32 administration of the act.

33
34 (e) The Board shall file an annual report of its activities with
35 the Governor and the legislature, which report shall include
36 a statement of all receipts and disbursements and a listing
37 of all current licensees under this Act. The Board shall mail
38 a copy of the annual report to any person requesting it and
39 paying a reasonable charge therefor.

40
41 (f) The Board may employ an executive director and such other
42 personnel as it deems necessary in its administration and
43 enforcement of this Act. It may appoint such committees or
44 persons, to advise or assist it in such administration and
45 enforcement, as it may see fit. It may retain its own counsel
46 to advise and assist it in addition to such advice and
47 assistance as is provided by the Attorney General of this
48 State.

49
50 COMMENT. Adequate staffing can be an important determinant of how
51 effective a board of accountancy is in discharging its statutory
52 obligations. The same is true of the ability of a board to employ

1 independent counsel from time to time for special purposes, in
2 addition to the counsel normally provided to it by the state
3 attorney general's office. With regard to the financing necessary
4 to implement such provisions, see the comment following subsection
5 (d).

6 An additional way for a board to increase its effectiveness,
7 which does not involve significant expense, is the appointment of
8 committees or individuals not on the board or its staff, to advise
9 and assist it in various ways, including disciplinary
10 investigations (see section 11(b)).

11
12 (g) The Board shall have the power to take all action that is
13 necessary and proper to effectuate the purposes of this Act,
14 including the power to sue and be sued in its official name
15 as an agency of this State; to issue subpoenas to compel the
16 attendance of witnesses and the production of documents; to
17 administer oaths; to take testimony and to receive evidence
18 concerning all matters within its jurisdiction. In case of
19 disobedience of a subpoena, the Board may invoke the aid of
20 any court of this State in requiring the attendance and
21 testimony of witnesses and the production of documentary
22 evidence. The Board, its members, and its agents shall be
23 immune from personal liability for actions taken in good faith
24 in the discharge of the Board's responsibilities, and the
25 State shall hold the Board, its members, and its agents
26 harmless from all costs, damages, and attorneys' fees arising
27 from claims and suits against them with respect to matters to
28 which such immunity applies.
29

30 COMMENT. In many accountancy laws now in effect, the provisions
31 regarding subpoenas and testimony that are included in this
32 paragraph dealing with board powers generally are found instead in
33 the section dealing with hearings, which is section 12 in this
34 Model Bill Uniform Act.
35

36 (h) The Board may adopt rules governing its administration and
37 enforcement of this Act and the conduct of licensees,
38 including but not limited to--
39

- 40 (1) Rules governing the Board's meetings and the conduct of
41 its business;
- 42 (2) Rules of procedure governing the conduct of
43 investigations and hearings by the Board;
- 44 (3) Rules specifying the educational qualifications required
45 for the issuance of certificates under Section 5 of this
46 Act [the experience required for initial issuance of
47 permits under Section 6(c)(2)] and the continuing
48 professional education required for renewal of
49 certificates under 5(i) and permits under Section 6(e);
50
51
52

- 1
2
3 **(4) Rules of professional conduct directed to controlling the**
4 **quality and probity of the practice of public accountancy**
5 **by permit holders, and dealing among other things with**
6 **independence, integrity, and objectivity; competence and**
7 **technical standards; responsibilities to the public; and**
8 **responsibilities to clients;**
9
10 **(5) Rules specifying actions and circumstances that shall be**
11 **deemed to constitute holding oneself out as a licensee**
12 **in connection with the practice of public accountancy**
13 **within the meaning of Section 3(g);**
14
15 **(6) Rules governing the manner and circumstances of use by**
16 **holders of certificates who do not also hold permits**
17 **under this Act of the titles "certified public**
18 **accountant" and "CPA";**
19
20 **(7) Rules regarding quality reviews that may be required to**
21 **be performed under provisions of this Act; and**
22
23 **(8) Such other rules as the Board may deem necessary or**
24 **appropriate for implementing the provisions and the**
25 **purposes of this Act.**
26

27 COMMENT. See the comment following section 3(g) regarding paragraph
28 (5); see the comment following section 3(h) regarding paragraph
29 (7).
30

- 31 **(i) At least 60 days prior to the proposed effective date of any**
32 **rule or amendment thereto under subsection (h) of this Section**
33 **or any other provision of this Act, the Board shall publish**
34 **notice of such proposed action and of a public hearing to be**
35 **held no more than 30 days prior to such effective date, in**
36 **[the State Register or equivalent official publication].**
37

38 COMMENT. The provision for publication of proposed rules and
39 amendments thereto in an official state register, and for public
40 hearings thereon, may be covered in some states by a state statute
41 of general application, such as an Administrative Procedure Act;
42 but where this is not the case, it appears a desirable provision
43 for a state accountancy law. Some existing laws also have a
44 provision requiring separate notice by mail to all licensees of any
45 proposed rule or amendment; but, no such provision is included here
46 because the expense of notice by mail seems unjustified when
47 adequate notice by publication is available.
48
49
50
51
52

1 **SECTION 5**
2 **CERTIFIED PUBLIC ACCOUNTANTS**

3
4 (a) The Board shall grant the certificate of "certified public
5 accountant" to any person who meets the good character,
6 education, and examination requirements of, and who pays the
7 fees prescribed by, the following subsections of this Section.
8

9 COMMENT. As mentioned in the introductory comments, this ~~Model Bill~~
10 Uniform Act, like many accountancy laws now in effect, involves a
11 "two-tier" system: That is, it provides for the granting of
12 certificates and the separate, subsequent granting of permits which
13 constitute a license to practice. ~~The second tier is attended by~~
14 ~~a requirement of continuing professional education as a condition~~
15 ~~for renewal of the permits (section 6(e)); the certificates do not~~
16 ~~have to be renewed.~~ In addition, an optional provision in this
17 Model Bill Uniform Act, section 6(c)(2), would impose a requirement
18 of experience in the practice of public accountancy as a
19 prerequisite to issuance of the permit; there is such an experience
20 requirement under some accountancy laws now in effect as a
21 requisite for the issuance of certificates.

22 It may be noted that this provision contemplates that there will
23 be no certificate requirements with respect to citizenship, age,
24 or residency. A citizenship requirement would not be
25 constitutional; in view of the education requirement, a separate
26 age requirement seems without utility; and in light of the
27 desirability, explained in the introductory comments, of achieving
28 maximum uniformity and reciprocity among the various states, a
29 residency requirement seems not merely useless but
30 counterproductive.
31

32 (b) Good character for purposes of this Section means lack of a
33 history of dishonest or felonious acts. The Board may refuse
34 to grant a certificate on the ground of failure to satisfy
35 this requirement only if there is a substantial connection
36 between the lack of good character of the applicant and the
37 professional responsibilities of a licensee and if the finding
38 by the Board of lack of good character is supported by clear
39 and convincing evidence. When an applicant is found to be
40 unqualified for a certificate because of a lack of good
41 character, the Board shall furnish the applicant a statement
42 containing the findings of the Board, a complete record of the
43 evidence upon which the determination was based, and a notice
44 of the applicant's right of appeal.
45

46 COMMENT. This provision is intended both to assure that the
47 requirement of good character will be narrowly and precisely
48 construed, avoiding problems of both vagueness and overbreadth and
49 to assure procedural fairness in any instance where a certificate
50 is denied on the basis of lack of good character. The right of
51 appeal referred to would presumably be prescribed by a statute of
52 general application, such as an Administrative Procedure Act.

1
2 (c) The education requirement for a certificate, which must be
3 met ~~no later than _____ days after an applicant sits before~~
4 an applicant is eligible to apply for the examination
5 prescribed in subsection (d), shall be as follows:
6

7 (1) During the _____-year period immediately following the
8 effective date of this Act, a baccalaureate degree or its
9 equivalent conferred by a college or university
10 acceptable to the Board, with an accounting concentration
11 or equivalent as determined by the Board by rule to be
12 appropriate;
13

14 (2) After the expiration of the _____-year period
15 immediately following the effective date of this Act, a
16 ~~baccalaureate degree or its equivalent conferred by a~~
17 ~~college or university acceptable to the Board and not~~
18 ~~less than 30 semester hours of additional study, at least~~
19 150 semester hours of college education including a
20 baccalaureate or higher degree conferred by a college or
21 university acceptable to the Board, the total educational
22 program to include an accounting concentration or
23 equivalent as determined by the Board by rule to be
24 appropriate.
25

26 COMMENT. Paragraph (2) of this provision would, after the lapse of
27 the specified number of years, put into effect a 150-hour education
28 requirement. The report of the Commission on Professional
29 Accounting Education (issued in August 1983) sets out the
30 considerations that underlie the policies of both the AICPA and
31 NASBA favoring establishment of such a requirement.

32 ~~—This provision follows the pattern of provisions found in most~~
33 ~~laws in allowing an applicant to sit for the examination within a~~
34 ~~specified period (ordinarily two or three months) prior to~~
35 ~~completing his education. The basis for this pattern is that for~~
36 ~~some years the Uniform CPA Examination has been given in November~~
37 ~~and May, and the latter date is often shortly before the end of a~~
38 ~~college term. The reasoning is that students so close to graduation~~
39 ~~should not be required to wait another six months before sitting~~
40 ~~for the examination. The precise period should be specified in~~
41 ~~subsection (c): It is recommended that the period not exceed 120~~
42 ~~days.~~
43

44 *(d) The examination required to be passed as a condition for the
45 granting of a certificate shall be in writing, shall be held
46
47
48
49

50 * Board of Examiners anticipates changes.
51
52

1
2
3 twice a year, and shall test the applicant's knowledge of the
4 subjects of accounting ~~theory, accounting practice,~~ and
5 auditing, and such other related subjects as the Board may
6 specify by rule. The time for holding such examination shall
7 be fixed by the Board and may be changed from time to time.
8 The Board shall prescribe by rule the methods of applying for
9 and conducting the examination, including methods for grading
10 papers and determining a passing grade required of an
11 applicant for a certificate provided, however, that the Board
12 shall to the extent possible see to it that the grading of the
13 examination, and the passing grades, are uniform with those
14 applicable in all other states. The Board may make such use
15 of all or any part of the Uniform Certified Public Accountant
16 Examination and Advisory Grading Service of the American
17 Institute of Certified Public Accountants and may contract
18 with third parties to perform such administrative services
19 with respect to the examination as it deems appropriate to
20 assist it in performing its duties hereunder.
21
22
23

24 COMMENT. The Uniform Certified Public Accountant Examination and
25 Advisory Grading Service, referred to in this provision, has for
26 some years been consistently used by the board of accountancy (or
27 its equivalent) of every American jurisdiction. Although the
28 grading provided by that service is, as the name implies, only
29 advisory, with each state board retaining ultimate authority to
30 determine grades and passing requirements, it is obvious that
31 uniformity among jurisdictions in these matters is a matter of
32 considerable importance. Uniformity respecting the examination is
33 essential to ensuring interstate mobility for the certificate and
34 permit holders of this state.
35

36 (e) An applicant shall be required to pass all parts sections of
37 the examination provided for in subsection (d) in order to
38 qualify for a certificate. If at a given sitting of the
39 examination an applicant passes two or more but not all parts
40 ~~(with the accounting practice part of the examination being~~
41 ~~treated for this purpose as two parts)~~ sections, then the
42 applicant shall be given credit for those parts sections that
43 he has passed and need not sit for reexamination in those
44 parts sections, provided that--
45

46 (1) the applicant wrote all parts sections of the examination
47 at that sitting;
48
49
50
51
52

- 1 (2) the applicant attained a minimum grade of 50 on each part
2 section not passed at that sitting;
3
4 (3) the applicant passes the remaining parts sections of the
5 examination within six consecutive examinations given
6 after the one at which the first parts sections were
7 passed;
8
9 (4) at each subsequent sitting at which the applicant seeks
10 to pass any additional parts sections, the applicant
11 writes all parts sections not yet passed; and
12
13 (5) in order to receive credit for passing additional parts
14 sections in any such subsequent sitting, the applicant
15 attains a minimum grade of 50 on parts sections written
16 but not passed on such sitting.
17

18 COMMENT. This provision goes into unusual detail in prescribing
19 the requirements applicable to the granting of partial credits
20 where an applicant passes part but not all of the CPA examination
21 at a given sitting (these requirements are commonly referred to as
22 "conditioning" requirements). The reason for such detail is, as
23 explained in the introductory comments, the desirability of uniform
24 requirements among all jurisdictions so as to provide maximum
25 latitude for transferability of credits and consequent mobility of
26 applicants.
27

- 28 (f) An applicant shall be given credit for any and all parts
29 sections of an examination passed in another state if such
30 credit would have been given, under then applicable
31 requirements, if the applicant had taken the examination in
32 this State.
33
34 (g) The Board may in particular cases waive or defer any of the
35 requirements of subsections (e) and (f) regarding the
36 circumstances in which the various parts sections of the
37 examination must be passed, upon a showing that, by reason of
38 circumstances beyond the applicant's control, he was unable
39 to meet such requirement.
40
41 (h) The Board may charge, or provide for a third party
42 administering the examination to charge, each applicant a fee,
43 in an amount prescribed by the Board by rule, for each part
44 section of the examination or reexamination taken by the
45 applicant.
46
47 (i) A certificate of certified public accountant shall be issued
48 and renewed for periods of not more than three years with
49 renewal subject to requirements of continuing professional
50 education and payment of fees prescribed by the Board. A
51 minimum of ninety (90) hours of continuing professional
52 education over a three-year period is required, with a minimum

1 of fifteen hours in each year. The Board may prescribe by
2 rule the content, duration and organization of continuing
3 professional education which contributes to the general
4 professional competence of the applicant.

5
6 COMMENT: Requiring renewal of a certificate after completion of
7 the appropriate hours of continuing professional education allows
8 accountants who have met the original requirements to obtain a
9 certificate, but who are not in public practice, to maintain their
10 certificate and the name "certified public accountant" without
11 having a permit to practice.

12 When establishing credit for all courses, state boards are to
13 acknowledge the equal importance of courses to CPAs who offer
14 specialized services other than traditional public accounting to
15 their clients, and maintain the professional expertise of CPAs who
16 offer such specialized services.

17
18 **SECTION 6**
19 **PERMITS TO PRACTICE--INDIVIDUAL**

20
21 (a) **The Board shall grant or renew permits to practice public**
22 **accountancy to persons who make application and demonstrate**
23 **their qualifications therefor in accordance with the following**
24 **subsections of this Section.**

25
26 COMMENT. With regard to the "two-tier" licensing system of which
27 the permit provisions of this section are a part, see the comments
28 following section 5(a), above. Those comments also discuss the lack
29 of any citizenship, age, or residency requirement for licensing.

30 This Model Bill Uniform Act differs from a number of accountancy
31 laws now in effect in having two separate sections--this one and
32 section 7--dealing with individual permits and firm permits,
33 respectively, rather than a single section dealing with both.
34 Clarity seems better served by having two sections, since the
35 requirements are not the same for the two kinds of permits. The
36 difference is one of form and not substance, but it bears mention
37 because it may affect the interchangeability between these
38 provisions and the corresponding provisions of existing laws.

39
40 (b) **Permits shall be initially issued, and renewed, for periods**
41 **of two not more than three years but in any event shall expire**
42 **on the second [specified date] following issuance or renewal.**
43 **Applications for such permits shall be made in such form, and**
44 **in the case of applications for renewal, between such dates,**
45 **as the Board shall by rule specify, and the Board shall grant**
46 **or deny any such application no later than _____ days after**
47 **the application is filed in proper form. In any case where the**
48 **applicant seeks the opportunity to show that issuance or**
49 **renewal of a permit was mistakenly denied, or where the Board**
50 **is not able to determine whether it should be granted or**
51 **denied, the Board may issue to the applicant a provisional**
52 **permit, which shall expire ninety days after its issuance or**

1 when the Board determines whether or not to issue or renew the
2 permit for which application was made, whichever shall first
3 occur.
4

5
6 COMMENT. This provision reflects the pattern of some laws now in
7 effect in contemplating a biennial or triennial rather than an
8 annual renewal. The purpose of this is to make it possible to tie
9 the renewal period to the period for completion of continuing
10 professional education (CPE) requirements, as provided by
11 subsection (e) below.
12

13 (c) An applicant for initial issuance of a permit under this
14 Section shall show--

15
16 (1) that he holds a valid certificate;

17
18 [(2) that he has had two years of experience in the practice
19 of public accountancy or its equivalent, meeting
20 requirements prescribed by the Board by rule; or, if the
21 applicant's educational qualifications comprise a
22 ~~baccalaureate degree and not less than thirty semester~~
23 ~~hours of additional study at least 150 semester hours of~~
24 college education including a baccalaureate degree or
25 higher meeting the requirements set out in Section
26 5(c)(2) of this Act, then that he has had one year of
27 experience in such practice or equivalent;] and
28

29 (3) if the applicant's certificate was issued more than four
30 years prior to his application for issuance of an initial
31 permit under this Section, that he has fulfilled the
32 requirements of continuing professional education that
33 would have been applicable under subsection (e) of this
34 Section if he had secured his initial permit within four
35 years of issuance of his certificate and was now applying
36 under subsection (e) for renewal of such permit.
37
38
39

40 COMMENT. The optional provision appearing in paragraph (2) of this
41 subsection for an experience requirement as a condition to the
42 initial issuance of a permit to practice constitutes one of the two
43 differences between the two levels of licensing contemplated by the
44 statute (the other being the requirement of continuing professional
45 education as a condition to renewal of a permit, in subsection
46 (e)). The provision is shown as optional because the legislative
47 policies of the AICPA and NASBA differ on it. NASBA favors it. In
48 accordance with the AICPA policy statement, Education Requirements
49 for Entry Into the Accounting Profession, experience is not
50 required for the CPA certificate or the permit to practice. AICPA
51 Council has directed, however, that an AICPA ~~Model Bill~~ Uniform Act
52 should include an alternate provision for an experience requirement

1 for use in those states that choose to retain it. The certificate
2 is issued upon a showing that essentially academic requirements
3 (education and examination) have been met; but, before the
4 applicant may engage in practice on his own, which is what the
5 permit to practice entitles him to do, he must get some actual
6 experience in the practice of public accountancy or experience that
7 the board deems equivalent to such experience. The prohibition
8 against a holder of a certificate engaging in the practice of
9 public accountancy without a permit, in section 14(j), excepts
10 certificate holders who so practice as employees of a person or
11 firm holding such a permit specifically to allow certificate
12 holders to acquire the necessary experience, but limited to the
13 period necessary to acquire the experience. It is contemplated
14 that the board will issue rules under section 4(h)(3) specifying
15 the kinds of experience (such as audit practice) necessary to meet
16 the requirement applicable to initial issuance of a permit. The
17 board may think it advisable to require that some specified portion
18 of the experience be current--that is, during a period immediately
19 preceding the application.

20 It should be noted that the second clause of this provision,
21 reducing the amount of experience required when the applicant has
22 additional educational qualifications, would become automatically
23 applicable to all applicants once the time period specified in
24 section 5(c)(2) had expired, and a higher level of educational
25 attainment was required of all applicants.

26 Paragraph (3) is intended to assure that, where an extended
27 period has passed between issuance of a certificate and the
28 certificate holder's first application for a permit to practice,
29 the applicant has fulfilled at least a substantial portion of the
30 CPE requirements that would have been applicable if the initial
31 permit had been more promptly secured and then regularly renewed.

32
33
34 **(d) The Board shall issue a permit or a certificate to a holder**
35 **of a certificate issued by another state upon a showing that--**

36
37
38
39 **(1) The applicant passed the examination required for**
40 **issuance of his certificate with grades that would have**
41 **been passing grades at the time in this State;**

42
43 **(2) The applicant--**

44
45 **(A) meets all current requirements in this State for**
46 **issuance of a certificate at the time application**
47 **is made; or**

48
49 **(B) at the time of the issuance of the applicant's**
50 **certificate in the other state, met all such**
51 **requirements then applicable in this State; or**
52

1 (C) had ~~four~~ five years of experience outside of this
2 state in the practice of public accountancy or
3 meets equivalent meeting requirements prescribed by
4 the Board by rule, after passing the examination
5 upon which his certificate was based and within the
6 ten years immediately preceding his application; and
7
8

9 (3) The applicant meets the requirements of subsection (c)
10 [2 and] (3).
11

12 COMMENT. This provision offers a means of providing for reciprocal
13 recognition of licensees of other states. Reciprocity for
14 certificates is added to the Uniform Act to prevent licensees from
15 a one-tier licensing state from having to renew their certificate
16 in such a state. Paragraph (2) requires a determination that the
17 certificate of the other state has been issued on the basis of
18 education and examination "conditioning" requirements comparable
19 to those of this state, but makes allowance for an experience
20 requirement as a substitute for these.

21 The reciprocity so offered would be limited to CPAs--that is, it
22 would exclude "grandfathered" PAs of other jurisdictions--since it
23 rests upon the applicant having a certificate in the other
24 jurisdiction, and, although there are a few jurisdictions where
25 certificates have been issued to grandfathered public accountants,
26 the term certificate is defined in section 3(b) to refer only to
27 certificates issued after examination.
28

29 (e) ~~An applicant for renewal of a permit under this Section shall~~
30 ~~show that he has fulfilled requirements of continuing~~
31 ~~professional education consisting of no less than 80 hours in~~
32 ~~each two-year renewal period (including no less than 20 hours~~
33 ~~in each year of such period) that has elapsed since the permit~~
34 ~~was last renewed (or, if never renewed, first issued), of such~~
35 ~~general kinds and in such subjects as shall have been~~
36 ~~specified by the Board by rule. The Board may provide by rule~~
37 ~~that fulfillment of continuing professional education~~
38 ~~requirements of other states will be accepted in lieu of the~~
39 ~~foregoing requirements. For renewal of a permit under this~~
40 ~~section an applicant shall show that he/she has completed 120~~
41 ~~hours of continuing professional education during a three-~~
42 ~~year period with a minimum of twenty hours each year. The~~
43 ~~Board may prescribe by rule the content, duration and~~
44 ~~organization of continuing professional education courses~~
45 ~~which contribute to the general professional competence of the~~
46 ~~applicant.~~ The Board may also provide by rule for prorated
47 continuing professional education requirements to be met by
48 applicants whose initial permits were issued substantially
49 less than ~~two~~ three years prior to the renewal date, and it
50 may prescribe by rule special lesser requirements to be met
51 by applicants for permit renewal whose prior permits lapsed
52 substantially prior to their applications for renewal, and

1 regarding whom it would in consequence be inequitable to
2 require a full compliance with all requirements of continuing
3 professional education that would otherwise have been
4 applicable to the period of lapse.
5

6 COMMENT. This provision for mandatory CPE as a condition for
7 renewal of permits to practice is an important provision of this
8 Model Bill Uniform Act aimed at assuring that persons licensed
9 under the bill maintain an acceptable level of current knowledge
10 in their field. ~~The provision for recognition of the requirements~~
11 ~~of other states is intended to lessen the possible burdens of a~~
12 ~~practitioner who holds a permit in several states whose deadlines,~~
13 ~~procedures, and/or substantive requirements vary in minor but~~
14 ~~potentially onerous details. When establishing credit for all~~
15 ~~courses, state boards are to acknowledge the equal importance of~~
16 ~~courses to CPAs who offer specialized services other than~~
17 ~~traditional public accounting to their clients, and maintain the~~
18 ~~professional expertise of CPAs who offer such specialized services.~~
19

20 (f) The Board shall charge a fee for each application for initial
21 issuance or renewal of a permit under this Section in an
22 amount prescribed by the Board by rule.
23

24 (g) Applicants for initial issuance or renewal of permits under
25 this Section shall in their applications list all states in
26 which they have applied for or hold certificates or permits,
27 and each holder of or applicant for a permit under this
28 Section shall notify the Board in writing, within 30 days
29 after its occurrence, of any issuance, denial, revocation, or
30 suspension of a certificate or permit by another state.
31

32
33
34 **SECTION 7**
35 **PERMITS TO PRACTICE--FIRMS**
36

37 (a) The Board shall grant or renew permits to practice public
38 accountancy to firms that make application and demonstrate
39 their qualifications therefor in accordance with the following
40 subsections of this Section.
41

42 COMMENT. This ~~Model Bill~~ Uniform Act departs from the pattern of
43 some accountancy laws now in effect not only in having separate
44 sections dealing with individual permits and firm permits, as
45 discussed in the comment to section 6(a), but also in eliminating
46 any separate requirement for the registration of firms and of
47 offices. The information-gathering and other functions accomplished
48 by such registration should be equally easily accomplished as part
49 of the process of issuing firm permits under this section. The
50 difference is, again, one of form more than of substance but one
51 that should be kept in mind if consideration is given to fitting
52

1
2 the permit provisions of this ~~Model-Bill~~ Uniform Act into an
3 existing law.

4 As pointed out in the comment following section 3(c), above,
5 because a firm is defined to include a sole proprietorship, the
6 permits contemplated by this section would be required of sole
7 practitioners as well as larger practice entities. To avoid
8 unnecessary duplication of paperwork, a board could, if it deemed
9 appropriate, offer a joint application form for individual and firm
10 permits.
11

12
13 (b) Permits shall be initially issued and renewed for periods of
14 ~~two not more than three~~ years but in any event expiring on
15 ~~the second~~ [specified date] following issuance or renewal.
16 Applications for permits shall be made in such form, and in
17 the case of applications for renewal, between such dates as
18 the Board may by rule specify, and the Board shall grant or
19 deny any such application no later than _____ days after the
20 application is filed in proper form. In any case where the
21 applicant seeks the opportunity to show that issuance or
22 renewal of a permit was mistakenly denied or where the Board
23 is not able to determine whether it should be granted or
24 denied, the Board may issue to the applicant a provisional
25 permit, which shall expire ninety days after its issuance or
26 when the Board determines whether or not to issue or renew the
27 permit for which application was made, whichever shall first
28 occur.
29

30 COMMENT. See the comment following section 6(b) regarding the
31 ~~two-year~~ renewal period.
32

33 (c) An applicant for initial issuance or renewal of a permit to
34 practice under this Section shall be required to show that
35 each partner, officer, or shareholder who regularly works in
36 this State, and each employee holding a certificate who
37 regularly works in this State [except for employees who have
38 not yet accumulated sufficient experience to qualify for a
39 permit under Section 6(c)(2)], holds a valid individual permit
40 to practice issued under Section 6 of this Act or the
41 corresponding provision of prior law and that each other
42 partner, officer, or shareholder holds a certificate and is
43 licensed to practice public accountancy in some other state.
44

45
46 COMMENT. The limitation of the requirement of individual permits
47 to partners, officers, shareholders, and employees who regularly
48 work in the state is intended to allow some latitude for occasional
49 visits and limited assignments within the state of firm personnel
50 who are based elsewhere.

51 The bracketed phrase is intended to make provision, in the event
52 that the optional provision of section 6(c), requiring experience

1 in the practice of public accountancy as a condition for issuance
2 of a permit, is adopted for certificate holders to acquire that
3 experience without running afoul of requirements that they have a
4 permit in order to practice. See also section 14(j).

5 It should be pointed out that, since section 8 contemplates
6 continuation of a grandfathered class of public accountants
7 entitled to individual permits to practice (and thereby entitled
8 to perform the audit function), and since this provision requires,
9 for firm permits to practice only, that all partners, officers, and
10 shareholders who regularly work within the state hold permits to
11 practice but does not require them to hold certificates, the effect
12 is to allow, for wholly intrastate firms, mixed partnerships or
13 corporations of CPAs and PAs. However, because when some partners,
14 officers, or shareholders are in other states they are required to
15 have a certificate, interstate firms of mixed character would not
16 be entitled to firm permits.

17
18 **(d) An applicant for initial issuance or renewal of a permit to**
19 **practice under this Section shall be required to register each**
20 **office of the firm within this State with the Board and to**
21 **show that each such office is under the charge of a person**
22 **holding a valid permit to practice issued under Section 6 of**
23 **this Act or the corresponding provision of prior law.**

24
25 **(e) The Board shall charge a fee for each application for initial**
26 **issuance or renewal of a permit under this Section in an**
27 **amount prescribed by the Board by rule.**

28
29 **(f) Applicants for initial issuance or renewal of permits under**
30 **this Section shall in their application list all states in**
31 **which they have applied for or hold permits to practice public**
32 **accountancy, and each holder of or applicant for a permit**
33 **under this Section shall notify the Board in writing, within**
34 **30 days after its occurrence, of any change in the identities**
35 **of partners, officers, or shareholders who work regularly**
36 **within this State, any change in the number or location of**
37 **offices within this State, any change in the identity of the**
38 **persons in charge of such offices, and any issuance, denial,**
39 **revocation, or suspension of a permit by any other state.**

40
41
42 **NOTE:** The following provision is presented as optional, because
43 the policies of the AICPA and NASBA presently differ with regard
44 to it, as explained in the comment.

45
46 **Optional Section 7(g)**
47

48
49 **(g) The Board may by rule require, on either a uniform or a random**
50 **basis, as a condition to renewal of permits under this**
51 **Section, that applicants undergo quality reviews conducted no**
52 **more frequently than once every three years in such fashion**

1 manner and producing such satisfactory result as the Board may
2 specify, provided, however, that any such requirement (1)
3 shall be promulgated reasonably in advance of the time when
4 it is first required to be met, and (2) shall include
5 reasonable provision for compliance by an applicant's showing
6 that it has undergone a satisfactory quality review performed
7 for other purposes which was substantially equivalent to
8 quality reviews generally required pursuant to this subsection
9 and completion of such review was within the three years
10 immediately preceding the renewal period.

11
12 COMMENT. The AICPA and NASBA both agree that periodic quality
13 reviews are a ~~useful~~ an important means of maintaining the general
14 quality of professional practice. ~~However, the AICPA believes that~~
15 ~~such reviews should be undertaken voluntarily and not under the~~
16 ~~auspices of a government agency, whereas NASBA believes that state~~
17 ~~boards of accountancy should be authorized to require that such~~
18 ~~reviews be undertaken as a condition for the renewal of permits to~~
19 ~~practice. NASBA believes that state boards of accountancy should~~
20 be authorized to require that such reviews be undertaken as a
21 condition for the renewal of permits to practice. The AICPA,
22 however, believes that such reviews should not be undertaken under
23 the auspices of a government agency since the AICPA has implemented
24 a nationwide program for its members which is conducted pursuant
25 to published, well-established standards and procedures. Thus,
26 this provision is presented as an optional one.

27 In the interests of flexibility and of avoiding a sudden,
28 wholesale imposition of requirements that could not effectively be
29 met, the NASBA-favored provision would give the Board latitude with
30 regard to when and whether to require reviews and also with regard
31 to whether, if they are required, they should be imposed uniformly
32 upon all applicants for renewal, or only on a random basis. The
33 proviso is intended to recognize that there are other valid reasons
34 besides state regulation for which firms may undergo quality
35 reviews ~~(for example, as a condition to membership in the AICPA's~~
36 ~~Division for Firms) and to avoid unnecessary duplication of such~~
37 ~~reviews. (for example, as a condition to membership in the AICPA).~~
38 It is also intended to avoid unnecessary duplication of such
39 reviews and provide for the acceptance of quality reviews performed
40 by other groups or organizations whose work could be relied on by
41 the State Board of Accountancy. In the event consideration is to
42 be given to the establishment of a quality review requirement by
43 a State Board, the AICPA believes that any documents developed in
44 connection with the review should be confidential. Thus, the AICPA
45 believes that the optional section 7(g) should also indicate that
46 neither the State Board nor any other third party should have
47 access to the workpapers, report, letter of comments and response
48 thereto related to reviews performed in conformity with the
49 provisions of this subsection. The fact that the quality reviews
50 required for the AICPA's Division for Firms are on a triennial
51 cycle, while firm permits under this provision are renewed
52 biennially, should present no difficulty: A requirement for quality

1 ~~reviews under this provision could easily enough give full~~
2 ~~recognition to such triennial reviews without requiring a change~~
3 ~~in their frequency by, for example, requiring that a quality~~
4 ~~review has been conducted within three years preceding the time~~
5 ~~when application is made for renewal of the permit, rather than~~
6 ~~within the two-year permit renewal period.~~

7 The term quality review is defined in section 3(h).

8
9
10
11 **SECTION 8**

12 **PUBLIC ACCOUNTANTS AND FIRMS OF PUBLIC ACCOUNTANTS**

13
14 **Persons and firms who on the effective date of this Act hold**
15 **registrations as public accountants and permits to practice public**
16 **accountancy issued under prior law of this State shall be entitled**
17 **to have their permits to practice renewed under Sections 6 and 7**
18 **of this Act, provided that they fulfill all requirements for**
19 **renewal under those provisions. So long as such licensees hold**
20 **valid permits to practice under Sections 6 and 7, they shall be**
21 **entitled to engage in the practice of public accountancy to the**
22 **same extent as other holders of such permits, and in addition they**
23 **shall be entitled to use the designations "public accountants" and**
24 **"PA," but no other designation, in connection with the practice of**
25 **public accountancy.**

26
27
28
29 COMMENT. This provision would be of use in jurisdictions where
30 under the previous law a class of "grandfathered" public
31 accountants was licensed to perform the audit function. Many
32 accountancy laws now in effect have substantially more elaborate
33 provisions to deal with public accountants, but a comparatively
34 simple provision such as this one should be sufficient. Those
35 coming within this provision would, like holders of certificates,
36 be required to have a permit to practice (under section 6 in the
37 case of individuals, and section 7 for firms) in order to engage
38 in the practice of public accountancy, and they would be subject
39 to the same continuing professional education requirements for
40 renewal of such permits and the same rules respecting all aspects
41 of the practice of public accountancy, as holders of certificates.
42 They would in fact be treated the same as holders of certificates
43 for virtually all purposes, the principal differences being in the
44 titles they and their firms would be permitted to use, and in a
45 lack of reciprocity to comparable licensees of other states (see
46 comments following sections 6(d) and 7(c)).

1
2
3 **SECTION 9**
4 **APPOINTMENT OF SECRETARY OF STATE AS AGENT**
5

6 Application by a person or a firm not a resident of this State
7 for a certificate under Section 5 of this Act or a permit to
8 practice under Section 6 or Section 7 shall constitute appointment
9 of the Secretary of State as the applicant's agent upon whom
10 process may be served in any action or proceeding against the
11 applicant arising out of any transaction or operation connected
12 with or incidental to the practice of public accountancy by the
13 applicant within this State.
14

15 COMMENT. In many laws now in effect, a provision of this kind
16 appears in each of the sections dealing with the issuance of a
17 certificate or any form of permit. Since there are a number of such
18 provisions in this ~~Model Bill~~ Uniform Act (as there are in many
19 existing laws), repetition is here avoided by having this single
20 comprehensive provision.
21
22
23

24 **SECTION 10**
25 **ENFORCEMENT AGAINST HOLDERS OF CERTIFICATES**
26 **AND PERMITS**
27

28 (a) After notice and hearing pursuant to Section 12 of this Act,
29 the Board may revoke any certificate or permit issued under
30 Sections 5, 6, or 7 of this Act or corresponding provisions
31 of prior law; suspend any such certificate or permit or refuse
32 to renew any such certificate and/or permit for a period of
33 not more than five years; reprimand, censure, or limit the
34 scope of practice of any licensee; impose an administrative
35 fine not exceeding \$1000, or place any licensee on probation,
36 all with or without terms, conditions, and limitations, for
37 any one or more of the following reasons:
38

- 39 (1) Fraud or deceit in obtaining a certificate or permit;
40
41 (2) Cancellation, revocation, suspension or refusal to renew
42 authority to engage in the practice of public accountancy
43 in any other state for any cause;
44
45 (3) Failure, on the part of a holder of a permit under
46 Sections 6 or 7, to maintain compliance with the
47 requirements for issuance or renewal of such permit or
48 to report changes to the Board under Sections 6(g) or
49 7(f);
50
51 (4) Revocation or suspension of the right to practice before
52 any state or federal agency;

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- (5) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the filing or failure to file his own income tax returns;
- (6) Violation of any provision of this Act or rule promulgated by the Board under this Act;
- (7) Violation of any rule of professional conduct promulgated by the Board under Section 4(h)(4) of this Act;
- (8) Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this State, or of any other state if the acts involved would have constituted a crime under the laws of this State;
- (9) Performance of any fraudulent act while holding a certificate or permit issued under this Act or prior law; and
- (10) Any conduct reflecting adversely upon the licensee's fitness to engage in the practice of public accountancy.

COMMENT. This provision departs from the typical corresponding provision of accountancy laws now in effect in two respects. One of these is the provision for an administrative fine of up to \$1000, in addition to other possible penalties. There is such a provision in some accountancy laws; whether such a provision is permissible in the laws of other states is a matter for individual determination in each jurisdiction.

The other departure from the common pattern is in paragraph (10), a catch-all provision which is phrased in terms of conduct reflecting adversely on the licensee's fitness to engage in the practice of public accountancy, rather than the broader and vaguer conventional phrase, "conduct discreditable to the accounting profession." This narrower provision is intended to avoid problems of vagueness and overbreadth. A similar change is involved in the requirement of "good character" in section 5(b).

- (b) In lieu of or in addition to any remedy specifically provided in subsection (a) of this Section, the Board may require of a licensee--
 - (1) A quality review conducted in such fashion as the Board may specify; and/or
 - (2) Satisfactory completion of such continuing professional education programs as the Board may specify.

COMMENT. This subsection is intended to provide rehabilitative remedies for enforcement proceedings against licensees, in addition

1
2 to (or in place of) the more traditional punitive remedies provided
3 in subsection (a). The term quality review is defined in section
4 3(h).

- 5
6 (c) In any proceeding in which a remedy provided by subsections
7 (a) or (b) of this Section is imposed, the Board may also
8 require the respondent licensee to pay the costs of the
9 proceeding.

10
11 COMMENT. This provision appears appropriate in terms of both equity
12 and the economics of board operations.

13
14 **SECTION 11**
15 **ENFORCEMENT PROCEDURES--INVESTIGATIONS**

- 16
17 (a) The Board may, upon receipt of a complaint or other
18 information suggesting violations of this Act or of the rules
19 of the Board, conduct investigations to determine whether
20 there is probable cause to institute proceedings under
21 Sections 12, 15, or 16 of this Act against any person or firm
22 for such violation, but an investigation under this Section
23 shall not be a prerequisite to such proceedings in the event
24 that a determination of probable cause can be made without
25 investigation. In aid of such investigations, the Board or the
26 chairman thereof may issue subpoenas to compel witnesses to
27 testify and/or to produce evidence.

- 28
29 (b) The Board may designate a member, or any other person of
30 appropriate competence, to serve as investigating officer to
31 conduct an investigation. Upon completion of an investigation,
32 the investigating officer shall file a report with the Board.
33 The Board shall find probable cause or lack of probable cause
34 upon the basis of the report or shall return the report to the
35 investigating officer for further investigation. Unless there
36 has been a determination of probable cause, the report of the
37 investigating officer, the complaint, if any, the testimony
38 and documents submitted in support of the complaint or
39 gathered in the investigation, and the fact of pendency of the
40 investigation shall be treated as confidential information and
41 shall not be disclosed to any person except law enforcement
42 authorities and, to the extent deemed necessary in order to
43 conduct the investigation, the subject of the investigation,
44 persons whose complaints are being investigated, and witnesses
45 questioned in the course of the investigation.

- 46
47 (c) Upon a finding of probable cause, if the subject of the
48 investigation is a licensee, the Board shall direct that a
49 complaint be issued under Section 12 of this Act, and if the
50 subject of the investigation is not a licensee, the Board
51 shall take appropriate action under Sections 15 or 16 of this
52 Act. Upon a finding of no probable cause, the Board shall

1 close the matter and shall thereafter release information
2 relating thereto only with the consent of the person or firm
3 under investigation.
4

- 5 (d) The Board may review the publicly available professional work
6 of licensees on a general and random basis, without any
7 requirement of a formal complaint or suspicion of impropriety
8 on the part of any particular licensee. In the event that as
9 a result of such review the Board discovers reasonable grounds
10 for a more specific investigation, the Board may proceed under
11 subsections (a) through (c) of this Section.
12

13 COMMENT. This provision contemplates "positive enforcement," which
14 is to say review of the professional work of licensees without any
15 triggering requirement of receipt of complaints.
16

17
18
19 **SECTION 12**

20 **ENFORCEMENT PROCEDURES--HEARINGS BY THE BOARD**
21

- 22 (a) In any case where probable cause with respect to a violation
23 by a licensee has been determined by the Board, whether
24 following an investigation under Section 11 of this Act, or
25 upon receipt of a written complaint furnishing grounds for a
26 determination of such probable cause, or upon receipt of
27 notice of a decision by the Board of Accountancy of another
28 state furnishing such grounds, the Board shall issue a
29 complaint setting forth appropriate charges and set a date
30 for hearing before the Board on such charges. The Board shall,
31 not less than 30 days prior to the date of the hearing, serve
32 a copy of the complaint and notice of the time and place of
33 the hearing upon the licensee, together with a copy of the
34 Board's rules governing proceedings under this Section, either
35 by personal delivery or by mailing a copy thereof by
36 registered mail to the licensee at his address last known to
37 the Board.
38
- 39 (b) A licensee against whom a complaint has been issued under this
40 Section shall have the right, reasonably in advance of the
41 hearing, to examine and copy the report of investigation, if
42 any, and any documentary or testimonial evidence and summaries
43 of anticipated evidence in the Board's possession relating to
44 the subject matter of the complaint. The Board's rules
45 governing proceedings under this Section shall specify the
46 manner in which such right may be exercised.
47
48
49
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1
2 COMMENT. Although the procedures followed by many boards of
3 accountancy now include, on either a formal or an informal basis,
4 prehearing disclosure to the respondent of the evidence that will
5 be offered in support of a complaint, it seems desirable to embody
6 so fundamental a procedural right in the governing statute.
7

8 (c) In a hearing under this Section the respondent licensee may
9 appear in person (or, in the case of a firm, through a
10 partner, officer, director, or shareholder) and/or by counsel,
11 examine witnesses and evidence presented in support of the
12 complaint, and present evidence and witnesses on his own
13 behalf. The licensee shall be entitled, on application to the
14 Board, to the issuance of subpoenas to compel the attendance
15 of witnesses and the production of documentary evidence.
16

17 (d) The evidence supporting the complaint shall be presented by
18 the investigating officer, by a Board member designated for
19 that purpose, or by counsel. A Board member who presents the
20 evidence, or who has conducted the investigation of the matter
21 under Section 11 of this Act, shall not participate in the
22 Board's decision of the matter.
23

24 COMMENT. The provision disqualifying a board member who presents
25 the evidence or who has investigated the case from participating
26 in the board's decision of the case again reflects common practice,
27 but like subsection (b) it appears to involve a sufficiently
28 fundamental point to merit explicit mention in the statute. The
29 purpose is, of course, to separate the prosecutorial and
30 adjudicative functions of the board.

31 Some or all of the procedural matters of this kind included in
32 this ~~Model Bill~~ Uniform Act may be dealt with by statutes of
33 general applicability, such as Administrative Procedure Acts, and
34 so be unnecessary for inclusion in an accountancy law.
35

36 (e) In a hearing under this Section the Board shall be advised by
37 counsel, who shall not be the same counsel who presents or
38 assists in presenting the evidence supporting the complaint
39 under subsection (d) of this Section.
40

41 COMMENT. The comments under subsection (d) are applicable here
42 also. It should be noted that this provision would not require two
43 lawyers in all cases: It simply requires that if there is counsel
44 involved in presenting the complaint, in addition to counsel
45 advising the Board, it must not be the same counsel. If there were
46 two counsel, they might both be provided by the state attorney
47 general's office, so long as they were firmly insulated from each
48 other.
49

50 (f) In a hearing under this Section the Board shall not be bound
51 by technical rules of evidence.
52

1 (g) In a hearing under this Section a stenographic or electronic
2 record shall be made and filed with the Board. A transcript
3 need not be prepared unless review is sought under subsection
4 (j) of this Section or the Board determines that there is
5 other good cause for its preparation.
6

7 (h) In a hearing under this Section a recorded vote of a majority
8 of all members of the Board then in office (excluding members
9 disqualified by reason of subsection (d) of this Section)
10 shall be required to sustain any charge and to impose any
11 penalty with respect thereto.
12

13
14 (i) If, after service of a complaint and notice of hearing as
15 provided in subsection (a) of this Section, the respondent
16 licensee fails to appear at the hearing, the Board may proceed
17 to hear evidence against the licensee and may enter such order
18 as it deems warranted by the evidence, which order shall be
19 final unless the licensee petitions for review thereof under
20 subsection (j) of this Section, provided, however, that within
21 thirty days from the date of any such order, upon a showing
22 of good cause for the licensee's failure to appear and defend,
23 the Board may set aside the order and schedule a new hearing
24 on the complaint, to be conducted in accordance with
25 applicable subsections of this Section.
26

27
28 (j) Any person or firm adversely affected by any order of the
29 Board entered after a hearing under this Section may obtain
30 review thereof by filing a written petition for review with
31 the _____ Court within thirty days after the entry of said
32 order. The procedures for review and the scope of the review
33 shall be as specified in [State Administrative Procedure Act,
34 or other statute providing for judicial review of actions of
35 administrative agencies];
36

37 COMMENT. This provision would depart from the pattern of some
38 accountancy laws now in effect in providing that, where a decision
39 of the Board is appealed to a court, the court will not conduct a
40 trial de novo but rather will review the Board's decision on the
41 same basis as ordinarily applies in cases of judicial review of
42 decisions by administrative agencies: That is, reversal will be
43 based on errors of law or procedure, or on a lack of substantial
44 evidence to support factual determinations. If in a given state
45 there is no Administrative Procedure Act or analogous statute, it
46 will be necessary to spell out the standards and procedures in this
47 provision.

48 The right of appeal is not limited to persons or firms against
49 whom disciplinary proceedings are specifically directed but
50 includes anyone who is "adversely affected." Thus, a partner in a
51

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1 firm that was subjected to discipline in a given case, or a firm
2 of which a partner was disciplined, might be adversely affected by
3 the Board's order so as to be entitled to appeal it.
4
5

6 (k) In any case where the Board renders a decision imposing
7 discipline against a licensee under this Section and Section
8 10 of this Act, the Board shall examine its records to
9 determine whether the licensee holds a certificate or a permit
10 to practice public accountancy in any other state; and if so,
11 the Board shall notify the Board of Accountancy of such other
12 state of its decision, by mail, within forty-five days of
13 rendering the decision. The Board may also furnish information
14 relating to proceedings resulting in disciplinary action to
15 other public authorities and to private professional
16 organizations having a disciplinary interest in the licensee.
17

18 COMMENT. The forty-five-day period of delay here specified, before
19 a board which has rendered a disciplinary decision on a licensee
20 notifies boards of other states of the decision, is intended to be
21 longer than the period for the filing of an appeal to the courts
22 from a decision of the board and thus to avoid requiring such
23 notification in cases where an appeal has been taken but not yet
24 resolved. The period for taking such an appeal is specified in
25 section 12(j) as thirty days, which accounts for the forty-five-day
26 period here. If the time for filing such an appeal specified in the
27 accountancy law (or in a statute of general applicability) was
28 other than thirty days, the period appropriate for this provision
29 might differ correspondingly.
30
31
32

33 **SECTION 13**
34 **REINSTATEMENT**
35

36 (a) In any case where the Board has suspended or revoked a
37 certificate or a permit or refused to renew a certificate or
38 permit, the Board may, upon application in writing by the
39 person or firm affected and for good cause shown, modify the
40 suspension, or reissue the certificate or permit.
41

42 (b) The Board shall by rule specify the manner in which such
43 applications shall be made, the times within which they shall
44 be made, and the circumstances in which hearings will be held
45 thereon.
46

47 (c) Before reissuing, or terminating the suspension of, a
48 certificate or permit under this Section, and as a condition
49 thereto, the Board may require the applicant therefor to show
50 successful completion of specified continuing professional
51 education; and the Board may make the reinstatement of a
52 certificate or permit conditional and subject to satisfactory

1 completion of a quality review conducted in such fashion as
2 the Board may specify.
3

4 COMMENT. The term quality review is defined in section 3(h).
5

6 **SECTION 14**
7 **UNLAWFUL ACTS**
8

9 (a) No person or firm not holding a valid permit issued under
10 Sections 6 or 7 of this Act shall issue a report on financial
11 statements of any other person, firm, organization, or
12 governmental unit. This prohibition does not apply to an
13 officer, partner, or employee of any firm or organization
14 affixing his signature to any statement or report in reference
15 to the financial affairs of such firm or organization with any
16 wording designating the position, title, or office that he
17 holds therein; nor prohibit any act of a public official or
18 employee in the performance of his duties as such; nor
19 prohibit the performance by any persons of other services
20 involving the use of accounting skills, including the
21 preparation of tax returns, management advisory services, and
22 the preparation of financial statements without the issuance
23 of reports thereon.
24

25 COMMENT. This provision, giving application to the definition of
26 report in section 3(i) above, is the cornerstone prohibition of
27 the bill, reserving the performance of those professional services
28 calling upon the highest degree of professional skill and having
29 greatest consequence for persons using financial
30 statements--namely, the audit function--to licensees. It is so
31 drafted as to make as clear and emphatic as possible the limited
32 nature of this exclusively reserved function and the rights of
33 unlicensed persons to perform all other functions.
34

35 (b) The prohibition contained in subsection (a) of this Section
36 is applicable to issuance, by a person or firm not holding a
37 valid permit, of a report using any form of language
38 conventionally used by licensees respecting a review of
39 financial statements.
40

41 COMMENT. This provision is intended to extend the reservation of
42 the audit function to another kind of professional work that also
43 calls for special skill and carries particular consequence for
44 users of financial statements, albeit in each respect to a lesser
45 degree than the audit function: namely, the issuance of reports on
46 reviews of financial statements. The AICPA's Statement on Standards
47 for Accounting and Review Services No. 1 (SSARS 1) sets out the
48 standards to be met in such a review and specifies a form of report
49 to be issued following such a review, which report makes explicit
50 reference to the applicable standards. The reference in this
51 subsection to a "form of language conventionally used by licensees"
52

1 is intended to prevent issuance by nonlicensees of reports using
2 that standard language or language deceptively similar to it.

3 Because the reasons for prohibiting unlicensed persons from the
4 issuing of reports on reviews and on compilations (dealt with in
5 subsection (c) below), though similar in kind to those that require
6 prohibiting such persons to issue audit reports, are less
7 compelling in degree (since lesser levels of assurance are
8 involved), it seems sensible to set out these additional
9 prohibitions in separate subsections.

10
11 (c) The prohibition contained in subsection (a) of this Section
12 is applicable to issuance by a person or firm not holding a
13 valid permit of a report using any form of language
14 conventionally used by licensees with respect to a compilation
15 of financial statements.
16

17 COMMENT. See the comment following subsection (b).
18

19 (d) No person not holding a valid certificate shall use or assume
20 the title or designation "certified public accountant," or the
21 abbreviation "CPA" or any other title, designation, words,
22 letters, abbreviation, sign, card, or device tending to
23 indicate that such person is a certified public accountant.
24

25 COMMENT. This subsection prohibits the use by persons not holding
26 certificates of the two titles, "certified public accountant" and
27 "CPA," that are specifically and inextricably tied to the granting
28 of a certificate as certified public accountant under section 5.
29 It should be noted that the board would have authority under
30 section 4(h)(6) to promulgate rules governing the use of these
31 titles by persons who hold certificates but not permits to
32 practice.
33

34 (e) No firm shall assume or use the title or designation
35 "certified public accountant," or the abbreviation "CPA," or
36 any other title, designation, words, letters, abbreviation,
37 sign, card, or device tending to indicate that such firm is
38 composed of certified public accountants, unless (1) the firm
39 holds a valid permit issued under Section 7 of this Act, and
40 (2) all partners, officers, and shareholders of the firm hold
41 certificates.
42

43 COMMENT. Like the preceding subsection, this one restricts use of
44 the two titles "certified public accountant" and "CPA," but in this
45 instance by firms, requiring the holding of a firm permit to
46 practice.
47

48 (f) No person shall assume or use the title or designation "public
49 accountant," or the abbreviation "PA," or any other title,
50 designation, words, letters, abbreviation, sign, card, or
51
52

1 device tending to indicate that such person is a public
2 accountant unless he holds a valid permit issued under Section
3 6 of this Act.
4

5 COMMENT. This subsection, and the one that follows, reserve the
6 title "public accountant" and its abbreviation in the same fashion
7 as subsections (d) and (e) do for the title "certified public
8 accountant" and its abbreviation. The two provisions would of
9 course only be required in a jurisdiction where there were
10 grandfathered public accountants as contemplated by section 8.
11

12 (g) No firm not holding a valid permit issued under Section 7 of
13 this Act shall assume or use the title or designation "public
14 accountant," the abbreviation "PA," or any other title,
15 designation, words, letters, abbreviation, sign, card, or
16 device tending to indicate that such firm is composed of
17 public accountants.
18

19 COMMENT. See the comment following subsection (f).
20

21 (h) No person or firm not holding a valid permit issued under
22 Sections 6 or 7 of this Act shall assume or use the title or
23 designation "certified accountant," "chartered accountant,"
24 "enrolled accountant," "licensed accountant," "registered
25 accountant," "accredited accountant," or any other title or
26 designation likely to be confused with the titles "certified
27 public accountant" or "public accountant," or use any of the
28 abbreviations "CA," "EA," "LA," "RA," "AA," or similar
29 abbreviation likely to be confused with the abbreviations
30 "CPA" or "PA," provided, however, that a holder of a
31 certificate who does not also hold a permit may use the titles
32 pertaining to such certificate in any manner not prohibited
33 by rules promulgated by the Board under Section 4(h)(6) of
34 this Act.
35
36

37 COMMENT. This provision is intended to supplement the prohibitions
38 of subsections (d) through (g) on use of titles by prohibiting
39 other titles that may be misleadingly similar to the titles
40 specifically reserved to licensees or that otherwise suggest that
41 their holders are licensed.
42
43
44

45 (i) No person or firm not holding a valid permit issued under
46 Sections 6 or 7 of this Act shall assume or use any title or
47 designation that includes the words "accountant," "auditor,"
48 or "accounting," in connection with any other language
49 (including the language of a report) that implies that such
50 person or firm holds such a permit or has special competence
51 as an accountant or auditor, provided, however, that this
52 subsection does not prohibit any officer, partner, or employee

1 of any firm or organization from affixing his signature to any
2 statement in reference to the financial affairs of such firm
3 or organization with any wording designating the position,
4 title, or office that he holds therein nor prohibit any act
5 of a public official or employee in the performance of his
6 duties as such.

7
8 COMMENT. Like the preceding subsection, this provision is intended
9 to supplement the prohibitions of subsections (d) through (g), by
10 prohibiting other titles which may be misleadingly similar to the
11 specifically reserved titles or that otherwise suggest licensure.
12 In the interest of making the prohibition against the issuance by
13 unlicensed persons of reports on audits, reviews, and compilations
14 as tight and difficult to evade as possible, there is also some
15 overlap between this provision and the prohibitions in subsections
16 (a) through (c).

17
18 (j) No person holding a certificate shall engage in the practice
19 of public accountancy unless [(1)] he also holds a valid
20 permit issued under Section 6 of this Act [or (2) he is an
21 employee (and not a partner, officer or shareholder) of a firm
22 holding such a permit issued under Section 7 of this Act and
23 has not been such an employee long enough to meet the
24 experience requirement prescribed by Section 6(c)(2) for an
25 individual permit to practice].

26
27 COMMENT. As pointed out in the comment under section 3(g), where
28 the term "practice of public accountancy" is defined, this
29 prohibition is so framed that it does not prevent the public at
30 large from offering or performing accounting services of any kind,
31 because it applies only to holders of certificates. For certificate
32 holders, on the other hand, it has the effect of requiring that
33 they secure a permit before engaging in any aspect of the practice
34 of public accountancy, even if it be incidental to some other
35 occupation. However, practice of public accountancy is so defined
36 in section 3(g) as to be limited to the performance or offering of
37 services in circumstances where the person involved also holds
38 himself out as having a certificate (or, if a firm, as having a
39 permit). As explained in the comment following section 3(g), the
40 purpose of the "holding out" limitation is to avoid unnecessarily
41 broad application of the requirement of this provision that
42 certificate holders also have a permit before engaging in the
43 practice of public accountancy. The board is given authority by
44 section 4(h)(5) to prescribe what actions and circumstances
45 constitute a "holding out" for purposes of these provisions.

46 The reason for the bracketed clause (2), with its exception for
47 certificate holders to practice public accountancy as employees of
48 a person or firm holding a permit, would be to allow certificate
49 holders to acquire the experience required by section 6(c)(2), to
50 qualify them for permits. That provision, however, is an optional
51 one. If in a particular law there was no experience requirement for
52 a permit, it would be appropriate to omit clause (2) also.

1
2 (k) No person or firm holding a permit under this Act shall engage
3 in the practice of public accountancy using a professional or
4 firm name or designation that is misleading about the legal
5 form of the firm, or about the persons who are partners,
6 officers, or shareholders of the firm, or about any other
7 matter, provided, however, that names of one or more former
8 partners or shareholders may be included in the name of a firm
9 or its successor.

10
11 COMMENT. This prohibition with regard to misleading firm names
12 reflects a provision commonly found in ethical codes. Unlike the
13 typical such provision, however, it does not permit a partner
14 surviving the death or withdrawal of all other partners to continue
15 to practice under the partnership name after becoming a sole
16 practitioner. The reason for allowing such continued use of a firm
17 name is, of course, equity to the surviving practitioner, but the
18 countervailing consideration, which dictated its omission here, is
19 that by suggesting the existence of a partnership when in fact
20 there is only a sole proprietorship, such a name is inherently
21 misleading. As a practical matter, of course, in such circumstances
22 there would be a grace period simply because no enforcement action
23 would be brought immediately after the death of the former partner,
24 but a fixed grace period of extended duration appears unnecessary.

25
26 (l) None of the foregoing provisions of this Section shall have
27 any application to a person or firm holding a certification,
28 designation, degree, or license granted in a foreign country
29 entitling the holder thereof to engage in the practice of
30 public accountancy or its equivalent in such country, whose
31 activities in this State are limited to the provision of
32 professional services to persons or firms who are residents
33 of, governments of, or business entities of the country in
34 which he holds such entitlement, who issues no reports with
35 respect to the financial statements of any other persons,
36 firms, or governmental units in this State, and who does not
37 use in this State any title or designation other than the one
38 under which he practices in such country, followed by a
39 translation of such title or designation into the English
40 language, if it is in a different language, and by the name
41 of such country.

42
43
44
45 COMMENT. The right spelled out in this provision, of foreign
46 licensees to provide services in the state to foreign-based
47 clients, looking to the issuance of reports only in foreign
48 countries, is essentially what foreign licensees have a right to
49 do under most laws now in effect, simply because no provision in
50 those laws restricts such a right. Insofar as the foreign titles
51 used by foreign licensees might otherwise run afoul of standard
52 prohibitions with respect to titles (such as one on titles

1 misleadingly similar to "CPA"), on the other hand, this provision
2 would grant a dispensation not found in most laws now in force.
3
4

5 **SECTION 15**
6 **INJUNCTIONS AGAINST UNLAWFUL ACTS**
7

8 Whenever, as a result of an investigation under Section 11 of
9 this Act or otherwise, the Board believes that any person or firm
10 has engaged, or is about to engage, in any acts or practices which
11 constitute or will constitute a violation of Section 14 of this
12 Act, the Board may make application to the appropriate court for
13 an order enjoining such acts or practices, and upon a showing by
14 the Board that such person or firm has engaged, or is about to
15 engage, in any such acts or practices, an injunction, restraining
16 order, or other order as may be appropriate shall be granted by
17 such court.
18
19

20 **SECTION 16**
21 **CRIMINAL PENALTIES**
22

- 23 (a) Whenever, by reason of an investigation under Section 11 of
24 this Act or otherwise, the Board has reason to believe that
25 any person or firm has knowingly engaged in acts or practices
26 that constitute a violation of Section 14 of this Act, the
27 Board may bring its information to the attention of the
28 Attorney General of this State (or other appropriate law
29 enforcement officer) who may, in his discretion, cause
30 appropriate criminal proceedings to be brought thereon.
31
32 (b) Any person or firm who knowingly violates any provision of
33 Section 14 of this Act shall be guilty of a misdemeanor, and
34 upon conviction thereof shall be subject to a fine of not more
35 than \$_____ or to imprisonment for not more than one
36 year, or to both such fine and imprisonment.
37
38

39 COMMENT. The word "knowingly" is included in this provision to
40 assure that criminal penalties will not be applied in the absence
41 of conscious wrongdoing.
42
43

44 **SECTION 17**
45 **SINGLE ACT EVIDENCE OF PRACTICE**
46

47 In any action brought under Sections 12, 15, or 16 of this Act,
48 evidence of the commission of a single act prohibited by this Act
49 shall be sufficient to justify a penalty, injunction, restraining
50 order, or conviction, respectively, without evidence of a general
51 course of conduct.
52

1 **SECTION 18**
2 **CONFIDENTIAL COMMUNICATIONS**

3
4 Except by permission of the client engaging a licensee under this
5 Act, or the heirs, successors, or personal representatives of such
6 client, a licensee or any partner, officer, shareholder, or
7 employee of a licensee shall not voluntarily disclose information
8 communicated to him by the client relating to and in connection
9 with services rendered to the client by the licensee in the
10 practice of public accountancy. Such information shall be deemed
11 confidential, provided, however, that nothing herein shall be
12 construed as prohibiting the disclosure of information required to
13 be disclosed by the standards of the public accounting profession
14 in reporting on the examination of financial statements or as
15 prohibiting disclosures in court proceedings, in investigations or
16 proceedings under Sections 11 or 12 of this Act, in ethical
17 investigations conducted by private professional organizations, or
18 in the course of quality reviews.

19
20 COMMENT. This provision is similar to those found in a number of
21 accountancy laws as well as ethical codes recognizing the
22 confidentiality of client communications to accountants without,
23 however, extending it to the point of being an evidentiary
24 privilege (which would prevent its disclosure in court in certain
25 circumstances--essentially, those in which the licensee is not a
26 party, such as divorce proceedings where one of the parties is a
27 client of the licensee). The term "quality review" is defined in
28 section 3(h).

29
30 **SECTION 19**
31 **LICENSEES' WORKING PAPERS; CLIENTS' RECORDS**

32
33 (a) All statements, records, schedules, working papers, and
34 memoranda made by a licensee or a partner, shareholder,
35 officer, director, or employee of a licensee, incident to, or
36 in the course of, rendering services to a client in the
37 practice of public accountancy, except the reports submitted
38 by the licensee to the client and except for records that are
39 part of the client's records, shall be and remain the property
40 of the licensee in the absence of an express agreement between
41 the licensee and the client to the contrary. No such
42 statement, record, schedule, working paper, or memorandum
43 shall be sold, transferred, or bequeathed, without the consent
44 of the client or his personal representative or assignee, to
45 anyone other than one or more surviving partners or
46 stockholders or new partners or stockholders of the licensee,
47 or any combined or merged firm or successor in interest to the
48 licensee. Nothing in this section should be construed as
49 prohibiting any temporary transfer of workpapers or other
50 material necessary in the course of carrying out quality
51 reviews.

1 COMMENT. It should be noted that this provision, which is a fairly
2 standard one in accountancy laws, prohibits the transfer of working
3 papers relating to a particular client without that client's
4 consent in connection with the sale of a practice. The language
5 regarding quality reviews is intended to harmonize this section
6 with section 18 and make it clear that no licensee, partner,
7 shareholder, officer, director or employee of a licensee may
8 withhold any material that might be needed to perform a quality
9 review.

10
11 (b) A licensee shall furnish to his client or former client, upon
12 request and reasonable notice--

13
14 (1) A copy of the licensee's working papers, to the extent
15 that such working papers include records that would
16 ordinarily constitute part of the client's records and
17 are not otherwise available to the client; and

18
19 (2) Any accounting or other records belonging to, or obtained
20 from or on behalf of, the client that the licensee
21 removed from the client's premises or received for the
22 client's account; the licensee may make and retain copies
23 of such documents of the client when they form the basis
24 for work done by him.

25
26 COMMENT. This subsection reflects a commonly recognized ethical
27 obligation. It seems of sufficient importance to deserve
28 incorporation in the statute.

29
30 (c) Nothing herein shall require a licensee to keep any workpaper
31 beyond the period prescribed in any other applicable statute.

32
33
34
35 COMMENT. The new subsection is designed to make clear that Section
36 19 does not impose any new record retention requirement. The
37 retention period may be based on the licensee's professional
38 judgment and any existing law.

39
40
41
42 **SECTION 20**
43 **PRIVITY OF CONTRACT**

44
45 (a) Applicability of Section - Suits for Negligent Performance of
46 Accountancy Services

47
48 (1) This section applies to all causes of action of the type
49 specified herein filed on or after the effective date.

50
51 (2) This section governs any action based on negligence
52 brought against any accountant or firm of accountants

1 registered, licensed or practicing in this state by any
2 person or entity claiming to have been injured as a
3 result of financial statements or other information
4 examined, compiled, reviewed, certified, audited or
5 otherwise reported or opined on by the defendant
6 accountant.

7
8 (b) Requirement of Privity - No action covered by this section
9 may be brought in any court in this state unless:

10
11 (1) The plaintiff (1) is issuer (or successor of the issuer)
12 of the financial statements or other information
13 examined, compiled, reviewed, certified, audited or
14 otherwise reported or opined on by the defendant and (2)
15 engaged the defendant accountant to examine, compile,
16 review, certify, audit or otherwise report or render an
17 opinion on such financial statements; or

18
19 (2) The defendant accountant; (1) was aware at the time the
20 engagement was undertaken that the financial statements
21 were to be made available for use in connection with a
22 specified transaction by the plaintiff who was
23 specifically identified to the defendant accountant, (2)
24 was aware that the plaintiff intended to rely upon such
25 financial statements in connection with the specified
26 transaction, and (3) had direct contact and communication
27 with the plaintiff and expressed by words or conduct the
28 defendant accountant's understanding of the reliance on
29 such financial statements or other information.

30
31 COMMENT. This section embodies the common law rule that only
32 persons in a relationship of privity of contract (i.e., a direct
33 contractual relationship), or a relationship so close as to
34 approach that of privity, may sue an accountant for negligence.
35 This rule is derived from the seminal decision of Chief Justice
36 Cardozo of the N.Y. Court of Appeals in Ultramares Corporation v.
37 Touche, 255 N.Y. 170 (1931), which was reaffirmed by that court in
38 Credit Alliance v. Arthur Andersen & Co., 65 N.Y. 2D 536 (1985).

39
40
41 SECTION 21
42 UNIFORM STATUTE OF LIMITATIONS

43
44 (a) Applicability of Section - Suits for Breach of Contract or
45 Negligent Performance of Accounting Services

46
47 (1) This section applies to all causes of action of the type
48 specified herein filed on or after the effective date.

49
50 (2) This section governs any action based on negligence or
51 breach of contract brought against any accountant, any
52 partnership of such accountants or any accounting

1 corporation registered, licensed or practicing in this
2 state by any person or entity claiming to have been
3 injured as a result of financial statements or other
4 information examined, compiled, reviewed, certified,
5 audited or otherwise reported or opined on by the
6 defendant accountant as a result of an engagement to
7 provide professional accounting services.

8
9 (b) Statute of Limitations - No action covered by this section
10 may be brought in any court in this state unless the suit is
11 commenced on or before the earlier of:

12
13 (1) one year from the date the alleged act, omission or
14 neglect is discovered or should have been discovered by
15 the exercise of reasonable diligence; or

16
17 (2) three years after the service for which the suit is
18 brought has been performed or the date of the initial
19 issuance of the accountant's report on the financial
20 statements or other information, whichever comes first.

21
22 COMMENT. This section establishes a uniform statute of limitations
23 for accountant's negligence and breach of contracts actions of one
24 year from the date of discovery of the claim, but in no event more
25 than three years from the date of the completion of the accounting
26 services that are the subject of complaint or date of the initial
27 issuance of the accountant's report, whichever is earliest. It is
28 intended to reduce the uncertainty attending potential liability
29 exposure under differing state limitations periods.

30
31
32 **SECTION 20 22**
33 **CONSTRUCTION; SEVERABILITY**

34
35 If any provision of this Act or the application thereof to any
36 person or entity or in any circumstances is held invalid, the
37 remainder of the Act and the application of such provision to
38 others or in other circumstances shall not be affected thereby.

39
40
41
42 **SECTION 21 23**
43 **REPEAL OF PRIOR LAW**

44
45 _____ (existing legislation) and all other acts or parts of
46 acts in conflict herewith are hereby repealed, provided, however,
47 that nothing contained in this Act shall invalidate or affect any
48 action taken or any proceeding instituted under any law in effect
49 prior to the effective date hereof.

1
2
3 **SECTION 22 24**
4 **EFFECTIVE DATE**
5

6 **This Act shall take effect on _____.**
7
8
9

10
11
12 **Appendix A**
13 **Legislative Policy (Annotated)**
14 **American Institute of Certified Public Accountants**
15

16 **1. The public interest warrants the licensing and regulation of**
17 **persons professing expertise in accounting who perform professional**
18 **accounting services, including the expression of opinions on**
19 **financial statements and other information upon which the public**
20 **necessarily relies.**

21 Protection of the public interest is a basic tenet of society.
22 Good governments, since the beginning of civilization, have enacted
23 laws protecting the health and welfare of the public. These basic
24 human rights are protected, and indeed may only be secure, when the
25 financial resources and economic well-being of society are guarded.
26 Today, financial decisions are made, and resources are allocated,
27 by reference to financial reports and other accounting data. These
28 reports and data must be fair and must be believable. Both
29 qualities are enhanced by the professional certified public
30 accountant's work, and his function needs to be regulated for the
31 public's sake.
32

33 The state, under its police power, may pass laws to protect
34 the public against fraud, deception or the consequences of
35 ignorance and incapacity, and may exact the requisite degree
36 of skill and learning of persons in professions and pursuits
37 which affect the public health or welfare, such as accountancy
38 (Davis v. Allen, 307 S.W.2d 800, Tenn. Ct. App., 1957).
39

40 **2. There is no such compelling need for licensing and regulation**
41 **of persons offering record-keeping and elementary accounting**
42 **services performed at the instance of, and for the benefit of,**
43 **employers and clients. Nor is licensing required in connection with**
44 **the preparation of tax returns because of regulatory and**
45 **disciplinary authority presently possessed by the Internal Revenue**
46 **Service and other taxing authorities.**

47 Freedom of enterprise is a basic concept of American philosophy
48 that must be evaluated against the public's right to protection
49 when determining activities that need to be regulated. There does
50 not appear to be a compelling public interest in restricting the
51 services noted above to licensed persons only. At the same time,
52 courts have held that the expression of opinions on financial

1 statements and data on which credit grantors, government officials,
2 investors, and other third parties may rely, clearly involves the
3 public interest in such a way as to require regulation.
4 Professional accounting services deemed to merit regulation are
5 perhaps well summarized in a 1964 decision of the Tennessee Court
6 of Appeals. The Court said,

7
8 The Courts have generally recognized that the practice
9 of public accountancy is a highly skilled and technical
10 ... profession and, as such, may be regulated by the
11 legislature within proper limits.... However, the Courts
12 consistently have held that legislation which prohibits
13 noncertified accountants from practicing the profession
14 of accountancy is invalid as it infringes upon rights of
15 contract in matters of purely private concern bearing no
16 perceptible relation to the general or public welfare.
17 And, in so doing, the Courts have indicated that
18 bookkeeping and similar technical services--as contrasted
19 with auditing and expressing opinions on financial
20 statements--do not involve a sufficient public interest
21 to permit legislative interference with the normal right
22 of an individual to deal with anyone he chooses....
23 (State of Tennessee ex rel. State Board of Accountancy
24 v. Bookkeepers Business Service Co., 382 S.W.2d 559, Tenn
25 Ct. App., 1964.)
26

27 Licensure of tax return preparers would be difficult to
28 administer and ineffective. A major disadvantage is that tax
29 authorities would not automatically obtain information about the
30 returns prepared by a licensee. Without such information, it would
31 be difficult to check on the competence or honesty of the return
32 preparer. Moreover, licensure would not prevent improprieties
33 associated with advertising by commercial tax return preparers and
34 tax return preparers who are unethical. Further, the federal
35 government should be given a fair chance to succeed in its current
36 program of testing methods of regulating tax return preparers.

37 **3. The practice of professional accountancy should ultimately**
38 **be restricted to certified public accountants who have demonstrated**
39 **competency by passing the Uniform CPA Examination, by fulfilling**
40 **educational and other requirements, and by continuing to meet**
41 **professional standards.**

42 The licensure and regulation of professionals should be conducted
43 as a professional function. State boards of accountancy have as
44 their responsibility the maintenance of adherence to high technical
45 and ethical standards. In this policing activity, board members
46 should be qualified to judge whether the licensee's professional
47 activities conform with standards established to protect the public
48 interest.

49 **4. The enactment of a regulatory accountancy law is not intended**
50 **to deprive persons who are practicing public accounting as**
51 **principals at the time of passage of the law of their means of**
52 **livelihood, and they should be permitted to register as public**

1 **accountants and become subject to regulation. All further**
2 **registration or licensing to practice public accountancy should be**
3 **limited to persons demonstrating their competence as certified**
4 **public accountants.**

5 Registration of public accountants is appropriate to protect the
6 interests of those who at the time of the enactment of a law had
7 been entitled to assume the designation "public accountant."
8 However, provision should not be made for additions to the ranks
9 of public accountants. The intention is to protect the
10 constitutional rights of those already engaged in public
11 accounting--not to create a permanent second class of professional
12 accountants. Those who would enter public practice in the future
13 should do so only by satisfying educational and other requirements
14 and by passing the Uniform CPA Examination.

15 **5. The accounting profession serves a broad public interest as**
16 **evidenced by the similarity of accounting needs in all political**
17 **jurisdictions. In order that it may serve this interest, uniform**
18 **licensing and regulatory requirements should be established, and**
19 **unnecessary restrictions of a local character should be avoided.**

20 Diversity in requirements for the CPA certificate tends to create
21 confusion over the meaning of the certificate. Further, doubt is
22 raised regarding the comparability of the competence of CPAs.
23 Accounting principles and auditing standards used in the practice
24 of public accounting are national in scope; they are not subject
25 to limitations imposed by geographical boundaries. The
26 preponderance of interstate commerce in our economy makes it
27 necessary for qualified accountants to practice across state
28 borders in response to the needs of the public.

29
30

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