

BILL ANALYSIS

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S.B. 1358
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DIGEST AND PURPOSE

As proposed, S.B. 1358 modifies the law relating to accounting regulation by simplifying the practice of certified public accountants (CPAs) across state lines, allowing financial professionals of other disciplines to partner with CPAs in one organization, strengthening required competency standards for attest services, and focusing regulation on those attest services.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Public Accountancy in SECTIONS 11 (Section 901.165, Occupations Code), 19 (Section 901.304(a), Occupations Code), 22 (Section 901.307, Occupations Code), 24 (Section 901.351 and 901.354, Occupations Code), and 30 (Section 901.456, Occupations Code).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 901.002(a), Occupations Code, to define “attest service,” “certified public accountancy firm,” “client,” “license,” “peer review,” “permit,” and “professional accounting services.” Deletes the definitions of “practice unit” and “sole proprietorship.”

SECTION 2. Amends Chapter 901A, by adding Section 901.0021, to read as follows:

Sec. 901.0021. MEETING AND IMPLICATION OF REPORT. (a) Provides that a reference to a report used with respect to a financial statement means an opinion, report, or other document, including an assurance prepared in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the Texas State Board of Public Accountancy (board), that meets certain criteria.

(b) Provides that a statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication

(c) Authorizes a statement or implication of special knowledge or competence in accounting or auditing to arise from certain factors.

SECTION 3. Amends Section 901.004(a), Occupations Code, to provide that this chapter does not prohibit an attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney’s or firm’s professional work in the practice of law or prohibit an employee, officer, or director of a federally insured depository institution from preparing or presenting records or documents when lawfully acting within the scope of the activities of the institution’s trust department.

SECTION 4. Amends Section 901.005, Occupations Code, as follows:

Sec. 901.005. New heading: FINDINGS; PUBLIC POLICY; PURPOSE. (a) Provides that practice has historically been defined to include a broad range of financial, advisory, and attest services, including certain specified services.

(b) Provides that the attest function is part of the practice of public accountancy, and makes statements regarding that function.

(c) Provides that the public relies on the competence and integrity of certified public accountants in all its dealings with certified public accountants and not merely in connection with their performance of the attest function.

(d) Provides the terms “accountant” and “auditor,” and derivations, combinations, and abbreviations of those terms, have an implication of competence in the profession of public accountancy on which the public relies in certain activities and enterprises.

(e) Sets forth state policy. Requires a person licensed as a certified public accountant, rather than engaged in the practice of public accountancy, to meet certain criteria.

SECTION 5. Amends Section 901.051(a), Occupations Code, to provide that the Texas State Board of Public Accountancy consists of certain members appointed by the governor with the advice and consent of the senate. Requires one of the members to be an owner or employee of a certified public accountancy firm, rather than a firm engaged in public practice.

SECTION 6. Amends Sections 901.158 and 901.159, Occupations Code, as follows:

Sec. 901.158. New heading: RULES RESTRICTING COMPETITIVE PRACTICES. Authorizes the board in its rules of professional conduct to regulate the competitive practices of, rather than bidding by, a license holder as necessary to ensure that the license holder meets certain conditions. Deletes text regarding advertising. Deletes text regarding the license holder’s activities.

Sec. 901.159. New heading: PEER REVIEW. (a) Requires the board by rule to provide for a peer, rather than quality, review program to review the work product of a license holder or of the certified public accountancy firm in which the holder is a member, rather than practice unit, in lieu of the license holder, to the extent necessary to comply with any applicable standards adopted by generally recognized bodies responsible for setting accounting standards. Requires peer review to include a verification that each individual in a certified public accountancy firm who is responsible for supervising attest services and who signs or authorizes another person to sign an accountant’s reports on financial statements on behalf of the firm meets the competency requirements of the professional standards that apply to those services.

(b) Requires the board by rule to establish a fee in an amount not to exceed a certain amount to be paid by a certified public accountancy firm, rather than practice unit, or by a license holder who is not a member of a certified public accountancy firm, rather than practice unit, for each peer, rather than quality, review required by the board under this section.

SECTION 7. Amends Section 901.160(c), Occupations Code, to provide that except on written authorization as provided by Subsection (b), certain information gathered or received by the board is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

SECTION 8. Amends Section 901.161(a), Occupations Code, to delete text regarding quality review.

SECTION 9. Amends Section 901.162, Occupations Code, by adding Subsection (c), to provide that certain persons are immune from personal liability for an action taken in good faith in the discharge of

the board's responsibilities. Requires the state to hold each board member and each employee, volunteer, or agent of the board harmless from any cost, damage, or attorney's fees arising from a claim or suit against that person with respect to matters to which that immunity applies.

SECTION 10. Amends Section 901.163(a), Occupations Code, to require the board to develop and maintain a system for tracking a complaint filed with the board against a person who holds a license or permit, rather than a person registered under this chapter.

SECTION 11. Amends Chapter 901D, Occupations Code, by adding Section 901.165, as follows:

Sec. 901.165. RULES FOR ATTEST SERVICES. (a) Requires the board by rule to specify those services that constitute attest services.

(b) Provides that attest services are required to be performed in accordance with professional standards. Authorizes the board to adopt by reference the standards developed for general application by the American Institute of Certified Public Accountants or another nationally recognized accountancy organization.

SECTION 12. Amends Section 901.251(a), Occupations Code, to prohibit a person who is an individual from performing attest services, rather than engaging in the practice of public accountancy, unless the person holds a certificate issued under this chapter.

SECTION 13. Amends Section 901.253(c), Occupations Code, to authorize the board to obtain certain information to investigate the qualifications of an individual who applies to take the uniform CPA examination or to be certified or issued a permit, rather than registered, under this chapter.

SECTION 14. Amends Section 901.254, Occupations Code, to require an applicant to meet certain criteria to be eligible to take the uniform CPA examination. Deletes text regarding semester hours.

SECTION 15. Amends Section 901.256(a), Occupations Code, to require a person to complete certain criteria to be eligible to receive a certificate. Deletes text regarding being under the supervision of a certified public accountant.

SECTION 16. Amends Section 901.259(a), Occupations Code, to require the board to issue a certificate to a person who holds a certificate or license issued by another state if the person satisfies certain conditions. Deletes text regarding CPA examination.

SECTION 17. Amends Chapter 901F, Occupations Code, by adding Section 901.260, as follows:

Sec. 901.260. CERTIFICATE BASED ON FOREIGN CREDENTIALS. (a) Authorizes the board to issue a certificate to an applicant who holds a substantially equivalent foreign credential if certain criteria exist.

(b) Requires an applicant for a certificate under Subsection (a) to list in the application each jurisdiction in which the applicant has applied for or holds a credential to practice public accountancy. Requires each holder of a credential issued under Subsection (a) to notify the board in writing of the issuance, denial, revocation, suspension, limitation, or probation of a credential or the commencement of a disciplinary or enforcement action by any jurisdiction not later than the 30th day after the effective date of that action.

(c) Provides that the board's determination of whether a foreign credential is substantially equivalent to a certificate issued under this section is not subject to judicial review.

SECTION 18. Amends Section 901.301, Occupations Code, as follows:

(a) Requires the board to conduct or contract with another person to conduct uniform CPA examinations administered under this chapter. Makes conforming changes.

(b) Deletes text regarding criteria the board is authorized to establish.

SECTION 19. Amends Section 901.304(a), Occupations Code, to require the board, for each examination or reexamination, to collect a fee set by board rule not to exceed the cost of administering the examination, rather than \$250. Makes a conforming change.

SECTION 20. Amends Section 901.305, Occupations Code, to require a uniform CPA examination to be administered under this chapter as often as necessary but at least once a year. Deletes text requiring the board to administer the examination.

SECTION 21. Amends Section 901.306(a), Occupations Code, authorizing the board to use or require the use of all or part of the uniform CPA examination and any related service available from certain sources.

SECTION 22. Amends Section 901.307, Occupations Code, as follows:

Sec. 901.307. New heading: GRADING EXAMINATION. (a) Requires the board by rule to adopt a method for grading the examination and to determine the grade required to pass the examination. Deletes text regarding a grade of at least 75 percent.

(b) Requires rule adopted under this section, to the extent possible, to be uniform with those of other states.

SECTION 23. Amends the heading to Chapter 901H, Occupations Code, as follows:

SUBCHAPTER H. FIRM PERMIT REQUIREMENTS

SECTION 24. Amends Sections 901.351, 901.354, 901.355, and 901.401, Occupations Code, as follows:

Sec. 901.351. FIRM PERMIT REQUIRED. (a) Prohibits a firm from providing attest services or use the title “CPA’s,” “CPA Firm,” “Certified Public Accountants,” “Certified Public Accounting Firm,” or “Auditing Firm” or a variation of one of those titles unless the firm holds a permit issued under this subchapter.

(b) Requires the board to grant or renew a permit to practice as a certified public accountancy firm to certain firms which meet certain criteria.

(c) Provides that a permit issued under Subsection (b)(2) is automatically revoked and is prohibited from being renewed if the firm does not maintain a license as a certified public accountancy firm in the other state.

(d) Requires the board by rule to specify certain information. Deletes text regarding registration.

Sec. 901.354. New heading: PERMIT INFORMATION AND ELIGIBILITY. (a) Requires an applicant for initial issuance or renewal of a permit to show certain information. Requires a firm and its owners to comply with board rules regardless of whether the firm includes owners who are not license holders.

(b) Authorizes a certified public accountancy firm to include individuals as owners who are not license holders if certain criteria are met.

(c) Authorizes the board by rule to adopt a system to investigate the background of individual owners who are not license holders under this chapter.

(d) Authorizes the board to obtain criminal history record information maintained by certain agencies to investigate the qualifications of an individual who is not a license holder under this section.

(e) Authorizes the board to require an individual who is not a license holder under this chapter to submit a complete set of fingerprints. Authorizes the board, if the individual does not provide the complete set of fingerprints on request, to refuse to allow that individual to become an owner of a certified public accountancy firm and to cancel or refuse to issue or renew a permit to the firm.

(f) Requires an applicant for issuance or renewal of a permit under this section to register each office of the firm and show that all attest services performed in this state and each office in this state are under the supervision of a person who holds a certificate issued under this chapter or by another state.

(g) Requires an application for a permit, rather than registration, under this chapter to be made on an affidavit of certain person stating certain information. Deletes text regarding partnership or corporation.

(h) Makes a conforming change.

(i) Deletes text regarding a partnership. Makes a conforming change.

(j) Requires a certified public accountancy firm, rather than sole proprietorship, to notify the board not later than the 31st day after the date on which information in the affidavit is changed, including information regarding the admission or withdrawal of an owner or resident manager. Deletes text regarding a partnership. Makes a nonsubstantive change.

(k) Requires a certified public accountancy firm that is no longer in compliance with this section because of a change in firm ownership or personnel that occurs after the firm receives or renews a permit to report that fact to the board not later than the 30th day after the date the firm ceases to be in compliance and to take corrective action to bring the firm into compliance. Provides that failure to bring the firm into compliance within a reasonable time as determined by board rule is grounds for the suspension or revocation of the firm's permit.

Sec. 901.355. New heading: REGISTRATION FOR CERTAIN FOREIGN APPLICANTS.

(a) Authorizes the holder of a certificate, license, or degree authorizing the person to practice accountancy in a foreign country to register with the board as the holder of a certificate, license, or degree issued by the foreign country, if the board determines that the standards were at least as high as the standards of this state at the time that authority was granted. Deletes text regarding a certified public accountant.

(d) Makes a conforming change.

Sec. 901.401. LICENSE REQUIRED. (a) Prohibits a person from performing attest services, rather than practicing public accountancy, unless the person holds a license issued under this chapter.

(b) Requires each office of a certified public accountancy firm or a firm of public accountants to hold a license issued under this chapter to perform attest services, rather

than engaging in the practice of public accountancy. Makes a conforming change.

SECTION 25. Amends Section 901.402(a), Occupations Code, to require the board, on payment of the required fees, to issue a license to an applicant who meets certain criteria.

SECTION 26. Amends Section 901.403, Occupations Code, as follows:

Sec. 901.403. New heading: APPLICATION FOR AND RENEWAL OF LICENSE.

Requires the board to specify certain aspects regarding the application for and renewal of a license. Deletes text regarding license provisions.

SECTION 27. Amends Sections 901.411(a) and (c), Occupations Code, to require a license holder who is an individual to participate in a program of continuing professional education designed to maintain professional competency. Requires the program to comply with rules adopted by the board. Deletes text regarding continuing professional education.

SECTION 28. Amends Chapter 901I, Occupations Code, by adding Section 901.412, to read as follows:

Sec. 901.412. REGISTRATION OF OUT-OF-STATE PRACTITIONER WITH SUBSTANTIALLY EQUIVALENT QUALIFICATIONS. (a) Authorizes an individual who holds a certificate or license as a certified public accountant issued by another state and whose principal place of business is not in this state to exercise all the privileges of certificate and license holders of this state without obtaining a certificate or license under this chapter if certain conditions are met.

(b) Requires an individual who meets the requirements of Subsection (a)(1) or (2) to register with the board to practice public accountancy in this state. Requires the individual, to register with the board, to perform certain procedures.

(c) Sets forth provisions regarding an individual who registers under this section.

(d) Provides that an individual's practice privileges under this section are automatically revoked if the individual does not maintain the authority to practice public accountancy in the other state.

SECTION 29. Amends Sections 901.451, 901.452, 901.453, and 901.454, Occupations Code, as follows:

Sec. 901.451. USE OF TITLE OF ABBREVIATION FOR "CERTIFIED PUBLIC ACCOUNTANT". (a) Prohibits a person from assuming or using certain titles or designations to indicate that the person is a certified public accountant unless the person holds a certificate under this chapter. Deletes text regarding a firm composed of certified public accountants.

(b) Prohibits a person from providing attest services or assuming or using certain titles to indicate that the person is a certified public accountancy firm unless certain conditions are met.

Sec. 901.452. USE OF TITLE OR ABBREVIATION FOR "PUBLIC ACCOUNTANT". Prohibits a person from providing attest services or assuming or using certain titles to indicate that the person is a public accountant, or a firm composed of public accountants, unless certain conditions are met.

Sec. 901.453. USE OF OTHER TITLES OR ABBREVIATIONS. (a) Prohibits a person from assuming or using certain titles or abbreviations. Makes conforming changes.

Sec. 901.454. TITLE USED BY CERTAIN OUT-OF STATE OR FOREIGN ACCOUNTANTS. (a) Deletes text regarding foreign country and country. Makes a conforming change.

(b) Authorizes a person who holds a certain credential granted in a foreign jurisdiction that entitles the person to engage in the practice of public accountancy or its equivalent in that jurisdiction to use in this state any title or designation under which the person practices in the foreign jurisdiction, followed by the translation of the title or designation into English if it is in a different language and by the name of that jurisdiction, if certain conditions exist.

(c) Requires a person registered under Section 901.355 to use the title held in the country from which the person received a certificate, license, or degree, and to indicate the name of the country, rather than state. Deletes text regarding a person making representations to the public.

SECTION 30. Amends Section 901.455(c), Occupations Code, to make conforming changes.

SECTION 31. Amends Sections 901.456 and 901.457, Occupations Code, as follows:

Sec. 901.456. New heading: REPORTS ON FINANCIAL STATEMENTS; USE OF NAME OR SIGNATURE ON CERTAIN DOCUMENTS. (a) Authorizes only a license holder to issue a report on a financial statement of another person or otherwise perform or offer to perform an attest service.

(b) Provides that a person who is not a license holder is prohibited from performing certain acts and authorized to perform certain acts.

(c) Requires the board by rule to prescribe safe harbor language that a person who is not a license holder is authorized to use without violating Subsection (b).

(e) Provides that this section does not prohibit the performance by a person who is not a license holder of a service that is not an attest service and that involves the use of bookkeeping skills, including certain activities.

(f) Requires a license holder who performs attest services to provide those services in accordance with standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.

Sec. 901.457. ACCOUNTANT-CLIENT PRIVILEGE. (a) Prohibits a license holder or a partner, officer, shareholder, or employee of a license holder from voluntarily disclosing information communicated to the license holder by a client in connection with services provided to the client by the license holder, rather than in the practice of public accountancy, except with the permission of the client or the client's representative.

(b) Provides that this section does not prohibit a license holder from disclosing information that is required to be disclosed under a summons under the provisions of the Internal Revenue Code or under a court order if the summons or order meets certain criteria.

SECTION 32. Amends Sections 901.458(a) and (b), Occupations Code, as follows:

(a) Redefines "direct labor cost."

(b) Provides that a person creates a presumption of loss of independence if the person meets

certain conditions.

SECTION 33. Amends Chapter 901J, Occupations Code, by adding Section 901.460, to read as follows:

Sec. 901.460. **PERFORMING ATTEST SERVICES.** (a) Requires a certificate holder to perform attest services in a certified public accountancy firm.

(b) Requires a license holder who is an individual and who is responsible for supervising attest services or signs or authorizes another person to sign an accountant's reports on financial statements on behalf of a certified public accountancy firm to meet the competency requirements of the professional standards that apply to those services.

SECTION 34. Amends Section 901.501(a), Occupations Code, to authorize the board, on a determination that a ground for discipline exists under Section 901.502, after notice and hearing as provided by Section 901.509, to perform certain procedures.

SECTION 35. Amends Sections 901.502 and 901.504, Occupations Code, as follows:

Sec. 901.502. **FOUNDATIONS FOR DISCIPLINARY ACTION.** Authorizes the board to discipline a person under Section 901.501 for certain violations.

Sec. 901.504. **LICENSE REVOCATION BASED ON VIOLATION OF CHAPTER.** Makes conforming changes.

SECTION 36. Amends Sections 901.505(a) and (d), Occupations Code, to make conforming changes.

SECTION 37. Amends Sections 901.506 and 901.507, Occupations Code, as follows:

Sec. 901.506. New heading: **VOLUNTARY SURRENDER OF CERTIFICATE OR PERMIT.** Makes conforming changes.

Sec. 901.507. **REINSTATEMENT.** Makes conforming changes.

SECTION 38. Amends Chapter 901K, Occupations Code, by adding Section 901.511, as follows:

Sec. 901.511. **DISCIPLINARY ACTION FOR ACT COMMITTED IN ANOTHER STATE.** (a) Provides that a license holder of this state who offers to perform professional accounting services or who uses the license holder's title as a certified public accountant in another state or jurisdiction is subject to disciplinary action in this state for an act committed in the other state or jurisdiction for which the license holder would be subject to discipline as a license holder of the other state or jurisdiction.

(b) Requires the board to investigate any complaint made by the regulatory agency of another state or jurisdiction concerning a license holder of this state.

SECTION 39. Amends Section 901.602(c), Occupations Code, to delete text regarding being registered.

SECTION 40. Amends Chapter 901M, Occupations Code, by adding Section 901.603, 901.604, and 901.605, as follows:

Sec. 901.603. **INTERVENTION IN ACTION.** Authorizes a license holder or a professional organization of certified public accountants, subject to approval by the board, to intervene in an

action by the board or to bring an action in the name of the license holder or professional organization to enforce any provision of this chapter against a person who does not hold a license or permit.

Sec. 901.604. SINGLE ACT AS EVIDENCE OF PRACTICE. Provides that in an action brought under this chapter, evidence of a single act prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order, or conviction without evidence of a general course of conduct.

Sec. 901.605. APPOINTMENT OF SECRETARY OF STATE AS AGENT. Provides that a person who is not a resident of this state and who applies for a certificate or permit is considered to have appointed the secretary of state as the applicant's agent for service of process in any action or proceeding against the applicant arising out of any transaction connected with or incidental to professional accounting services performed by the applicant while the applicant holds a certificate or permit.

SECTION 41. Repealer: Sections 901.003 (Practice of Public Accountancy), 901.352 (Application for Registration), and 901.356 (Temporary Practice Permit for Certain Out-Of-State or Foreign Applicants), Occupations Code.

SECTION 42. (a) Effective date: September 1, 2001.

(b) Makes application of Chapter 901H, Occupations Code, prospective.

(c) Requires the Texas State Board of Public Accountancy to adopt rules under Sections 901.304(a) and 901.307, Occupations Code, as amended by this Act, not later than January 1, 2002.

(d) Makes application of Sections 901.304(a) and 901307, Occupations Code, prospective.

(e) and (f) Makes application of this Act prospective.