



Ohio Legislative Service Commission

122nd Senate Bill Analysis

S.B. 200
122nd General Assembly
(As Introduced)

Sen. Cupp

- Redefines the "practice of public accounting."
- Allows nonaccountants to own a minority equity interest in a public accounting firm.
- Adds to the registration requirements for a public accounting firm and to the sanctions for violating them.
- Authorizes the Accountancy Board to investigate violations of Board law or rules before commencing disciplinary proceedings against an accountant or an accounting firm for an infraction of such law or rules or before taking legal action against a person for the unauthorized practice of accounting.

CONTENT AND OPERATION

Definition of public accounting

At present the practice of public accounting is defined not in the Revised Code, but in Rule 4701-1-09 of the Accountancy Board, as follows:

"Practice of (or practicing) public accountancy" means the performance or the offering to perform by a person or firm, holding itself out to the public as a licensee, for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

R.C. 4701.01(A) of the bill enacts the following definition instead:

"Practice of public accounting" means performing or offering to perform any engagement that will result in the issuance of an attest report, and, with respect to a person who holds a CPA certificate, PA registration, foreign certificate, or firm registration, any other services involving the use of accounting or auditing skills as established by rules adopted by the accountancy board.

According to the redefinition, there are two ways to engage in the practice of public accounting. The first is to do or offer to do work that results in the issuance of an attest report--which the bill defines as an opinion report, review report, compilation report, examination report, agreed-upon procedures report, or any similar report with respect to a financial statement or other financial information (sec. 4701.01(T)). The most important attest report is the opinion report. In it the accountant attests to (that is, provides assurance concerning) the fairness and dependability of the balance sheet, income statement, and other financial statements of the firm or other organization that the accountant has audited and whether the statements conform with generally accepted accounting principles. Other attest reports that accountants issue range from reports on an organization's prospective financial information to reports on its internal controls or controls in the computer software the organization uses. Existing law (1) prohibits anyone from issuing an [audit] opinion, review report, compilation report, examination report, or agreed upon procedures report on a financial statement indicating that the person is an accountant or auditor or has expert knowledge in accounting or auditing or expert knowledge regarding compliance with conditions established by law or contract unless the person holds a "live" permit issued by the Accountancy Board, but (2) states expressly that the prohibition does not preclude an officer, employee, partner, or principal of an organization from signing any statement or report referring to the financial affairs of that organization. (Sec. 4701.14(D).)

The second way to engage in the practice of public accounting under the redefinition is for a person holding a CPA

certificate, PA registration, foreign certificate, or firm registration to perform any services (other than the attest function) that involve the use of accounting or auditing skills as established by rules adopted by the Accountancy Board. PAs (public accountants) are a dying class since, under Ohio law (1) a person cannot be registered as a PA unless the person had, on or before April 16, 1993, applied to be registered as such, and (2) any PA is eligible to receive a CPA certificate if the accountant has had a PA practice permit under Ohio law for at least ten years and has completed and reported to the Accountancy Board the requisite continuing education hours, and if the firm that employs the accountant or in which the accountant has an interest is registered and meets the quality review requirements of the Board. Candidates for PA registration had to meet requirements similar to those that applied to candidates for CPA certification, except that PA candidates had to pass (1) only the accounting practice and auditing sections of the uniform CPA examination (rather than all four sections of the examination, as CPAs were and are required to do), (2) the uniform National Society of Public Accountants examination, or (3) a comparable examination approved by the public accountant members of the Accountancy Board. (Secs. 4701.061 and 4701.07.) As of April 16, 1993, CPAs are the only accountants who can be appointed to the Board (sec. 4701.02, not in the bill).

A PA or CPA needs more than registration as a PA or certification as a CPA to practice public accounting. The accountant also needs a practice permit, currently referred to as a "live permit," that is not suspended or revoked. The bill replaces the term "live permit" with two others: (1) an "Ohio permit," a permit to practice public accounting that is available to Ohio PAs and CPAs, and (2) a "foreign permit," a permit to practice public accounting that has been issued under the laws of a foreign country or of a state of the United States other than Ohio. A PA or CPA who is not in the practice of public accounting in Ohio is already required to register with the Board. Under the bill, such an accountant is said to have an "Ohio registration" rather than an "Ohio permit." (Sec. 4701.01(M), (N), and (O).)

The bill authorizes the Board, after notice and hearing, to discipline any person whose activities are regulated by the Board in the same ways that it can discipline a person holding an Ohio permit, Ohio registration, firm registration, CPA certificate, or PA registration (sec. 4701.16(A).)

Ownership and registration of public accounting firms

Under existing law a partnership may not indicate that it is composed of CPAs unless (1) at least one general partner, and every partner who is personally engaged in Ohio in the practice of public accounting as a member of the partnership, is an Ohio CPA in good standing, (2) each partner is a CPA of some state in good standing, and (3) each resident manager in charge of an office of the firm in Ohio is an Ohio CPA in good standing. Likewise, a partnership may not indicate that it is composed of PAs unless it has PAs or CPAs in these three capacities. (Sec. 4701.14(B).)

Similarly, a professional association or corporation-for-profit for the practice of public accounting may not assume or use the title "certified public accountant" unless all of its shareholders are CPAs in good standing under the laws of some state. Additionally, the firm may not assume or use the title "public accountant" unless all of its shareholders are PAs or CPAs in good standing under the Accountancy Board Law. (Sec. 4701.14(C)(2)(a) and (3)(a).)

Also, a limited liability company formed in Ohio to render public accounting services may not assume and use (1) the title "certified public accountant" unless each member of the company and, if the management of the company is not reserved to its members, each manager of the company, is a CPA in good standing under the Accountancy Board Law, or (2) the title "public accountant" unless each member of the company and, if the management of the company is not reserved to its members, each manager of the company, is a PA or CPA in good standing under the Accountancy Board Law. (Sec. 4701.14(C)(4)(a).)

These prohibitions are removed by the bill to enable a person who has neither an Ohio permit nor a foreign permit to own, directly or indirectly, an "equity interest" (defined as a capital or profit interest) in a public accounting firm. However, the bill provides (sec. 4701.04(D) and (E) and 4701.14):

(1) A partnership may assume or use the title or designation "certified public accountant" if a majority of its partners who are individuals hold a CPA certificate or a foreign certificate and if a majority of the owners of any qualified firm that is a partner in the firm hold a CPA certificate or a foreign certificate. The same applies to indicating that a partnership is composed of "public accountants" unless PAs or CPAs constitute such majorities. Similar requirements are set forth for professional associations, corporations-for-profit, and limited liability companies, except that for them the requirements apply to a majority of the shareholders (in the case of professional associations and corporations-for-profit) and members (in the case of limited liability companies), rather than to the partners, of the firm. (Sec. 4701.14.)

(2) All persons who have an Ohio permit or foreign permit and who own equity interests in the firm, and all qualified firms that own equity interests in the firm, must own, in the aggregate, directly or indirectly, more than 50% of the equity interests in the firm and must control it. Moreover, a person who owns a voting equity interest in the firm may not delegate the duty to exercise any voting rights to a person that does not hold an Ohio permit or foreign permit or is not a "qualified firm" (a firm in which the individuals who own a majority of the equity interests in the firm and control it hold an Ohio permit or foreign permit). (Sec. 4701.04(D)(1) and (E).)

- (3) A person who owns an equity interest in the firm but does not hold an Ohio permit or foreign permit:
- (a) May not assume or use any title or designation that tends to indicate or is likely to be confused with "certified public accountant" or "CPA";
 - (b) The person may not be in violation of any character or conduct standard that the Board has established by rule;
 - (c) May not participate in the business of the public accounting firm solely or predominantly as a passive investor. Rather, the person's participation must be the person's principal occupation and consist of providing services to or on behalf of the firm;
 - (d) Must have at least a bachelor's degree from a college or university approved by the Board;
 - (e) Must meet or exceed the continuing education requirements adopted by the Accountancy Board for an Ohio permit (120 class hours every three years in a formal program of learning that contributes directly to the professional competence of the individual);
 - (f) Must comply with the requirements of any occupational or professional license, registration, or certification that the person holds;
 - (g) Must abide by the Code of Conduct of the American Institute of Certified Public Accountants or a comparable code of professional conduct that the Board adopts;
 - (h) Must comply with all applicable provisions of the Accountancy Board Law and rules adopted by the Board. (Sec. 4701.04(D).)

Public accounting firm registration

Existing law requires a new public accounting firm to apply for initial registration within 90 days of formation and to renew its registration triennially within 90 days of formation. The bill applies the registration requirement to all public accounting firms (except those that qualify for one of the specific exemptions of existing law), not just new ones. (Sec. 4701.04(B).)

To register, a firm must submit to the Board information on all license holders employed by it and must undergo a quality review to determine the firm's degree of compliance with generally accepted accounting principles, generally accepted auditing standards, and other generally accepted technical standards. The Board designates the quality review committees that advise it on whether the Board's guidelines are being followed and is required to establish fair and reasonable compensation for the committee members. The bill expands the amount of information that a firm must submit to the Board with its initial and renewal registration applications, partly to take note of persons who might own equity interests in the firm but who do not hold an Ohio permit or foreign permit, and authorizes, rather than requires, the Board to establish compensation for committee members. (Sec. 4701.04(B), (C), and (G)(1).)

The bill also requires that (1) the chief executive of any office of a public accounting firm located in or doing business in Ohio must hold an Ohio permit or foreign permit, (2) the holder of an Ohio permit or foreign permit who owns an equity interest in or is employed by a public accounting firm assumes "ultimate responsibility" for any attest report issued from an office of the firm located in Ohio, and (3) the firm must provide for the transfer (that is, purchase) of the equity interest of a person who does not hold an Ohio permit or foreign permit to either the firm itself or to a person who owns an equity interest in the firm if the person not holding a permit withdraws from or ceases to be employed by the firm. (Sec. 4701.04(C).)

The bill makes failure to comply with any of the new requirements for registration, as well as failure to comply with the conditions under which a person who does not hold an Ohio permit or foreign permit may own an equity interest in the firm, subject to the same sanctions as currently apply to the failure of a PA, CPA, or public accounting firm to register with the Board (sec. 4701.04(H)(1)(a)(iv)). These sanctions include:

- (1) Revocation or suspension of a CPA certificate or of a PA or public accounting firm registration;
- (2) Revocation, suspension, or refusal to renew a permit to practice public accounting;
- (3) Public censure of a registrant or holder of a certificate;
- (4) Levying of a fine not to exceed \$1,000 for each offense;
- (5) In case of dishonesty, fraud, or gross negligence in the practice of public accounting, or in case of violation of a Board rule of professional conduct, either or both (a) completion of remedial continuing education programs, or (b) submission to quality review by a professional committee designated by the Board.

The bill adds two other sanctions that the Board could impose:

(1) Refusal to renew the registration of a firm;

(2) Disqualification of a person who is not a holder of an Ohio permit or foreign permit from owning an equity interest in the firm. (Sec. 4701.16(B).)

Accountancy Board investigations

The bill authorizes the Accountancy Board to investigate whether a person has violated any provision of the Accountancy Board Law, or any rule the Board has adopted under it, before commencing a disciplinary proceeding against an accountant or an accounting firm for an infraction of the law or rules, or before taking legal action against a person for the unauthorized practice of accountancy. Such an investigation is, the bill provides, subject to the Administrative Procedure Act. The Board could appoint a committee of its members or employees to conduct the investigation, and any Board member who participates in the investigation could still participate actively in any hearing or proceeding concerning the investigation. (Sec. 4701.29(A).)

During an investigation, the Board may administer oaths, order the taking of depositions, issue subpoenas, compel the attendance and testimony of a person at a deposition, and compel the production of any form of documentary evidence or record. If a person fails to comply with a subpoena or order issued by the Board in connection with the investigation, the Board may petition the Franklin County Court of Common Pleas for an order compelling compliance. Upon the request of the Board and upon evidence of the person's failure to comply, the Court is directed to compel compliance and is authorized to issue any contempt citation and sanction that the Court considers appropriate. (Sec. 4701.29(B) and (C)(2).)

Any such investigative proceeding of the Board is to be confidential, not a public record, and not subject to discovery in a civil or administrative action. Any witness who appears in response to a subpoena of the Board would be entitled to receive the same fees and mileage as a witness receives in a civil case in a court of common pleas. (Sec. 4701.29(C)(1) and (D).)

HISTORY

ACTION DATE JOURNAL ENTRY

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