

Act No. 278  
Public Acts of 2005  
Approved by the Governor  
December 19, 2005  
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December 19, 2005  
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**STATE OF MICHIGAN**  
**93RD LEGISLATURE**  
**REGULAR SESSION OF 2005**

**Introduced by Senators Bishop, Goschka, Kuipers, Stamas, Gilbert, George, Toy, Patterson, Cropsey,  
Basham, Thomas, Allen, Van Woerkom, McManus and Barcia**

# **ENROLLED SENATE BILL No. 723**

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 601, 602, 721, 723, 725, 729, 732, 734, and 735 (MCL 339.601, 339.602, 339.721, 339.723, 339.725, 339.729, 339.732, 339.734, and 339.735), section 601 as amended by 1998 PA 250, section 602 as amended by 1981 PA 83, sections 721, 723, 729, 732, 734, and 735 as added by 1997 PA 10, and section 725 as amended by 1998 PA 380.

*The People of the State of Michigan enact:*

Sec. 601. (1) A person shall not engage in or attempt to engage in the practice of an occupation regulated under this act or use a title designated in this act unless the person possesses a license or registration issued by the department for the occupation.

(2) A school, institution, or person shall not operate or attempt to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by the department.

(3) A person, school, or institution that violates subsection (1) or (2) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 90 days, or both.

(4) A person, school, or institution that violates subsection (1) or (2) a second or any subsequent time is guilty of a misdemeanor, punishable, except as provided in section 735, by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(5) Notwithstanding the existence and pursuit of any other remedy, an affected person may maintain injunctive action to restrain or prevent a person from violating subsection (1) or (2). If successful in obtaining injunctive relief, the affected person shall be entitled to actual costs and attorney fees.

(6) This act does not apply to a person engaging in or practicing the following:

- (a) Interior design.
- (b) Building design.

(c) Any activity for which the person is licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

(d) Any activity for which the person is licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(e) Any activity for which the person is licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(7) As used in subsection (5), “affected person” means a person directly affected by the actions of a person suspected of violating subsection (1) or (2) and includes, but is not limited to, a licensee or registrant, a board established pursuant to this act, a person who has utilized the services of the person engaging in or attempting to engage in an occupation regulated under this act or using a title designated by this act without being licensed or registered by the department, or a private association composed primarily of members of the occupation in which the person is engaging in or attempting to engage in or in which the person is using a title designated under this act without being registered or licensed by the department.

(8) An investigation may be conducted under article 5 to enforce this section. A person who violates this section shall be subject to this section and section 506.

(9) The remedies under this section are independent and cumulative. The use of 1 remedy by a person shall not bar the use of other lawful remedies by that person or the use of a lawful remedy by another person.

(10) An interior designer may perform services in connection with the design of interior spaces including preparation of documents relative to finishes, systems furniture, furnishings, fixtures, equipment, and interior partitions that do not affect the building mechanical, structural, electrical, or fire safety systems.

Sec. 602. A person, school, or institution that violates this act or a rule or order promulgated or issued under this act shall be assessed 1 or more of the following penalties:

(a) Placement of a limitation on a license or certificate of registration for an occupation regulated under articles 8 to 25.

(b) Suspension of a license or certificate of registration.

(c) Denial of a license, certificate of registration, or renewal of a license or certificate of registration.

(d) Revocation of a license or certificate of registration.

(e) An administrative fine to be paid to the department, not to exceed \$10,000.00.

(f) Censure.

(g) Probation.

(h) A requirement that restitution be made.

Sec. 721. (1) The state board of accountancy is created.

(2) Six members of the board shall be certified public accountants who hold a certificate as a certified public accountant, who are licensed under section 727, and who have practiced in this state as certified public accountants for not less than 5 years. Three members shall be representative of the general public, 1 of whom shall be an attorney who is a member in good standing in the bar of this state. One of the 9 members of the board shall be a full-time instructor of accounting above the elementary level at an accredited college or university.

(3) The director may promulgate the following rules:

(a) Rules of professional conduct for establishing and maintaining high standards of competence and integrity in the practice of public accounting.

(b) Rules governing corporations practicing public accounting, consistent with the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

(c) Rules governing educational and experience requirements for the issuance of a certificate as a certified public accountant.

(d) Rules of procedure governing the conduct of matters before the board.

(e) Rules governing the recognition of educational institutions by the board.

(f) Rules governing continuing education as required by section 729.

(g) Any other rules considered necessary by the director to implement and enforce this article.

Sec. 723. (1) Each licensed or registered individual holder of a certificate as a certified public accountant shall be known as a certified public accountant and a person shall not use that title or the abbreviation “CPA” or any other word, words, letters, or figures to indicate that the person using them is a certified public accountant unless the use is specifically approved by the board. Use of the terms “certified accountant”, “chartered accountant”, “public accountant”,

and “registered accountant” and the abbreviations “C.A.,” “P.A.,” and “R.A.” is specifically prohibited as being prima facie misleading to the public.

(2) Except as provided in section 724, a person shall not engage in the practice of public accounting either in the person’s own name, under an assumed name, or as a member of a firm or as an employee, unless the person holds a certificate as a certified public accountant and a license as a certified public accountant issued under this article.

(3) Unless use of a term is specifically approved by the board, the display or uttering by a person of a card, sign, advertisement, directory listing, or other printed, engraved, or written instrument or device bearing a person’s name in conjunction with a title described in subsection (1) shall be prima facie evidence that the person whose name is so displayed caused or procured the display or uttering of the card, sign, advertisement, directory listing, or other printed, engraved, or written instrument or device. Evidence of the commission of a single act prohibited by this section is sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

(4) Each licensed firm may use the designation “certified public accountants” in connection with the firm name, except that a licensed firm having only 1 member may use only the designation “certified public accountant”. An unlicensed firm shall not use the designation “certified public accountants”, “certified accountants”, “chartered accountants”, “public accountants”, or “registered accountants” or the abbreviation “C.P.A.,” “CPA”, “CPAs”, “C.A.,” “P.A.,” or “R.A.” in connection with the firm name.

(5) A person that violates this section or a rule or order promulgated or issued under or related to this section is liable for an administrative fine payable to the department of not more than \$25,000.00 per violation.

(6) The department may conduct an investigation and proceed under article 5 to enforce this section.

Sec. 725. (1) The department shall issue a certificate as a certified public accountant to an individual who meets all of the following requirements:

(a) Is of good moral character.

(b) Has complied with the education requirements of subsection (2).

(c) Has passed an examination meeting the requirements of subsection (3).

(d) Has complied with the experience requirements of subsection (4).

(e) Has completed at least 150 semester hours of college education, including a baccalaureate degree or higher degree with a concentration in accounting, at an educational institution approved by the board.

(2) An individual who has completed a curriculum required for a baccalaureate degree with a concentration in accounting at an educational institution approved by the board may sit for the examination required under subsection (3).

(3) An applicant for a certificate as a certified public accountant shall pass an examination in accounting, auditing, and other related subjects, acceptable to the department and the board, that is given reciprocal status in the plurality of states as compared to other examinations.

(4) An applicant for a certificate as a certified public accountant shall have 2 years of qualifying experience, and an applicant for a certificate as a certified public accountant shall have 1 year of qualifying experience under the direction and supervision of a licensed certified public accountant of this or another state in either of the following:

(a) The practice of public accounting with experience obtained in 1 financial audit and in all of the following areas that may be performed under the direction and supervision of a licensed certified public accountant while the applicant was meeting the education requirements of subsection (2):

(i) The application of a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records.

(ii) The preparation of working papers covering the examination of the accounts usually found in accounting records for audit, review, and compilation.

(iii) The participation in the planning of the program of work including the selection of the procedures to be followed for audit, review, and compilation.

(iv) The participation in the preparation of reports, including written explanations and comments on the findings of the examinations and on the content of the accounting records.

(v) The participation in the preparation and analysis of financial statements together with explanations and notes.

(b) The practice of public accounting with a governmental agency involving either of the following:

(i) The auditing of the books and accounts or financial activities of persons engaged in 3 or more distinct lines of commercial or industrial business in accordance with generally accepted auditing standards or generally accepted government auditing standards.

(ii) The auditing of the books and accounts of financial activities of 3 or more distinct governmental agencies or independent organizational units other than an employer of the applicant in accordance with generally accepted auditing

standards or generally accepted government auditing standards, and in which the results of the auditing are reported to a third party.

(5) In complying with the requirement of subsection (4) that an applicant shall have performed 1 financial audit, an applicant may submit an audit performed under the direction and supervision of a licensed certified public accountant who is not the applicant's employer or an audit performed while the applicant was meeting the educational requirements of subsection (2).

Sec. 729. (1) As a condition of license renewal, an individual licensee shall complete at least 40 hours of continuing education for each year since the issuance of the original license or the last renewal. Of the 40 hours of continuing education credits, the board shall not require more than 8 of those hours to be in the areas of auditing and accounting. The board may make exceptions from the continuing education requirements of this subsection for reasons of health, military service, or other good cause.

(2) Beginning March 1, 2007, each licensed firm and sole practitioner that performs attest services, including audits, reviews, and compilations that are relied upon by third parties, shall participate in a peer review program established by rule of the department and approved by the board. An applicant for renewal or relicensure shall submit to the department at the time of renewal or relicensure proof of peer review obtained within the 3 years immediately preceding the application. A firm or sole practitioner required to participate in a peer review program under this subsection shall notify the department within 30 days after receipt of an adverse report or second modified peer review report. Verbal testimony or documents, or both, pertaining to a peer review shall be considered confidential and shall be exempt from disclosure to the department, except in the case of an adverse or second consecutive modified opinion.

Sec. 732. (1) Except by written permission of the client or the heir, successor, or personal representative of the client to whom the information pertains, a licensee, or a person employed by a licensee, shall not disclose or divulge and shall not be required to disclose or divulge information relative to and in connection with an examination or audit of, or report on, books, records, or accounts that the licensee or a person employed by the licensee was employed to make. Except as otherwise provided in this section, the information derived from or as the result of professional service rendered by a certified public accountant is confidential and privileged.

(2) Subsection (1) does not prohibit any of the following:

(a) A certified public accountant, whose professional competence has been challenged in a court of law or before an administrative agency, from disclosing information otherwise confidential and privileged as part of a defense in the court action or administrative hearing.

(b) The disclosure of information required to be disclosed in the course of practice monitoring programs and ethical investigations conducted by a licensed certified public accountant. In such cases, the information disclosed to another licensed certified public accountant in the course of practice monitoring programs and ethical investigations is confidential and privileged to the same degree and in the same manner as provided for in subsection (1).

(c) A licensee, or a person employed by a licensee, from disclosing information otherwise privileged and confidential to appropriate law enforcement or governmental agencies when the licensee, or person employed by the licensee, has knowledge that forms a reasonable basis to believe that a client has committed a violation of federal or state law or a local governmental ordinance.

(3) Documents or records in the possession of the department pertaining to a review, an investigation, or disciplinary actions under this article are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, unless the records or documents are used for either or both of the following purposes:

(a) As evidence in a contested case held by the department.

(b) As a basis for formal action by the department and until the action is resolved by a final order issued by the board.

Sec. 734. (1) A holder of a certificate as a certified public accountant, a registration, or a license is subject to the penalties of section 602 for 1 or more of the following:

(a) Fraud or deceit in obtaining a certificate as a certified public accountant, a license to practice public accounting, or a registration under this article.

(b) Dishonesty, fraud, or negligence in the practice of public accounting.

(c) Violation of a rule of professional conduct promulgated under this article.

(d) Conviction of a felony under the laws of this or another state or the United States or conviction of a crime, an element of which is dishonesty, fraud, or negligence, under the laws of this or another state or of the United States, including, but not limited to, the failure to file a personal federal, state, or local income tax return.

(e) Cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant by another state for a cause other than failure to pay a licensure or other required fee in that state.

(f) Suspension or revocation for cause of the right to engage in the practice of public accounting before a state or federal agency.

(g) Conduct discreditable to the public accounting profession.

(h) Determination of mental incompetency by a court of law.

(i) A violation of this article or a rule promulgated under this article.

(j) A violation of the provisions of section 604.

(k) A violation of professional standards regarding the issuance of reports on financial statements; 1 or more kinds of management advisory, financial advisory, or consulting services; the preparation of tax returns; or the furnishing of advice on tax matters.

(2) Notwithstanding section 602(e), a person that violates this article or a rule or order promulgated or issued under or related to this article is liable for an administrative fine payable to the department of not more than \$25,000.00 per violation.

(3) Within 30 days after a final determination rendered by a federal or state administrative agency or a judgment or conviction issued by a federal court, a state court, or any other court of record, a licensee or registrant shall report to the department in writing or electronically a determination, order, judgment, or conviction regarding a violation in which dishonesty, fraud, or negligence is an element of that determination, order, judgment, or conviction.

Sec. 735. (1) A person who violates section 723(1) through (4) is guilty of a felony punishable by a fine of not more than \$25,000.00, or imprisonment for not more than 5 years, or both.

(2) The attorney general or the prosecuting attorney of a county may bring an action in a court of competent jurisdiction to enforce this section and section 601.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor