

**PUBLIC ACCOUNTANTS BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION**

**TITLE 37, CHAPTER 50
PUBLIC ACCOUNTANTS**

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CHAPTER 50 PUBLIC ACCOUNTANTS

Chapter Compiler's Comments

Severability Clause: Section 31, Ch. 118, L. 1969, was a severability clause.

Chapter Cross-References

Licensed public accountant — exemption from regulation of escrow business, 32-7-103.
Professional service corporations, Title 35, ch. 4.

Chapter Administrative Rules

Title 24, chapter 201, ARM Board of Public Accountants.

Chapter Case Notes

Elements of Negligent Misrepresentation Action Against Accountant: In a case in which two banks brought an action against an accounting firm for damages caused by an unqualified audit statement, the Supreme Court set forth the elements of a third-party negligent misrepresentation claim against an accountant under Restatement (Second) of Torts 552. *W. Sec. Bank v. Eide Bailly, LLP*, 2010 MT 291, 359 Mont. 34, 249 P.3d 35.

Professional Negligence and Negligent Misrepresentation Distinguished — Restatement of Torts 552 Controls Third-Party Negligent Misrepresentation — Accountant's Duty of Care to Third Parties: After *Eide Bailly*, an accounting firm, issued an unqualified opinion stating that an audit of IMC, a mortgage company, showed that its financial statements didn't contain misstatements, the holding company owning IMC was purchased by plaintiff Glacier Bank, which merged the holding company into plaintiff Western Bank. When it was later discovered that an employee of IMC had manipulated IMC's financial records to make IMC appear more profitable than it was, the plaintiffs sued *Eide Bailly*, alleging that *Eide Bailly* owed a duty of care to the plaintiffs. The Supreme Court affirmed the District Court's ruling that no duty of care was owed. Citing *Jim's Excavating Service v. HKM Associates*, 265 Mont. 494, 878 P.2d 248 (1994), and the Restatement (Second) of Torts, 552 (1977), the Supreme Court held that the plaintiffs had failed to rebut the affidavits from *Eide Bailly* that it didn't intend to supply the information to the plaintiffs and that it didn't know the plaintiffs would receive the accounting statement. The Supreme Court therefore affirmed the District Court's grant of summary judgment for defendant *Eide Bailly*. Relying upon *Jim's Excavating*, the Supreme Court also distinguished professional negligence claims from claims for third-party negligent misrepresentation claims but treated the case before the court as a case of third-party negligent misrepresentation. *W. Sec. Bank v. Eide Bailly, LLP*, 2010 MT 291, 359 Mont. 34, 249 P.3d 35.

Chapter Law Review Articles

New Uniform Principal and Income Act Being Promulgated, Schaengold, 138 Tr. & Est. 38 (1999).

A Law of Financial Accounts: Modern Payment and Securities Transfer Law, Sommer, 53 Bus. Law. 1181 (1998).

The Corporate Dilemma—Is It Possible to Preserve a Privilege for Environmental Audits?, Pabst, 41 La. B.J. 110 (1993).

The Tax Attorney and the CPA—A Study in Professional Dynamics, Widdes, 24 Md. B. J. 39(2) (1991).

The Uniformity Challenge, Ellyson, 169 J. Acct. 15(1) (1990).

The Accounting Profession's Peer Review Program, Sommer, 20 U. Tol. L. Rev. 375 (1989).

Part 1 General

37-50-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Affiliated entity" means an entity owned, leased, or controlled by a firm through common employment or any other service arrangement, including but not limited to financial or investment services, insurance, real estate, and employee benefits services.

(2) "Agreed-upon procedures engagement" means an engagement performed in accordance with applicable attestation standards and in which a firm or person is engaged to issue a written finding that:

(a) is based on specific procedures that the specified parties agree are sufficient for their purposes;

(b) is restricted to the specified parties; and

(c) does not provide an opinion or negative assurance.

(3) "Attest" means providing the following services:

(a) an audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) a review of a financial statement to be performed in accordance with the statements on standards for accounting and review services;

(c) an examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements;

(d) an engagement to be performed in accordance with the auditing standards of the public company oversight board; and

(e) an examination, other than an examination as provided in subsection (3)(c), a review, or an agreed-upon procedures engagement to be performed in accordance with the statements on standards for attestation engagements.

(4) "Board" means the board of public accountants provided for in 2-15-1756.

(5) "Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review services that presents, in the form of financial statements, information that is the representation of owners without undertaking to express any assurance on the statements.

(6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) "Firm" means a sole practice, sole proprietorship, partnership, professional corporation, or limited liability company engaged in the practice of public accounting.

(8) "Peer review" means a board-approved study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee of a registered firm in the practice of public accounting, by a person or persons who hold licenses in this or another jurisdiction and who are not affiliated with the person or firm being reviewed.

(9) "Practice of public accounting" means performing or offering to perform, by a person licensed as a certified public accountant or holding a practice privilege under 37-50-325, for a client or potential client one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services as determined by the board;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters.

(10) "Principal place of business" means the office location designated by the licensee for the purposes of substantial equivalency.

(11) "Satellite office" means a secondary location of a registered public accounting firm.

(12) "Substantial equivalency" or "substantially equivalent" means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act or subsequent acts or that an individual certified public accountant's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act. In ascertaining substantial equivalency, the board shall take into account the qualifications without regard to the sequence in which the experience, education, and examination requirements were attained.

History: En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974; R.C.M. 1947, 66-1807.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 382, L. 1989; amd. Sec. 143, Ch. 483, L. 2001; amd. Sec. 41, Ch. 109, L. 2009; amd. Sec. 5, Ch. 169, L. 2015; amd. Sec. 1, Ch. 162, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 162 in definition of attest in (e) at beginning inserted "an examination, other than an examination as provided in subsection (3)(c), a review, or"; deleted definition that read: "'Home office" is the location specified by the client as the address where a service described in 37-50-325(4) is directed"; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in definition of firm inserted "sole practice"; in definition of peer review before "licensee" deleted "permittee or"; in definition of practice of public accounting substituted "licensed as a certified public accountant" for "certified under 37-50-302, licensed under 37-50-303" and in (b) after "consulting services" inserted "as determined by the board"; inserted definition of satellite office; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 inserted definitions of affiliated entity, agreed-upon procedures engagement, attest, compilation, firm, home office, peer review, principal place of business, and substantial equivalency; in definition of practice of public accounting near middle after "37-50-303" inserted "or holding a practice privilege under 37-50-325"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1989 Amendment: Inserted definition of practice of public accounting. Amendment effective July 1, 1989.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in definition of department; changed internal references to the department and the board.

Administrative Rules

ARM 24.201.301 Definitions.

37-50-102. Exemptions. This chapter does not prohibit any person who is not a certified public accountant from serving as an employee of or an assistant to a certified public accountant holding a license to practice under 37-50-302 or a firm composed of certified public accountants registered under this chapter. However, the employee or assistant may not issue any accounting or financial statement in the employee's or assistant's name.

History: En. Sec. 27, Ch. 118, L. 1969; R.C.M. 1947, 66-1839; amd. Sec. 4, Ch. 684, L. 1979; amd. Sec. 1, Ch. 335, L. 1983; amd. Sec. 3, Ch. 375, L. 2003; amd. Sec. 42, Ch. 109, L. 2009; amd. Sec. 6, Ch. 169, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 169 in three places after references to certified public accountant deleted references to licensed public accountant, in middle substituted "license" for "permit" and substituted "37-50-302 or" for "37-50-314", and after "this chapter" deleted "or a foreign accountant whose credentials have been recognized under 37-50-313". Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 near middle of first sentence before "composed" substituted "firm" for "partnership or corporation". Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendment: Chapter 375 in first sentence near end after "foreign accountant" deleted "registered" and inserted reference to recognition of credentials; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1983 Amendment: Substituted "permit" for "license" before "to practice under 37-50-314".

Part 2

Board of Public Accountants

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1756.
Entries in official books and records prima facie evidence, 26-1-605.
Entry made by officer or Board prima facie evidence, 26-1-606.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Board to adopt rules on conduct, 37-1-131.

Part Administrative Rules

Title 24, chapter 201, subchapter 1, ARM Organizational rule.
Title 24, chapter 201, subchapter 2, ARM Procedural rules.

37-50-201. Organization — general rulemaking power — seal — records. (1) The board shall elect annually a presiding officer and a secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

(3) The board must have a seal that must be judicially noticed.

(4) The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(1) thru (5); amd. Sec. 5, Ch. 684, L. 1979; amd. Sec. 2, Ch. 335, L. 1983; amd. Sec. 33, Ch. 492, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 492 deleted former (3) that read: "(3) A quorum for the transaction of business consists of three members of the board"; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: In (1) deleted reference to treasurer.

Administrative Rules

Title 24, chapter 201, ARM Board of Public Accountants.

37-50-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(6); amd. Sec. 6, Ch. 684, L. 1979; amd. Sec. 28, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section (see 1981 Session Law) for former text that read: "Each member of the board while actually engaged in the duties of his office is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one-fourth the daily rate of a grade 8, step 1, classified state employee, for every 6 hours or fraction thereof spent away from home on board business".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-50-203. Rules of board. (1) The board may adopt rules, consistent with the purposes of this chapter, that it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules governing education requirements, as provided in 37-50-305, for issuance of the license of a certified public accountant;

(c) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial license; and

(d) rules to enforce the provisions of this chapter. The purpose of the rules is to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

(3) The board may adopt rules:

(a) governing firms and other types of entities practicing public accounting, including but not limited to rules concerning style, name, title, and affiliation with other organizations; and

(b) establishing education and experience qualifications for out-of-state and foreign accountants seeking licenses to practice in Montana.

History: En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974; R.C.M. 1947, 66-1817; amd. Sec. 7, Ch. 684, L. 1979; amd. Sec. 3, Ch. 335, L. 1983; amd. Sec. 101, Ch. 429, L. 1995; amd. Sec. 42, Ch. 492, L. 1997; amd. Sec. 4, Ch. 375, L. 2003; amd. Sec. 43, Ch. 109, L. 2009; amd. Sec. 7, Ch. 169, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 169 deleted former (2)(b) that read: "(b) rules of procedure governing the conduct of matters before the board"; in (2)(b) substituted "license" for "certificate" and after "accountant" deleted "and the license for licensed public accountant"; in (2)(c) substituted "license" for "permit"; deleted former (3)(b) that read: "(b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and

(ii) prescribing joint and several liability for torts relating to professional services for shareholders of a firm or owners of other types of entities that fail to comply with standards established pursuant to subsection (3)(b)(i)"; in (3)(b) after "seeking" deleted "permits, certificates, or"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 in (3)(a) at beginning after "governing" substituted "firms" for "partnerships, corporations"; in (3)(b)(ii) after "shareholders of a" substituted "firm" for "corporation"; in (3)(c) after "seeking" substituted "permits, certificates, or licenses" for "authorization"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendment: Chapter 375 deleted former (2)(d) that read: "(d) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any corporation failing to comply with the standards"; inserted (3) allowing adoption of rules governing entities practicing public accounting, standards of professional liability insurance and unimpaired capital, and education and experience qualifications for out-of-state and foreign accountants; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1997 Amendment: Chapter 492 in (2)(e), near end after "the initial", deleted "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted former (2)(d) that read: "(d) rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accounting. In issuing rules and individual orders regarding continuing education, the board in its discretion:

(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) may prescribe the content, duration, and organization of courses; and

(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accounting that may result from differences in such requirements in other states"; deleted former (2)(f) that read: "(f) internal rules considered necessary to initiate and conduct investigations and protect the confidences of the client of any certified public accountant or licensed public accountant subjected to board disciplinary proceedings"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: In (2)(c) inserted "as provided in 37-50-305"; deleted former (2)(f) that read "rules setting forth the terms, not exceeding 2 years, and areas of experience required for certification as a certified public accountant and licensing as a licensed public accountant"; inserted (2)(f) referring to internal rules; inserted (2)(g) referring to rules defining accounting experience requirements; inserted (2)(h) referring to other rules required to enforce chapter; deleted (3), which read: "At least 60 days prior to the adoption of a rule or amendment, the department shall mail copies of the proposed rule or amendment to each holder of a certificate or license issued under 37-50-314, with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments on it at least 15 days prior to the effective date. These comments are advisory only. The department's certificate of mailing to licensed accountants is conclusive proof thereof."

1983 Statement of Intent: The statement of intent attached to Ch. 335, L. 1983, provided: "This bill requires a statement of intent because it requires rulemaking by the Board of Public Accountants.

Under new subsections added to section 37-50-203, the Board must adopt internal rules to preserve the confidences of clients of investigated public accountants, rules defining experience requirements, and rules for investigations and enforcement of the law and board rules. The internal rules required are intended to prevent disclosure by board members and employees of facts learned through board investigations which the client of the investigated party, who may be unaware of the investigation, never consented to. The Legislature believes this to be a sensitive area, as investigations may or may not result in civil and criminal charges and may even result in legal action by others against the client. Rules governing experience required by the Board must require only so much experience as is necessary for the protection of the public and must not impede access to the profession by those persons reasonably well qualified. Enforcement rules must create a positive enforcement program which will require application of continuing education principles for persons who, among others, may be close to violations of the law but for which other disciplinary action is not warranted."

Existing Orders and Rules Effective Until Revoked or Modified: Section 22, Ch. 684, L. 1979, provided: "All orders and rules relating to the practice of accounting made by the board of public accountants prior to July 1, 1979, remain in effect until revoked or modified in accordance with law."

1979 Statement of Intent: The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "1. The Board may establish rules setting standards for determining a practitioner's competency in specialized fields of accounting. It is contemplated the rules should address the following:

- (a) the fields of specialized practice such as auditing of financial institutions, auditing of governmental entities, estate tax planning and other fields requiring specialized knowledge;
- (b) types of programs required for determining competency such as classroom instruction, seminars, homestudy, experience, examination or any combination thereof;
- (c) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, course content and endorsement by other regulatory agencies or professional or educational groups;
- (d) the number of hours of instruction or experience, if any, required;
- (e) contents of examinations, if any, required;
- (f) alternative methods of fulfilling the requirements such as intrafirm or company programs and a provision for waiver of the requirements for hardship.

The rules may not prohibit the person holding a license or certificate from practicing in any area or field of public accounting nor affect his ability to acquire annual renewal of his certificate or license.

2. The Board may establish rules governing education requirements for certification or licensure. It is contemplated that the rules should supplement and interpret 37-50-305 as amended by the bill by:

- (a) making determinations as to recognized colleges and universities. The Board may use the University System schools of business as a yardstick;
- (b) determining standards for accepting college graduates with majors other than accounting, including but not limited to:
 - (i) the minimum number of accounting credits required;
 - (ii) subjects of courses allowed as supplementary business-related courses; and
 - (iii) the total number of credits required in business administration.

3. The Board may adopt rules prescribing continuing education for continued practice in public accounting. It is contemplated that they should address the following:

- (a) types of programs required for determining knowledge and competence such as classroom instruction, seminars, homestudy, experience, examination, or any combination thereof;
- (b) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, course content and endorsement by other regulatory agencies or professional or national groups;
- (c) the number of hours of instruction or experience, if any, required;
- (d) contents of examinations, if any, required;
- (e) alternative methods of fulfilling the requirements such as intrafirm or intracompany programs or prospective programs of study;
- (f) methods of monitoring and enforcement;
- (g) the rules may not deny a person the ability to acquire annual renewal of his certificate or license if continuing education requirements constitute a hardship due to inaccessibility to programs or interference with an interstate practice;
- (h) the rules should reflect standards for continuing education programs to ensure equal access, reasonable cost, exceptions for financial or physical hardships or impediments and reference to areas commonly and not rarely practiced by those engaged in public accounting.

4. The Board may establish rules governing partnerships and corporations practicing public accountancy. It is contemplated that the rules should address the following:

- (a) the financial ability of a partnership or corporation to protect the public from damages caused by negligence or malpractice, if any;
- (b) the method of establishing financial ability such as unimpaired capital, professional liability insurance, self-insurance or mutual insurance, or agreement;
- (c) other areas of regulation regarding firm style, name, title, affiliations, and joint and several liability of members or shareholders are governed by existing statutory law regulating partnerships and professional corporations.

5. The Board may establish rules setting forth terms, not exceeding two years, and areas of experience for original certification or licensure. It is contemplated that the rules should address the following:

- (a) the duration of experience required, not to exceed two years;
- (b) the areas of experience such as private, public or governmental accounting, or accounting experience as an educator, researcher, publisher or military serviceman, or combination thereof;
- (c) the rules should not discriminate between the areas of experience."

Administrative Rules

Title 24, chapter 201, subchapter 1, ARM Organizational rule.
Title 24, chapter 201, subchapter 2, ARM Procedural rules.
Title 24, chapter 201, subchapter 5, ARM Licensing and examinations.
Title 24, chapter 201, subchapter 7, ARM Professional conduct rules.
Title 24, chapter 201, subchapter 11, ARM Profession monitoring rules.
Title 24, chapter 201, subchapter 21, ARM Renewal and continuing education.
Title 24, chapter 201, subchapter 24, ARM Complaint procedures.

37-50-204. Rulemaking powers relating to examinations. The board may adopt rules for the following:

- (1) the terms and conditions under which a candidate shall obtain credit for passing the required examination or portions of the examination;
- (2) the period of time that candidates are allowed to apply for reexamination; and
- (3) the fees to be charged each candidate for examinations and special examinations, which must be commensurate with costs.

History: En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977; R.C.M. 1947, 66-1826; amd. Sec. 3, Ch. 196, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 196 at end of (1) after "candidate" substituted "shall obtain credit for passing the required examination or portions of the examination" for "who passes one or more subjects of examination may be reexamined in only the remaining subjects, with credit for the subjects previously passed"; substituted (2) concerning period for reexamination for former text that read: "a reasonable waiting period for a candidate's reexamination in a subject he has failed"; deleted former (3) that read: "(3) the maximum number of reexaminations for which a candidate may apply"; in (3) deleted former second sentence that read: "With respect to reexaminations, a fee commensurate with costs may be charged for each subject in which the candidate is reexamined"; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 24.201.410 Fee schedule.
Title 24, chapter 201, subchapter 5, ARM Licensing and examinations.

37-50-205. (Temporary) Duties of department. The department shall:

- (1) assist the board in transactions of its business and keep a record of the board's official action;
 - (2) assess to the board the reasonable costs of the department incurred in assisting the board;
- and
- (3) track the balance of funds in the enterprise fund, provided for in 37-50-209, and inform the board. (*Terminates September 30, 2023—sec. 5, Ch. 50, L. 2019.*)

37-50-205. (Effective October 1, 2023) Duties of department. The department shall:

- (1) assist the board in transactions of its business and keep a record of the board's official action;
- and
- (2) assess to the board the reasonable costs of the department incurred in assisting the board.

History: En. Sec. 21, Ch. 684, L. 1979; amd. Sec. 5, Ch. 427, L. 2015.

Compiler's Comments

Extension of Termination Date: Section 5, Ch. 50, L. 2019, amended sec. 10, Ch. 427, L. 2015, by extending the termination date imposed by Ch. 427 to September 30, 2023. Effective July 1, 2019.

2015 Amendment: Chapter 427 inserted (3) regarding balance of funds in the enterprise fund; and made minor changes in style. Amendment effective October 1, 2015, and terminates September 30, 2019.

37-50-206 through 37-50-208 reserved.

37-50-209. (Temporary) Enterprise fund. (1) There is an enterprise fund, as described in 17-2-102, established for the use of the board. The money in the fund is statutorily appropriated as provided in 17-7-502.

(2) All licensing fees, other money collected by the department on behalf of the board, and all interest or earnings on money deposited in the enterprise fund must be deposited in or credited to the fund.

(3) Money in the enterprise fund must be invested by the board of investments pursuant to the provisions of the unified investment program for state funds.

(4) The enterprise fund must retain a cash reserve balance of at least 15% of the average of the last 3 years of revenue as needed for operation of the board and measured on completion of the license renewal cycle.

(5) The enterprise fund may not include money taken from the general fund. (*Terminates September 30, 2023—sec. 5, Ch. 50, L. 2019.*)

History: En. Sec. 1, Ch. 427, L. 2015.

Compiler's Comments

Extension of Termination Date: Section 5, Ch. 50, L. 2019, amended sec. 10, Ch. 427, L. 2015, by extending the termination date imposed by Ch. 427 to September 30, 2023. Effective July 1, 2019.

Effective Date: This section is effective October 1, 2015.

Termination: Section 10, Ch. 427, L. 2015, provided that this section terminates September 30, 2019.

37-50-210. (Effective October 1, 2023) Deposit of money collected. Fees and other money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 6, Ch. 427, L. 2015.

Compiler's Comments

Extension of Effective Date: Section 4, Ch. 50, L. 2019, amended sec. 9, Ch. 427, L. 2015, by extending the effective date imposed by Ch. 427 to October 1, 2023. Effective July 1, 2019.

Effective Date: Section 9, Ch. 427, L. 2015, provided that this section is effective October 1, 2019.

Part 3 Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-50-301. Illegal use of title. (1) It is not a violation of this chapter for a firm that is not registered under 37-50-335 and that does not have an office in this state to provide its professional services and to practice public accounting in this state and use the title "CPA" or "CPA firm" so long as it complies with the exemption requirements of 37-50-335(4).

(2) A person may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a certified public accountant unless the person holds a current license as a certified public accountant under this chapter or qualifies for the practice privilege under 37-50-325.

(3) A firm may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the firm is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335 or meets the conditions to be exempt from registration as set forth in 37-50-335(4).

(4) A person or firm may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed certified public accountant", or any abbreviations likely to be confused with "CPA". However, a foreign accountant may use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received, and a person who is licensed as an enrolled agent by the internal revenue service may use the title "enrolled agent" or the abbreviation "EA".

(5) A person may not sign or affix a firm name with any wording indicating that it is a firm composed of persons offering attest services and compilations unless the firm conforms to the requirements of 37-50-330 and 37-50-335.

(6) A person may not assume or use the title or designation "certified public accountant" in conjunction with names indicating or implying that there is a firm or in conjunction with the designation "and company" or "and co." or a similar designation if there is in fact no bona fide firm that has been formed subject to the provisions of 37-50-330 and 37-50-335. However, it is lawful for a sole proprietor to continue the use of a deceased's name in connection with the sole proprietor's business for a reasonable period of time after the death of a former partner or co-owner.

History: En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977; R.C.M. 1947, 66-1838; amd. Sec. 8, Ch. 684, L. 1979; amd. Sec. 162, Ch. 575, L. 1981; amd. Sec. 4, Ch. 335, L. 1983; amd. Sec. 2, Ch. 123, L. 2001; amd. Sec. 5, Ch. 375, L. 2003; amd. Sec. 44, Ch. 109, L. 2009; amd. Sec. 8, Ch. 169, L. 2015; amd. Sec. 2, Ch. 162, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 162 in (5) after "37-50-330 and" deleted "is registered as required under" and in (6) after "37-50-330 and" deleted "registered under". Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in (1) and (3) at end substituted "37-50-335(4)" for "37-50-335(2)"; in (2) near end substituted "license" for "certificate" and deleted former last sentence that read: "However, a foreign accountant whose credentials are recognized under the provisions of 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received"; in (4) substituted ""licensed certified public accountant"" for ""licensed public accountant"", substituted "or any" for ""public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar", and substituted "may use" for "whose credentials are recognized under 37-50-313 shall use"; deleted former (4) and (5) that read: "(4) A person may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.

(5) A firm may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the firm is composed of public accountants unless it is registered as required under 37-50-335"; in (5) substituted "offering attest services and compilations" for "having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement"; in (6) after ""certified public accountant"" deleted "or "public accountant""; deleted former (7) that read: "(7) A person may not sign or affix the person's name or any trade or assumed name

used by the person in the person's profession or business with any wording indicating that the person has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless the person holds a current permit issued under 37-50-314 and all of the person's offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing a signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the person holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of the official's or employee's public duties"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 inserted (1) permitting certain unregistered firms if they comply with the exemption requirements of 37-50-335(2); in (2) at end of first sentence after "chapter" inserted "or qualifies for the practice privilege under 37-50-325"; in (3) in two places substituted "firm" for "partnership or corporation" and at end after "37-50-335" inserted "or meets the conditions to be exempt from registration as set forth in 37-50-335(2)"; in (5) in two places substituted "firm" for "partnership or corporation"; in (6) at beginning after "person" substituted "or firm" for "corporation, or partnership"; in (8) in three places substituted "firm" for "partnership or corporation"; in (9) in first sentence in two places substituted "firm" for "partnership or corporation" and at end of second sentence after "partner" inserted "or co-owner"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendment: Chapter 375 in (1) and (5) in second sentence after "foreign accountant" substituted "whose credentials are recognized" for "who has registered". Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

2001 Amendment: Chapter 123 in (1) in second sentence after "37-50-313" substituted "shall" for "may"; in (2) at end substituted "certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335" for "certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335"; in (4) near end after "registered" deleted "under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered"; in (5) in second sentence after "37-50-313" substituted "shall" for "may" and at end inserted phrase relating use of "EA" by an enrolled agent; in (7) at end substituted "corporation conforms to the requirements of 37-50-330 and is registered as required under 37-50-335" for "corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335"; in (8) at end of first sentence substituted "corporation that has been formed subject to the provisions of 37-50-330 and registered under 37-50-335" for "corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334"; and made minor changes in style. Amendment effective October 1, 2001.

1983 Amendment: At end of first sentence of (1), substituted "unless such person holds a current certificate as a public accountant under this chapter." for "unless such person has received a certificate as a certified public accountant in some state and is certified under 37-50-302, 37-50-310, or 37-50-311 and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335."; at end of (3) substituted "unless such person holds a current license as a licensed public accountant under this chapter." for "unless such person is licensed as a public accountant under this chapter, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335 or unless such person has received a certificate as a certified public accountant in some state, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335."; in (5) inserted "who has registered under 37-50-313" after "However, a foreign accountant"; in (6) substituted "permit" for "license" before "issued under 37-50-314".

1981 Amendment: Substituted "his country" for "this country" in (5).

Administrative Rules

ARM 24.201.415 Use of CPA/LPA designation.

37-50-302. Certified public accountants — licensure — qualifications and requirements. The board shall grant an initial license as a certified public accountant to any person who:

- (1) is of good moral character;
- (2) has successfully passed the certified public accountant examination;
- (3) meets the requirements of education and accounting experience set forth in this chapter and in board rules; and
- (4) has successfully completed a professional ethics course for certified public accountants as identified in board rule.

History: En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974; R.C.M. 1947, 66-1819; amd. Sec. 9, Ch. 684, L. 1979; amd. Sec. 5, Ch. 335, L. 1983; amd. Sec. 9, Ch. 169, L. 2015; amd. Sec. 24, Ch. 3, L. 2019; amd. Sec. 2, Ch. 50, L. 2019.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 3 in (2) substituted "certified public accountant examination" for "certified public accountants' examination". Amendment effective October 1, 2019.

Chapter 50 in (4) substituted "a professional ethics course for certified public accountants as identified in board rule" for "the professional ethics for CPAs course of the American institute of certified public accountants or its successor organization as defined in board rule". Amendment effective July 1, 2019.

2015 Amendment: Chapter 169 near beginning substituted "license" for "certificate"; in (3) inserted "and accounting experience"; inserted (4) regarding professional ethics requirement; and made minor changes in style. Amendment effective October 1, 2015.

1983 Amendment: Rewrote introductory clause from "Certification as a certified public accountant is available to any person who:".

Administrative Rules

ARM 24.201.501 Education requirements.

ARM 24.201.502 Accounting and auditing experience requirements.

ARM 24.201.510 Examinations.

ARM 24.201.516 Granting of examination credit.

ARM 24.201.517 Acceptance of examination credits.

37-50-303. Repealed. Sec. 24, Ch. 169, L. 2015.

History: En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974; R.C.M. 1947, 66-1820; amd. Sec. 6, Ch. 341, L. 1981; amd. Sec. 163, Ch. 575, L. 1981; amd. Sec. 6, Ch. 335, L. 1983.

37-50-304. Repealed. Sec. 24, Ch. 169, L. 2015.

History: En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974; R.C.M. 1947, 66-1821; amd. Sec. 1, Ch. 218, L. 1993; amd. Sec. 100, Ch. 467, L. 2005.

37-50-305. Education requirements — definition. (1) An applicant for initial licensure as a certified public accountant must have:

- (a) graduated from an accredited college or university with a baccalaureate degree and at least 150 semester hours of credit; and
 - (b) met the requirements for accounting and business course credit hours specified by board rule.
- (2) (a) A licensee shall obtain continuing education credits as provided by board and department rule.

(b) If an audit conducted under 37-1-306 results in more than 15% of the audited licensees being noncompliant before the department administers the provisions of 37-1-321, in the subsequent audit year the board may audit up to 100% of the licensees.

(3) For the purposes of this section, "initial licensure" means that the applicant has never been licensed as a certified public accountant by any jurisdiction.

History: En. Sec. 12, Ch. 118, L. 1969; R.C.M. 1947, 66-1824; amd. Sec. 10, Ch. 684, L. 1979; amd. Sec. 7, Ch. 335, L. 1983; amd. Sec. 3, Ch. 382, L. 1989; amd. Sec. 4, Ch. 196, L. 2003; amd. Sec. 10, Ch. 169, L. 2015; amd. Sec. 3, Ch. 50, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 50 inserted (2) concerning continuing education credits; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 169 substituted (1) concerning qualifications for licensure for former (1) that read: "(1) A candidate for initial certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with an accounting concentration or its equivalent as determined by the board; and

(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent"; in (2) substituted ""initial licensure" means that the applicant has never been licensed as a certified public accountant" for ""initial certification" means that the candidate has never been certified as a certified public accountant or licensed as a licensed public accountant"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 196 deleted former (1) that read: "(1) Prior to July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with a concentration in accounting; or

(b) with a concentration other than accounting if supplemented by experience or by related courses in other areas of business administration and the board determines that an equivalent education has been achieved"; at beginning of (1) deleted "Beginning July 1, 1997" and before "certification" inserted "initial"; inserted (2) defining initial certification; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: At beginning of (1) inserted "prior to July 1, 1997"; inserted (2) providing requirements for certification as public accountant; and made minor changes in form. Amendment effective July 1, 1989.

1983 Amendment: In (2), inserted "experience or by" before "related courses".

Statement of Intent: The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "The Board may establish rules governing education requirements for certification or licensure. It is contemplated that the rules should supplement and interpret 37-50-305 as amended by the bill by:

(a) making determinations as to recognized colleges and universities. The Board may use the University System schools of business as a yardstick;

(b) determining standards for accepting college graduates with majors other than accounting, including but not limited to:

(i) the minimum number of accounting credits required;

(ii) subjects of courses allowed as supplementary business-related courses; and

(iii) the total number of credits required in business administration."

Section Not Codified: Section 66-1823, R.C.M. 1947, a temporary section dealing with education and experience requirements for licensure between December 31, 1971, and January 1, 1975, has not been codified in the MCA. However, the statute has not been repealed and is still valid law. Citation may be made to sec. 11, Ch. 118, L. 1969.

Administrative Rules

ARM 24.201.501 Education requirements.

37-50-306. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(1), (2), (4), (5).

37-50-307. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974; R.C.M. 1947, 66-1830.

37-50-308. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974; R.C.M. 1947, 66-1818; amd. Sec. 20, Ch. 22, L. 1979; amd. Sec. 11, Ch. 684, L. 1979; amd. Sec. 8, Ch. 335, L. 1983; amd. Sec. 21, Ch. 230, L. 1999; amd. Sec. 5, Ch. 196, L. 2003.

37-50-309. Credit for examinations taken in other jurisdictions. The board may grant credit to an applicant for the satisfactory completion of the uniform certified public accountant examination taken in another jurisdiction.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(3); amd. Sec. 12, Ch. 684, L. 1979; amd. Sec. 6, Ch. 196, L. 2003; amd. Sec. 11, Ch. 169, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 169 substituted current language allowing credit for completion of uniform certified public accountant examination for former section text that read: "The board may by rule provide for granting credit to a candidate for the satisfactory completion of an examination in any one or more of the subjects of examination given by the licensing authority in another jurisdiction." Amendment effective October 1, 2015.

2003 Amendment: Chapter 196 near middle before "examination" deleted "written" and at end substituted "jurisdiction" for "state" and deleted former second sentence that read: "These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit originally was granted by the other state for passing the examination"; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 24.201.517 Acceptance of examination credits.

ARM 24.201.528 Licensure of out-of-state applicants.

ARM 24.201.529 Licensure of foreign-trained applicants.

37-50-310. Repealed. Sec. 24, Ch. 169, L. 2015.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-311. Repealed. Sec. 24, Ch. 169, L. 2015.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 9, Ch. 335, L. 1983; amd. Sec. 6, Ch. 375, L. 2003.

37-50-312. Repealed. Sec. 24, Ch. 169, L. 2015.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 10, Ch. 335, L. 1983; amd. Sec. 7, Ch. 375, L. 2003.

37-50-313. Repealed. Sec. 24, Ch. 169, L. 2015.

History: En. Sec. 16, Ch. 118, L. 1969; R.C.M. 1947, 66-1828; amd. Sec. 8, Ch. 375, L. 2003.

37-50-314. License required — proof of licensure. (1) A person may not engage in the practice of public accounting in this state without a current license issued by the department. A license to engage in the practice of public accounting in this state must be issued by the department to a person who complies with the requirements of this chapter.

(2) The current license to practice public accounting must be presented as proof of licensure upon request by a client.

(3) Upon request from a Montana client, a person qualifying for a practice privilege under 37-50-325(1) or (2) shall present proof of licensure from the state where the person is licensed.

History: En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974; R.C.M. 1947, 66-1833; amd. Sec. 13, Ch. 684, L. 1979; amd. Sec. 11, Ch. 335, L. 1983; amd. Sec. 102, Ch. 429, L. 1995; amd. Sec. 43, Ch. 492, L. 1997; amd. Sec. 45, Ch. 109, L. 2009; amd. Sec. 12, Ch. 169, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 169 in (1) in two places and in (2) substituted "license" for "permit"; in (1) after "a person who" deleted "holds a current certificate as a certified public accountant or license as a licensed public accountant and"; in (2) substituted "practice public accounting" for "engage in the practice of public accounting" and substituted "presented as proof of licensure upon request by a client" for "prominently displayed for public inspection"; in (3) at beginning inserted "Upon request from a Montana client" and substituted "shall present proof of licensure from the state where the person is licensed" for "is exempt from this requirement"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 inserted (3) providing that a person qualifying for a practice privilege is exempt from the permit and display requirements. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1997 Amendment: Chapter 492 in (1), in first sentence, and in (2), after "current", deleted "annual"; and in second sentence of (1), at beginning, substituted "A permit" for "An annual permit". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted (2) through (5) that read: "(2) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal of a permit by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.

(3) The board may in its discretion waive the requirement stated in subsection (2) if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.

(4) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accounting and for an applicant who cannot fulfill the requirement due to individual hardship.

(5) Subject to subsections (3) and (4), the board may revoke, suspend, or refuse to renew the permit of an applicant who fails to furnish evidence of having met the continuing education requirements established by the board"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: In (1) substituted language, providing that a public accountant must have a current permit which must be issued by the Department to an applicant who holds a certificate as a certified public accountant and complies with chapter requirements, for former text that read: "Annual

certificates and licenses to engage in the practice of public accounting in this state shall be issued by the department to certified public accountants and to licensed public accountants. There is an annual certificate or license renewal fee in an amount to be determined by the board. Annual certificates and licenses expire on December 31 of each year and may be renewed for a period of 1 year by certified public accountants and licensed public accountants in good standing on payment of the annual renewal fee."; deleted former (2), which read: "A person who fails to renew his license or certificate shall promptly surrender it to the board upon request."; in (2) inserted "of a permit" after "renewal"; in (5) substituted "permit" for "certificate or license"; inserted (6) requiring current annual permit to be displayed.

Statement of Intent: The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "Section 13 allows the Board to prescribe a reasonable annual renewal fee. It is intended that the fee not exceed an amount necessary to meet administrative costs."

Administrative Rules

ARM 24.201.410 Fee schedule.

ARM 24.201.2101 Renewals.

37-50-315. Repealed. Sec. 7, Ch. 427, L. 2015.

History: En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974; R.C.M. 1947, 66-1816; amd. Sec. 14, Ch. 684, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-50-316. Other license fees prohibited. License fees may not be imposed as a condition upon the practice of public accounting other than those provided for in this chapter.

History: En. Sec. 30, Ch. 118, L. 1969; R.C.M. 1947, 66-1842; amd. Sec. 12, Ch. 335, L. 1983; amd. Sec. 13, Ch. 169, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 169 at beginning substituted "License fees may not" for "No certificate, permit, or license fees shall" and substituted "accounting" for "accountancy". Amendment effective October 1, 2015.

1983 Amendment: Inserted "certificate, permit, or" before "license fees".

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-50-317. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 13, Ch. 335, L. 1983; amd. Sec. 103, Ch. 429, L. 1995; amd. Sec. 44, Ch. 492, L. 1997; amd. Sec. 47, Ch. 271, L. 2003.

37-50-318. Existing license or certificate transition. (1) A person who holds a licensed public accountant license and permit to practice on July 1, 2015, issued under the laws of this state may renew the person's existing license and is not required to obtain a certified public accountant license under this chapter. The person must otherwise be subject to all provisions of this chapter.

(2) A person who holds a certified public accountant certificate or licensed public accountant license on July 1, 2015, issued under the laws of this state but who has not met the qualifications for a permit to practice must meet the accounting experience requirement set forth in this chapter and in board rule by December 31, 2017, in order to be licensed. Failure to meet the accounting experience requirement by the deadline must result in termination of the certified public accountant certificate or licensed public accountant license.

History: En. Sec. 21, Ch. 169, L. 2015.

Compiler's Comments

Effective Date: Section 26(2), Ch. 169, L. 2015, provided that this section is effective July 1, 2015.

37-50-319 and 37-50-320 reserved.

37-50-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 22, Ch. 118, L. 1969; R.C.M. 1947, 66-1834; amd. Sec. 15, Ch. 684, L. 1979; amd. Sec. 14, Ch. 335, L. 1983.

37-50-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974; R.C.M. 1947, 66-1837; amd. Sec. 15, Ch. 335, L. 1983.

37-50-323. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 1, Ch. 541, L. 2005.

37-50-324. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 2, Ch. 541, L. 2005.

37-50-325. Practice privilege for nonresident certified public accountant — rules. (1) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy's national qualification appraisal service or a successor organization has verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or a subsequent act of the American institute of certified public accountants/national association of state boards of accountancy is presumed to have qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a license of this state without the need to obtain a license under 37-50-302.

(b) A person who offers or renders professional services under this section, whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required. The person is subject to the requirements of subsections (3) and (4) and this subsection (1).

(2) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy's national qualification appraisal service or a successor organization has not verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or a subsequent act of the American institute of certified public accountants/national association of state boards of accountancy is presumed to have qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a license of this state without the need to obtain a license under 37-50-302 if the person obtains verification from the national association of state boards of accountancy's national qualification appraisal service that the person's CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act of the American institute of certified public accountants/national association of state boards of accountancy.

(b) A person who has passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012, is exempt from the education requirements in the Uniform Accountancy Act or a subsequent act for purposes of this subsection (2).

(c) A person who offers or renders professional services under this subsection (2), whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required unless the person is required to register pursuant to 37-50-335. The person is subject to the requirements of subsections (3) and (4) and this subsection (2).

(3) A licensee of another state exercising the privilege under this section and the firm that employs that person, as a condition of the grant of this privilege:

- (a) are subject to the personal and subject matter jurisdiction and disciplinary authority of the board;
- (b) shall comply with this chapter and the board's rules;
- (c) shall cease offering or rendering professional services in this state individually or on behalf of a firm if the license from the state of the person's principal place of business is no longer valid; and
- (d) shall accept the appointment of the state board that issued the license as the agent upon whom process may be served in any action or proceeding by the board of public accountants against the licensee.
- (4) A person who has been granted practice privileges under this section and who, for any client with its home office in this state, performs any attest services or compilations may do so only through a firm in compliance with 37-50-335.

History: En. Sec. 1, Ch. 109, L. 2009; amd. Sec. 14, Ch. 169, L. 2015; amd. Sec. 3, Ch. 162, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 162 in (2)(c) near end of first sentence after "person is" substituted "required to register" for "registered" and in (4) near end after "a firm" substituted "in compliance with" for "registered under". Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in (1)(a) near end and in (2)(a) near middle substituted "is presumed to have qualifications" for "has qualifications" and substituted "license of this state without the need to obtain a license under 37-50-302" for "certificate and a permit of this state without the need to obtain a certificate under 37-50-302 or a permit under 37-50-314"; and in (2)(c) after "required" inserted "unless the person is registered pursuant to 37-50-335". Amendment effective October 1, 2015.

Effective Date: This section is effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

Administrative Rules

- ARM 24.201.531 Practice privilege.
- ARM 24.201.532 Application review.
- ARM 24.201.535 Reactivation of inactive status.
- ARM 24.201.537 Retired status.

37-50-326 through 37-50-329 reserved.

37-50-330. Compliance with ownership requirements — firm registration. (1) A firm composed of certified public accountants that is engaged in the practice of public accounting may include persons who are not licensed as certified public accountants if:

(a) the firm designates an accountant who is licensed in this state or, in the case of a firm that practices under the practice privilege pursuant to 37-50-335, a licensee of another state who meets the requirements set out in 37-50-325(1) or (2) to be responsible for the proper registration of the firm;

(b) a simple majority of ownership in the firm, in terms of equity and voting rights, is held by accountants who are licensed in this state or in another substantially equivalent jurisdiction or meet the requirements of 37-50-325; and

(c) all persons with an ownership interest in the firm are of good moral character and individuals actively participating in the business of the firm or its affiliated entities.

(2) An accountant licensed in this state or a person qualifying for practice privileges under 37-50-325 who holds an ownership interest in a firm, who is responsible for supervising attest or compilation services, and who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm is responsible for all attest or compilation services.

(3) A person licensed in this state and a person qualifying for practice privileges under 37-50-325 who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm must meet the competency requirements of 37-50-203(2)(a).

(4) (a) A firm that is no longer in compliance with the ownership requirements of subsection (1)(b) shall give notice to the board within 90 days of the noncompliance.

(b) The board shall grant the firm a reasonable amount of time to reestablish compliance with the ownership requirements of subsection (1)(b). The time granted by the board to a firm to reestablish

compliance may not be less than 90 days from the date the board receives the firm's notice of noncompliance.

(c) The failure of a firm to reestablish compliance with the ownership requirements of subsection (1)(b) is grounds for the board to suspend or revoke the firm's registration required by 37-50-335.

History: En. Sec. 1, Ch. 123, L. 2001; amd. Sec. 46, Ch. 109, L. 2009; amd. Sec. 15, Ch. 169, L. 2015; amd. Sec. 4, Ch. 162, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 162 in (1)(c) inserted "of good moral character and". Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in (1) substituted "that is engaged" for "or a firm composed of public accountants that is or plans to become engaged" and after "not licensed" deleted "as public accountants or certified"; in (1)(a), (2), and (3) near beginning after "licensed" deleted "or certified"; in (1)(a) substituted "practices under the practice privilege" for "must be registered"; in (1)(b) after "licensed" deleted "or certified accountants" and substituted "37-50-325" for "37-50-325(2)"; deleted former (1)(d) that read: "(d) any person with an ownership interest in the firm who is not licensed or certified as an accountant and who holds a professional license, registration, or certification issued by this state or another jurisdiction is in compliance with the requirements for that license, registration, or certification"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 throughout section substituted reference to firm for reference to corporation or partnership; in (1)(a) near middle after "state" inserted "or, in the case of a firm that must be registered pursuant to 37-50-335, a licensee of another state who meets the requirements set out in 37-50-325(1) or (2)"; in (1)(b) near end after "another" inserted "substantially equivalent" and after "jurisdiction" inserted "or meet the requirements of 37-50-325(2)"; in (1)(c) at end substituted "firm or its affiliated entities" for "partnership or corporation"; in (2) near beginning after "state" inserted "or a person qualifying for practice privileges under 37-50-325" and at end after "interest in a" substituted "firm, who is responsible for supervising attest or compilation services, and who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm is responsible for all attest or compilation services" for "partnership or corporation organized pursuant to this section is ultimately responsible for all services provided by the partnership or corporation including any unit, branch, or division of the partnership or corporation providing attestation services"; inserted (3) regarding competency requirements of a person who signs or authorizes someone to sign the accountant's report; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: This section is effective October 1, 2001.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

37-50-331. Repealed. Sec. 3, Ch. 123, L. 2001.

History: En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974; R.C.M. 1947, 66-1829; amd. Sec. 16, Ch. 684, L. 1979.

37-50-332. Repealed. Sec. 3, Ch. 123, L. 2001.

History: En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 101, L. 1977; R.C.M. 1947, 66-1829.1; amd. Sec. 17, Ch. 684, L. 1979.

37-50-333. Repealed. Sec. 3, Ch. 123, L. 2001.

History: En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974; R.C.M. 1947, 66-1831; amd. Sec. 18, Ch. 684, L. 1979; amd. Sec. 16, Ch. 335, L. 1983.

37-50-334. Repealed. Sec. 3, Ch. 123, L. 2001.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977; R.C.M. 1947, 66-1831.1; amd. Sec. 19, Ch. 684, L. 1979; amd. Sec. 17, Ch. 335, L. 1983.

37-50-335. Registration of firms — exemptions. (1) All firms that establish or maintain offices in this state for the practice of public accounting shall register annually with the department.

(2) A fee may be charged for the annual registration of firms.

(3) Each firm that establishes or maintains satellite offices in this state for the practice of public accounting shall provide a list of the location of each satellite office in this state at the time of annual registration.

(4) A firm that does not have an office in this state may use the title "CPA" or "CPA firm" in this state without registering and may:

(a) offer or render attest services and compilations in this state if the firm:

(i) complies with the state's peer review and firm ownership qualifications;

(ii) performs the services through an individual with practice privileges under 37-50-325; and

(iii) has practice privileges that include offering or rendering attest and compilation services in the state where the firm has its principal place of business;

(b) perform professional services other than attest services or compilations in this state if the firm:

(i) performs the services through a person with practice privileges under 37-50-325; and

(ii) has practice privileges to perform the services in the state where the firm has its principal place of business.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977; R.C.M. 1947, 66-1832; amd. Sec. 20, Ch. 684, L. 1979; amd. Sec. 18, Ch. 335, L. 1983; amd. Sec. 9, Ch. 375, L. 2003; amd. Sec. 47, Ch. 109, L. 2009; amd. Sec. 16, Ch. 169, L. 2015; amd. Sec. 5, Ch. 162, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 162 deleted former (2) that read: "(2) All firms that do not have an office in this state but perform attest services and compilations for a client having its home office in this state shall register annually with the department"; inserted (3) concerning state satellite offices; substituted (4) concerning firms that do not have offices in this state for former language that read: "(4) A firm that is not subject to the requirements of subsection (2) may perform other professional services while using the title "CPA" or "CPA firm" in this state without registering with the department only if:

(a) it performs the services through a person with practice privileges under 37-50-325; and

(b) it can lawfully perform the services in the state where persons with practice privileges have their principal place of business"; deleted former (5) that read: "(5) Each firm that establishes or maintains satellite offices in this state for the practice of public accounting shall provide a list of the location of each satellite office in this state at the time of annual registration"; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 169 in (1) substituted current language regarding annual registration for former (1) that read: "(1) The following firms shall register annually with the department:

(a) those with an office in this state performing attest services and compilations;

(b) those with an office in this state that use the title "CPA" or "CPA firm"; deleted former (2) that read: "(2) A firm that undergoes a board-sanctioned compliance or peer review process and receives an acceptable, a pass, or a pass with deficiencies rating for these services and completes all remediation in its principal place of business is exempt from registration"; in (2) substituted "All firms" for "those" and inserted "shall register annually with the department"; in (3) after "may" deleted "not" and substituted "of firms" for "required in subsection (1)(c)"; in (5) substituted "firm that establishes or maintains satellite offices" for "office established or maintained" and substituted "shall provide a list of the location of each satellite office in this state at the time of annual registration" for "in this state by a certified public accountant, by a firm of certified public accountants, by a licensed public accountant, by a firm of licensed public accountants, or by a foreign accountant recognized under 37-50-313 shall register annually with the department. A fee may not be charged for this registration"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 inserted (1) through (3) regarding registration of firms and exemptions from registration under certain circumstances; in (4) in first sentence in two places substituted "firm" for "partnership or corporation" and deleted former third sentence that read: "In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2003 Amendment: Chapter 375 in first sentence before "under 37-50-313" substituted "by a foreign accountant recognized" for "by one registered"; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 14, Ch. 375, L. 2003, was a saving clause.

1983 Amendment: At end substituted language requiring an annual permit under 37-50-314 for "accounting must be certified or licensed annually under 37-50-314".

37-50-336. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974; R.C.M. 1947, 66-1835.

37-50-337 through 37-50-340 reserved.

37-50-341. Initiation of proceedings — hearings and rulemaking. (1) The board may initiate proceedings under this chapter upon its own motion, upon a complaint made by the board of accountancy of another state, or upon the complaint of a person.

(2) A person licensed in this state offering or rendering services or using a "CPA" title in another state is subject to disciplinary action in this state for an act committed in another state where the licensee would be subject to discipline for the act committed in the other state.

(3) A person licensed in another state offering or rendering services or using a "CPA" title in this state is subject to disciplinary action in this state for an act committed in this state for which a licensee in this state would be subject to discipline.

(4) Hearings and rulemaking proceedings are governed by the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974; R.C.M. 1947, 66-1836; amd. Sec. 48, Ch. 109, L. 2009; amd. Sec. 17, Ch. 169, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 169 in (2) and (3) after "licensed" deleted "or certified". Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 in (1) near middle after "motion" inserted "upon a complaint made by the board of accountancy of another state"; inserted (2) and (3) regarding disciplinary actions; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-50-342. Violation. Any person who violates any provision of this chapter or the rules of the board is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500, by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

History: En. Sec. 28, Ch. 118, L. 1969; R.C.M. 1947, 66-1840; amd. Sec. 19, Ch. 335, L. 1983.

Compiler's Comments

1983 Amendment: Rewrote section (see 1983 Session Law) that previously read: "Any person who violates any provision of 37-50-301 shall be guilty of a misdemeanor."

Part 4 Miscellaneous Provisions

Part Case Notes

Statute of Limitations Barring Professional Negligence Claim Against Accountant Who Entered Business With Client: Brevig's company executed a cattle share agreement with Brevig's accountant wherein the accountant purchased cattle and bulls, paid taxes on the livestock, and agreed to supply

labor for the operation of the herd. In turn, the company agreed to manage the herd, cover certain expenses, market the stock, and maintain herd records. The partnership split calves born to the herd, 60% to the company and 40% to the accountant. The arrangement was profitable for both parties and produced appropriate returns on the accountant's investment. Brevig later argued that it was unethical for the accountant to go into business with the partnership because the partnership was one of the accountant's clients. The 3-year statute of limitations in 27-2-204 barred Brevig's negligence claim with respect to the cattle share agreement because the claim of professional negligence was not filed within 3 years from the time that the agreement was executed. *McCormick v. Brevig*, 1999 MT 86, 294 M 144, 980 P2d 603, 56 St. Rep. 355 (1999).

Part Law Review Articles

ERISA Liability for CPAs, Collins, 190 J. Acct. 39 (2000).

Saga of Accountants' Liability to Third Parties Under Common Law, Brodsky, 224 N.Y.L.J. 3 (2000).

Tax Malpractice in the Estate and Gift Tax Areas, Todres, 77 Taxes 13 (1999).

Tax Shelter Malpractice, Feinschreiber & Kent, 18 Tax Notes Int'l 2345 (1999).

37-50-401. False statements by certified public accountants — misdemeanor — penalty. Any person practicing as a certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, issues or permits the issuance of any false statement of the financial transactions, standing, or condition of any firm or individual business undertaking is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$2,000, be imprisoned for a period of not less than 90 days or more than 1 year, or both.

History: En. Sec. 8, Ch. 46, L. 1933; re-en. Sec. 3241.8, R.C.M. 1935; R.C.M. 1947, 66-1808; amd. Sec. 49, Ch. 109, L. 2009; amd. Sec. 18, Ch. 169, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 169 after "practicing as" deleted "an accountant, public accountant, or"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 near beginning after "accountant" deleted "auditor", near middle after "condition of any" substituted "firm" for "corporation, partnership"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

37-50-402. Privileged communications — exceptions. (1) Except by permission of the client, person, or firm engaging a certified public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, or firm and except for the expression of opinions on financial statements, a certified public accountant or employee may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified public accountant or an employee may have relative to and in connection with any professional services as a certified public accountant. The information derived from or as a result of professional services is considered confidential and privileged.

(2) The provisions of this section do not apply to the testimony or documents of a certified public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program.

History: En. Sec. 29, Ch. 118, L. 1969; R.C.M. 1947, 66-1841; amd. Sec. 20, Ch. 335, L. 1983; amd. Sec. 1, Ch. 82, L. 1993; amd. Sec. 50, Ch. 109, L. 2009; amd. Sec. 19, Ch. 169, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 169 in (1) after "engaging a certified" deleted "or licensed", after second "certified public accountant" deleted "licensed public accountant", after "divulge information that the" substituted "certified public accountant" for "certified or licensed accountant", and after "professional services as a" inserted "certified"; and in (2) inserted "certified". Amendment effective October 1, 2015.

2009 Amendment: Chapter 109 in (1) in first sentence in two places after "firm" deleted "or corporation"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1993 Amendment: Chapter 82 at end of (2) inserted "or in the process of any board-approved practice review program"; and made minor changes in style.

1983 Amendment: In last sentence inserted "or documents" after "testimony"; substituted "furnished" for "given"; and inserted "or a board proceeding" at end of section.

Cross-References

Evidence — privileges, Title 26, ch. 1, part 8.

37-50-403. Nonliability — evidential privilege — application to nonprofit corporations. (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice as certified public accountants is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the member after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within that person's knowledge. However, the person may not be questioned about the person's testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to a member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting.

History: En. Sec. 1, Ch. 197, L. 1991; amd. Sec. 1408, Ch. 56, L. 2009; amd. Sec. 20, Ch. 169, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 169 in (1) substituted "as certified public accountants" for "the accounting profession". Amendment effective October 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.