

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 271

BY SENATORS FERNS AND GAUNCH

[Introduced January 14, 2016; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §30-9-2, §30-9-3 and §30-9-7 of the Code of West Virginia, 1931,
2 as amended, all relating to regulation of the practice of accountancy; redefining “attest
3 services”; protecting board members from civil liability; and revising requirements for
4 issuance of certificate as certified public accountant including criminal background check.

Be it enacted by the Legislature of West Virginia:

1 That §30-9-2, §30-9-3 and §30-9-7 of the Code of West Virginia, 1931 as amended, be
2 amended and reenacted, all to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-2. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
2 the context or associated language clearly indicates otherwise:

3 (1) ~~AAffiliated entity@~~ means an entity that controls, is controlled by, or is under common
4 control with, a firm. For purposes of this definition, an entity controls another entity if the entity
5 directly or indirectly or acting in concert with one or more other affiliated entities, or through one
6 or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing,
7 more than fifty percent of the voting interest in such entity.

8 (2) ~~AAssurance@~~ means any act or action, whether written or oral, expressing an opinion
9 or conclusion about the reliability of a financial statement or about its conformity with any financial
10 accounting standards.

11 (3) ~~AAttest services@~~ means providing ~~any~~ the following services:

12 (A) ~~Audit~~ Any audit or other engagement to be performed in accordance with the
13 statements on Auditing Standards (SAS);

14 (B) ~~Review~~ Any review of a financial statement to be performed in accordance with the
15 statements on Standards for Accounting and Review Services (SSARS);

16 (C) ~~Examination~~ Any examination of prospective financial information to be performed

17 in accordance with applicable Statements on Standards for Attestation Engagements
18 (SSAE); ~~or~~

19 (D) ~~Engagement~~ Any engagement to be performed in accordance with the Auditing
20 Standards of the Public Company Accounting Oversight Board (PCAOB); or

21 (E) Any examination, review or agreed upon procedures engagement to be performed in
22 accordance with the statements on Standards for Attestation Engagements (SSAE), other than
23 an examination described in paragraph (C) of this subdivision.

24 (4) AAudit@ means expressing an opinion about the fairness of presentation of financial
25 statements in accordance with the statements on Auditing Standards.

26 (5) "Authorization" means an authorization issued pursuant to this article that entitles a
27 permit holder or an individual practitioner to perform attest or compilation services.

28 (6) ABoard@ means the West Virginia Board of Accountancy.

29 (7) ABusiness entity@ means any corporation, partnership, limited partnership, limited
30 liability partnership, professional limited liability partnership, limited liability company, professional
31 limited liability company, joint venture, business trust or any other form of business organization.
32 The term Abusiness entity@ includes a firm.

33 (8) "Certificate" means a certificate as a certified public accountant issued or renewed by
34 the board pursuant to this article or corresponding provisions of prior law.

35 (9) ACertified public accountant@ or ACPA@ means the holder of a certificate.

36 (10) AClient@ means a person or entity that agrees with a licensee or licensee=s employer
37 to receive any professional service.

38 (11) ACommission@ means compensation, except a referral fee, for recommending or
39 referring any product or service to be supplied by another person.

40 (12) ACompilation services@ means providing a service performed in accordance with the
41 statements on Standards for Accounting and Review Services that presents, in the form of a

42 financial statement, information that is the representation of management without an expression
43 of assurance on the statement: *Provided*, That this definition does not apply to the use of the term
44 Acompilation@ in section thirty-one of this article.

45 (13) AContingent fee@ means a fee established for the performance of any service
46 pursuant to an arrangement in which no fee will be charged unless a specified finding or result is
47 attained, or in which the amount of the fee is otherwise dependent upon the finding or result of
48 the service. A fee fixed by a court, taxing authority or other public authority is not a contingent fee.

49 (14) AExamination”, when used with reference to prospective financial statements, means
50 expressing an opinion about the fairness of presentation of financial information in accordance
51 with the statements on Standards for Attestation Engagements.

52 (15) AFinancial statement@ means a writing or other presentation, including
53 accompanying notes, which presents, in whole or in part, historical or prospective financial
54 position, results of operations or changes in financial position of any person, corporation,
55 partnership or other entity.

56 (16) AFirm@ means any business entity, including, but not limited to, accounting
57 corporations and professional limited liability companies, in which two or more certified public
58 accountants or public accountants hold an ownership or membership interest, in terms of the
59 financial interests and voting rights of all partners, officers, shareholders, members or managers,
60 and the primary business activity of which is the provision of professional services to the public
61 by certified public accountants or public accountants.

62 (17) AFirm ownership requirements@ means, with respect to:

63 (A) Any professional limited liability company organized pursuant to article thirteen,
64 chapter thirty-one-b of this code, consisting of one or more licensed certified public accountants
65 or licensed public accountants;

66 (B) Any other firm where:

67 (i) A simple majority of ownership of the firm, in terms of financial interests and voting
68 rights of all partners, officers, shareholders, members or managers, belongs either to:

69 (I) Certified public accountants holding a certificate under section twelve of this article or
70 the equivalent provision of another state; or

71 (II) Public accountants who have met the continuing professional education requirements
72 of subsection (b), section twelve of this article and who are not subject to the exemption or
73 limitation set forth in subdivisions (1) or (2), subsection (b), section twelve of this article or similar
74 provisions of another state.

75 (ii) All owners of the firm who are not certified public accountants or public accountants
76 are active participants in the firm or in affiliated entities.

77 (18) AForeign@ means any country other than the United States.

78 (19) AGood moral character@ means lack of a history of dishonesty or felonious activity.

79 (20) AHome office@ means the client=s office address.

80 (21) AIndividual practitioner@ means a certified public accountant or a public accountant
81 who offers professional services to the public but who does not practice in a firm.

82 (22) "License" means a certificate, permit, registration or authorization.

83 (23) "Licensee" means the holder of a license.

84 (24) "Manager" means a manager of a professional limited liability company.

85 (25) "Member" means a member of a professional limited liability company.

86 (26) ANonlicensee@ means a person or business entity that does not hold a license.

87 (27) AOut-of-state certificate@ means a valid certificate as a certified public accountant or
88 equivalent designation issued or renewed under the laws of another state: *Provided*, That Aout-
89 of-state certificate@ does not include any certificate as a certified public accountant or equivalent
90 designation that was issued or renewed solely by virtue of a holder=s prior status as a public
91 accountant or its equivalent in the state of issuance and not by virtue of the holder=s having met

92 the certification requirements of the state of issuance.

93 (28) AOut-of-state permit@ means a valid permit as a firm of certified public accountants
94 or another designation equivalent to a permit issued or renewed by the board and that is issued
95 or renewed under the laws of another state.

96 (29) "Peer Review" means a study, appraisal or review of one or more aspects of the
97 professional work of a licensee by a person who holds a certificate or an out-of-state certificate
98 and who is not affiliated with the licensee being reviewed.

99 (30) "Permit" means a permit issued to a firm pursuant to this article.

100 (31) APrincipal place of business@ means the licensee=s office location in the state where
101 the licensee holds a certificate or registration.

102 (32) AProfessional services@ means those services that involve the specialized
103 knowledge and skills of a certified public accountant or a public accountant delivered by any
104 means, including but not limited to, in person, by mail, telephone or by electronic means.

105 (33) APublic accountant@ means a person holding a registration who is not a certified
106 public accountant.

107 (34) AReferral fee@ means compensation for recommending or referring any service of a
108 licensee to any person.

109 (35) ARegistration@ means a registration as a public accountant issued by the board
110 pursuant to prior law governing the registration of public accountants and renewed by the board
111 pursuant to this article.

112 (36) "Report", when used with reference to financial statements, means an opinion or
113 disclaimer of opinion or other form of language or representation which states or implies any form
114 of assurance or denial of assurance.

115 (37) "Rule" means any rule proposed for legislative approval by the board pursuant to this
116 article.

117 (38) "State" means any state of the United States, the District of Columbia, Puerto Rico,
118 the U.S. Virgin Islands or Guam.

119 (39) ASubstantial equivalency@ or Asubstantially equivalent@ means or refers to a
120 determination by the board or its designee that the education, examination and experience
121 requirements contained in the statutes or rules of another state are comparable to or exceed the
122 education, examination and experience requirements contained in the Uniform Accountancy Act,
123 or that an individual certified public accountant=s education, examination and experience
124 qualifications are comparable to or exceed the education, examination and experience
125 requirements contained in the Uniform Accountancy Act.

126 (40) ASubstantial equivalency practitioner@ means any individual whose principal place
127 of business is not in this state, who holds a certificate from another state and has complied with
128 the provisions of section sixteen of this article.

129 (41) AUniform Accountancy Act@ means the Uniform Accountancy Act, fifth edition,
130 revised (July 2007), jointly published by the American Institute of Certified Public Accountants
131 and the National Association of State Boards of Accountancy.

**§30-9-3. Board of accountancy; appointment; terms, qualifications of members; removal
of members; compensation of members; civil liability protection for members.**

1 (a) The West Virginia board of accountancy is hereby continued.

2 (b) (1) Commencing with the board terms beginning July 1, 2001, the board shall consist
3 of seven members appointed for terms of three years by the Governor with the advice and consent
4 of the Senate. Five members must be certified public accountants; one member must be a public
5 accountant so long as twenty-five or more public accountants are registered by the board, but if
6 there are fewer than twenty-five public accountants registered by the board, then the member
7 may be either a public accountant or a certified public accountant; and one member must be a
8 citizen member who is a resident of this state, who is not licensed under the provisions of this

9 article and who also is not a bookkeeper, enrolled agent or a person who provides or offers to
10 provide to the public any bookkeeping, tax preparation, financial advisory or insurance service:
11 *Provided, That* the members of the board in office on July 1, 2001, shall continue to serve until
12 their respective terms expire.

13 (2) Each licensed member of the board, at the time of his or her appointment, must have
14 held a license in this state for a period of not less than five years immediately preceding the
15 appointment and each member must be a resident of this state during the appointment term.

16 (3) Each appointment of a public accountant, whether for a full term or to fill a vacancy,
17 must be made by the Governor from among three nominees selected by the West Virginia Public
18 Accountants Association and each appointment of a certified public accountant, whether for a full
19 term or to fill a vacancy, must be made by the Governor from among three nominees selected by
20 the West Virginia Society of Certified Public Accountants: *Provided, That* when the appointment
21 of a certified public accountant is to fill the seat held on July 1, 2001, by a public accountant, then
22 the appointment, whether for a full term or to fill a vacancy, must be made by the Governor from
23 among three nominees selected by the West Virginia Public Accountants Association. When the
24 appointment is for a full term, the nominations must be submitted to the Governor not later than
25 eight months prior to the date on which the appointment will become effective. When the
26 appointment is to fill a vacancy, the nominations must be submitted to the Governor within ten
27 days after a request for the nominations has been made by the Governor to the president of the
28 West Virginia Society of Certified Public Accountants or president of the West Virginia Public
29 Accountants Association. If the society or the association fails to submit to the Governor
30 nominations for an appointment in accordance with the requirements of this section, the Governor
31 may make the appointment without the nominations.

32 (c) No member may serve more than two consecutive full terms, and any member having
33 served two full terms may not be appointed for one year after completion of his or her second full
34 term. A member shall continue to serve until his or her successor has been appointed and

35 qualified.

36 (d) If a board member is unable to complete a term, the Governor shall appoint a person
37 of similar qualifications to complete the unexpired term: *Provided*, That if the board member is a
38 certified public accountant or public accountant, the Governor shall appoint a person from any
39 nominees submitted pursuant to subdivision (3), subsection (b) of this section. Each vacancy
40 occurring on the board must be filled by appointment within sixty days after the vacancy is created.

41 (e) The Governor may remove any member from the board for neglect of duty,
42 incompetency or official misconduct.

43 (f) Any member of the board shall immediately and automatically forfeit his or her
44 membership if he or she has his or her certificate or registration suspended or revoked by the
45 board, is convicted of a felony under the laws of any state or the United States, or becomes a
46 nonresident of this state.

47 (g) Each member of the board shall receive compensation and expense reimbursement
48 in accordance with section eleven, article one of this chapter.

49 (h) Board members are exempt from civil liability for any decision made or any act done
50 in good faith in the performance of any duty or the exercise of any power granted under this article.

§30-9-7. Issuance of certificate; certificates issued prior to the first day of July, two thousand one.

1 (a) The board shall issue an original certificate to an applicant ~~of good moral character~~
2 who demonstrates that:

3 (1) He or she has met one of the following qualifications for a certificate:

4 (A) He or she meets the qualifications for a certificate set forth in section eight of this
5 article;

6 ~~(2)~~(B) He or she holds an out-of-state certificate and meets the requirements of section
7 nine of this article;

8 ~~(3)~~(C) He or she holds an out-of-state certificate, does not meet the requirements of

9 section nine of this article but does meet the requirements of section ten of this article; or

10 ~~(4)(D)~~ He or she holds a substantially equivalent foreign designation and meets the
11 requirements of section eleven of this article.

12 (2) He or she has submitted an application, in writing, on a form prescribed by the board:
13 Provided, That the application must require an applicant to list all states in which he or she has
14 applied for or holds an out-of-state certificate and any past denial, revocation or suspension of an
15 out-of-state certificate;

16 (3) He or she is trustworthy and of good moral character;

17 (4) He or she has paid the appropriate fee prescribed by the board;

18 (5) He or she has submitted to a state and national criminal history record check, as set
19 forth in this subdivision.

20 (A) This requirement is found not to be against public policy.

21 (B) The criminal history record check shall be based on fingerprints submitted to the West
22 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

23 (C) The applicant shall meet all requirements necessary to accomplish the state and
24 national criminal history record check, including:

25 (i) Submitting fingerprints for the purposes set forth in this subsection; and

26 (ii) Authorizing the board, the West Virginia State Police and the Federal Bureau of
27 Investigation to use all records submitted and produced for the purpose of screening the applicant
28 for a certificate.

29 (D) The results of the state and national criminal history record check may not be released
30 to or by a private entity except:

31 (i) To the individual who is the subject of the criminal history record check;

32 (ii) With the written authorization of the individual who is the subject of the criminal history
33 record check; or

34 (iii) Pursuant to a court order.

35 (E) The criminal history record check and related records are not public records for the
36 purposes of chapter twenty-nine-b of this code.

37 (F) The applicant shall pay the actual costs of the fingerprinting and criminal history record
38 check.

39 (G) The board may propose rules to implement the provisions of this section for legislative
40 approval in accordance with article three, chapter twenty-nine-a of this code. The rules must be
41 consistent with standards established by the Federal Bureau of Investigation and the National
42 Crime Prevention and Privacy Compact as authorized by 42 U. S. C. §14611, et seq.

43 (b) Certificates will initially be issued for a period to expire on June 30 following the date
44 of issue.

45 ~~(c) Applications for the issuance of certificates must be made in the form specified by the~~
46 ~~board by rule: Provided: That, The application must require an applicant to list all states in which~~
47 ~~he or she has applied for or holds an out-of-state certificate and any past denial, revocation or~~
48 ~~suspension of an out-of-state certificate.~~

49 ~~(d) The board shall charge an application fee in an amount specified by rule.~~

50 ~~(e)~~ A certificate issued by the board prior to July 1, 2001, will for all purposes be considered
51 a certificate issued under this section: *Provided*, That a person holding a certificate issued prior
52 to July 1, 2001, must renew the certificate pursuant to section twelve of this article.

NOTE: The purpose of this bill is to conform the definition of attest services to the Uniform Accountancy Act, to protect members of the board of Accountancy from civil liability for any decision made or act done in good faith as members of the board and to require criminal history record check to obtain certificate issued by the board.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.