

**SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION**

S.F. No. 698

(SENATE AUTHORS: KORAN, Rest and Benson)

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Introduction and first reading
Referred to State Government Finance and Policy and Elections
See First Special Session 2019, SF10, Art. 9

OFFICIAL STATUS

- 1.1 A bill for an act
- 1.2 relating to state government; modifying provisions related to the practice of certified
- 1.3 public accounting; amending Minnesota Statutes 2018, sections 326A.01,
- 1.4 subdivision 2; 326A.04, subdivisions 4, 5; 326A.08, subdivisions 4, 5, by adding
- 1.5 a subdivision; 326A.10; proposing coding for new law in Minnesota Statutes,
- 1.6 chapter 326A.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2018, section 326A.01, subdivision 2, is amended to read:
- 1.9 Subd. 2. **Attest.** "Attest" means providing any of the following services:
- 1.10 (1) an audit or other engagement performed in accordance with the Statements on
- 1.11 Auditing Standards (SAS);
- 1.12 (2) an audit or other engagement performed in accordance with the Government Auditing
- 1.13 Standards (GAS);
- 1.14 (3) a review of a financial statement performed in accordance with the Statements on
- 1.15 Standards for Accounting and Review Services (SSARS);
- 1.16 ~~(3)~~ (4) an examination of prospective financial information performed in accordance
- 1.17 with the Statements on Standards for Attestation Engagements (SSAE);
- 1.18 ~~(4)~~ (5) an engagement performed in accordance with the standards of the Public Company
- 1.19 Accounting Oversight Board (PCAOB); and
- 1.20 ~~(5)~~ (6) an examination, review, or agreed-upon procedures engagement performed in
- 1.21 accordance with SSAE, other than an examination described in clause (3).

2.1 Sec. 2. Minnesota Statutes 2018, section 326A.04, subdivision 4, is amended to read:

2.2 Subd. 4. **Program of learning.** Each licensee shall participate in a program of learning
2.3 designed to maintain professional competency. The program of learning must comply with
2.4 rules adopted by the board. The board may by rule create an exception to this requirement
2.5 for licensees who do not perform or offer to perform for the public one or more kinds of
2.6 services involving the use of ~~accounting or~~ auditing skills, including issuance of reports on
2.7 ~~financial statements or of one or more kinds of:~~ attest or compilation engagements,
2.8 management advisory services, financial advisory services, or consulting services, ~~or the~~
2.9 ~~preparation of tax returns or the furnishing of advice on tax matters.~~ A licensee granted such
2.10 an exception by the board must place the word "inactive" or "retired," if applicable, adjacent
2.11 to the CPA title on any business card, letterhead, or any other document or device, with the
2.12 exception of the licensee's certificate on which the CPA title appears.

2.13 Sec. 3. Minnesota Statutes 2018, section 326A.04, subdivision 5, is amended to read:

2.14 Subd. 5. **Fee.** (a) The board shall charge a fee for each application for initial issuance
2.15 or renewal of a certificate or temporary military certificate under this section as provided
2.16 in paragraph (b). ~~The fee for the temporary military certificate is \$100.~~

2.17 (b) The board shall charge the following fees:

2.18 (1) initial issuance of certificate, \$150;

2.19 (2) renewal of certificate with an active status, \$100 per year;

2.20 (3) initial CPA firm permits, except for sole practitioners, \$100;

2.21 (4) renewal of CPA firm permits, except for sole practitioners and those firms specified
2.22 in clause ~~(17)~~ (16), \$35 per year;

2.23 (5) initial issuance and renewal of CPA firm permits for sole practitioners, except for
2.24 those firms specified in clause ~~(17)~~ (16), \$35 per year;

2.25 (6) annual late processing delinquency fee for permit, certificate, or registration renewal
2.26 applications not received prior to expiration date, \$50;

2.27 (7) copies of records, per page, 25 cents;

2.28 (8) registration of noncertificate holders, nonlicensees, and nonregistrants in connection
2.29 with renewal of firm permits, \$45 per year;

2.30 (9) applications for reinstatement, \$20;

2.31 (10) initial registration of a registered accounting practitioner, \$50;

(11) initial registered accounting practitioner firm permits, \$100;

(12) renewal of registered accounting practitioner firm permits, except for sole practitioners, \$100 per year;

(13) renewal of registered accounting practitioner firm permits for sole practitioners, \$35 per year;

~~(14) CPA examination application, \$40;~~

~~(15)~~ (14) CPA examination, fee determined by third-party examination administrator;

~~(16)~~ (15) renewal of certificates with an inactive status, \$25 per year; ~~and~~

~~(17)~~ (16) renewal of CPA firm permits for firms that have one or more offices located in another state, \$68 per year; and

(17) temporary military certificate, \$100.

Sec. 4. **[326A.045] RETIRED STATUS.**

Subdivision 1. **Application.** A retired certified public accountant age 55 or older who holds a current license to practice public accounting in Minnesota under this chapter with a license status of active or inactive, or who has been granted exempt status under Minnesota Rules, part 1105.3700, may apply to the board for certified public accountant retired status if the person declares that he or she is retired in all jurisdictions from the practice of public accounting. A person must submit an application for retired status on a form provided by the board.

Subd. 2. **Status of registrant.** Retired status is not a license to engage in the practice of public accounting. A person granted retired status under this section shall not perform or offer to perform for the public one or more kinds of services involving the use of auditing skills, including issuance of reports on attest or compilation engagements, management advisory services, financial advisory services, or consulting services.

Subd. 3. **Documentation of status.** A person granted retired status shall receive a document certifying that retired status has been granted by the board and that the licensee has completed the licensee's active career as a CPA licensed in good standing with the board.

Subd. 4. **Representation to the public.** A person granted retired status may represent themselves as "Certified Public Accountant - Retired," "CPA - Retired," "Retired Certified Public Accountant," or "Retired CPA" but shall not represent themselves or allow themselves to be represented to the public as a current licensee of the board.

4.1 Subd. 5. **Continuing education requirements.** The continuing education requirements
4.2 that apply to certificate holders with a status of "active" do not apply to a person granted
4.3 retired status under this section.

4.4 Subd. 6. **Renewal cycle or fee.** A person granted retired status under this section shall
4.5 not be subject to registration renewal.

4.6 Subd. 7. **Change to active or inactive status.** A person granted retired status who
4.7 requests to reactivate his or her license to a status of active or inactive shall meet the
4.8 requirements for reactivation as prescribed by rule.

4.9 Sec. 5. Minnesota Statutes 2018, section 326A.08, subdivision 4, is amended to read:

4.10 Subd. 4. **Cease and desist orders.** (a) The board, or the complaint committee if
4.11 authorized by the board, may issue and have served upon a certificate holder, a permit
4.12 holder, a registration holder, a person with practice privileges granted under section 326A.14,
4.13 a person who has previously been subject to a disciplinary order by the board, or an
4.14 unlicensed firm or person an order requiring the person or firm to cease and desist from the
4.15 act or practice constituting a violation of the statute, rule, or order. The order must be
4.16 calculated to give reasonable notice of the rights of the person or firm to request a hearing
4.17 and must state the reasons for the entry of the order. No order may be issued until an
4.18 investigation of the facts has been conducted pursuant to section 214.10.

4.19 (b) Service of the order ~~is effective when the order is served on the person, firm, or~~
4.20 ~~counsel of record personally, or by certified mail to the most recent address provided to the~~
4.21 ~~board for the person, firm, or counsel of record.~~ may be by first class United States mail,
4.22 including certified United States mail, or overnight express mail service, postage prepaid
4.23 and addressed to the party at the party's last known address. Service by United States mail,
4.24 including certified mail, is complete upon placing the order in the mail or otherwise delivering
4.25 the order to the United States mail service. Service by overnight express mail service is
4.26 complete upon delivering the order to an authorized agent of the express mail service.

4.27 (c) Unless otherwise agreed by the board, or the complaint committee if authorized by
4.28 the board, and the person or firm requesting the hearing, the hearing must be held no later
4.29 than 30 days after the request for the hearing is received by the board.

4.30 (d) The administrative law judge shall issue a report within 30 days of the close of the
4.31 contested case hearing record, notwithstanding Minnesota Rules, part 1400.8100, subpart
4.32 3. Within 30 days after receiving the report and any exceptions to it, the board shall issue

5.1 a further order vacating, modifying, or making permanent the cease and desist orders as the
5.2 facts require.

5.3 (e) If no hearing is requested within 30 days of service of the order, the order becomes
5.4 final and remains in effect until it is modified or vacated by the board.

5.5 (f) If the person or firm to whom a cease and desist order is issued fails to appear at the
5.6 hearing after being duly notified, the person or firm is in default and the proceeding may
5.7 be determined against that person or firm upon consideration of the cease and desist order,
5.8 the allegations of which may be considered to be true.

5.9 (g) In lieu of or in addition to the order provided in paragraph (a), the board may require
5.10 the person or firm to provide to the board a true and complete list of the person's or firm's
5.11 clientele so that they can, if deemed necessary, be notified of the board's action. Failure to
5.12 do so, or to provide an incomplete or inaccurate list, is an act discreditable.

5.13 Sec. 6. Minnesota Statutes 2018, section 326A.08, subdivision 5, is amended to read:

5.14 Subd. 5. **Actions against persons or firms.** (a) The board may, by order, deny, refuse
5.15 to renew, suspend, temporarily suspend, or revoke the application, or practice privileges,
5.16 registration or certificate of a person or firm; censure or reprimand the person or firm;
5.17 prohibit the person or firm from preparing tax returns or reporting on financial statements;
5.18 limit the scope of practice of any licensee; limit privileges under section 326A.14; refuse
5.19 to permit a person to sit for examination; or refuse to release the person's examination grades
5.20 if the board finds that the order is in the public interest and that, based on a preponderance
5.21 of the evidence presented, the person or firm:

5.22 (1) has violated a statute, rule, or order that the board has issued or is empowered to
5.23 enforce;

5.24 (2) has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether
5.25 or not the conduct or acts relate to performing or offering to perform professional services,
5.26 providing that the fraudulent, deceptive, or dishonest conduct or acts reflect adversely on
5.27 the person's or firm's ability or fitness to provide professional services;

5.28 (3) has engaged in conduct or acts that are negligent or otherwise in violation of the
5.29 standards established by board rule, where the conduct or acts relate to providing professional
5.30 services, including in the filing or failure to file the licensee's income tax returns;

5.31 (4) has been convicted of, has pled guilty or nolo contendere to, or has been sentenced
5.32 as a result of the commission of a felony or crime, an element of which is dishonesty or
5.33 fraud; has been shown to have or admitted to having engaged in acts or practices tending

to show that the person or firm is incompetent; or has engaged in conduct reflecting adversely on the person's or firm's ability or fitness to provide professional services, whether or not a conviction was obtained or a plea was entered or withheld and whether or not dishonesty or fraud was an element of the conduct;

(5) employed fraud or deception in obtaining a certificate, permit, registration, practice privileges, renewal, or reinstatement or in passing all or a portion of the examination;

(6) has had the person's or firm's permit, registration, practice privileges, certificate, right to examine, or other similar authority revoked, suspended, canceled, limited, or not renewed for cause, or has committed unprofessional acts for which the person or firm was otherwise disciplined or sanctioned, including, but not limited to, being ordered to or agreeing to cease and desist from prescribed conduct, in any state or any foreign country;

(7) has had the person's or firm's right to practice before any federal, state, other government agency, or Public Company Accounting Oversight Board revoked, suspended, canceled, limited, or not renewed for cause, or has committed unprofessional acts for which the person or firm was otherwise disciplined or sanctioned, including, but not limited to, being ordered to or agreeing to cease and desist from prescribed conduct;

(8) failed to meet any requirement for the issuance or renewal of the person's or firm's certificate, registration or permit, or for practice privileges;

(9) with respect to temporary suspension orders, has committed an act, engaged in conduct, or committed practices that may result or may have resulted, in the opinion of the board or the complaint committee if authorized by the board, in an immediate threat to the public;

(10) has engaged in any conduct reflecting adversely upon the person's or firm's fitness to perform services while a licensee, individual granted privileges under section 326A.14, or a person registered under section 326A.06, paragraph (b); or

(11) has, prior to a voluntary surrender of a certificate or permit to the board, engaged in conduct which at any time resulted in the discipline or sanction described in clause (6) or (7).

(b) In lieu of or in addition to any remedy provided in paragraph (a), the board, or the complaint committee if authorized by the board, may require, as a condition of continued possession of a certificate, a registration, or practice privileges, termination of suspension, reinstatement of permit, registration of a person or firm or of practice privileges under

section 326A.14, a certificate, an examination, or release of examination grades, that the person or firm:

(1) submit to a peer review of the person's or firm's ability, skills, or quality of work, conducted in a fashion and by persons, entity, or entities as required by the board; and

(2) complete to the satisfaction of the board continuing professional education courses specified by the board.

(c) ~~Service of the order is effective if the order is served on the person, firm, or counsel of record personally or by certified mail to the most recent address provided to the board for the person, firm, or counsel of record.~~ may be by first class United States mail, including certified United States mail, or overnight express mail service, postage prepaid and addressed to the party at the party's last known address. Service by United States mail, including certified mail, is complete upon placing the order in the mail or otherwise delivering the order to the United States mail service. Service by overnight express mail service is complete upon delivering the order to an authorized agent of the express mail service. The order shall state the reasons for the entry of the order.

(d) All hearings required by this subdivision must be conducted in accordance with chapter 14 except with respect to temporary suspension orders as provided for in subdivision 6.

(e) In addition to the remedies authorized by this subdivision, the board, or the complaint committee if authorized by the board, may enter into an agreement with the person or firm for corrective action and may unilaterally issue a warning to a person or firm.

(f) The board shall not use agreements for corrective action or warnings in any situation where the person or firm has been convicted of or pled guilty or nolo contendere to a felony or crime and the felony or crime is the basis of the board's action against the person or firm, where the conduct of the person or firm indicates a pattern of related violations of paragraph (a) or the rules of the board, or where the board concludes that the conduct of the person or firm will not be deterred other than by disciplinary action under this subdivision or subdivision 4 or 6.

(g) Agreements for corrective action may be used by the board, or the complaint committee if authorized by the board, where the violation committed by the person or firm does not warrant disciplinary action pursuant to this subdivision or subdivision 4 or 6, but where the board, or the complaint committee if authorized by the board, determines that corrective action is required to prevent further such violations and to otherwise protect the public. Warnings may be used by the board, or the complaint committee if authorized by

the board, where the violation of the person or firm is de minimus, does not warrant disciplinary action under this subdivision or subdivision 4 or 6, and does not require corrective action to protect the public.

(h) Agreements for corrective action must not be considered disciplinary action against the person's or firm's application, permit, registration or certificate, or practice privileges under section 326A.14. However, agreements for corrective action are public data. Warnings must not be considered disciplinary action against the person's or firm's application, permit, registration, or certificate or person's practice privileges and are private data.

Sec. 7. Minnesota Statutes 2018, section 326A.08, is amended by adding a subdivision to read:

Subd. 10. **Actions against lapsed license, certificate, or permit.** If a person's or firm's permit, registration, practice privileges, license, certificate, or other similar authority lapses, expires, is surrendered, withdrawn, terminated, canceled, limited, not renewed, or otherwise becomes invalid, the board may institute a proceeding under this subdivision within two years after the date the license, certificate, or permit was last effective and enter a revocation or suspension order as of the last date on which the license, certificate, or permit was in effect, or impose a civil penalty as provided for in subdivision 7.

Sec. 8. Minnesota Statutes 2018, section 326A.10, is amended to read:

326A.10 UNLAWFUL ACTS.

(a) Only a licensee and individuals who have been granted practice privileges under section 326A.14 may issue a report on financial statements of any person, firm, organization, or governmental unit that results from providing attest services, or offer to render or render any attest service. Only a certified public accountant, an individual who has been granted practice privileges under section 326A.14, a CPA firm, or, to the extent permitted by board rule, a person registered under section 326A.06, paragraph (b), may issue a report on financial statements of any person, firm, organization, or governmental unit that results from providing compilation services or offer to render or render any compilation service. These restrictions do not prohibit any act of a public official or public employee in the performance of that person's duties or prohibit the performance by any nonlicensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports on them. Nonlicensees may prepare financial statements and issue nonattest transmittals or information on them which do not purport to be in compliance with the Statements on Standards for

Accounting and Review Services (SSARS). Nonlicensees registered under section 326A.06, paragraph (b), may, to the extent permitted by board rule, prepare financial statements and issue nonattest transmittals or information on them.

(b) Licensees and individuals who have been granted practice privileges under section 326A.14 performing attest or compilation services must provide those services in accordance with professional standards. To the extent permitted by board rule, registered accounting practitioners performing compilation services must provide those services in accordance with standards specified in board rule.

(c) A person who does not hold a valid certificate issued under section 326A.04 or a practice privilege granted under section 326A.14 shall not use or assume the title "certified public accountant," the abbreviation "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.

(d) A firm shall not provide attest services or assume or use the title "certified public accountants," the abbreviation "CPA's," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is a CPA firm unless (1) the firm has complied with section 326A.05, and (2) ownership of the firm is in accordance with this chapter and rules adopted by the board.

(e) A person or firm that does not hold a valid certificate or permit issued under section 326A.04 or 326A.05 or has not otherwise complied with section 326A.04 or 326A.05 as required in this chapter shall not assume or use the title "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited accountant," "accounting practitioner," "public accountant," "licensed public accountant," or any other title or designation likely to be confused with the title "certified public accountant," or use any of the abbreviations "CA," "LA," "RA," "AA," "PA," "AP," "LPA," or similar abbreviation likely to be confused with the abbreviation "CPA." The title "enrolled agent" or "EA" may only be used by individuals so designated by the Internal Revenue Service.

(f) Persons registered under section 326A.06, paragraph (b), may use the title "registered accounting practitioner" or the abbreviation "RAP." A person who does not hold a valid registration under section 326A.06, paragraph (b), shall not assume or use such title or abbreviation.

(g) Except to the extent permitted in paragraph (a), nonlicensees may not use language in any statement relating to the financial affairs of a person or entity that is conventionally

used by licensees in reports on financial statements or on an attest service. In this regard, the board shall issue by rule safe harbor language that nonlicensees may use in connection with such financial information. A person or firm that does not hold a valid certificate or permit, or a registration issued under section 326A.04, 326A.05, or 326A.06, paragraph (b), or has not otherwise complied with section 326A.04 or 326A.05 as required in this chapter shall not assume or use any title or designation that includes the word "accountant" or "accounting" in connection with any other language, including the language of a report, that implies that the person or firm holds such a certificate, permit, or registration or has special competence as an accountant. A person or firm that does not hold a valid certificate or permit issued under section 326A.04 or 326A.05 or has not otherwise complied with section 326A.04 or 326A.05 as required in this chapter shall not assume or use any title or designation that includes the word "auditor" in connection with any other language, including the language of a report, that implies that the person or firm holds such a certificate or permit or has special competence as an auditor. However, this paragraph does not prohibit any officer, partner, member, manager, or employee of any firm or organization from affixing that person's own signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds, nor prohibit any act of a public official or employee in the performance of the person's duties as such.

(h)(1) No person holding a certificate or registration or firm holding a permit under this chapter shall use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter. However, names of one or more former partners, members, managers, or shareholders may be included in the name of a firm or its successor.

(2) A common brand name or network name part, including common initials, used by a CPA firm in its name, is not misleading if the firm is a network firm as defined in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct ~~in effect July 1, 2011~~ incorporated by reference in Minnesota Rules, part 1105.0250, and when offering or rendering services that require independence under AICPA standards, the firm must comply with the AICPA code's applicable standards on independence.

(i) Paragraphs (a) to (h) do not apply to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder to engage in the practice of public accountancy or its equivalent in that country, if:

(1) the activities of the person or firm in this state are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds the entitlement;

(2) the person or firm performs no attest or compilation services and issues no reports with respect to the information of any other persons, firms, or governmental units in this state; and

(3) the person or firm does not use in this state any title or designation other than the one under which the person practices in the foreign country, followed by a translation of the title or designation into English, if it is in a different language, and by the name of the country.

(j) No holder of a certificate issued under section 326A.04 may perform attest services through any business form that does not hold a valid permit issued under section 326A.05.

(k) No individual licensee may issue a report ~~in standard form~~ upon a compilation of financial information through any form of business that does not hold a valid permit issued under section 326A.05, unless the report discloses the name of the business through which the individual is issuing the report, and the individual:

(1) signs the compilation report identifying the individual as a certified public accountant;

(2) meets the competency requirement provided in applicable standards; and

(3) undergoes no less frequently than once every three years, a peer review conducted in a manner specified by the board in rule, and the review includes verification that the individual has met the competency requirements set out in professional standards for such services.

(l) No person registered under section 326A.06, paragraph (b), may issue a report ~~in standard form~~ upon a compilation of financial information unless the board by rule permits the report and the person:

(1) signs the compilation report identifying the individual as a registered accounting practitioner;

(2) meets the competency requirements in board rule; and

(3) undergoes no less frequently than once every three years a peer review conducted in a manner specified by the board in rule, and the review includes verification that the individual has met the competency requirements in board rule.

12.1 (m) Nothing in this section prohibits a practicing attorney or firm of attorneys from
12.2 preparing or presenting records or documents customarily prepared by an attorney or firm
12.3 of attorneys in connection with the attorney's professional work in the practice of law.

12.4 (n) The board shall adopt rules that place limitations on receipt by a licensee or a person
12.5 who holds a registration under section 326A.06, paragraph (b), of:

12.6 (1) contingent fees for professional services performed; and

12.7 (2) commissions or referral fees for recommending or referring to a client any product
12.8 or service.

12.9 (o) Anything in this section to the contrary notwithstanding, it shall not be a violation
12.10 of this section for a firm not holding a valid permit under section 326A.05 and not having
12.11 an office in this state to provide its professional services in this state so long as it complies
12.12 with the applicable requirements of section 326A.05, subdivision 1.