

CHAPTER 340—H.F.No. 2308

An act relating to accountants; modifying licensing provisions; providing for firm licensure; authorizing rulemaking; amending Minnesota Statutes 1996, sections 326.165; 326.17; 326.18; 326.19; 326.20; 326.211; 326.212, subdivisions 1, 4, 5, and by adding a subdivision; 326.22, subdivision 2; 326.223; 326.228; and 326.229, subdivisions 3, 4, 6, and by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 326; repealing Minnesota Statutes 1996, sections 326.191; 326.21; and 326.225.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 326.165, is amended to read:

326.165 BOARD OF ACCOUNTANCY POLICY; DEFINITIONS.

Subdivision 1. **PURPOSE.** It is the policy of this state to promote the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private, or governmental. The public interest requires that persons engaged in the practice of public accounting be qualified; that a public authority competent to prescribe and assess the qualifications of public accountants be established; that the expression of any form of assurance or of opinions on financial statements be reserved to persons who demonstrate their ability and fitness to observe and apply the standards of the accounting profession; and that the use of accounting titles likely to confuse the public be prohibited.

Subd. 1a. **SCOPE.** For the purposes of sections 326.165 to 326.229, the definitions in this section have the meanings given.

Subd. 2. **PRACTICE OF PUBLIC ACCOUNTING.** The "practice of public accounting" is: (a) (1) holding one's self out to the public as skilled in the knowledge and practice of accounting; or (b) (2) expressing any form of assurance on financial statements; or (c) (3) expressing opinions on financial statements for credit purposes, for use in courts and for other purposes involving third parties.

Subd. 3. **ASSURANCE OR OPINIONS ON FINANCIAL STATEMENTS.** "Assurance or opinions on financial statements" are any opinions or assurance expressed in accordance with generally accepted auditing standards or other authoritative professional standards as to the fairness of presentation of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private, or governmental.

Subd. 4. **CPA.** "CPA" means certified public accountant.

Subd. 5. **FINANCIAL STATEMENTS.** "Financial statements" means a presentation of financial data, including accompanying notes, if any, intended to communicate an entity's economic resources and/or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles.

Incidental financial data to support recommendations to a client, management advisory service reports, or tax returns and supporting schedules do not constitute financial

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statements. The statement, affidavit, or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of the opinion.

Subd. 6. FIRM. "Firm" means an entity of CPAs or LPAs organized as a CPA or LPA partnership, professional corporation, professional limited liability company, or professional limited liability partnership, any cooperative auditing organization as specified in section 326.192, subdivision 4, or any CPA or LPA practice in any other form of business organization authorized by law for use by CPAs and LPAs, including individual partners or shareholders.

Subd. 7. LPA. "LPA" means licensed public accountant. Licensed public accountants are those accountants who were eligible for licensure on July 1, 1979, under the law in effect on that date and who were issued a license as a licensed public accountant by the board at that time.

Sec. 2. Minnesota Statutes 1996, section 326.17, is amended to read:

326.17 BOARD OF ACCOUNTANCY.

(a) A board of accountancy is created to carry out the purposes and enforce the provisions of sections 326.165 to 326.229. It consists of between seven and nine citizens of this state appointed by the governor as provided in this section. Two shall be public members as defined by section 214.02, five shall be currently actively licensed certified public accountants, and two shall be actively licensed public accountants under the provisions of sections 326.165 to 326.229. When the number of licensed public accountants in this state drops below 100, their representation on the board of accountancy shall drop to one and the board shall consist of two public members, five currently actively licensed certified public accountants, and one actively licensed public accountant. At the time when the number of licensed public accountants in this state drops below 25, the licensed public accountants shall lose their representation on the board, except that the licensed public accountant then serving on the board shall be allowed to complete the term of office and. The board shall then consist of two public members and five currently actively licensed certified public accountants.

(b) Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be as provided in sections 214.07 to 214.09. The provision of staff, administrative services, and office space; the review and processing of complaints; the setting of board fees; and other provisions relating to board operations shall be as provided in chapter 214 and sections 326.165 to 326.229.

Sec. 3. Minnesota Statutes 1996, section 326.18, is amended to read:

326.18 BOARD, DUTIES, OFFICERS, RULES, EXAMINATIONS.

Subdivision 1. MEMBERS AND OFFICERS. A majority of the qualified members of the board constitutes a quorum. The board shall elect one of its number as chair, another as vice-chair, and another as secretary and treasurer, who shall hold their respective offices for a term of one year and until their successors are elected. The affirmative vote of a majority of the qualified members of the board is considered the action of the board.

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Subd. 2. DUTIES. The board shall enforce the standard of general education, the standard of special education in the science and art of accounting, and the standard of good character and general public experience, as prescribed in sections 326.165 to 326.229, in all examinations conducted thereunder.

Subd. 3. RULES. The board shall make rules for the conduct of applicants' examinations and the character and scope of the examinations, the method and time of filing applications for examinations and their form and contents, and all other rules proper to carry into effect the purposes of sections 326.165 to 326.229. The board shall make rules to govern administration of the board, examinations, issuance of certificates, licensing, professional conduct and discipline, continuing education, fees, and practice monitoring.

Subd. 4. EXAMINATION. The board may make use of all or any part of the uniform certified public accountant examination and advisory grading service provided by the American Institute of Certified Public Accountants if it deems it appropriate to assist it in performing its duties. These examinations shall be conducted by the board of accountancy. The examinations shall take place as often as may be convenient in the opinion of the board. The board may make rules necessary to implement and enforce sections 326.165 to 326.229, and 214.12, including but not limited to rules of professional conduct, pertaining to individuals, partnerships and corporations practicing public accounting which it deems consistent with or required by the public welfare and rules of continuing education to be met by persons licensed under sections 326.165 to 326.229.

Subd. 5. RECORDS, CERTIFICATES, AND LICENSES. (a) The board shall keep records of its proceedings, an accurate list of all applications made, licenses and certificates issued, and licenses and certificates ~~revoked~~ disciplined pursuant to section 326.229, and shall keep proper financial records in which there shall be entered a complete statement of the cash receipts and disbursements. All records of the board shall be subject to chapter 13.

(b) The board shall issue to each person who satisfies the examination requirements of section 326.19, subdivision 1, a certified public accountant certificate and shall maintain a record of that issuance. The board shall issue a license as a certified public accountant to each holder of a certified public accountant certificate who satisfies the experience requirements for a license as a certified public accountant or to a person who has been issued a certified public accountant certificate under section 326.19, subdivision 3. The board shall maintain a record of the issuance. It shall adopt and provide itself with a seal with a band inscribed "Certified Public Accountant, State of Minnesota," with the coat of arms of Minnesota in the center, which seal shall be affixed to each certificate of the certified public accountant issued under sections ~~326.17~~ 326.165 to 326.229.

(c) The board shall issue to each person who qualifies for a license under sections ~~326.17~~ 326.165 to 326.229 as a licensed public accountant a certificate as a licensed public accountant and shall maintain a record of that issuance. It shall adopt and provide itself with a seal with a band inscribed "Licensed Public Accountant, State of Minnesota," with the coat of arms of Minnesota in the center, which seal shall be affixed to each certificate of the licensed public accountant, issued under sections ~~326.17~~ 326.165 to 326.229. ~~All records of the board shall be open to the inspection of the public at the office of its secretary.~~

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Sec. 4. Minnesota Statutes 1996, section 326.19, is amended to read:

326.19 LICENSURE; QUALIFICATIONS OF CERTIFIED PUBLIC ACCOUNTANTS; CERTIFICATES AND LICENSING.

Subdivision 1. **CERTIFICATES AND LICENSES AS CERTIFIED PUBLIC ACCOUNTANTS.** (a) A certified public accountant certificate shall be granted to any person:

(a) (1) who has attained the age of 18 years; and

(b) (2) who is of good character; and

(c) (3) who has successfully completed an examination in the subjects and at the times the board may prescribe in its rules; and

(4) who meets all other requirements for issuance of a certificate, including payment of required fees.

(b) The examination shall be administered by the board only to a candidate who holds:

(i) (1) holds a master's degree with a major in accounting from a college or university that is fully accredited by the North Central Association of Colleges and Secondary Schools, or an equivalent accrediting association, or who has in the opinion of the board at least an equivalent education a recognized accrediting agency listed with the United States Department of Education; or

(ii) (2) holds a baccalaureate degree, with a major in accounting, from a college or university that is fully accredited by the North Central Association of Colleges and Secondary Schools, or an equivalent accrediting association, or whose credits are acceptable to the University of Minnesota for admission to graduate study, a recognized accrediting agency listed with the United States Department of Education or who has in the opinion of the board at least an equivalent education; or

(iii) (3) holds a baccalaureate degree from a college or university that is fully accredited by the North Central Association of Colleges and Secondary Schools, or an equivalent accrediting association, or whose credits are acceptable to the University of Minnesota for admission to graduate study, or a recognized accrediting agency listed with the United States Department of Education and who has in the opinion of the board at least an equivalent education, or providing at least one year of experience of the type specified in subdivision 4, has been completed; or

(iv) (4) provides evidence of having completed two or more years of study with passing grade average or above from a college or university that is fully accredited by the North Central Association of Colleges and Secondary Schools, or an equivalent accrediting association, or whose credits are acceptable to the University of Minnesota for admission to graduate study, or a technical college, or a Minnesota licensed private vocational school which fulfills the requirements of sections 141.21 to 141.36, that is fully accredited by a recognized accrediting agency listed with the United States Department of Education or who has in the opinion of the board at least an equivalent education, providing that at least three years experience of the type specified in subdivision 4, has been completed; or

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~~(v)~~ (5) holds a diploma as a graduate of an accredited high school or who has in the opinion of the board at least an equivalent education, providing that at least five years experience of the type specified in subdivision 4 has been completed.

Subd. 2. **EXPERIENCE.** A certified public accountant license shall be granted to any person who has been issued a certified public accountant certificate under subdivision 3. Those persons holding certified public accountant certificates issued under subdivision 1 who meet all other requirements for licensure, including payment of required fees, shall be granted licenses as certified public accountants, providing that they have completed the following required experience of the type specified in subdivision 4 in addition to any experience required in subdivision 1, ~~clause (e)(i) to (v)~~ paragraph (b):

~~(i)~~ (1) for those whose educational qualifications meet the requirements of subdivision 1, paragraph (b), clause (e)(i) (1), the experience requirement is one year;

~~(ii)~~ (2) for those whose educational qualifications meet the requirements of subdivision 1, paragraph (b), clause (e)(ii) (2), the experience requirement is two years;

~~(iii)~~ (3) for those whose educational and experience qualifications meet the requirements of subdivision 1, paragraph (b), clause (e)(iii) (3), the additional required experience is two years;

~~(iv)~~ (4) for those whose educational and experience qualifications meet the requirements of subdivision 1, paragraph (b), clause (e)(iv) (4), the additional required experience is two years; and

~~(v)~~ (5) for those whose educational and experience qualifications meet the requirements of subdivision 1, paragraph (b), clause (e)(v) (5), the additional required experience is one year.

Subd. 3. **CERTIFICATE AND LICENSE WITHOUT EXAMINATION.** The state board of accountancy may, in its discretion, waive the examination of, and may issue a certificate and license as, a certified public accountant to any person possessing the qualifications mentioned in this section, who:

~~(a)~~ (1) is the holder of a ~~C.P.A.~~ CPA license or certificate, issued under the laws of another state, provided the requirements for the license or certificate in the state which has granted it to the applicant are, in the opinion of the state board of accountancy, equivalent to those herein provided in subdivisions 1 and 2; ~~or~~

~~(b)~~ (2) is the holder of a degree or certificate of certified public accountant or chartered accountant, or the equivalent thereof, issued in any foreign country, provided that the requirements for the degree or certificate are equivalent to those herein provided in subdivisions 1 and 2 for the license of certified public accountant in this state; ~~or~~

~~(c)~~ (3) ~~has~~ in another jurisdiction have completed successfully an examination which, in the opinion of the board, is comparable to that prescribed by the board in its rules and provided that ~~such~~ the person has satisfied the other requirements of subdivisions 1 and 2.

Subd. 4. **QUALIFYING EXPERIENCE FOR EXAMINATION AND GRANTING OF LICENSE.** Qualifying experience for subdivisions 1, 2, and 3 include public accounting experience:

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(1) as a staff employee of a certified public accountant or, licensed public accountant, or a firm of certified public accountants or public accountants, or a corporation formed licensed for the practice of public accounting; or

(2) as an auditor in the office of the legislative auditor or state auditor, or as an auditor or examiner with any other agency of government, which experience, in the opinion of the board is equally comprehensive and diversified; or

(3) as a self-employed public accountant or as a partner in a firm of public accountants; or

(4) in any combination of the foregoing capacities.

Sec. 5. [326.192] LICENSURE; QUALIFICATIONS OF FIRMS.

Subdivision 1. APPLICATION. Upon application made upon the affidavit of a general partner of the partnership, secretary of the corporation, or member of the limited liability company or partnership who is a CPA or a LPA of this state in good standing, the board shall issue a firm license. The license shall be valid for a period prescribed by the board, unless the license is revoked sooner. The application shall confer upon the board the consent of the partnership, corporation, or limited liability company or partnership, and of the general partner, secretary, or member making the application, to the board's jurisdiction over the acts of the partnership and its partners or agents, of the corporation and its shareholders or agents within the state, or of the limited liability company or partnership and its members or agents.

Subd. 2. CPA FIRMS. No partnership, corporation, or limited liability company or partnership shall style itself as a firm of CPAs unless:

(1) all partners, shareholders, or members resident in this state are CPAs of this state;

(2) all managers in charge of offices maintained in this state are CPAs of this state;

(3) all partners, shareholders, or members, wherever situated, are CPAs of one of the states or territories or of the District of Columbia; and

(4) the partnership, corporation, or limited liability company or partnership is duly licensed under this section.

Subd. 3. LPA FIRMS. No partnership, corporation, or limited liability company or partnership shall style itself as a firm of LPAs unless:

(1) all partners, shareholders, or members resident in this state are LPAs or CPAs of this state;

(2) all managers in charge of offices maintained in this state are LPAs or CPAs of this state;

(3) all partners, shareholders, or members, wherever situated, are LPAs of this state or CPAs of one of the states or territories or the District of Columbia; and

(4) the partnership, corporation, or limited liability company or partnership is duly licensed under this section.

Subd. 4. COOPERATIVE AUDITING ORGANIZATION. Any cooperative auditing organization organized under chapter 308A is qualified for a cooperative auditing service license and may style itself as a licensed cooperative auditing service if:

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(1) for a minimum of one year prior to July 1, 1979, it rendered auditing or accounting of business analysis services to its members only; and

(2) its managers in charge of offices maintained in this state are certified public accountants or licensed public accountants of this state.

Cooperative auditing services shall comply with all requirements imposed by sections 326.165 to 326.229 and the board's rules governing firms.

Sec. 6. Minnesota Statutes 1996, section 326.20, is amended to read:

326.20 RENEWAL; UNLICENSED PRACTICE.

Subdivision 1. LICENSE RENEWAL OF CERTIFIED PUBLIC ACCOUNTANTS AND LICENSED PUBLIC ACCOUNTANTS. (a) Every holder of a certified public accountant CPA license or a licensed public accountant LPA license issued by the board, if engaged, or intending to be engaged, in public the practice of public accounting within this state at any time during a calendar year, shall renew the license as active as prescribed by the board by rule.

(b) Every holder of a CPA license or an LPA license issued by the board, who does not intend to actively engage in the practice of public accounting within this state at any time during a calendar year, shall renew the license as inactive or active, as prescribed by the board by rule under authority granted in section 326.18, subdivision 3. Previously licensed individuals who do not actively engage in the practice of public accounting in any manner or who do not hold out as CPAs or LPAs in any manner are not required to obtain a license nor may the board require those individuals to surrender their certificates. The board must provide for the relicensing of those individuals if they wish to return to the practice of public accounting.

(c) The board may establish temporary, active, and inactive licenses and adopt rules, under authority granted in section 326.18, subdivision 3, governing them.

(d) The board shall, upon application made by any holder of an unrevoked Minnesota or unsuspended license as a certified public accountant CPA or unrevoked or unsuspended Minnesota license as a licensed public accountant LPA, renew the license which shall be good for a period prescribed by the board, unless the said certificate or license shall sooner be is revoked or suspended during that period. Interim licenses shall be issued to individuals who have satisfied the provisions of sections 326.17 326.165 to 326.229 within the year. If a license has been conditioned, limited, or otherwise restricted or disciplined pursuant to section 326.229, any other condition, limitation, or discipline shall remain for the term of the board's order imposing the condition, limitation, or other discipline, notwithstanding renewal of the license.

(e) The CPA certificates of persons who fail to renew their licenses as required by this subdivision for more than two years after expiration shall be automatically revoked by order of the board. This includes all persons who, on the effective date of this section, did not hold an active or an inactive license in 1996, 1997, and 1998. The orders may be issued by the board without following the procedures of chapter 14, provided the board notifies each such person by mail at the person's last known address on file with the board at least three days prior to the issuance of any such order. No such notice is required if the last communication sent by the board to a licensee was returned to the board by the United

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States Postal Service as undeliverable and with no forwarding address. Certificates so revoked by the board may be reinstated, if at all, pursuant to section 326.229, subdivision 7. This paragraph shall not apply to previously licensed individuals who have notified the board that they will not hold out as CPAs or LPAs in any manner or practice public accounting in any manner.

Subd. 2. LICENSURE OF PARTNERSHIPS AND CORPORATIONS. Every

partnership or corporation in which one or more certified public accountants or licensed public accountants of this state is a partner or shareholder, if it is engaged, or intends to be engaged, in public practice within this state at any time shall be licensed by the state board of accountancy for that period. Upon application made upon the affidavit of a general partner or of the partnership or secretary of the corporation who is a certified public accountant or a licensed public accountant of this state in good standing, the board shall issue a license which shall be good for a period prescribed by the board, unless the license shall sooner be revoked. Internum licenses shall be issued to partnerships or corporations which have satisfied the provisions of this subdivision. The application shall confer upon the board the consent of the partnership or corporation, and of the general partner or secretary making the application, to the board's jurisdiction over the acts of the partnership and its partners or agents or of the corporation and its shareholders or agents within the state.

No partnership or corporation shall style itself as a firm of certified public accountants unless (a) all partners or shareholders resident in this state are certified public accountants of this state, (b) all managers in charge of offices maintained in this state are certified public accountants or certified public accountants of this state, (c) all partners or shareholders, wherever situated, are licensed public accountants of this state, (d) all partners or shareholders of one of the states or territories or the District of Columbia and (e) the partnership or corporation is duly licensed under this section.

No partnership or corporation shall style itself as a firm of licensed public accountants unless (a) all partners or shareholders resident in this state are licensed public accountants or certified public accountants of this state, (b) all managers in charge of offices maintained in this state are licensed public accountants or certified public accountants of this state, (c) all partners or shareholders, wherever situated, are licensed public accountants of this state, (d) the partnership or corporation is duly licensed under this section.

Any cooperative auditing organization organized under chapter 308A (a) which for a minimum of one year prior to July 1, 1979, has been rendering auditing, accounting or business analysis services to its members only, and (b) whose managers in charge of offices maintained in this state are certified public accountants or licensed public accountants of this state, shall be deemed to be qualified for a cooperative auditing service license and may style itself as a licensed cooperative auditing service.

Subd. 3. UNLICENSED PRACTICE. It shall be unlawful for any certified public partnership containing one or more certified public accountants to engage in public the practice of public accounting within this state unless such certified public accountant or the CPA, LPA, partnership or firm defined under section 326.165, subdivision 6, is duly licensed as provided by this section. A partnership shall be deemed in public practice within this state if it performs professional accounting services for a fee. A certified public accountant shall be deemed in public practice within this state if the accountant per-

forms professional accounting services for a fee within this state to the extent required by sections 326.165 to 326.229.

Subd. 4. TAX CLEARANCE CERTIFICATE. (a) Notwithstanding subdivisions 1 and 2, the board may not issue or renew a license under sections 326.165 to 326.229 if the commissioner of revenue notifies the board and the licensee or applicant for a license that the licensee or applicant owes the state delinquent taxes in the amount of \$500 or more. The board may issue or renew the license only if (1) the commissioner of revenue issues a tax clearance certificate and (2) the commissioner of revenue or the licensee or applicant forwards a copy of the clearance to the board. The commissioner of revenue may issue a clearance certificate only if the licensee or applicant does not owe the state any uncontested delinquent taxes.

(b) For purposes of this subdivision, the following terms have the meanings given.

(1) "Taxes" are all taxes payable to the commissioner of revenue, including penalties and interest due on those taxes.

(2) "Delinquent taxes" do not include a tax liability if (i) an administrative or court action that contests the amount or validity of the liability has been filed or served, (ii) the appeal period to contest the tax liability has not expired, or (iii) the licensee or applicant has entered into a payment agreement to pay the liability and is current with the payments.

(c) When a licensee or applicant is required to obtain a clearance certificate under this subdivision, a contested case hearing must be held if the licensee or applicant requests a hearing in writing to the commissioner of revenue within 30 days of the date of the notice provided in paragraph (a). The hearing must be held within 45 days of the date the commissioner of revenue refers the case to the office of administrative hearings. Notwithstanding any law to the contrary, the licensee or applicant must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the licensee or applicant. The notice may be served personally or by mail.

(d) The board shall require all licensees or applicants to provide their social security number and Minnesota business identification number on all license applications. Upon request of the commissioner of revenue, the board must provide to the commissioner of revenue a list of all licensees and applicants, including the name and address, social security number, and business identification number. The commissioner of revenue may request a list of the licensees and applicants no more than once each calendar year.

Sec. 7. [326.201] PRACTICE MONITORING.

The board shall, by rule adopted under authority granted in section 326.18, subdivision 3, provide for a practice monitoring program designed to ensure the competency of licensees engaged in the practice of public accountancy in this state. The program shall be designed to promote remediation of deficiencies in lieu of removal from or restriction of practice. However, this shall not be construed to prohibit the board from imposing discipline, including removal from or restriction of practice, where necessary and appropriate to protect the public. The board may determine which classes of licensees and what types of practice shall be subject to practice monitoring based on the need to protect the public. For those licensees subject to the rules, renewal of the license is conditional upon compliance with the rules.

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Sec. 8. Minnesota Statutes 1996, section 326.211, is amended to read:

326.211 PROHIBITED ACTS.

Subdivision 1. **CERTIFIED PUBLIC ACCOUNTANT; USE OF TITLE BY INDIVIDUAL.** Except as permitted by the board, no person shall assume or use the title or designation "certified public accountant," or the abbreviation "~~C.P.A.~~ CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate or imply that the person is a certified public accountant, unless the person has received a certificate as a certified public accountant under sections ~~326.17~~ 326.165 to 326.229, holds a license issued under sections ~~326.17~~ 326.165 to 326.229 which is not revoked or suspended, and has all offices in this state for the practice of public accounting maintained and licensed as to the extent required under section 326.20 by sections 326.165 to 326.229.

Subd. 2. **CERTIFIED PUBLIC ACCOUNTANT; USE OF TITLE BY INDIVIDUAL ENTITY.** No partnership ~~or~~ corporation, or limited liability company or partnership shall assume or use the title or designation "certified public accountant," or the abbreviation "~~C.P.A.~~ CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate or imply that the partnership ~~or~~ corporation, or limited liability company or partnership is composed of certified public accountants, unless the partnership ~~or~~ corporation, or limited liability company or partnership is licensed as a partnership ~~or~~ corporation, or limited liability company or partnership of certified public accountants under section ~~326.20~~ 326.192 and all offices of the partnership ~~or~~ corporation, or limited liability company or partnership in this state for the practice of public accounting are maintained and licensed as required under section ~~326.20~~ 326.192.

Subd. 3. **LICENSED PUBLIC ACCOUNTANT; USE OF TITLE BY INDIVIDUAL.** No person shall assume or use the title or designation "licensed public accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate or imply that the person is a licensed public accountant, unless the person is licensed as a licensed public accountant under section ~~326.19~~ 326.20, and all of the person's offices in this state for the practice of public accounting are maintained and licensed as required under section ~~326.20~~ 326.192, or unless the person has received a certificate as a certified public accountant under section 326.19, holds a license issued under section 326.19 or 326.20, and all of the person's offices in this state for the practice of public accounting are maintained and licensed as required under section ~~326.20~~ 326.192.

Subd. 4. **LICENSED PUBLIC ACCOUNTANT; USE OF TITLE BY PARTNERSHIP OR CORPORATION ENTITY.** No partnership ~~or~~ corporation, or limited liability company or partnership shall assume or use the title or designation "licensed public accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate or imply that the partnership ~~or~~ corporation, or limited liability company or partnership is composed of licensed public accountants, unless the partnership ~~or~~ corporation, or limited liability company or partnership is licensed as a partnership, corporation, or limited liability company or partnership of licensed public accountants under section ~~326.20~~ 326.192, and all offices of the partnership ~~or~~ corporation, or limited liability company or partnership in this state for the practice of public accounting are maintained and licensed as required under section ~~326.20~~ 326.192.

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Subd. 5. **PROHIBITED AND PERMITTED TITLES.** No person, partnership, or corporation, or limited liability company or partnership shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "public accountant," "accredited accountant," "accounting practitioner," "registered accountant," or any other title or designation likely to be confused with "certified public accountant," or "licensed public accountant," or any of the abbreviations "C.A. CA," "L.A. LA," "P.A. PA," "R.A. RA," "A.A. AA," "A.P. AP," or similar abbreviations likely to be confused with "C.P.A. CPA" or "L.P.A. LPA." Anyone who holds a current license issued under ~~sections 326.18 and~~ section 326.19 or 326.20 and all of whose offices in this state for the practice of public accounting are maintained and licensed as required under ~~section 326.20~~ 326.192 may hold out to the public as an "auditor."

Subd. 6. **FINANCIAL STATEMENT BY INDIVIDUAL.** No person's name shall be signed or affixed by the person nor shall any trade or assumed name be used by the person professionally or in business to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing (1) financial information, or (2) facts respecting compliance with conditions established by law or contract, including, but not limited to, statutes, ordinances, rules, grants, loans, and appropriations, together with any wording accompanying or contained in the opinion or certificate, which indicates (a) that the person is an accountant or auditor or (b) that the person has expert knowledge in accounting or auditing, without holding a current license issued under section 326.19 or 326.20 and all of the person's offices in this state for the practice of public accounting are maintained and licensed under ~~section 326.20~~ 326.192. The provisions of this subdivision shall not prohibit any officer, employee, partner, or principal of any organization from affixing that person's signature to any statement or report in reference to the affairs of the organization with any wording designating the position, title, or office which the person holds in the organization, nor shall the provisions of this subdivision prohibit any act of a public official or public employee in the performance of duties.

Subd. 7. **FINANCIAL STATEMENT BY PARTNERSHIP OR, CORPORATION, OR LIMITED LIABILITY COMPANY OR PARTNERSHIP.** No person shall sign or affix a partnership or, corporate, or limited liability company or partnership name to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing (a) financial information, or (b) facts respecting compliance with conditions established by law or contract, including, but not limited to, statutes, ordinances, rules, grants, loans, and appropriations, together with any wording accompanying or contained in the opinion or certificate which indicates that the partnership or, corporation, or limited liability company or partnership is composed of or employs (1) accountants, or auditors or (2) persons having expert knowledge in accounting or auditing, unless the partnership or, corporation, or limited liability company or partnership is licensed under sections 326.17 to 326.229.

Subd. 8. **AUDITOR; USE OF TITLE.** No person, partnership or, corporation, or limited liability company or partnership not licensed under ~~section 326.18~~ sections 326.19 to 326.20 shall assume or use the title "auditor" on any sign, card, letterhead, or in any advertisement or directory without indicating thereon or therein that the person, partnership or, corporation, or limited liability company or partnership does not hold such a license, provided that this subdivision shall not prohibit any officer, employee, partner, or

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principal of any organization from being described by the position, title, or office that person holds in the organization, nor shall this subdivision prohibit any act of a public official or public employee in the performance of duties.

Subd. 9. **TITLE INDICATING PARTNERSHIP OR, CORPORATION, OR LIMITED LIABILITY COMPANY OR PARTNERSHIP.** (a) No person shall assume or use the title or designation "certified public accountant" or "licensed public accountant" in conjunction with names indicating or implying that there is a partnership ~~or, corporation,~~ or limited liability company or partnership, if there is no bona fide partnership ~~or, corporation,~~ or limited liability company or partnership licensed under section ~~326.20~~ 326.192.

(b) No person shall assume or use the title or designation "certified public accountant" or "licensed public accountant" in conjunction with the designation "and Company," "and Co.," "and Associates," "Co.," or a similar designation if, in any such case, there is in fact no bona fide partnership ~~or, corporation,~~ or limited liability company or partnership with more than one shareholder licensed under section ~~326.20~~ 326.192.

(c) A sole proprietor, partnership, or corporation lawfully using the title or designation in conjunction with the names or designation on July 1, 1992, may continue to do so if otherwise in compliance with the provisions of sections 326.165 to 326.229 until December 31, 1999.

Subd. 10. **UNLICENSED CORPORATION; PROHIBITED USE OF TITLE.** No partnership, corporation, or limited liability company or partnership, other than one licensed under sections ~~326.17~~ 326.165 to 326.229, and in compliance with the rules of the board, shall style itself as certified public accountants or licensed public accountants, or use the abbreviation "C.P.A. CPA" or "L.P.A. LPA" in connection with its corporate name.

Sec. 9. Minnesota Statutes 1996, section 326.212, subdivision 1, is amended to read:

Subdivision 1. **EMPLOYEES; ASSISTANTS.** Nothing contained in sections ~~326.17~~ 326.165 to 326.229 shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of, or an assistant to, a certified public accountant or licensed public accountant, or partnership ~~or, corporation,~~ or limited liability company or partnership composed of certified public accountants or licensed public accountants, provided that the person shall not issue any accounting or financial statement over the person's name.

Sec. 10. Minnesota Statutes 1996, section 326.212, subdivision 4, is amended to read:

Subd. 4. **PERSONS PREPARING UNAUDITED FINANCIAL STATEMENTS.** Nothing contained in sections 326.165 to 326.229 shall prohibit any person, partnership ~~or, corporation,~~ or limited liability company or partnership, not licensed under sections 326.165 to 326.229, from preparing and presenting unaudited financial statements and unaudited schedules on printed forms or the letterheads ~~letterhead~~ of the preparer if they are clearly marked on each page, "unaudited." Any person or entity who prepares unaudited financial statements and unaudited schedules for a client for a fee is subject to section 326.229 and the practice of the person or entity may be disciplined by the board as provided for in section 326.229. The board may discipline a person or entity

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based on violations of sections 326.165 to 326.229, the board's rules, or misrepresentations made by such person or entity regarding the work the person or entity performed.

Sec. 11. Minnesota Statutes 1996, section 326.212, subdivision 5, is amended to read:

Subd. 5. **TAX RETURNS.** Nothing contained in sections 326.165 to 326.229 shall prohibit any person, partnership ~~or~~, corporation, or limited liability company or partnership, not licensed under sections 326.165 to 326.229, from preparing tax returns.

Sec. 12. Minnesota Statutes 1996, section 326.212, is amended by adding a subdivision to read:

Subd. 6. **MAINTAIN OR SURRENDER LICENSE.** Once licensed, a certified public accountant or licensed public accountant in order to perform any of the services listed in section 326.165, subdivision 2, shall maintain an active license.

Sec. 13. Minnesota Statutes 1996, section 326.22, subdivision 2, is amended to read:

Subd. 2. **ANNUAL LICENSE FEE.** Each person ~~or~~, partnership, corporation, or limited liability company or partnership to whom a license is issued shall pay a renewal fee at the rate set by the board for such year.

Sec. 14. Minnesota Statutes 1996, section 326.223, is amended to read:

326.223 EQUIVALENCY.

Whenever any statute or rule, city charter, ordinance, or other similar statute or rule of any other political subdivision of the state of Minnesota specifically requires professional services to be performed by a certified public accountant, the requirement shall be construed to mean certified public accountant or licensed public accountant.

Sec. 15. Minnesota Statutes 1996, section 326.228, is amended to read:

326.228 COMPLAINT COMMITTEE.

The board shall establish a complaint committee to investigate, mediate, or initiate administrative or legal proceedings on behalf of the board with respect to complaints filed with or information received by the board alleging or indicating violations of sections 326.165 to 326.229. The complaint committee shall consist of three members of the board, one of whom shall be a certified public accountant, and one of whom shall be a licensed public accountant. ~~When the licensed public accountants lose their representation on the board pursuant to section 326.17, the complaint committee shall consist of three members of the board, two of whom shall be certified public accountants.~~

Sec. 16. Minnesota Statutes 1996, section 326.229, subdivision 3, is amended to read:

Subd. 3. **CEASE AND DESIST ORDERS.** (a) The board, or the complaint committee if authorized by the board, may issue and have served upon a licensee who has previously been subject to a disciplinary order by the board, an unlicensed person ~~or~~, an unlicensed certificate holder, or a firm an order requiring the licensee, unlicensed person ~~or~~, unlicensed certificate holder, or firm to cease and desist from the act or practice constituting a violation of the statute, rule, or order. The order shall be calculated to give reasonable notice of the rights of the licensee, unlicensed person, or unlicensed certificate hold-

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er, or firm to request a hearing and shall state the reasons for the entry of the order. No such order shall be issued until an investigation of the facts has been conducted pursuant to section 214.10.

(b) Service of the order is effective when the order is served on the licensee, unlicensed person, unlicensed certificate holder, firm, or counsel of record personally or by certified mail to the most recent address provided to the board for the licensee, unlicensed person, unlicensed certificate holder, firm, or counsel of record.

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

(d) The administrative law judge shall issue a report within 30 days of the close of the contested case hearing record, notwithstanding Minnesota Rules, part 1400.8100, subpart 3. Within 30 days after receiving the report and any exceptions to it, the board shall issue a further order vacating, modifying, or making permanent the cease and desist orders as the facts require.

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

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

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

Sec. 17. Minnesota Statutes 1996, section 326.229, subdivision 4, is amended to read:

Subd. 4. **ACTIONS AGAINST APPLICANTS, LICENSEES, OR CERTIFICATE HOLDERS.** (a) The board may, by order, deny, refuse to renew, suspend for not more than five years, temporarily suspend, or revoke the application, certificate, or license of a person; censure or reprimand that person; prohibit that person from preparing tax returns or unaudited financial statements; refuse to permit a person to sit for examination, or refuse to release the person's examination grades if the board finds that the order is in the public interest and that, based on a preponderance of the evidence presented, the applicant, licensee, or certificate holder:

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

(2) has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether or not the conduct or acts relate to the practice of public accounting, providing that the fraudulent, deceptive, or dishonest conduct or acts reflect adversely on the person's ability or fitness to engage in the practice of public accounting;

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(3) has engaged in conduct or acts that are negligent or otherwise in violation of the standards established by Minnesota Rules, parts 1100.4700 and 1100.4800, where the conduct or acts relate to the practice of public accounting;

(4) ~~has been convicted of or, has pled guilty or nolo contendere to, or is sentenced as a result of the commission of a felony or crime, an element of which is dishonesty or fraud, or has been shown to have or admitted to having engaged in acts or practices tending to show that the applicant, licensee, or certificate holder is incompetent or has engaged in conduct reflecting adversely on the person's ability or fitness to engage in the practice of public accounting whether or not a plea was entered or withheld;~~

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

(6) has had the person's public accounting license, 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 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, commonwealth, or territory of the United States, in the District of Columbia, or in any foreign country;

(7) has had the person's right to practice before any federal, state, or other government agency revoked, suspended, canceled, limited, or not renewed for cause, or has committed unprofessional acts for which the person 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 license or certificate; or

(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.

(b) In lieu of or in addition to any remedy provided in paragraph (a), the board may require, as a condition of continued licensure, possession of certificate, termination of suspension, reinstatement of license or certificate, examination, or release of examination grades, that the person:

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

(2) complete to the satisfaction of the board such continuing professional education courses as the board may specify.

(c) Service of the order is effective if the order is served on the applicant, licensee, firm, certificate holder, person, or counsel of record personally or by certified mail to the most recent address provided to the board for the licensee, certificate holder, applicant, person, or counsel of record. The order shall state the reasons for the entry of the order.

(d) All hearings required by this subdivision shall be conducted in accordance with chapter 14 except with respect to temporary suspension orders, as provided for in subdivision 5, paragraph (e).

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Sec. 18. Minnesota Statutes 1996, section 326.229, is amended by adding a subdivision to read:

Subd. 4a. OTHER ACTIONS AGAINST APPLICANTS, LICENSEES, OR CERTIFICATE HOLDERS. (a) In addition to the remedies authorized by subdivision 4, the board may enter into an agreement with the applicant, licensee, or certificate holder for corrective action and may unilaterally issue a warning to an applicant, licensee, or certificate holder.

(b) The board shall not use agreements for corrective action or warnings in any situation where the applicant, licensee, or certificate holder has been convicted of or pled guilty or nolo contendere to a felony or crime and such felony or crime is the basis of the board's action against the applicant, licensee, or certificate holder; where the conduct of the applicant, licensee, or certificate holder indicates a pattern of repeated violations of subdivision 4, paragraph (a), or the rules of the board; or where the board concludes that the conduct of the applicant, licensee, or certificate holder will not be deterred other than by disciplinary action pursuant to subdivision 3, 4, or 5.

(c) 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 applicant, licensee, or certificate holder does not warrant disciplinary action pursuant to subdivision 3, 4, or 5, 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 application, licensee, or certificate holder is de minimis, does not warrant disciplinary action pursuant to subdivision 3, 4, or 5, and does not require corrective action to protect the public.

(d) Agreements for corrective action shall not be considered disciplinary action against the person's application, license, or certificate. However, agreements for corrective action are public data. Warnings shall not be considered disciplinary action against the person's application, license, or certificate and are private data.

Sec. 19. Minnesota Statutes 1996, section 326.229, subdivision 6, is amended to read:

Subd. 6. VIOLATION; PENALTIES; COSTS OF PROCEEDING. (a) The board may impose a civil penalty not to exceed \$2,000 per violation upon a person who violates an order, statute, or rule that the board has issued or is empowered to enforce.

(b) The board may, in addition, impose a fee to reimburse the board for all or part of the cost of the proceedings, including reasonable investigative costs, resulting in disciplinary or corrective action authorized by this section, the imposition of civil penalties, or the issuance of a cease and desist order. The fee may be imposed when the board shows that the position of the person who violates a statute, rule, or order that the board has issued or is empowered to enforce is not substantially justified, unless special circumstances make an award unjust, notwithstanding the provisions of Minnesota Rules, part 1400.8401. The costs include, but are not limited to, the amount paid by the board for services from the office of administrative hearings, attorney and reasonable investigative fees, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and expense incurred by board members and staff.

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(c) All hearings required by this subdivision shall be conducted in accordance with chapter 14.

Sec. 20. INSTRUCTION TO REVISOR.

The revisor shall renumber the definitions in Minnesota Statutes, section 326.165, in alphabetical order, as a separate section and shall correct references to those sections in Minnesota Statutes and Minnesota Rules.

Sec. 21. REPEALER.

Minnesota Statutes 1996, sections 326.191; 326.21; and 326.225, are repealed.

Presented to the governor March 27, 1998

Signed by the governor March 31, 1998, 10:46 a.m.

CHAPTER 341—H.F.No. 3297

An act relating to the environment; clarifying the liability of contractors performing certain response and development actions under MERLA; clarifying time for filing an action under MERLA; requiring public notice of proposed response actions; requiring a study; amending Minnesota Statutes 1996, sections 115B.03, by adding a subdivision; 115B.11; and 115B.17, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 115B.03, is amended by adding a subdivision to read:

Subd. 10. CONTRACTORS. (a) For the purposes of this subdivision, "contractor" means a person who is not otherwise responsible for a release or threatened release of a hazardous substance, or a pollutant or contaminant, and who, under contract with another person:

(1) performs response actions, including investigative, removal, or remedial actions to address the release or threatened release pursuant to a plan approved by the commissioner; or

(2) performs development actions at the site of the release or threatened release, such as site preparation, engineering, construction, and similar actions with respect to which the commissioner approves a contingency plan or other conditions which the commissioner deems necessary to protect public health or welfare or the environment.

(b) A contractor is not a responsible person for a release or threatened release solely as the result of performing response actions to address that release or threatened release if the contractor performs the response actions in accordance with a plan approved by the commissioner.

(c) A contractor who performs development actions, such as site preparation, engineering, construction, or similar actions, at the site of a release or threatened release is not responsible for the release or threatened release solely as a result of performing the devel-

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