ACCOUNTANTS: Revises the provisions regulating accountants and CPAs

AN ACT

To amend and reenact Part I of Chapter 2 of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 37:71 through 95, relative to accountants; to provide for a short title; to provide for legislative findings and purpose; to provide for definitions; to create and provide relative to the State Board of Certified Public Accountants of Louisisana; to provide for qualifications for a certificate as a certified public accountant; to provide for issuance and renewal of certificate and maintenance of competency; to provide for firm permits to practice, attest experience and peer review; to provide for appointment of the secretary of state as agent for nonresidents; to provide for enforcement; to provide for investigations; to provide for hearings by the board and complaints; to provide for reinstatement of licenses; to provide for unlawful acts; to provide for injunctions against unlawful acts and criminal penalties; to provide for single acts as evidence; to provide for confidential communications; to provide for accounting and review services for governmental agencies; to provide for licensee working papers and client records; to provide for the discarding of documents after completion of engagement; to provide for accounting documents sent out of state by the insurance commissioner; to provide for privity of contract; to provide for prescriptive and peremptive periods; to provide for proportionate liability; to provide for substantial equivalency; to provide relative to the legislative auditor and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part I of Chapter 2 of Title 37 of the Louisiana Revised Statutes of 1950, comprised of R.S. 37:71 through R.S. 95, is hereby amended and reenacted to read as follows:

CHAPTER 2. ACCOUNTANTS
PART I. IN GENERAL

' 71. Short title

This Part shall be known and may be cited as the "Louisiana Accountancy Act".

' 72. Legislative findings and purpose

The legislature hereby finds and declares that the purpose of this Part is to promote reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence or to offer such assurance. The public interest further requires that the conduct of persons and firms certified, permitted or licensed as having special competence in accountancy be regulated in all aspects of their professional work, that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established, and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

" 73. Definitions

When used in this Part, the following terms shall have the following meanings ascribed to them:

(1)(a) "Attest" means providing the following services, subject to the exceptions provided for in R.S. 37:83:

(i) Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards.

(ii) Any review to be performed in accordance with the Statements on Standards for Accounting and Review Services.

(iii) Any examination to be performed in accordance with the Statements on Standards for Attestation Engagements.

(iv) Issuance of any report, including compilation reports, prescribed by the Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, or Statements on Standards for Attestation Engagements on any services to which those statements on standards apply, indicating that the service was performed in accordance with standards established by the American Institute of Certified Public Accountants.

(b) Such statements on standards shall be adopted by reference by the board in accordance with the Administrative Procedure Act and shall be those developed for general application by recognized national accountancy organizations such as the American Institute of Certified Public Accountants.

(2) "Board" means the State Board of Certified Public Accountants of Louisiana.

(3) "Certificate" means a certificate as a certified public accountant issued pursuant to the provisions of this Part or a corresponding certificate as a certified public accountant issued after examination pursuant to the law of another state.

(4) "Client" means a person or entity that agrees with a licensee to receive any professional service.

(5) "CPA firm" means any sole proprietorship, corporation, partnership, registered limited liability partnership, limited liability company, or other form of organization issued a permit to practice in accordance with the provisions of this Part.

(6) "Good moral character" means a lack of history of dishonest or felonious acts.

(7) "License" means a certificate of certified public accountant or a permit to practice issued in accordance with the provisions of this Part.

(8) "Licensee" means the holder of a license.

(9) "Manager" means a manager of a limited liability company.

(10) "Member" means a member of a limited liability company.

(11) "Peer review" means a study, appraisal, or review of one or more aspects of the professional work of a CPA firm that performs attest services by a person or persons who hold certificates and who are not affiliated with the CPA firm being reviewed.

(12) "Permit" means a permit to practice as a CPA firm issued pursuant to the provisions of this Part or pursuant to corresponding provisions of law of another state.

(13) "Professional" means arising out of or related to the specialized knowledge or skills associated with CPAs.

(14) "Report" means, when used with reference to attest services, an opinion, report or other form of language that states or implies assurances as to the reliability of any financial statement or assertion. "Report" also means any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing and that the service reported upon was performed under standards for such services established by the American Institute of Certified Public Accountants. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. "Report" also means any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language. "Report" also means any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

(15) "Rule" means any rule, regulation, or other written directive of general application adopted by the board in accordance with the Administrative Procedure Act.

(16) "State" means any state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, and Guam. "This state" or "the state" means the state of Louisiana.

(17) "Substantial equivalency" or "substantially equivalent" means a determination by the board, or its designee, that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to or exceed the education, examination, and experience requirements of this state or that an individual CPA's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements of this state.

" 74. State Board of Certified Public Accountants of Louisiana; powers and duties

A. There is hereby created as a state agency within the Department of Economic Development, the State Board of Certified Public Accountants of Louisiana which shall administer and enforce this Part and be domiciled in the city of New Orleans.

B.(1) The board shall consist of seven members appointed by the governor, all of whom shall be residents of this state and holders of valid certificates. Each appointment shall be made from a list of three or more names submitted to the governor by the Society of Louisiana Certified Public Accountants or its successor.

(2) Three members of the board shall be residents of the area comprising the parishes of Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Point Coupee, St. Charles, St. Bernard, St. James, St. John the Baptist, St. Helena, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana.

(3) Two members of the board shall be residents of the area comprising the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Jefferson Davis, Lafayette, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, St. Martin, Tensas, Union, Vernon, Vermilion, Webster, West Carroll and Winn.

(4) Two members of the board shall be appointed from the state at large.

C.(1) Each appointment by the governor shall be submitted to the Senate for confirmation and each member of the board shall serve at the pleasure of the governor. Vacancies occurring on the board shall be filled in the same manner as the original appointment was made.

(2) Any member of the board whose certificate is revoked or suspended pursuant to the provisions of this Part shall automatically cease to be a member of the board as of the date of revocation or suspension.

(3) Each member of the board shall, within thirty days of such member's appointment subscribe to an oath, before any person authorized to administer oaths in the state, to faithfully and impartially perform the duties of the office. Such oaths shall be filed with the secretary of state.

D. The governor shall designate a chairman of the board. The board shall annually elect from its members such other officers as the board may determine to be appropriate.

E.(1) The board shall meet at such times and places as may be fixed by the board. Meetings of the board shall be open to the public except as provided with regard to investigations pursuant to R.S. 37:80 or hearings pursuant to R.S. 37:81 and except as may be necessary to protect information that is required to be kept confidential by board rules or by the laws of this state.

(2) A majority of the board members then in office shall constitute a quorum at any meeting duly called.

(3) The board shall have a seal which shall be judicially noticed.

(4) The board shall retain or arrange for the retention of such applications and documents under oath that are filed with the board, as well as all records of its proceedings as required by law or regulation. The board shall maintain a registry of the names and addresses of all licensees. In any civil or criminal court proceeding arising out of or founded upon any provision of this Part, copies of any records certified as true copies under the seal of the board shall be admissible in evidence as tending to prove the contents of said records.

(5) The board shall take appropriate administrative actions to regulate licensees and enforce the provisions of this Part.

F. The members of the board shall receive monthly compensation in an amount to be fixed by the board for the time expended by such members in the discharge of their official duties. The compensation of the board officers shall not exceed the sum of one hundred fifty dollars per month per officer. The compensation of other members of the board shall not exceed the sum of one hundred dollars per month per member. Such expenses shall be paid out of the treasury of the board. No expenses incurred by the board shall be charged to or against the funds of this state.

G.(1) The board may employ an executive director and such other personnel as it deems necessary in its administration and enforcement of this Part.

(2) The board may appoint such committees or persons to advise or assist it in such administration and enforcement as it may see fit.

(3) The board may retain its own counsel to advise and assist it.

(4) The board may incur all necessary and proper expenses.

(5) The board may authorize any member of the board or any of its agents or employees to make any affidavit necessary to the issuance of any injunction or other legal process authorized by this Part or the rules of the board.

H.(1) The board may take all action that is necessary and proper to effectuate the purposes of this Part, including the power to sue and be sued in its official name as an agency of this state.

(2) The board shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths, to take testimony, and receive evidence concerning all matters within the scope of this Part, and to cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of this Part and comparable acts of other states.

(3) The board may invoke the aid of any court in the case of disobedience of a subpoena in requiring the attendance and testimony of witnesses and the production of documentary evidence.

I. The board, its members, and its agents shall be immune from personal liability from actions taken in good faith in the discharge of the board's responsibilities. The state shall hold the board, its members, and its agents harmless from all costs, damages, and attorney fees arising from claims and suits against them with respect to matters to which such immunity applies.

J. The board may adopt rules in accordance with the Administrative Procedure Act, governing its administration and enforcement of the provisions of this Part and the conduct of licensees including but not limited to rules governing:

(1) The board's meetings and the conduct of its business.

(2) The procedure governing the conduct of investigations and hearings by the board.

(3) The educational and experience qualifications required for the issuance of certificates and the continuing professional education required for renewal of certificates as provided for in R.S. 37:76.

(4) Professional conduct directed to controlling the quality and probity of services by licensees including but not limited to those dealing with independence, integrity and objectivity, competence and technical standards, responsibilities to the public, and responsibilities to clients.

(5) The manner and circumstances of use of the titles "certified public accountant", "public accountant", "PA" and "CPA".

(6) Peer review that may be required to be performed under the provisions of this Part.

(7) Substantial equivalency.

(8) Any other issues as are necessary or appropriate for the implementation, administration, and enforcement of the provisions and purposes of this Part.

" 75. Qualifications for a certificate as a certified public accountant

A. A certificate of certified public accountant shall be granted to persons of good moral character who meet the education, experience, and examination requirements of this Section and who make application to the board.

B.(1) The board may refuse to grant a certificate on the grounds of failure to satisfy the requirement of good moral character only if there exists a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the findings of the board are supported by clear and convincing evidence.

(2) When an applicant is found to be unqualified for a certificate because of lack of good moral character, the board shall furnish the applicant with a statement containing the findings of the board, records of evidence upon which the determination is made, and a notice of the applicant's right of appeal.

C.(1) An applicant is eligible to apply for the examination provided for in this Section upon meeting the educational requirement of at least one hundred fifty semester hours of college education including a baccalaureate or higher degree conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by the board to be appropriate. In addition, the applicant shall have maintained continuous residence in this state for a period of not less than one hundred twenty days preceding the date of the board's next scheduled examination.

(2) Any applicant who has taken the examination prior to December 31, 1996, shall remain eligible to take any examination administered by the board prior to December 31, 1999, and shall thereafter be eligible, subject to applicable rules and regulations of the board, to take components of the examination in order to pass all portions of the examination. If the required degree or aggregate educational hours of such applicant do not reflect concentration in the area of accounting sufficient to satisfy the educational standards and regulations prescribed by the board, the board may require an applicant to successfully complete a course in higher accountancy prescribed by the board.

(3) Any applicant who has attained a baccalaureate degree prior to January 1, 1992, shall not be subject to any of the requirements of this Subsection, except that such degree must be conferred by a Louisiana college or university approved by the board and must have such adequate concentration in the area of accounting as the board may prescribe. If the required baccalaureate degree received by the applicant prior to January 1, 1992, does not reflect concentration in the area of accounting sufficient to satisfy the educational standards and regulations prescribed by the board, the board may require an applicant to successfully complete additional course work as prescribed by the board.

D.(1) The examination required to be passed as a condition for the granting of a certificate shall be held at least twice a year and shall test the applicant's knowledge of the subjects of accounting and auditing and such other related subjects as the board may specify including but not limited to business law and taxation.

(2) The time for holding such examination shall be determined by the board and may be changed from time to time.

(3) The board shall prescribe the methods for applying for and conducting the examination including methods for grading examinations and determining a passing grade required of an applicant for a certificate. However, the board shall to the extent possible see to it that the examination itself, grading of the examination, and the passing grades are uniform with those applicable in all other states.

(4) The board may make use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants and may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to assist it in performing its duties.

E. An applicant shall be given credit for any and all sections of an examination passed in another state if such credit would have been given, under then applicable requirements, if the applicant had taken the examination in this state.

F. The board may charge, or provide for a third party administering the examination to charge, each applicant a fee in an amount prescribed by the board for each section of the examination or reexamination taken by the applicant.

G. An applicant for initial issuance of a certificate under this Section shall show that he has had one year of experience. Such experience shall include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills. All such experience shall be obtained within the four-year period preceding the application and be supervised and verified by a licensee. Experience gained through employment in government, industry, academia, or public practice is acceptable.

H. All persons having held or holding a valid license as a licensed public accountant issued or renewed by the board on or after January 1, 1998, shall be deemed to have met the requirements of this Section, provided that the license has not been revoked or suspended by the board.

I. All persons, who on the day before the effective date of this Part, have met the then-existing requirements to become certified public accountant, but who have not met the then-existing requirements to be licensed as a certified public accountant, shall be presumed to have met all of the requirements for obtaining a certificate under this Part except for the experience requirements set forth in Subsection G of this Section. Upon furnishing satisfactory evidence to the board that the experience requirements in Subsection G have been satisfied, any such person shall be granted a certificate. Prior to obtaining a certificate under this Part, all such persons shall be entitled to use the designation "CPA inactive".

" 76. Issuance and renewal of certificates and maintenance of competency

A.(1) The board shall grant or renew certificates to persons who make application to the board and demonstrate that their qualifications are in accordance with the provisions of this Part or that they are eligible under the substantial equivalency standard prescribed in this Part.

(2) The holder of a certificate may only provide attest services in a CPA firm that holds a permit issued pursuant to this Part.

B.(1) Certificates shall be initially issued and renewed annually. Applications for such certificates shall be made in such form, and in the case of applications for renewal between such dates, as the board shall specify.

(2) Issuance or renewal of a certificate shall not preclude the board from any further investigation and action against such certificate or certificate holder. Any certificate which is not timely renewed with all required information shall expire on the date specified by the board. Any certificate which has expired because of nonrenewal may be reinstated by the board upon payment of the renewal fee and any penalty fees as may be prescribed by the board provided that the applicant is otherwise qualified for certification under this Part.

(3) Where an applicant seeks the opportunity to show that issuance of a certificate was mistakenly denied or where the board is not able to determine whether the application should be granted or denied, the board may issue a provisional certificate to the applicant. Such provisional certificate shall expire one hundred twenty days after its issuance or when the board determines whether or not to issue or renew the certificate for which application was made, whichever occurs first.

C.(1) For those applicants who do not qualify for reciprocity under the substantial equivalency standard provided for in this Part, the board shall issue a certificate to a holder of a certificate, license,or permit issued by another state upon a showing that:

(a) The applicant passed the examination required for issuance of a certificate with grades that would have been passing grades at the time in this state.

(b) The applicant has four years of experience outside of this state of the type described in R.S. 37:75 or meets equivalent requirements prescribed by the board after passing the examination upon which the applicant's certificate is based and within the ten years immediately preceding the application.

(c) If the applicant's certificate, license or permit was issued more than four years prior to the application for issuance of an initial certificate pursuant to this Section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable pursuant to Subsection D of this Section.

(2) As an alternative to the requirements of Paragraph (1) of this Subsection, a certificate holder licensed by another state who desires to establish his principal place of business in this state shall request the issuance of a certificate from the board prior to establishing such principal place of business. The board shall issue a certificate to such person whose CPA qualifications are substantially equivalent to the CPA licensure requirements of this Part as determined by the board or its designee.

D.(1) For renewal of a certificate, each licensee shall participate in a program of learning designed to maintain professional competency with regard to the current job duties of the licensee. Such program of learning must comply with rules adopted by the board, which rules shall broadly provide for programs of learning related to any type of accounting, attest, management advisory, financial advisory, tax or consulting skills, or the licensee's current employment.

(2) The board may create an exception to such continuing education requirement for certificate holders who do not perform or offer to perform for the public one or more kinds of service involving the use of accounting or auditing skills, including issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Licensees granted such an exception by the board must place the word "inactive" adjacent to their CPA title on any business card, letterhead or any other document or device, with the exception of their CPA certificate on which their CPA title appears.

E. The board shall charge a fee for each application for initial issuance or renewal of a certificate in an amount prescribed by rule.

F. Applicants for initial issuance, renewal or reinstatement of certificates shall list in their applications all reasonable and relevant information required by the board, which may include but not be limited to all states in which they have applied for or hold certificates, licenses or permits and any past denial, revocation or suspension of a certificate, license or permit. Each holder of or applicant for a certificate shall notify the board in writing within thirty days after the occurrence of any issuance, denial, revocation, or suspension of a certificate, license, or permit by another state.

G. The board may issue a certificate to a holder of a substantially equivalent foreign designation provided that:

(1) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid certificate issued by this state to obtain such foreign authority's comparable designation.

(2) The foreign designation:

(a) Was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended.

(b) Entitles the holder to issue reports upon financial statements.

(c) Was issued upon the basis of educational, examination and experience requirements established by the foreign authority or by law.

(3) The applicant:

(a) Received the designation based upon educational and examination standards substantially equivalent to those in effect in this state at the time the foreign designation was granted.

(b) Completed an experience requirement substantially equivalent to the requirement provided for in R.S. 37:75 in the jurisdiction which granted the foreign designation, or has completed four years of professional experience in this state, or meets equivalent requirements prescribed by the board within the ten years immediately preceding the application.

(c) Passed a uniform qualifying examination in national standards and an examination on the laws, regulations, and code of ethical conduct in effect in this state acceptable to the board.

(4) An applicant, in addition to any information required by the board, shall list in the application all jurisdictions, foreign or domestic, in which the applicant has applied for or holds a designation to practice public accountancy.

(5) Each holder of a certificate issued under this Subsection shall notify the board in writing within thirty days after the occurrence of any issuance, denial, revocation, or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

H. Only the board shall make determinations as to the applicability of the provisions of Subsection G of this Section.

' 77. Firm permits to practice; attest experience; peer review

A. The board shall grant or renew permits to practice as a CPA firm to entities that make application and demonstrate their qualifications in accordance with this Section or to CPA firms originally licensed in another state that establish an office in this state. A firm must hold a permit issued pursuant to this Section in order to provide attest services or to use the title "CPA", "CPAs", "CPA firm" or "firm of Certified Public Accountants".

B.(1) Permits shall be initially issued and renewed annually. Applications for such permits shall be made in such form, and in the case of applications for renewal between such dates, as the board may specify. The board shall grant or deny any application for initial issuance of a permit no later than one hundred twenty days after the application is filed in proper form. Issuance or renewal of a permit shall not preclude the board from any further investigation and action against such permit or permit holder. Any permit which is not timely renewed with all required information shall expire on the date specified by the board. Any permit which has expired because of nonrenewal may be reinstated by the board upon payment of the renewal fee and any penalty fees as may be prescribed by the board provided that the applicant is otherwise qualified for the issuance of a permit under this Part.

(2) Where an applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied or where the board is not able to determine whether the application should be granted or denied, the board may issue a provisional permit to the applicant. Such provisional permit shall expire ninety days after its issuance or when the board determines whether or not to issue or renew the permit for which application was made, whichever occurs first.

C.(1) An applicant for initial issuance or renewal of a permit to practice shall be required to show that, notwithstanding any other provision of law, a simple majority of the ownership of the firm in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers belongs to holders of valid certificates who are licensed in some state, and such partners, officers, shareholders, members, or managers whose principal place of business is in this state and who perform professional services in this state hold a valid certificate issued under R.S. 37:76. Although firms may include nonlicensee owners, the firm and its ownership must comply with rules adopted by the board.

(2) Any CPA firm may include nonlicensee owners provided that:

(a) The firm designates a licensee of this state who is responsible for the proper registration of the firm and identifies that individual to the board.

(b) All nonlicensee owners are active individual participants in the CPA firm or affiliated entities.

(c) The firm complies with such other requirements as the board may impose.

(3) Any individual licensee who is responsible for supervising attest services and who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm, shall meet the experience requirements set out in the professional standards for such services promulgated by the American Institute of Certified Public Accountants. In the absence of professional standards concerning such experience requirements promulgated by the American Institute of Certified Public Accountants, the board shall adopt a rule specifying the requisite experience requirements. Such board rule shall be in effect only until such time as the American Institute of Certified Public Accountants promulgates professional standards concerning such experience requirements.

(4) Any individual licensee who signs or authorizes someone to sign the accountant's report on the financial statement on behalf of the firm shall meet the experience requirements promulgated by the American Institute of Certified Public Accountants. In the absence of professional standards concerning such experience requirements promulgated by the American Institute of Certified Public Accountants, the board shall adopt rules specifying the requisite experience requirements. Such board rule shall be in effect only until such time as the American Institute of Certified Public Accountants promulgates professional standards concerning such experience requirements.

D. An applicant for initial issuance or renewal of a permit to practice shall be required to register each office of the firm within this state with the board and to show that all attest services rendered in this state are under the charge of a person holding a valid certificate.

E. The board shall charge a fee in an amount prescribed by the board for each application for initial issuance or renewal of a permit.

F. Applicants for initial issuance, renewal, or reinstatement of permits shall list in their applications all reasonable and relevant information required by the board which may include but not be limited to all states in which they have applied for or hold permits as CPA firms and list any past denial, revocation, or suspension of a certificate, license, or permit by any other state. Each holder of or applicant for a permit shall notify the board in writing within thirty days after the occurrence of any change in the identities of partners, officers, shareholders, members, or managers whose principal place of business is in this state, any change in the number or location of offices within the state, any change in the identity of those persons in charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any other state.

G. Firms which fall out of compliance with the provisions of this Section due to changes in firm ownership or personnel after receiving or renewing a permit shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to bring the firm back into compliance within a reasonable period as determined by the board shall result in the suspension or revocation of the firm permit.

H.(1) The board shall provide for the regular periodic review of the reports issued by licensees registered with the board for compliance with applicable generally accepted standards. The board shall during such period exempt from the requirements of such review of reports licensees who during such period have been subjected to a professional peer review approved by and acceptable to the board and conducted pursuant to standards not less stringent than peer review standards applied by the American Institute of Certified Public Accountants.

(2)(a) However, in the case of a licensee who qualifies for an exemption from periodic review because of a peer review and who is a member of the Securities and Exchange Commission Practice Section or the Private Companies Practice Section of the American Institute of Certified Public Accountants, the peer review report shall have been submitted to the board.

(b) In the case of a licensee who qualifies for an exemption from periodic review because of a peer review who is not a member of either the Securities and Exchange Commission Practice Section or the Private Companies Practice Section of the American Institute of Certified Public Accountants, the board shall have received certification from the American Institute of Certified Public Accountants, or its designee, of the licensee's participation in a peer review program and the dates of the licensee's most recent peer review.

(3) The board may engage a licensee to conduct such review on behalf of and as agent for the board and report the findings to the board.

(4) The board may adopt rules to:

(a)(i) Establish a program for the scheduled inspection, examination and review of working papers developed by licensees in connection with the issuance of any audit, review, or compilation report and provide for such a review of all licensees within each three-year period or such longer period as the board may prescribe. The board shall during any such period exempt from the requirement of such review of working papers licensees who during such period have been subjected to a professional peer review approved by and acceptable to the board and conducted pursuant to standards applied by the American Institute of Certified Public Accountants.

(ii) However, in the case of a peer review qualifying for exemption of a licensee who is a member of the Securities and Exchange Commission Practice Section or the Private Companies Practice Section of the American Institute of Certified Public Accountants, the peer review report shall have been submitted to the board.

(iii) However, in the case of a peer review qualifying a licensee for such exemption a licensee which is not a member of either the Securities and Exchange Commission Practice Section or the Private Companies Practice Section of the American Institute of Certified Public Accountants, the board shall have received certification from the American Institute of Certified Public Accountants, or its designee, of the licensee's participation in a peer review program and the dates of the licensee's most recent peer review.

(b) Provide that a licensee shall reimburse the board for expenses incurred by the board in connection with its review of the working papers of any such licensee. However, such reimbursable expenses shall include only reasonable travel expenses and a per diem prescribed by the board and the aggregate amount of such reimbursable expenses shall not exceed the sum of one thousand dollars as to any licensee in any three-year period.

I. All firms holding a valid registration as a certified public accounting firm on the effective date of this Part shall be deemed to have met the initial permit requirements of this Section.

" 78. Appointment of secretary of state as agent for nonresidents

Application by any person or firm not a resident of this state for a certificate or a permit to practice shall constitute appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to services performed by the applicant while a licensee within this state.

" 79. Enforcement against holders of certificates and permits

A. After notice and a hearing as provided for in R.S. 37:81, the board may revoke any certificate or permit, or suspend for a period of not more than five years, or refuse to issue or renew any certificate or permit, reprimand, censure, or limit the scope of practice of any licensee, impose an administrative fine not to exceed one thousand dollars per violation, or place any licensee on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons:

(1) Fraud, perjury, or deceit in obtaining or in renewing a certificate or permit.

(2) Cancellation, revocation, suspension, or refusal to issue or renew a license or practice rights for disciplinary reasons in any other state for any cause, including other restrictions imposed by such licensing authority.

(3) Revocation or suspension of, or a voluntary consent decree concerning, the right to practice before any state or federal agency.

(4) Dishonesty, fraud, or gross negligence in the performance of services while holding a license or in the filing or failure to file the licensee's own income tax returns.

(5) Violation of any provision of this Part or rule adopted by the board in accordance with the provisions of this Part or violation of professional standards or rules of professional conduct adopted by the board.

(6) Entry of a plea of guilty or nolo contendere or conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, this state, or any other state.

(7) Performance of any fraudulent act while holding a certificate or permit.

(8) Conduct reflecting adversely upon the licensee's fitness to perform services while a licensee.

(9) Making a false or misleading statement or verification in support of an application for a certificate or permit filed by another person.

(10) Providing false testimony before the board.

(11) Engaging in efforts to deceive or defraud the public.

(12) Professional incompetency.

(13) Rendering, submitting, subscribing, or verifying false, deceptive, misleading, or unfounded opinions, reports, or audits.

B. In lieu of or in addition to any remedy provided for in Subsection A of this Section, the board may require a licensee to:

(1) Undergo a peer review conducted under such terms as the board may specify.

(2) Satisfactorily complete such continuing professional education programs as the board may specify.

(3) Pay the costs of any proceedings involved in the imposition of a remedy pursuant to this Section.

(4) Comply with any other requirements or action the board may deem appropriate.

C.(1) If a person or firm against who costs or a fine are imposed by the board fails to pay in full within thirty days of the effective date of the order imposing such costs or fines or on or before a later date as the board may specify, the board may enforce its order by bringing an action in a court of competent jurisdiction and proper venue as to such person or firm.

(2) The proceeding shall be summarily tried by the judge without a jury, and the court may receive evidence by form of affidavit. Upon proof that the respondent has failed to pay timely all costs or fines imposed by the board, the court shall enter judgment in favor of the board. The court shall order the respondent to pay the board, within a reasonable time fixed by the court, the costs and fines imposed by the board, the costs and reasonable attorney fees incurred by the board in bringing the action, plus a civil penalty of not less than five hundred dollars nor more than one thousand dollars as may be determined by the court. The failure of a respondent to comply with the order of the court shall constitute and be punishable as contempt of court for which the board may seek relief in accordance with law.

(D)(1) In addition to or in lieu of the criminal penalties and administrative sanctions provided in this Part, the board may issue an order to any person or firm engaged in any activity, conduct, or practice constituting a violation of any provision of this Part, directing such person or firm to cease and desist from such activity, conduct, or practice. Such order shall be issued in the name of the state under the official seal of the board.

(2) If the person or firm to whom the board directs a cease and desist order does not cease and desist the proscribed activity, conduct, or practice within ten days from service of such cease and desist order by certified mail, the board may cause to issue, in any court of competent jurisdiction and proper venue, a writ of injunction enjoining such person or firm from engaging in any such activity, conduct, or practice as provided for in this Part.

(3) Upon a proper showing by the board that such person or firm has engaged or is engaging in any such activity, conduct or practice as provided for in this Part, the court shall issue a temporary restraining order restraining the person or firm from engaging in unlawful activity, conduct, or practices pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after hearing, commanding the cessation of the unlawful activity, conduct, or practice complained of, all without the necessity of the board having to give bond as usually required in such cases. A temporary restraining order, preliminary injunction, or permanent injunction issued thereunder shall not be subject to being released upon bond.

(4) In the suit for an injunction, the board may demand of the defendant a penalty of not more than five hundred dollars and attorney fees and court costs. A judgement for the penalty, attorney fees, and costs may be rendered in the same judgment in which the injunction is made absolute.

(5) The proceeding for injunction shall be tried summarily by the judge without a jury.

" 80. Investigations

A. The board may, upon receipt of a complaint or other information suggesting violations of this Part or of the rules adopted by the board pursuant to this Part, conduct investigations to determine whether there is probable cause to institute proceedings against any person or firm for such violation. An investigation shall not be a prerequisite to such proceedings in the event that a determination of probable cause can be made without investigation.

B. The board may issue subpoenas to compel witnesses to testify or produce evidence in aid of such investigations.

C. The board may review the publicly available information or professional work of licensees on a general and random basis without any requirement of a formal complaint or suspicion of impropriety on the part of any particular licensee. In the event that as a result of such review the board discovers reasonable grounds for a more specific investigation, the board may proceed as provided in this Section.

" 81. Hearings by the board

A. In any case where probable cause with respect to a violation by a licensee has been determined by the board, whether following an investigation or upon receipt of a written complaint furnishing grounds for a determination of such probable cause or upon receipt of notice of a decision by the board of accountancy of another state furnishing such grounds, the board shall issue a complaint setting forth appropriate charges and set a date for a hearing before the board on such charges. The board shall serve a copy of the complaint and notice of the time and place of the hearing upon the licensee, together with a copy of the board's rules governing proceedings, not less than thirty days prior to the date of the hearing, either by personal delivery or by mailing a copy by certified mail, or such other delivery methods available to the board, to the licensee at the address last known to the board or to the licensee's registered agent for service of process.

B. A licensee against whom a complaint has been issued shall have the right, reasonably in advance of the hearing, to examine and copy the report of investigation, if any, and any documentary or testimonial evidence and summaries of anticipated evidence in the board's possession relating to the subject matter of the complaint. The board shall specify the manner in which such right may be exercised.

C. In such a hearing, the respondent licensee may appear in person or through counsel, or in the case of a firm through a partner, officer, director, shareholder, member, manager, or through counsel. The respondent licensee may examine witnesses and evidence presented in support of the complaint and present evidence and witnesses on the licensee's own behalf. The licensee shall be entitled upon application to the board to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

D. The evidence supporting the complaint shall be presented by the investigating officer, by a board member designated for that purpose, or by counsel. A board member who presents the evidence or who has conducted the investigation of the matter shall not participate in the board's decision of the matter.

E. The board may be advised by counsel in a hearing who shall not be the same counsel who presents or assists in presenting the evidence supporting the complaint.

F. The board shall not be bound by technical rules of evidence in such hearing.

G. A stenographic or electronic record of the hearing shall be made and filed with the board. A transcript need not be prepared unless review is sought or the board determines that there is good cause for its preparation.

H. In such a hearing, a recorded vote of a majority of all members of the board then in office, excluding members disqualified by reason of Subsection D of this Section, shall be required to sustain any charge and to impose any penalty with respect thereto.

I. If, after service of a complaint and notice of hearing, the respondent licensee fails to appear at the hearing, the board may proceed to hear evidence against the licensee and may enter such order as it deems warranted by the evidence, which order shall be final unless the licensee petitions for review. However, within ten days from the date of such order upon a showing of good cause for the licensee's failure to appear and defend, the board may set aside the order and schedule a new hearing on the complaint.

J. Any person or firm adversely affected by any order of the board may file a written petition for review of the order with the Civil District Court for the Parish of Orleans within thirty days after the entry of the order. The procedures for review and the scope of the review shall be as specified in the judicial review of adjudication procedures of the Administrative Procedure Act.

K.(1) In any case where the board renders a decision imposing discipline against a licensee, the board shall examine its records to determine whether the licensee holds a certificate or a permit in any other state. If so, the board shall notify the board of accountancy of such other state of its decision by mail within forty-five days of rendering the decision.

(2) The board may also furnish information relating to such proceedings to other public authorities and to private professional organizations having a disciplinary interest in the licensee.

(3) Where a petition for review has been filed, such notification and furnishing of information shall await the resolution of such review. If the resolution is in favor of the licensee, no such notification or furnishing of information shall be made.

" 82. Reinstatement of licenses

A. In any case where the board has suspended or revoked a certificate or permit or refused to renew a certificate or permit, the board may, upon a written application by the person or firm affected and upon a showing of good cause, modify the suspension or reissue the certificate or permit or issue a new certificate or permit under a new number.

B. The board shall specify the manner in which such applications shall be made including but not limited to the time period within which they shall be made and the circumstances in which hearings shall be held.

C. Before reissuing or terminating the suspension of a certificate or permit, the board may require the applicant to show successful completion of specified continuing professional education and may make the reinstatement conditional and subject to satisfactory completion of a peer review conducted in such fashion as the board may specify or under such other conditions as the board may specify.

' 83. Unlawful acts

A. Only licensees may issue a report on financial statements of any other person, firm, organization, or governmental unit or otherwise offer to render or render any attest service. This restriction does not prohibit any act of a public official or public employee in the performance of that person's duties as such or prohibit the performance by any person 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 thereon. This restriction also does not apply to nonlicensees who may prepare financial statements which do not purport to be in compliance with the Statements on Standards for Accounting and Review Services.

B. Licensees performing attest services must provide those services pursuant to statements on standards relating to those services adopted by the board.

C. No person shall use or assume the title "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant, unless the person holds a valid certificate issued as provided for in this Part.

D. No firm shall provide attest services or assume or use the title "certified public accountants" or the abbreviation "CPAs" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a CPA firm unless the firm holds a valid permit issued as provided for in this Part and ownership of the firm is in accordance with this Part and rules adopted by the board.

E. No person or firm shall assume or use the title "public accountant", "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered 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", "PA", or similar abbreviation likely to be confused with the abbreviation "CPA", unless such person or firm holds a valid certificate or permit issued as provided for in this Part. The title "enrolled agent" or "EA" may only be used by individuals so designated by the Internal Revenue Service.

F.(1)(a) No person shall use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements, unless such person is licensed as provided for in this Part. However, any nonlicensee using the following "safe harbor" language in connection with the performance of compilation services shall not be in violation of any provisions of this Part: "The accompanying balance sheet of (name of company) as of (year end date) and the related statements of income, retained earnings, and cash flows for the year then ended have been compiled by me (or us). A compilation is limited to presenting in the form of financial statements information that is the representation of management (or owners). I (we) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."

(b) Use of the following language is permissible in appropriate circumstances: "Management has elected to omit substantially all of the disclosures (and the statement of cash flows) required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user=s conclusions about the company's financial position, results of operations, and cash flows. Accordingly these financial statements are not designed for those who are not informed about such matters".

(2) No person or firm shall assume or use any title or designation that implies that such person or firm holds a certificate or permit or has special competence as a licensee, unless such person or firm holds a valid certificate or permit issued as provided for in this Part. However, this Subsection 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 therein nor prohibit any act of a public official or employee in the performance of the person's duties as such.

G. No person holding a certificate nor firm holding a permit under this Part 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 the firm or its successor.

H. This Section shall not apply to any 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 such country whose activities 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 such entitlement, who performs no attest services and who issues no reports with respect to the financial statements of any other persons, firms, or governmental units in this state and who does not use any title or designation in this state other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

I. No holder of a certificate shall perform attest services in any firm that does not hold a valid permit.

J. Nothing herein shall prohibit a practicing attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with an attorney's professional work in the practice of law.

K.(1)(a) A licensed certified public accountant or licensed CPA firm shall not, for a commission, recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client any of the following:

(i) An audit or review of a financial statement.

(ii) A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence.

(iii) An examination of prospective financial information.

(b) This prohibition applies during the period in which the licensee is engaged to perform any of such services and the period covered by any historical financial statements involved in such services.

(2) A licensee who is not prohibited by this Section from performing services for or receiving a commission and who expects to be paid a commission shall disclose that fact in writing to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates, prior to receipt of any commission.

(3) Any licensee who expects to accept a referral fee for recommending or referring any service of a licensee to any person or entity, or who expects to pay a referral fee to obtain a client shall disclose such acceptance of payment in writing to the client prior to the acceptance or payment of such referral fee.

L.(1) A licensee shall not:

(a) Perform any professional services for or receive a contingent fee from a client for whom the licensee or the licensee's firm performs any of the following:

(i) An audit or review of a financial statement.

(ii) A compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence.

(iii) An examination of prospective financial information.

(b) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(2) These prohibitions apply during the period in which the licensee is engaged to perform any such services and the period covered by any historical financial statements involved in such services.

(3) For purposes of this Section, a "contingent fee" is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, fees are not regarded as being contingent if fixed by courts or other nonclient public authorities or in tax matters

if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fee may vary depending on the complexity of services rendered.

" 84. Injunctions against unlawful acts; criminal penalties

A. Whenever the board believes that any person or firm has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of R.S. 37:83, the board may:

(1) Apply to the appropriate court for an order enjoining such acts or practices. Upon a showing by the board that such person or firm has engaged in or is about to engage in any such acts or practices, an injunction, a restraining order, or other appropriate order shall be granted by such court.

(2) Bring its information to the attention of the attorney general of any state, or other appropriate law enforcement officer, who may in his discretion cause appropriate criminal proceedings to be brought.

B. Any person or firm who knowingly violates any provision of R.S. 37:83 shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than five hundred dollars for each violation or imprisonment for not more than one year, or both.

" 85. Single act evidence of practice

Evidence of the commission of a single act prohibited by this Part or any rules or regulations adopted pursuant to this Part is sufficient to justify a penalty, injunction, restraining order, or conviction without evi dence of a general course of conduct.

" 86. Confidential communications

A.(1) No licensee or person employed by a licensee shall be required to, except by court subpoena, or voluntarily disclose or divulge the contents of any communication made to him by any person employing such licensee or person to examine, audit, or report on any books, records, or accounts, or divulge any information derived from such books, records, or accounts in rendering professional services, except by express permission of the person employing such licensee or person or by the heirs, personal representative, or successors of such person.

(2) However, this Section shall not prohibit the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or prohibit disclosures in court proceedings, in investigations or proceedings conducted under the provisions of this Part, in ethical investigations conducted by private professional organizations, or in the course of peer reviews, or to other persons active in the organization performing services for that client on a need to know basis or to persons in the entity who need such information for the sole purpose of assuring quality control.

(3) The provisions of this Section shall not apply to any audit conducted pursuant to R.S. 24:511 through 521.

B. Notwithstanding the provisions of Subsection A of this Section, no licensee or person employed by a licensee shall be required by subpoena or otherwise to disclose or divulge any of the following internal documents maintained by such licensee:

(1) Personnel files, except that an individual may subpoena his own personnel files.

(2) Planning and procedure manuals.

(3) Notes and comments made in the course of evaluating the efforts of any licensee or employee, partner, shareholder, or member of a licensee in the performance of an engagement.

C. No licensee furnishing information, data, reports, or records of a client to a person, firm, committee, or organization established for the purpose of professional quality review or peer review shall, by reason of furnishing such information, be liable in damages to any person, partnership, corporation, or firm. The records and proceedings of any such person, firm, committee, or organization shall be confidential, shall be used only by such person, firm, committee, or organization solely in the exercise of the proper functions of professional quality review or peer review, and shall not be subject to court subpoena. However, peer review reports on participation by a licensee in the Public Corporation Practice Section Peer Review program may be disclosed.

D. The privilege against divulging information established by this Section shall not be invoked to withhold disclosure of information, data, reports, or records commanded by subpoena of the board in connection with proceedings pursuant to the provisions of this Part. Such proceedings of the board shall be confidential; information provided to the board pursuant to such provisions shall not be disclosed by it except to the extent necessary for the performance of its functions and shall not be subject to court subpoena. Any records, investigatory files, or other files maintained by the board in connection with any investigation concerning the fitness of any person to receive or continue to hold a certificate shall be exempt from the provisions of R.S. 44:1 et seq. However, any final determination made by the board relative to the fitness of any person to receive or continue to hold such a certificate, including any legal grounds upon which such determination was made, shall be a public record.

E. Membership files and ethics investigation files for the American Institute of Certified Public Accountants and the Society of Louisiana Certified Public Accountants shall be confidential and shall not be subject to subpoena. However, this limitation on disclosure shall not apply to any final determination by the American Institute of Certified Public Accountants or the Society of Louisiana Certified Public Accountants to impose final corrective action, including suspension from membership, a letter of reprimand, or any other public sanction, on any licensee.

" 87. Licensee's working papers; client records

A.(1) Subject to the provisions of R.S. 37:86, all statements, records, schedules, working papers, and memoranda made by a licensee or a partner, shareholder, officer, director, member, manager, or employee of a licensee incident to or in the course of rendering services to a client while a licensee, except the reports submitted by the licensee to the client and except for records that are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed without the consent of the client or the client's personal representative or assignee to anyone other than one or more surviving partners, stockholders, members, or new partners, new stockholders, or new members of the licensee or any combined or merged firm or successor in interest to the licensee.

(2) This Section shall not prohibit any temporary transfer of work papers or other material necessary in the course of carrying out peer reviews or the disclosure of information pursuant to R.S. 37:86.

B. A licensee shall furnish to a client or former client upon request and reasonable notice the following:

(1) A copy of the licensee's working papers that are records which would ordinarily constitute part of the client's records and are not otherwise available to the client.

(2) Any accounting or other records belonging to or obtained from or on behalf of the client that the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.

(3) Any other items as specified by the board by rule.

C. This Section shall not require a licensee to retain any work paper beyond the period prescribed in R.S. 37:89.

" 88. Accounting and review services for governmental entities

Notwithstanding any provision of Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950 to the contrary, a licensee may be engaged to conduct an audit, review, or compilation of the books and accounts of a governmental entity for which such licensee also performs, or has performed, other accounting, advisory, or other services, provided that the performance of such other services does not or has not impaired the independence of the licensee with respect to the governmental entity and such other services are or have been performed in conformity with the ethical rules and interpretations governing the independence of a licensee, as prescribed by the American Institute of Certified Public Accountants.

" 89. Right of licensees to discard documents three years after completion of engagement

A. No licensee who has retained documents generated during, or relevant to, the performance of an engagement for at least three years after completion of that engagement shall have any obligation to a client or any other party to continue to retain such documents. After the expiration of three years from the completion of any engagement, such licensee performing that engagement may dispose of all documents generated during the course of, or relevant to, that engagement by any means, including physical destruction, without thereby incurring liability for damages in tort, contract, or quasi contract to any person.

B. The term "document" is used in this Section as it is encompassed in Code of Civil Procedure Article 1461.

C. If a licensee receives written notice of the commencement of a review panel pursuant to Part II of this Chapter or any judicial proceeding or ethical investigation arising out of or relating to his or its performance of any engagement, then the effect of Subsections A and B of this Section shall be suspended until the termination of the review panel, judicial proceeding, or ethical investigation. A judicial proceeding shall be terminated by final judgment. An investigation or administrative proceeding arising therefrom shall be terminated by written notice by the administrative, regulatory, or professional society of termination of the investigation or proceeding. A review panel shall be terminated as provided in Part II of this Chapter.

D. Nothing in this Section shall impair the right of any person to demand production of any document which has not been disposed of in accordance with the provisions of Subsection A of this Section.

" 90. Accounting documents sent out of state by the insurance commissioner

A. Any document generated by a licensee in the course of an engagement which is sent outside this state by the commissioner of insurance and which is disclosed to an entity of another state, the federal government, or another country pursuant to R.S. 22:1302(I)(2), or any other statute or grant of authority, shall be held confidential by that entity and shall not be divulged to any third party.

B. Notwithstanding any other provision of law to the contrary, any lawsuit arising out of or predicated on documents or the content of documents generated by a licensee in the course of an engagement and sent outside this state by the commissioner of insurance pursuant to R.S. 22:1302(I)(2), or any other statute or grant of authority, shall be governed by the prescriptive and preemptive provisions of R.S. 9:5604.

C. The term "document" is used in this Section as it is encompassed in Code of Civil Procedure Article 1461.

" 91. Privity of contract

A. This Section shall apply to all causes of action specified in this Section filed on or after the effective date of this Act.

B. No action based on negligence brought against any licensee, or any employee or principal of a licensee by any person or entity claiming to have been injured as a result of their justifiable reliance upon financial statements or other information examined, compiled, reviewed, certified, audited, or otherwise reported or opined on by the defendant licensee or in the course of an engagement to provide other services may be brought unless either of the following conditions exist:

(1) The plaintiff is the issuer or successor of the issuer of the financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant, and has engaged the defendant licensee to examine, compile, review, certify, audit, or otherwise report or render an opinion on such financial statements or to provide other services.

(2) The defendant licensee was aware at the time the engagement was undertaken that the financial statements or other information were to be made available for use in connection with a specified transaction by the plaintiff who was specifically identified to the defendant licensee, was aware that the plaintiff intended to rely upon such financial statements or other information in connection with the specified transaction and had direct contact and communication with the plaintiff and expressed by words and conduct the defendant licensee's understanding of the reliance on such financial statements or other information.

" 92. Prescriptive and peremptive period

Notwithstanding any other law to the contrary, the prescriptive and peremptive period in all actions brought in this state against any licensee, or any employee or principal of a licensee shall be governed exclusively by R.S. 9:5604. The scope of the duty of a licensee, or an employee or principal of a licensee to clients and nonclients shall be determined exclusively by R.S. 37:91, regardless of the domicile of the parties involved.

" 93. Proportionate liability

Notwithstanding any other law to the contrary, no judgment for money damages may be entered against any licensee, or any employee or principal of a licensee by any person or entity claiming to have been injured by the licensee, employee, or principal except in accordance with the provisions of this Section:

(1) If the party seeking a judgment for damages against the licensee, employee, or principal proves that the licensee, employee, or principal acted with the deliberate intent to deceive, manipulate, or defraud for his or its own direct pecuniary benefit, the liability shall be determined according to the principles that generally apply to such an action.

(2) If the licensee, employee, or principal is not proven to have acted with the deliberate intent to deceive, manipulate, or defraud for his or its own direct pecuniary benefit, the amount of the liability in damages shall be determined as follows:

(a) The trier of fact shall determine the percentage of responsibility of the plaintiff, of each of the defendants, and of each of the other persons or entities alleged by the parties to have caused or contributed to the harm alleged by the plaintiff. In determining the percentages of responsibility, the trier of fact shall consider both the nature of the conduct of each person and the nature and extent of the casual relationship between that conduct and the damage claimed by the plaintiff.

(b) The trier of fact shall next determine the total amount of damages suffered by the plaintiff caused in whole or in part by the plaintiff, the defendants, and other persons alleged to have caused or contributed to the damage.

(c) The trier of fact shall then multiply the percentage of responsibility of the licensee, employee, or principal by the total amount of damages and shall enter a judgment or verdict against the licensee, employee, or principal in an amount no greater than the product of those two factors.

(d) In no event shall the damages awarded against or paid by a licensee, employee, or principal exceed the amount determined in Subparagraph (c) of the Paragraph. The licensee, employee, or principal shall not be jointly liable on any judgment entered against any other party to the action.

(e) Except where a contractual relationship permits, no defendant shall have a right to recover from a licensee, employee, or principal any portion of the percentage of damages assessed against such defendant.

" 94. Substantial equivalency

A.(1) An individual whose principal place of business is not in this state having a valid certificate or license as a certified public accountant from any state which the board or its designee has verified to be in substantial equivalence with the licensure requirements of this Part shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of certificate holders and licensees of this state without the need to obtain a certificate or permit as provided in this Part. However, such individuals shall notify the board of their intent to enter the state under this Section and pay any fee required by the board.

(2) An individual whose principal place of business is not in this state having a valid certificate or license as a certified public accountant from any state which the board or its designee has not verified to be in substantial equivalence with the licensure requirements of this Part shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of certificate holders and licensees of this state without the need to obtain the certificate or permit required by this Part, if such individual obtains from the board or its designee verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements required by this Part. However, such individuals shall notify the board of their intent to exercise the privilege afforded by this Section and pay any fee required by the board.

(3) Any licensee of another state exercising the privilege afforded by this Section consents, as a condition to the grant of this privilege to the following:

(a) The personal and subject matter jurisdiction of the board.

(b) Compliance with the provisions of this Chapter and the rules and regulations adopted by the board.

(c) The appointment of the board of accountancy which issued his license as his agent upon whom process may be served in any action or proceeding by this board against the licensee.

B.(1) A licensee of this state offering or rendering services or using his or its CPA title in another state shall be subject to disciplinary action in this state for any act committed in another state for which the licensee would be subject to discipline in the other state.

(2) Notwithstanding any other provision of this Part, the board shall be required to investigate any complaint made by the board of accountancy of another state.

" 95. Legislative auditor

Nothing in this Part shall apply to and the board shall not have any power to question or regulate any practices, services, functions, or other actions performed by the duly elected or appointed legislative auditor or his designees in the discharge of the powers, duties, and functions committed to his office by the state constitution or any statute.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

_ _____

SPEAKER OF THE HOUSE OF REPRESENTATIVES

_ _____

PRESIDENT OF THE SENATE

_ _____

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____