

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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APR 6 11 27 AM '99  
OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Board of Accountancy TITLE NUMBER: I

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: I

TITLE OF RULE BEING AMENDED: Board Rules and Rules of  
Professional Conduct

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 269

SECTION 64-9-12, PASSED ON 3/12/99

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 6, 1999

Ken Hechler

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OFFICE OF THE CLERK OF THE SENATE  
STATE OF WEST VIRGINIA  
11 17 AM '99  
SECRET

TITLE 1  
LEGISLATIVE RULES  
BOARD OF ACCOUNTANCY  
SERIES 1  
BOARD RULES AND  
RULES OF PROFESSIONAL CONDUCT

§ 1-1-1 General.

1.1 Scope. -- This Legislative rule establishes general rules for the regulation of the practice of public accounting, including the certification and licensure of certified public accountants and the registration and licensure of public accountants.

1.2 Authority. -- W.Va. Code §§ 30-9-3 and 30-9-11.

1.3 Filing date. -- April 6, 1999.

1.4 Effective date. -- April 6, 1999.

§ 1-1-2 Definitions.

As used in this Rule, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

2.1 "Accredited school" means any four-year, degree-granting college or university accredited at the time of an applicant's degree or attendance by the:

- a. Middle States Association of Colleges and Secondary Schools;
- b. New England Association of Schools and Colleges;
- c. North Central Association of Colleges and Secondary Schools;
- d. Northwest Association of Schools and Colleges;

f. Western Association of Schools and Colleges;

2.2 "Act" means the provisions of West Virginia Code § 30-9-1 *et. seq.*;

2.3 "Assurance" means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards;

2.4 "Board" means the West Virginia Board of Accountancy;

2.5 "Certificate" means a certificate as a certified public accountant issued by the Board pursuant to the Act or corresponding provisions of prior law or a corresponding certificate as a certified public accountant issued after examination under the laws of any other state;

2.6 "Client" means a person or entity that contracts with or retains a firm for performance of public accounting services;

2.7 "Contingency Fee" means 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 the service. A fee fixed by a court, taxing authority or other public authority is not a contingency fee.

2.8 "Commission" means compensation, except a referral fee, for recommending any product or service to be supplied by another person.

2.9 "Domicile" means the situs of the applicant's permanent residence, even though he or she may, at the time of making application, be residing elsewhere. Domicile is a question of fact in each case and is established only by concurrence of

the actual residence coupled with intent to make the residence the applicant's permanent residence;

2.10 "Financial Statement" means a written document or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position or cash flow of any person, corporation, partnership, or other entity;

2.11 "Firm" means a sole proprietorship, corporation, partnership, professional association, or any combination thereof practicing public accountancy in West Virginia;

2.12 "License" means a license to practice public accounting issued annually under the Act and this Rule and "licensee" means a person holding a license;

2.13 "Place of business" means the location within the State of West Virginia where a person is actually engaged in a lawful business;

2.14 "Practice of public accountancy" or "public accounting" means (i) the giving of an assurance, in a report or otherwise, whether expressly or implicitly or (ii) in the case of a person holding himself or herself out as certificate holder or for purposes of subsection 7.4 of this Rule, the performance or offering to perform any service involving the use of accounting or auditing skills, including, but not limited to, management advisory or consulting services, the preparation of tax returns, the rendering of tax services, the keeping of books of account and related accounting records, and the preparation of financial statements without the expression of an

assurance: Provided, That an employee giving assurances to or performing these services for an employer shall not be considered to be practicing public accountancy;

2.15 "Referral Fee" means compensation for recommending or referring any service of a licensee to any person.

2.16 "Registered" or "registrant" means a person registered, but not certified, by the Board under prior law as a public accountant before January 1, 1967, and "registration" means that registration;

2.17 "Report" or "reports," when used with reference to financial statements, means an opinion or disclaimer of opinion or other form of language or representation which states or implies any form of assurance or denial of assurance;

2.18 "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands or Guam, and "this State" means the State of West Virginia.

§ 1-1-3 Board organization and Proceedings.

3.1 Officers. -- At its first meeting after July 1 of each year, the Board shall elect a president, a vice president, a secretary, and an assistant secretary from among its members. All officers shall be elected for a term of one (1) year and each shall continue in office until his or her successor has been elected and qualified or until his or her term as a member of the Board expires.

3.2 Meetings. -- The Board shall meet in Charleston or elsewhere in West Virginia as it may elect, at least twice each year, and shall remain in session as long as necessary in order to transact its business. Meetings shall be held upon notice by

the president of the Board or by joint call of any three (3) of its members and may be held at any reasonable time or place designated in the notice of the meeting.

3.3 Quorum. -- A majority of the Board constitutes a quorum for the transaction of business.

3.4 Office and employees. -- The Board shall establish an office in West Virginia, if it is considered necessary and desirable, to transact the day-to-day business of the Board and for the maintenance of its files and records. The board shall designate one (1) of its principal officers or any other person as the executive officer in charge of its office and shall arrange his or her compensation in the form of a per diem allowance or as a salary. The executive officer, with the approval of the Board, may employ such assistance as may be necessary for efficient performance of his or her duties.

3.5 Records. -- The Board shall designate and cause to have prepared those forms it considers necessary or expedient to the discharge of its duties, the convenience of applicants for registration or examination, and the compilation of proper records. As soon as practicable after July 1 of each year the board shall publish a roster showing the names and addresses of all certificate holders and registrants who hold licenses during the fiscal year beginning on that date.

#### § 1-1-4 Registration of Public Accountants.

4.1 Registrants shall continue to be recognized as such as provided in the Act. No registrant needs to register or take other action to continue the effectiveness

of the registration upon the effective date of this Rule. Nothing in this Rule shall be construed to require the certification of registrants.

§ 1-1-5 Certification.

5.1 The board shall issue a certificate to any applicant who satisfies each of the requirements of this section.

5.2 Age. -- An applicant for certification shall be over the age of eighteen (18) years.

5.3 Good moral character. -- An applicant for certification shall have fiscal integrity and no history of acts involving dishonesty or acts which would constitute a violation of this Rule. The board may deny certification upon a finding supported by clear and convincing evidence of a lack of good moral character.

5.4 An applicant for certification shall be domiciled or employed on a full time basis in West Virginia.

5.5 Education. -- An applicant for certification shall have completed the following educational requirements:

(a) If the initial application for examination is made prior to February 15, 2000, the obtainment of a baccalaureate or equivalent degree conferred by an accredited school with a concentration in accounting or its equivalent. A qualified candidate shall submit an application on Board approved forms with the required documentation. The Board will consider an applicant to be in compliance with the educational requirement of this subsection as long as the applicant otherwise

continues to meet the qualifications for certification examination under subsection 6.1 of this Rule.

(b) If the initial application for examination is made on or after February 15, 2000, the satisfactory completion of one hundred fifty (150) semester hours or their equivalent at an accredited school, including the obtainment of baccalaureate or higher degree.

(i) As part of the required one hundred fifty semester hours, an applicant shall have completed the following credit hours at the upper-division baccalaureate and/or graduate levels at an accredited college or university:

(A) at least twenty-seven (27) credit hours or equivalent quarter hours in accounting, excluding introductory accounting courses covering the principles of accounting components, including the minimum requirements in each of the following subject areas:

(1) six (6) credit hours in financial or intermediate accounting;

(2) six (6) credit hours in auditing or accounting information systems with a minimum of three (3) credit hours in auditing;

(3) three (3) credit hours in taxation;

(4) three (3) credit hours in cost accounting, managerial accounting, governmental accounting or not-for-profit accounting; and

(5) nine (9) credit hours in accounting electives. Accounting internships or independent studies not exceeding three (3) credit hours may satisfy this accounting elective requirement;

(B) six (6) credit hours in business law; and

(C) a minimum of twenty-seven (27) credit hours in business courses, excluding required accounting and business law courses, with a minimum requirement in each of the following subject areas:

(1) three (3) credit hours in economics;

(2) three (3) credit hours in finance;

(3) three (3) credit hours in marketing;

(4) three (3) credit hours in statistics;

(5) three (3) credit hours in management; and

(6) twelve (12) credit hours in business-related electives,

excluding the introductory principles of accounting components and the required six (6) credit hours in business law. Business-related courses include, but are not limited to, quantitative application in business, business ethics, business communication skills and organizational behavior.

(c) Foreign academic credentials shall be accompanied by a written evaluation from the Foreign Academic Credentials Service, Inc., or any other credentialing agency which is a member of the National Association of Credential Evaluation Service, Inc., regarding equivalency to the requirements of this rule.

5.6 An applicant shall satisfactorily complete the examination provided for in section 6 of this Rule. The Board may, in its discretion, issue a certificate to any person, who (a) is the holder of a certificate issued under the laws of any state which extends similar privileges to certificate holders of this State: Provided, That the requirements for the certificates in the state which has granted the certificate are, in the opinion of the board, equivalent to those required by this rule; or (b) is the holder of a certificate, or the equivalent of a certificate, granted under the authority of a foreign nation.

5.7 Prior Certificants. -- Persons who, on July 1, 1989, held certificates previously issued by the board are not required to obtain additional certificates, but are otherwise subject to all provisions of this Rule. The certificates shall, for all purposes, be considered certificates issued under and subject to this Rule.

5.8 Practice by nonresidents. -- A person holding a certificate or registration issued by the accountancy board or commission of another state or jurisdiction may temporarily practice in this state on professional business incident to his or her regular practice: Provided, That he or she shall in the practice be governed by this Rule and shall pay the fee for a current license to practice, as provided in section 12 of this Rule. The Board shall submit evidence of a violation of any Rule to the accountancy board or commission of the state from which the nonresident holds his or her certificate or registration, and proceedings shall be instituted by the Board only in the event that the out of state board or commission fails or is unable to take appropriate action.

§ 1-1-6 Examination for certificate.

6.1 Application. -- An applicant for certificate examination shall meet the requirements of subsections 5.1, 5.2, 5.3, 5.4, and 5.5 of this Rule and shall complete the application form prescribed by the Board and furnish all information, documentation, and references required for in section 12 of this Rule. An applicant shall file a complete application with the Board at least three (3) months prior to the examination which the applicant for certification desires to take. If the candidate fails to attend three consecutive examinations he or she shall complete a new application for certification examination under the requirements existing at the time the new application is completed.

6.2 Notice and Procedure. -- The board shall conduct an examination in May and November of each year for applicants for certification approved by the Board. The Board shall notify the applicants approved as candidates for examination in writing to the address stated in their applications of the exact place of the examination and the dates and hours at which the subjects specified in subsection 6.3 of this Rule will be given. A candidate for exam shall complete all examination answers on materials provided by the Board. The board shall preserve all examination papers for a period of six (6) months after each examination.

The examiners shall give candidates for examination a card bearing a number. After the card is completed, the candidate shall hand it to the examiners at the beginning of the examination. The number is for identification only and shall be used on all papers submitted by the candidate. If any candidate signs his or her name or writes

initials or other identification marks upon his or her examination papers, the Board shall consider that action as misconduct and the Board may reject his or her examination papers.

6.3 Examination subjects, grading, reexaminations. -- Examinations shall include questions or problems on accounting practice, theory of accounts, auditing, commercial law, and any other areas the board may prescribe. The examination is a two-day examination comprising 15 ½ hours. The Board shall administer the examination every May and November on the first Wednesday and Thursday. The examination sections consist of; Financial Accounting & Reporting-Business Enterprises; Accounting & Reporting-Taxation, managerial, and Governmental and Not-for Profit Organization; Auditing; and Business Law & Professional Responsibilities. The candidate is required to make a grade of not less than seventy-five percent (75%) in each examination subject to pass the examination. If a candidate is sitting for the examination for the first time and passes two or more but not all sections, then the Board shall give the candidate credit for those sections that the candidate has passed and he or she need not sit for reexamination in those sections, provided that:

- (a) the candidate wrote all sections of the examination at that sitting;
- (b) the candidate attained a minimum grade of 50 on each section not passed at that sitting;
- (c) the candidate passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;

(d) at each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate writes all sections not yet passed; and

(e) in order to receive credit for passing additional sections in any subsequent sitting, the candidate attains a minimum grade of 50 on sections written but not passed at that sitting.

A candidate who sat for and passed part of the examination prior to May, 1994, shall retain the credits and the Board shall give the candidate credit for sections passed on the May, 1994 examination or subsequent examinations provided that:

(a) the candidate wrote all remaining sections of the examination at the May, 1994 and subsequent examinations,

(b) the candidate attained a minimum grade of 50 on each section not passed at that sitting; and

(c) the candidate passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed. The Board shall give a candidate credit for any and all sections of an examination passed in another state if credit would have been given, under then applicable requirements, if the candidate had taken the examination in this State. The Board may in particular cases waive or defer any of the requirements regarding the circumstances in which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the candidate's control, the candidate was unable to meet the requirement.

§ 1-1-7 Licensure.

7.1 License required. -- All registrants and certificants shall annually renew their licenses from the Board in order to practice public accounting. Licenses are valid for a period of one (1) year (or portion thereof) ending on June 30 of each year.

7.2 Application. -- Applicants for licensure or licensure renewal shall complete the forms prescribed by the Board and furnish all information and documentation required in the form, as well as the license fee provided for in section 12 of this Rule.

7.3 Continuing education. -- Certificate holders applying for licensure renewal shall have completed 120 hours of continuing education as provided for in this subsection within the three preceding calendar years, with at least 20 hours in each calendar year. Any certificate holder applying for licensure who has not been engaged in the practice of public accountancy during the prior calendar year shall be considered to have complied with the hourly requirements set forth in this subsection: Provided, That the certificate holder completes 40 hours of continuing education during the subsequent calendar year and thereafter satisfies all otherwise applicable provisions of this subsection. Registrants are exempt from the requirements of this subsection.

7.3.1 Continuing education program guidelines. The Board shall determine if a continuing education program satisfies the requirements of this subsection. In its evaluation of continuing education programs, the Board shall apply the following standards:

(a) The program should contribute directly to the professional competence of the individual;

(b) The stated objectives of a program should include the enhancement of the ability of the participant which the program is intended to accomplish;

(c) The education and/or experience prerequisites for the program should be stated;

(d) Materials used in programs should be developed by qualified individuals for use with specified teaching methods;

(e) Program content should be current;

(f) Programs should be reviewed by persons other than the preparer to ensure compliance with this subdivision;

(g) Qualifying programs include, but are not necessarily limited to:

(1) Courses and mini-courses sponsored by national or state professional organizations. The Board may approve programs sponsored by other groups if they meet the same educational objectives;

(2) University and college courses (other than courses in principles of accounting) which contribute to the professional competence of the individual;

(3) Formal home study courses;

(4) Firm "in house" programs sponsored by accounting firm associations, other than basic, "on-the-job" training;

(5) Published books and articles, to a maximum of 60 hours credit per publication; and

(6) Technical sessions at meetings of professional organizations or other organizations of direct interest and application to the practice of public accountancy, such as the West Virginia Tax Institute; and

(h) Qualifying programs do not include, for example, time spent in:

(1) Providing services to clients;

(2) Presentations to nonprofessional groups such as schools, civic, religious, or community organizations; and

(3) Informal review of professional journals.

7.3.2 Continuing education program pre-approval, credits and administration; additional credit for instruction.

(a) The Board encourages licensees, program sponsors, and other interested persons to seek prior approval of continuing education programs in order to facilitate the administration of and compliance with this subsection.

(b) The Board shall award one hour of credit for the completion of each 50 minutes of actual participation in the program, or its lesson equivalent in a home study course, as indicated on the certificate of completion. The Board shall not award credit for programs less than 50 minutes in length or partial hours of program participation.

(c) The Board shall grant credit for university or college courses at accredited schools as follows:

(1) Applicants shall receive 15 hours credit for each semester credit hour earned and ten hours credit for each quarter credit hour earned; and

(2) Applicants attending non credit courses shall receive credit at the rate of one hour of credit for each 50 minutes in-class participation.

(d) A licensee may claim credit only for programs completed during the relevant calendar years, except for good cause shown.

(e) Instructors in an approved program shall receive three hours credit for each hour taught for the first time they teach a course, to a maximum of 60 hours credit per course per year. The Board shall not give credit for subsequent teaching of the same course, unless the course has been substantially updated. If the same course is taught again in less than three years, the instructor must receive prior approval from the Board for additional credit.

#### 7.3.3 Compliance monitoring.

(a) The Board shall measure compliance with this subsection by the calendar year. All licensees shall return an annual continuing education reporting form to the Board by January 31 of the following year.

(b) Reporting forms shall contain the licensee's Board certificate and licensee numbers.

(c) The Board shall enter hours reported into the record of the licensee in a master file with the designation of the year and the number of credits and

maintain in the master file the licensee's record of the current year and the past two years. In addition, The Board shall maintain a file of continuing education reporting forms for each licensee for four years.

(d) The Board shall annually provide a mailing to each licensee which will provide a confirmation of the record for review by the licensee so that corrective action can be taken if there is an error or dispute.

#### 7.3.4 Continuing education exceptions.

The following persons are exempt from the requirements of this subsection:

(a) Licensees over the age of 65, all of whose services are rendered to an accounting firm: Provided, That the services shall be reviewed and approved by another licensee who satisfied the requirements of this subsection. The result of all services going to the public shall be presented under the firm name. This exemption shall be based on a written request from the licensee and is subject to approval by the Board; and

(b) Other persons who demonstrate good cause for exemption to the Board. A person not meeting the requirements of this subsection may apply to the Board for a waiver due to extenuating circumstances, such as accident, illness, pregnancy, or any other circumstance as determined appropriate by the Board. This request be received by the Board by January 31 following the reporting period, except for good cause shown.

#### 7.4 Work experience.

(a) Certificate holders applying for licensure shall have two years of public accounting experience, satisfactory to the Board, or experience of such length and character which, in the opinion of the Board, is considered the equivalent of the public accounting experience. The applicant shall obtain the qualifying experience (a) within the immediate 4 years prior to successfully completing the examination provided for in section 6 of this Rule if the experience was obtained prior to completing the examination; (b) or if the experience was obtained after completing the examination, within the immediate 4 years prior to licensure. Persons holding certificates prior to July 1, 1991, and registrants are exempt from the requirements of this subsection.

(b) The record of the applicant's experience shall be verified by notarized statements from the applicant's present or former employers or others who are familiar with the experience. The statements shall set forth the specific nature and exact length of each type of qualifying experience. Proper documentation is essential in order that the record of experience may properly be evaluated by the Board.

7.5 Peer Review. -- The Board may, at its discretion, provide for the review of any certificate holder (i) applying for licensure renewal or (ii) who the Board has reason to believe may be in violation of section 11 of this Rule. In these cases, the Board may provide for reimbursement and payment of those persons conducting the review and shall set forth in writing the scope and procedures of the review. Nothing in this subsection is a prerequisite to any other Board action under this Rule, including but not limited to section 13 of this Rule.

§ 1-1-8 Prohibited Acts.

8.1. A person who does not hold a valid license shall not (a) claim to hold one; (b) practice or offer to practice public accountancy or public accounting; or make any other claim of licensure or approval related to the preparation of financial statements or expression of assurances on the financial statements which is false or misleading.

8.2 Except as set forth in this subsection, a person who does not hold a valid certificate shall not claim to hold one or describe himself or herself as or assume any of the following titles or designations: "certified public accountant," "CPA," "public accountant," "PA," "certified accountant," "CA," "chartered accountant," "LA," "registered accountant," "RA," "independent auditor," "auditor," or similar designation. However, registrants may use the titles "public accountant," or "PA." Partnerships practicing accountancy in this State may use the designations in this subsection or practice as such, only if all the members of the partnership who practice in this State are licensed.

8.3 A person who does not hold a valid license shall not claim to have used "generally accepted accounting principles," "generally accepted accounting standards," "public accountancy standards," "public accountancy principles," "generally accepted auditing principles," or "generally accepted auditing standards," in connection with his or her preparation of any financial statement; nor shall he or she use these terms in describing any complete or partial variation from these standards or principles or to imply complete or partial conformity with these standards or principles.

8.4 A person who does not hold a valid license shall not use the words "audit," "audit report," "independent audit," "attest," "attestation," "examine," "examination," "opinion," or "review," in a report on a financial statement.

8.5 A person who does not hold a valid license shall neither state nor imply that he or she is tested, competent, qualified, or proficient in financial standards established by (i) the American Institute of Certified Public Accountants or agency of the institute, (ii) the Governmental Accounting Standards Board or any agency of the Board, (iii) the Securities and Exchange Commission or any agency of the Commission, (iv) the Financial Accounting Standards Board, or (v) any successor entity to an entity named in this subsection.

8.6 No person who holds a valid license shall engage in the practice of public accounting under a professional or firm name or designation that contains a name or term other than past or present partners, officers, or shareholders of the firm or of a predecessor firm; nor shall any such person engage in the practice of public accounting under professional or firm name which is deceptive or misleading.

#### § 1-1-9 Inapplicability of Rules

9.1 Nothing contained in this Rule shall be construed to prevent any person from describing himself or herself as an "accountant" or a "bookkeeper" or from stating that he or she practices accountancy or bookkeeping. Nor, subject to the licensure requirements imposed by this rule on persons holding themselves out as certificate holders, shall this Rule be construed to prevent any person from performing services involving the use of accounting skills, rendering tax services, management

advisory or consulting services, or in the keeping of books of account and related accounting records, or from preparing financial statements without the expression of an assurance.

9.2 Nothing contained in this Rule shall be construed to prevent any person from stating that he or she has prepared, compiled, assembled, or drafted a financial statement if he or she does not use any additional language which comprises an assurance.

9.3 The prohibitions of section 8 of this Rule and the other provisions of this Rule shall not be construed to preclude the use of the following or substantially similar language: "I (We) have compiled the accompanying (financial statements) of (Name of entity) as of (time period) for the (period) then ended. A compilation is limited to presenting in the form of financial statements information that is the representation of management (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. Management has elected to omit substantially all (or certain) required disclosures (and the statement of changes in financial position or cash flows). If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the (entity's) financial position, results of operation, and changes in financial position (or cash flows). Accordingly, these financial statements are not designed for those who are not informed about these matters."

9.4 Nothing contained in this Rule shall be construed to prohibit an employee from furnishing services to his or her employer .

§ 1-1-10 Accounting Corporations and Other Forms of Business.

10.1 One or more licensees may organize and become shareholders of an accounting corporation subject to the requirements of this section.

10.2 No accounting corporation shall exist or transact business as an accounting corporation without the prior authorization of the Board. Applicants for authorization shall complete an application form, furnish all other documents and information requested by the Board, and pay the fee set forth in section 12 of this Rule.

10.3 The Board shall not authorize the organization of an accounting corporation unless, in addition to the other requirements set forth in this Rule, the applicants comply with the following requirements:

(a) The sole purpose and business of the corporation shall be to furnish to the public, services not inconsistent with the Act or this Rule: Provided, That the corporation may invest its funds in a manner not incompatible with the practice of public accounting;

(b) The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation shall be an individual licensed under W. Va. Code § 30-9-1 et. seq.

(c) At least one shareholder of the corporation is certified or registered in this state;

(d) The accounting corporation is domiciled in this State.

(e) Sixty (60) % of the ownership of any accounting corporation is by individuals licensed under W. Va. Code § 30-9-1 et. seq.

(f) The remaining percentage of ownership may be held by non-licensee owners who are active participants in the accounting corporation.

i) Non-licensee owners are considered active participants in the accounting corporation if they are employed by the accounting corporation for at least 20 hours per week and are otherwise legally authorized to provide compatible professional services.

ii) Non-licensee owners shall possess no direct control or have personal supervision of the practice or personnel who act in behalf of the corporation in giving of assurance in a report or otherwise.

(g) Each resident manager in charge of an office of the corporation in this State and each shareholder or director personally engaged within this State in the practice of public accounting shall be certified or registered in this State;

(h) When not inconsistent with this section, the organization and procedures of accounting corporations shall conform to the requirements of W.Va. Code § 31-1-1, et. seq.

10.4 When the Board determines that an accounting corporation meets the requirements of this rule and W. Va. Code § 30-9-11, the Board shall notify the Secretary of State that a Certification of Authorization has been issued to the person or persons making application for the accounting corporation.

10.5 Upon receipt of the certificate of authorization required by subsection 10.2 of this Rule, an accounting corporation shall promptly cause to be filed in the office of the Secretary of State a certified copy of the certificate of authorization. No accounting corporation shall transact business until it has received (i) a certificate of incorporation from the Secretary of State and (ii) filed a certified copy of the certificate of incorporation with the Board.

10.6 The Secretary of State, upon receipt of a certificate of authorization shall attach the Certificate of Authorization to the corporation's application and, upon compliance with the applicable provisions of chapter thirty of the West Virginia Code, the Secretary of State may issue to the incorporators a certificate of incorporation for the accounting corporation. Once the accounting corporation receives the certificate of incorporation from the Secretary of State's Office it may begin engaging in the practice of public accounting through persons duly licensed under W. Va. Code § 30-9-1 *et. seq.*

10.7 The person or persons making application for the accounting corporation shall send a copy of the Certification of Authorization to the Secretary of State's office.

10.8 One or more licensees may be members of an accounting firm that is organized as a limited liability company or registered limited liability partnership solely to render accounting services under the laws of West Virginia, including but not limited to, the Uniform Liability Act, W. Va. Code § 31B-1-101 *et. seq.*, and the Uniform Partnership Act, W. Va. Code § 41B-1-1 *et. seq.*, and may practice as a

limited liability organization, provided that they are otherwise licensed to practice public accountancy in West Virginia and the accounting firm is registered pursuant to rules promulgated by the Board.

10.9 Nothing in this rule or the laws under which a licensee or accounting firm is organized shall relieve a licensee from personal liability for the acts, errors and omissions of the licensee arising out of the performance of public accountancy.

10.10 Licensees may operate under other forms of business organizations, including but not limited to partnerships, professional limited liability companies and limited liabilities companies authorized by West Virginia law provided, however, the Board shall not authorize the organization unless, in addition to the other requirements set forth in this Rule, the applicants comply with the following requirements:

(a) The sole purpose and business of the organization is to furnish to the public, services not inconsistent with the Act or this Rule: Provided, That the organization may invest its funds in a manner not incompatible with the practice of public accounting;

(b) The shareholder or member of the organization having authority over the practice of public accounting by the organization is an individual licensed under W. Va. Code § 30-9-1 et. seq. in good standing;

(c) At least one member or shareholder of the organization is certified or registered in this state;

(d) The organization is domiciled in this State.

(e) Sixty (60) % of the ownership of the organization is by an individual licensed under W.Va. Code § 30-9-1 et.seq. in good standing and shall be principally employed by the organization or actively engaged in its business.

(f) The remaining percentage of ownership may be held by non-licensee owners who are active participants in the organization.

i) Non-licensee owners are considered active participants in the organization if they are employed by the organization for at least 20 hours per week and are otherwise legally authorized to provide compatible professional services.

ii) Non-licensee owners shall possess no direct control or have personal supervision of the practice or personnel who act in behalf of the organization in giving assurance in a report or otherwise.

(g) Each resident manager in charge of an office of the organization in this State and each shareholder or director personally engaged within this State in the practice of public accounting shall be certified or registered in this State;

(h) When not inconsistent with this section, the organization and procedures of any business organization shall conform to the requirements of West Virginia Code authorizing the formation of that business organization.

10.11 No professional limited liability company shall exist or transact business without the prior authorization of the Board. Applicants for authorization shall complete an application form, furnish all other documents and information requested by the Board, and pay the fee set forth in section 12 of this Rule.

10.12 Upon receipt of the authorization required by subsection 10.11 of this Rule, a professional limited liability company shall promptly cause to be filed in the office of the Secretary of State a certified copy of the authorization. No professional limited liability company shall transact business until it has received (i) a certificate of Organization from the Secretary of State and (ii) filed a certified copy of the certificate with the Board.

10.13 A professional limited company may render public accounting services only through members, employees and agents who are licensees within this State. The term "employee" or "agent," as used in this subsection, does not include secretaries, clerks, typists or other individuals who are not usually and ordinarily considered by custom and practice to be rendering public accounting services.

10.14 This section does not modify the law as it relates to the relationship between a person furnishing accounting services and his or her client, nor does it modify the law as it relates to the liability arising out of such a professional service relationship. Except for permitting a professional limited liability company, this section is not intended to modify any legal requirement or court rule relating to ethical standards of conduct required of persons providing accounting services.

10.15 The name of a professional limited liability company shall contain the last name or names of one or more of its shareholders or include the name or names of former members or of persons who were associated with a predecessor partnership or other organization. The name shall also contain the words "professional limited liability company," or the abbreviation "P.L.L.C." The use of the word "company" or

any other words or abbreviations in the name of a professional limited liability corporation, organized under this section 10 of this Rule which indicate that the organization is a corporation, other than the words "professional limited liability company" or the abbreviation "P.L.L.C.," is specifically prohibited.

§ 1-1-11 Rules of Professional Conduct.

11.1 Independence, Integrity, and Objectivity.

(a) A licensee shall be independent in the performance of professional services.

(b) In the performance of any professional service, a licensee shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

11.2 General Standards; Accounting Principles.

(a) A licensee shall:

(1) Undertake only those professional services that the licensee or his or her firm can reasonably expect to be completed with professional competence;

(2) Exercise due professional care in the performance of professional services;

(3) Adequately plan and supervise the performance of professional services; and

(4) Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(b) A licensee who performs auditing, review, compilation, management advisory, tax, or other professional services shall comply with the recognized professional standards applicable to the services.

(c) A licensee shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principals or (2) state that he or she is not aware of any material modifications that should be made to the statements or data in order for them to be in conformity with generally accepted accounting principles, if the statements or data contain any departure from any accounting principle promulgated by bodies designated to establish the principles that has material effect on the statements or data taken as a whole. If, however, the statements or data contain such a departure and the licensee can demonstrate that due to unusual circumstances the financial statements or data would otherwise have been misleading, the licensee can comply with the rule by describing the departure, its approximate effects with the principle would result in a misleading statement.

### 11.3 Responsibilities to Clients.

(a) A licensee shall not disclose any confidential client information without the specific consent of the client. This rule shall not be construed (i) to relieve a licensee of his or her professional obligations under subdivisions 11.2 (b) and (c) of this Rule, (ii) to affect in any way the obligation to comply with a validly issued and enforceable subpoena or summons, (iii) to prohibit review of a licensee's professional practice under subsection 7.5 of these Rules, or (iv) to preclude a licensee

from initiating a complaint with or responding to any inquiry made by a recognized investigative or disciplinary body. Members of a recognized investigative or disciplinary body and professional practice reviewers shall not use to their own advantage or disclose any licensee's confidential client information that comes to their attention in carrying out their official responsibilities. However, this prohibition shall not restrict the exchange of information with a recognized investigative or disciplinary body or affect, in any way, compliance with a validly issued and enforceable subpoena or summons.

#### 11.4 Responsibilities to Colleagues [RESERVED]

#### 11.5 Other Responsibilities and Practices.

(a) A licensee shall not commit an act discreditable to the public accounting profession.

(b) A licensee shall not seek to obtain clients by advertising or other forms of solicitation that are false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited.

(d) A licensee may practice public accounting only in the form of a proprietorship, a partnership, or a professional corporation whose characteristics conform to this Rule. A licensee shall not practice public accounting under a firm name that is misleading. Names of one or more past partners or shareholders may be included in the firm name of a successor partnership or corporation. Also, a partner or shareholder surviving the death or withdrawal of all other partners or shareholders may continue to practice under a name which includes the name of past partners or

shareholders for up to two years after becoming a sole practitioner. A firm may not designate itself as a member of a professional organization unless all of its partners or shareholders are members of the organization.

11.6 All contingency fee contracts shall be in writing and signed by both the accountant and the clients.

11.7 Before entering into a contingency fee contract, the accountant shall disclose, to the prospective client, in writing; the percentage to be retained by the accountant in the event a favorable result is attained.

11.8 In determining the reasonableness of a contingency fee contract, the Board shall consider the following factors:

11.8.1 The time and labor expended in attaining the result;

11.8.2 The difficulty of the work performed;

11.8.3 The level of skill required to perform the work;

11.8.4 Whether acceptance of this client's work precluded the licensee from accepting work from other clients;

11.8.5 The standard contingency fee charged in the area;

11.8.6 Time limitations imposed by the work or the client;

11.8.7 The amount involved and the results obtained;

11.8.8 The experience, reputation and ability of the licensee; and

11.8.9 The nature and length of the relationship with the client;

11.9 A licensee shall not charge or accept a contingency fee for:

11.9.1 preparing an original or amended tax return or claim for a tax refund;

11.9.2 serving as an expert witness;

11.9.3 performing an audit or review of a financial statement;

11.9.4 performing 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; or

11.9.5 performing an examination of prospective financial information,

11.9.6 The prohibition in this subsection applies during the period in which the licensee or the licensee's firm is engaged to perform any of the services listed in this subsection and the period covered by any historical statements involved in the services.

11.10 A licensee may utilize a contingency fee contract when representing a client before a taxing authority. Provided: that nothing in this rule shall be construed either to limit or expand the scope of practice of public accountancy. This rule shall not be construed to promote the unauthorized practice of law.

11.11 Prohibited Commissions. A licensee in public practice shall not recommend or refer to a client any product or service for a commission or recommend or refer to a client any product or service to be supplied by a client for a commission or receive a commission, when the licensee or the licensee's firm also performs the following services for that client:

11.11.1 an audit or review of a financial statement;

11.11.2 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; or

11.11.3 an examination of prospective financial information;

11.12 The prohibition in this subsection applies during the period in which the licensee is engaged to perform any of the services listed in this subsection and the period covered by any historical financial statements involved in the listed services.

11.13 Disclosure of Permitted Commission. A licensee in public practice who is not prohibited by this rule from performing services for or receiving a commission and who is paid or 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.

11.14 Referral Fees. Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose the acceptance or payment to the client in writing.

§ 1-1-12 Fees.

12.1 The board shall charge the following fees:

a. An examination application fee of one hundred seventy dollars (\$170.00);

- b. A re-examination fee of forty dollars (\$40.00) per part of the examination retaken;
- c. A transfer of credit and examination application for as follows:
  - (i) A transfer of credit application fee of one hundred fifty-five dollars (\$155.00);
  - (ii) An examination fee of one hundred seventy dollars (\$170.00);
  - (iii) A minimum transfer fee of one or more parts of the examination of seventy-five dollars (\$75.00);
  - (iv) A minimum transfer fee of three parts of the examination of one hundred fifteen dollars (\$115.00); and
  - (v) A minimum transfer fee of four parts of one hundred fifty-five dollars (\$155.00);
- d. A fee for authorization to release information form of thirty dollars (\$30.00);
- e. A certificate fee of thirty dollars (\$30.00);
- f. A C.P.A. license renewal fee of sixty-five dollars (\$65.00);
- g. A P.A. license renewal fee of sixty-five dollars (\$65.00);
- h. A non-resident C.P.A. license application fee of sixty-five dollars (\$65.00);
- i. A non-resident C.P.A. license renewal fee of sixty-five dollars (\$65.00);

- j. An accounting corporation, limited liability company or limited liability partnership application for registration fee of fifty-five dollars (\$55.00);
- k. An accounting corporation, limited liability company or limited liability partnership registration renewal fee of fifty-five dollars (\$55.00);
- l. An active certificate holder registration fee of thirty dollars (\$30.00);
- m. An active certificate holder registration renewal fee of fifty dollars (\$50.00);
- n. All renewals postmarked after the annual renewal deadline date of June 30, are subject to an additional late filing fee of fifty dollars (\$50.00);
- o. A fee for a copy of the directory of all licensees of one hundred ten dollars (\$110.00);
- p. A fee for a copy of the list of all scheduled examination candidates of not more than one hundred ten dollars (\$110.00);
- q. A late fee for filing of continuing professional education reports, if they are filed after January 31, of one hundred ten dollars (\$110.00);
- r. A fee for a request for an extension of time to file a continuing professional education report postmarked prior to January 31, of fifty-five dollars (\$55.00);
- s. A fee for a request for an extension of time to file a continuing professional education report postmarked subsequent to January 31, of one hundred ten dollars (\$110.00);

t. A fee for request for extension of time to file continuing professional education report postmarked after June 30, of fifty-five dollars (\$55.00) per month;

u. A fee for reinstatement of a license application of sixty-five dollars (\$65.00);

12.2 All fees are nonrefundable and shall not be prorated. The Board may, in its discretion, return all or part of a fee accompanying a filing which the Board declines to process and returns it to the applicant.

§ 1-1-13 Discipline and Enforcement.

13.1 Censure, reprimand, revocation and suspension of certificates, registrations, and licenses. -- After notice and hearing, as provided in W.Va. Code § 30-1-1, *et. seq.*, the Board may censure or reprimand a certificant or registrant, revoke or suspend any certificate or registration, and may refuse to issue, or refuse to renew, any license, for any one or combination of the following causes:

- (a) Fraud or deceit in obtaining a certificate, registration, or license;
- (b) Dishonesty, fraud, or gross negligence in the practice of public accounting;
- (c) Violation of this Rule;
- (d) Conviction of any felony, or any crime an element of which is deceit or fraud, under the laws of any state or of the United States;

(e) Cancellation, revocation, suspension, or refusal to renew authority to practice public accountancy by any other state, for any cause other than failure to pay an annual license fee in the other state;

(f) Habitual drunkenness, addiction to the use of habit-forming drugs, mental incompetence, or gross immorality; and

(g) Unlawful practice of law as defined by the West Virginia Supreme Court of Appeals and/or statutory law of this State.

13.2 Injunction against unlawful acts. -- Any person may bring to the attention of the board suspected violations of section 6 of the Act. At its discretion, and following whatever investigation it considers appropriate, the board may apply to any court of competent jurisdiction for an order enjoining the violations as provided in section 8 of the Act.

Sb7C

H. B. 2495

1 Bill-Accour

2 (By Delegates Hunt, Linch, Compton, Faircloth,  
3 Jenkins and Riggs)

4 [Introduced February 1, 1999; referred to the  
5 Committee on Health and Human Resources then  
6 the Judiciary.]

6

7

8

9

10 A BILL to amend article nine, chapter sixty-four of the  
11 code of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
13 section, designated section twenty-nine, relating to  
14 authorizing the board of accountancy to promulgate a  
15 legislative rule relating to the board and rules of  
16 professional conduct.

17 **Be it enacted by the Legislature of West Virginia:**

18 That article nine, chapter sixty-four of the code of  
19 West Virginia, one thousand nine hundred thirty-one, as  
20 amended, be amended by adding thereto a new section,  
21 designated section twenty-nine, to read as follows:

22 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND**  
23 **BOARDS TO PROMULGATE LEGISLATIVE RULES.**

1 §64-9-29. Board of accountancy.

2       The legislative rule filed in the state register on  
3 the fifth day of August, one thousand nine hundred  
4 ninety-eight, under the authority of section three, article  
5 nine, chapter thirty, of this code, modified by the board  
6 of accountancy to meet the objections of the legislative  
7 rule-making review committee and refiled in the state  
8 register on the fifteenth day of January, one thousand nine  
9 hundred ninety-nine, relating to the board of accountancy  
10 (board rules and rules of professional conduct, 1 CSR 1),  
11 is authorized.

12

13       NOTE: The purpose of this bill is to authorize the  
14 Board of Accountancy to promulgate a legislative rule  
15 relating to the Board and Rules of Professional Conduct.

16

17       This section is new; therefore, strike-throughs and  
18 underscoring have been omitted.