

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

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

AGENCY: WEST VIRGINIA BOARD OF ACCOUNTANCY TITLE NUMBER: 1

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

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 145

SECTION 64-9-29(b), PASSED ON MARCH 10, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: MAY 3, 1994

[Handwritten Signature]
Authorized Signature

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 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.

1.3 Filing Date. --

1.4 Effective Date. --

§ 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;
- e. Southern Association of Colleges and Schools; or

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 provided for in the Act.

2.5 "Certificate" means a certificate as a certified public accountant issued by the Board pursuant to the West Virginia Code 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 "Domicile" means the situs of the applicant's permanent residence, even though he 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 the intent to make the residence the applicant's permanent residence.

2.8 "Financial statement" means a writing 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.

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

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

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

2.12 "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 out as a certificate holder or for purposes of subsection 7.4 of these Rules, 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 such services for an employer shall not be considered to be practicing public accountancy.

2.13 "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 such registration.

2.14 "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.

2.15 "Rule" means this Board Rule and Rules of Professional Conduct.

2.16 "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 Board Name. -- The Board shall be known as the "West Virginia Board of Accountancy."

3.2 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 successor has been elected and qualified or until his term as a member of the Board expires.

3.3 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.

3.4 Quorum. -- A majority of the Board shall constitute a quorum for the transaction of business.

3.5 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 compensation in the form of a per diem allowance or as salary. The executive officer, with the approval of the Board, may employ such assistance as may be necessary for the efficient performance of his duties.

3.6 Records. -- The Board shall designate and cause to have prepared such forms as it shall consider 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.

Registrants shall continue to be recognized as such as provided in the Act. No registrant needs to reregister 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 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 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 application is made prior to July 1, 2000, the obtainment of a baccalaureate or equivalent degree conferred by an accredited school with a concentration in accounting or its equivalent; the application must be submitted by a qualified candidate on Board approved form(s) with the required documentation. An applicant will be considered 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 application is made on or after July 1, 2000, the satisfactory completion of one hundred fifty (150) semester hours or their equivalent at an accredited school, including the obtainment of degree.

5.6 An applicant for certification shall have

satisfactorily completed the examination provided for in section 6 of this Rule. The Board may, in its discretion, issue a certificate to any person who possesses the other qualifications stated in this section, and 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 thereof, granted under the authority of a foreign nation: Provided, That the requirements for like certificates in the foreign nation are, in the opinion of the Board, equivalent to those required by this rule.

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.

Evidence of a violation of any Rule shall first be submitted to the accountancy board or commission of the state from which this person holds his or her certificate or registration, and proceedings shall be instituted by this Board only in the event that such board or commission fails or is unable to take appropriate action.

§ 1-1-6 Examination for Certificate.

6.1 Application. -- Applicants for certificate examination must meet the requirements of subsections 5.1, 5.2, 5.3, 5.4 and 5.5 of this rule and must complete the application form prescribed by the Board and furnish all information, documentation, and references required in the application, as well as the examination fee provided for in section 12 of this Rule. Complete applications must be filed 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 must 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 will conduct an examination in May and November of each year for applicants for certification approved by the Board. The applicants approved as candidates for examination will be notified 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.

All examination answers shall be completed 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, such action shall be considered as misconduct and shall be sufficient cause for rejecting his or her examination papers.

6.3 Examination subjects, grading, reexaminations. -- Examinations will include questions or problems on accounting practice, theory of accounts, auditing, commercial law, or such other areas as the Board may prescribe. Beginning in May 1994, the examination will be a two-day examination comprising 15 1/2 hours. The examination will be administered every May and November on 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 will be required to make a grade of not less than seventy-five percent (75%) in each examination subject before he or she will be declared to have passed the examination.

If a candidate is sitting for the examination for the first time at the May, 1994 examination or thereafter 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 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 applicant 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 will retain the credit(s) and the Board shall give the candidate credit for sections passed on May, 1994 or after 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 section(s) 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 obtain or renew a license 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 must 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. -- Effective July 1, 1991, certificate holders applying for licensure renewal shall have completed 120 hours of continuing education as provided for in this subsection within the three prior calendar years, with at least 20 hours in each such calendar year: Provided, That for

licenses effective July 1, 1991, the total hour requirement shall be 40 hours within calendar year 1990; and Provided, however, That for licenses effective July 1, 1992 the total hour requirement shall be 80 hours within calendar years 1990 and 1991, with at least 20 hours in 1991.

Any certificate holder applying for licensure who has not been engaged in the practice of public accountancy or held a license to practice 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.

Satisfaction of the requirements of this subsection shall be determined by the Board. 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 person(s) other than the preparer to ensure compliance with these standards;
- (g) Qualifying programs include, but are not necessarily limited to:
 - (1) Courses (and mini-courses) sponsored by national or state professional organizations. Programs sponsored by other groups may be approved 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 and 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 will 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 will not award credit for programs less than 50 minutes in length or partial hours of program participation.

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

- (1) Applicants will receive 15 hours credit for each semester credit hour earned and ten hours credit for each quarter credit hour earned; and
- (2) Applicants attending noncredit courses will receive credit at the rate of one hour of credit for each 50 minutes of in-class

participation.

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

(e) Instructors in an approved program will 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. No credit will be given 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 will 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 must contain the licensee's Board certificate and license numbers.

(c) The Board will 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 will maintain a file of continuing education reporting forms for each licensee for four years.

(d) The Board will 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 must be reviewed and approved by another licensee who has satisfied the requirements of this subsection. The result of all services going to the public must be presented under the firm name. This exemption shall be based on a written request from the individual 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 such other circumstances as determined appropriate by the Board. This request must be received by the Board by January 31 following the reporting period, except for good cause shown.

7.4 Work experience.

(a) Effective July 1, 1991, 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 must 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 such

experience was obtained prior to completing the examination; (b) 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.

Qualified applicants, who have submitted a complete application prior to June 30, 1991 have until June 30, 1994 to successfully complete the certificate examination in order to be exempt from the work experience requirement of this subsection.

(b) The record of the applicant's experience must be verified by notarized statements from the applicant's present or former employers or others who are familiar with the experience. The statements must 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 such 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 (c) make any other claim of licensure or approval related to the preparation of financial statements or expression of assurances thereon 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," "licensed accountant," "LA," "registered accountant," "RA," "independent auditor," "auditor," or similar designation; provided that 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 so 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 preparation of any financial statement; nor shall he or she use such terms in describing any complete or partial variation from such standards or principles or to imply complete or partial conformity with such 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 any agency thereof, (ii) the Governmental Accounting Standards Board or any agency thereof, (iii) the Securities and Exchange Commission or any agency thereof, (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 a 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 operations, 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.

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 such 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 must 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) Each shareholder of the corporation must be a certificiant or registrant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person shall have any interest in the stock of the corporation. The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certificiant or registrant of some state in good standing;

(c) At least one shareholder of the corporation must be certified or registered in this State;

(d) 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 must be certified or registered in this State;

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any share offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding any holder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be contained in writing on each certificate of corporate stock. The corporation may purchase any amount of its stock for this purpose, notwithstanding any impairment of capital so long as one share remains outstanding; and

(f) 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 Upon receipt of the 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 authorization. No accounting corporation shall transact business as such until it has received (i) a certificate of incorporation from the Secretary of State and (ii) filed a certified copy of the certificate with the Board.

10.5 An accounting corporation may render public

accounting services only through officers, 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.

10.6 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 an accounting corporation, 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.

10.7 The corporate name of an accounting corporation shall contain the last name or names of one or more of its shareholders or include the name or names of former shareholders or of persons who were associated with a predecessor partnership or other organization. The corporate name shall also contain the words "accounting corporation," or the abbreviation "A.C." The use of the word "company," "corporation," or "incorporated," or any other words or abbreviations in the name of an accounting corporation organized under this section 10 which indicate that the corporation is a corporation, other than the words "accounting corporation" or the abbreviation "A.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 principles 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 such principles that has a 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, if practicable, and the reasons why compliance 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 subsection 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.

(b) Public accountancy service shall not be rendered or offered for a fee which is contingent upon the findings or results of the service. This subsection does not apply to cases involving federal, state, or other taxes, in which findings are those of the tax authorities and not those of the accountant. Fees to be fixed by courts or other public authorities, which are therefore of an indeterminate amount at the time when an engagement is undertaken, are not regarded as contingent fees within the meaning of this subsection.

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 is false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited.

(c) The acceptance by a licensee in public practice of a payment for the referral of products or services of others to a client is prohibited. Such action is considered to create a conflict of interest that results in a loss of objectivity and independence.

A licensee shall not make a payment to obtain a client. This rule shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals formerly

engaged in the practice of public accounting or payments to their heirs or estates.

(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 such 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.

§ 1-1-12 Fees.

An applicant shall tender fees for examination (section 6 of this Rule), reexamination (section 6 of this Rule), out-of-state examination proctoring, licenses and renewals (section 1 of this Rule), certificates (section 5 of this Rule), corporation registration (section 10 of this Rule), and such other services as the Board shall prescribe to the Board at the time of filing. 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 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 any 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.

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SENATE BILL NO. ~~142~~ 142

(By Senators Manchin, Anderson, Grubb, Macnaughtan and Minard)

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[Introduced January 31, 1994; referred to the Committee on

THE JUDICIARY

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

15 Be it enacted by the Legislature of West Virginia:

16 That section twenty-nine, article nine, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred thirty-one,
18 as amended, be amended and reenacted, to read as follows:

19 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
20 TO PROMULGATE LEGISLATIVE RULES.

21 §64-9-29. Board of accountancy.

22 (a) The legislative rules filed in the state register on the
23 fifth day of December, one thousand nine hundred ninety, modified
24 by the board of accountancy to meet the objections of the

1 legislative rule-making review committee and refiled in the state
2 register on the fourth day of June, one thousand nine hundred
3 ninety-one, relating to the board of accountancy (professional
4 conduct), are authorized.

5 (b) The legislative rules filed in the state register on the
6 twelfth day of August, one thousand nine hundred ninety-three,
7 modified by the board of accountancy to meet the objections of
8 the legislative rule-making review committee and refiled in the
9 state register on the twenty-seventh day of October, one thousand
10 nine hundred ninety-three, relating to the board of accountancy
11 (board rules and rules of professional conduct), are authorized.

12
13 NOTE: The purpose of this bill is to authorize the Board of
14 Accountancy to promulgate legislative rules relating to the Board
15 and rules of professional conduct.

16
17 ~~Strike-throughs indicate language that would be stricken from~~
18 ~~the present law, and underscoring indicates new language that~~
19 ~~would be added.~~

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H. B. 4232

(By Delegates Gallagher, Douglas, Conpton,
Huntwork, Burk and Faircloth
(Introduced January 31, 1994; referred to the
Committee on Government Organization then the
Judiciary)

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

15 Be it enacted by the Legislature of West Virginia:

16 That section twenty-nine, article nine, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred thirty-one,
18 as amended, be amended and reenacted, to read as follows:

19 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS**
20 **TO PROMULGATE LEGISLATIVE RULES.**

21 **§64-9-29. Board of accountancy.**

22 (a) The legislative rules filed in the state register on the
23 fifth day of December, one thousand nine hundred ninety, modified
24 by the board of accountancy to meet the objections of the

4232

1 legislative rule-making review committee and refiled in the state
2 register on the fourth day of June, one thousand nine hundred
3 ninety-one, relating to the board of accountancy (professional
4 conduct), are authorized.

5 (b) The legislative rules filed in the state register on the
6 twelfth day of August, one thousand nine hundred ninety-three,
7 modified by the board of accountancy to meet the objections of
8 the legislative rule-making review committee and refiled in the
9 state register on the twenty-seventh day of October, one thousand
10 nine hundred ninety-three, relating to the board of accountancy
11 (board rules and rules of professional conduct), are authorized.

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13 NOTE: The purpose of this bill is to authorize the Board of
14 Accountancy to promulgate legislative rules relating to the Board
15 and rules of professional conduct.

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17 Strike-throughs indicate language that would be stricken from
18 the present law, and underscoring indicates new language that
19 would be added.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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help we can get)

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

OFFICE OF THE SECRETARY OF STATE
SECRETARIAT OF STATE
Aug 8 9 48 AM '94
FILED

TO: Jo Ann Walker

AGENCY: Accountancy

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 26, 1994

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE: 1 Accountancy

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED. Page 7 Section 7.4. Spelling -1 word.

SIGNED: Jo Ann Walker

TITLE OF PERSON SIGNING: Exec Director

DATE: 8.5.94

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
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March 15, 1994

Donald H. McIver, Jr.
Accountancy
201 L & S Building
812 Quarrier Street
Charleston, WV 25301

SB 145 authorizing, **Title 1, Series 1, Board Rules & Rules of Professional Conduct**, passed the Legislature on **March 10, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 145, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 145** section **64-9-29(b)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division