

Uniform Accountancy Act

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1 **SECTION 3**
2 **DEFINITIONS**

3
4 **When used in this Act, the following terms have the meanings indicated:**

- 5
6 (a) "AICPA" means the American Institute of Certified Public Accountants.
7
8 (b) "Attest" means providing the following services:
9
10 (1) any audit or other engagement to be performed in accordance with the
11 Statements on Auditing Standards (SAS);
12
13 (2) any review of a financial statement to be performed in accordance with the
14 Statements on Standards for Accounting and Review Services (SSARS);
15
16 (3) any examination of prospective financial information to be performed in
17 accordance with the Statements on Standards for Attestation Engagements
18 (SSAE);
19
20 (4) any engagement to be performed in accordance with the standards of the
21 PCAOB; and
22
23 (5) any examination, review, or agreed upon procedures engagement to be
24 performed in accordance with the SSAE, other than an examination described
25 in subsection (3).
26

27 **The standards specified in this definition shall be adopted by reference by the**
28 **Board pursuant to rulemaking and shall be those developed for general**
29 **application by recognized national accountancy organizations, such as the**
30 **AICPA, and the PCAOB.**
31

32 *COMMENT:* Subject to the exceptions set out in Sections 7, 14, and 23(a)(4), these services are
33 restricted to licensees and CPA firms under the Act and licensees can only perform the attest
34 services through a CPA firm. Individual licensees may perform the services described in Section
35 3(f) as employees of firms that do not hold a permit under Section 7 of this Act, so long as they
36 comply with the peer review requirements of Section 6(j). Other professional services are not
37 restricted to licensees or CPA firms; however, when licensees perform those services they are
38 regulated by the state board of accountancy. See also the definition of Report. The definition
39 also includes references to the Public Company Accounting Oversight Board (PCAOB) which
40 make it clear that the PCAOB is a regulatory authority that sets professional standards applicable
41 to engagements within its jurisdiction.
42

43 Regarding SSAE engagements, subsections 3(b)(3) and (5) include SSAE engagements
44 pertaining to the examination of prospective financial information, as well as other SSAE
45 engagements. Thus, like other services included in this definition of "attest," they are all

1 restricted to licensees and CPA firms. Although these respective services have been bifurcated
2 in the definition of “attest,” only CPAs can provide the services, and they must do so only
3 through firms that either have a permit or comply with Section 7(a)(1)(C).
4

5 This definition of “attest” includes both examinations of prospective financial information to be
6 performed in accordance with the Statements on Standards for Attestation Engagements (SSAE)
7 as well as “any examination, review, or agreed upon procedures engagement, to be performed in
8 accordance with SSAE.”
9

10 (c) **“Board” means the _____ Board of Accountancy established under Section 4 of**
11 **this Act or its predecessor under prior law.**
12

13 *COMMENT:* The general purpose of references to prior law, in this provision and others below,
14 is to assure maximum continuity in the regulatory system, except where particular changes are
15 specifically intended to be brought about by amendment of the law.
16

17 (d) **“Certificate” means a certificate as “certified public accountant” issued under**
18 **Section 6 of this Act or corresponding provisions of prior law, or a corresponding**
19 **certificate as certified public accountant issued after examination under the law of**
20 **any other state.**

21 *COMMENT:* The term here defined is used in section 3(n), defining the term “peer review”;
22 section 4(a), regarding the composition of the Board of Accountancy; section 4(h)(6), regarding
23 Board rules governing use of the titles “certified public accountant” and “CPA”; section 10(a),
24 regarding enforcement proceedings; and section 14(c), prohibiting use of the titles “certified
25 public accountant” and “CPA” by persons not holding certificates.
26

27 In a few states the law allows for the issuance of “certificates” to certain practitioners who have
28 not passed the examination ordinarily required (and provided for by section 5 of this Uniform
29 Act). The definition of the term “certificate,” insofar as it has reference to those issued by other
30 states, excludes any certificate for which an examination was not required.
31

32 (e) **“Client” means a person or entity that agrees with a licensee or licensee's employer**
33 **to receive any professional service.**
34

35 *COMMENT:* This term is used in a number of Sections throughout this Act including the
36 provisions related to acceptance of commissions and contingent fees, client records and
37 confidential communications. For that reason it is useful to include a definition of the term.
38

39 (f) **"Compilation" means providing a service to be performed in accordance with**
40 **Statements on Standards for Accounting and Review Services (SSARS) that is**
41 **presenting in the form of financial statements, information that is the representation**
42 **of management (owners) without undertaking to express any assurance on the**
43 **statements.**

1
2 (g) **“CPA Firm” means a sole proprietorship, a corporation, a partnership or any other**
3 **form of organization issued a permit under Section 7 of this Act.**
4

5 *COMMENT:* This defined term is used in section 7, on permits to practice for firms, in such a
6 way as to allow the Uniform Act, unlike some accountancy laws now in effect, to treat both
7 partnerships and corporations in a single provision rather than in two separate but parallel
8 provisions for the two different forms of organization. It is also used in section 12(j), on rights
9 of appeal from an adverse Board decision in an enforcement proceeding; section 14(a),
10 prohibiting issuance of reports on financial statements or attest services by unlicensed persons
11 and firms; 14(d), (f), (g) and (h), regarding use of certain titles by unlicensed persons and firms;
12 section 14(i), regarding misleading firm names; and section 14(j), defining certain rights of
13 foreign licensees to serve foreign clients. The definition of “firm” is designed to be broad
14 enough to include any type of business entity or combination of business entities, recognized by
15 the state.
16

17 Inclusion of sole proprietorships in the definition of the term “firm” has the effect of requiring
18 sole practitioners to secure both individual certificates under section 6 and firm permits to
19 practice under section 7. This will assure that all practice units have firm permits. The Board
20 would have the power to alleviate the burden of duplicate applications (where the same person
21 must secure both an individual certificate and a firm permit) by providing for joint application
22 forms.
23

24 (h) **“License” means a certificate issued under Section 6 of this Act, a permit issued**
25 **under Section 7 or a registration under Section 8; or, in each case, a certificate or**
26 **permit issued under corresponding provisions of prior law.**
27

28 *COMMENT:* See commentary to Section 3(i) below.
29

30 (i) **“Licensee” means the holder of a license as defined in Section 3(h).**
31

32 *COMMENT:* This term is intended simply to allow for briefer references in provisions that
33 apply to holders of certificates, holders of permits and holders of registrations: See Section 4(h),
34 regarding rules to be promulgated by the Board of Accountancy; Section 5(b), regarding the
35 meaning of “good moral character” in relation to the professional responsibility of a licensee;
36 Sections 11(c) and (d), regarding Board investigations; Sections 12(a)-(c), (i), and (k), relating to
37 hearings by the Board; Section 18, relating to confidential communications; and Sections 19(a)
38 and (b), regarding licensees’ working papers and clients’ records. Pursuant to Section 14(p),
39 individuals and firms using practice privileges in this State are treated as “Licensees” for
40 purposes of other requirements and restrictions in Section 14.
41

42 (j) **“Manager” means a manager of a limited liability company.**
43

44 (k) **“Member” means a member of a limited liability company.**
45

1 *COMMENT:* The two defined terms “manager” and “member” assume that the state has adopted
2 a limited liability company law, and that these terms are used in that law. If this is not the case,
3 then these terms should not be included in the Act, either here, or in the substantive provisions of
4 the Act: Sections 7(c), 7(f), 12(c), 14(h), 14(i), 19(a). The point is an important one, since the
5 two terms are in general use in circumstances where their meaning is different from what is
6 intended here.

7
8 **(l) “NASBA” means the National Association of State Boards of Accountancy.**

9
10 **(m) “PCAOB” means the Public Company Accounting Oversight Board.**

11
12 **(n) “Peer Review” means a board-approved study, appraisal, or review of one or more**
13 **aspects of the attest and compilation services~~professional work~~ of a certificate**
14 **holder or CPA firm in the practice of public accounting, performed that issues attest**
15 **or compilation reports, by a person or persons who hold certificates in this or**
16 **another jurisdiction and who are not affiliated with the certificate holder or CPA**
17 **firm being reviewed.**

18
19
20 *COMMENT:* This defined term is employed in section 4(h)(7), which empowers the Board to
21 issue rules prescribing how such reviews are to be performed; section 7(h), contemplating such
22 reviews in connection with renewals of firm permits; section 10(b)(1), specifying that such
23 reviews are available as remedies in enforcement proceedings; section 13(c), providing that the
24 Board may require such reviews as a condition of reinstatement after a suspension or revocation
25 of a certificate or permit; and section 18, on confidential communications, which recognizes an
26 exception for peer review. The rules issued by the Board under section 4(h)(7) would
27 presumably prescribe, among other things, how the requirement of independence, or non-
28 affiliation, of the reviewer to the person or firm being reviewed is to be implemented. See also
29 Sections 6(j), 14(k) and 14(l) with regard to certificate holders who perform compilations other
30 than through a CPA firm.

31
32 **(o) “Permit” means a permit to practice as a CPA firm issued under Section 7 of this**
33 **Act or corresponding provisions of prior law or under corresponding provisions of**
34 **the laws of other states.**

35
36 **(p) “Principal place of business” means the office location designated by the licensee for**
37 **purposes of substantial equivalency and reciprocity.**

38
39 *COMMENT:* “Principal place of business” has been defined to assure consistency in the use of
40 that term. Under substantial equivalency, a licensee must obtain a certificate from the state
41 board in the state where the licensee has an office and establishes it as the principal place of
42 business. Because states have adopted more than one statutory definition of “principal place of
43 business,” both AICPA and NASBA agree that the simple definition above will not only enhance
44 mobility, but also be easier to implement and enforce.

1 (q) “Professional” means arising out of or related to the specialized knowledge or
2 skills associated with CPAs.
3

4 (r) “Report,” when used with reference to any attest or compilation service, means an
5 opinion, report, or other form of language that states or implies assurance as to the
6 reliability of the attested information or compiled financial statements and that also
7 includes or is accompanied by any statement or implication that the person or firm
8 issuing it has special knowledge or competence in accounting or auditing. Such a
9 statement or implication of special knowledge or competence may arise from use by
10 the issuer of the report of names or titles indicating that the person or firm is an
11 accountant or auditor, or from the language of the report itself. The term “report”
12 includes any form of language which disclaims an opinion when such form of
13 language is conventionally understood to imply any positive assurance as to the
14 reliability of the attested information or compiled financial statements referred to
15 and/or special competence on the part of the person or firm issuing such language;
16 and it includes any other form of language that is conventionally understood to
17 imply such assurance and/or such special knowledge or competence.
18

19 *COMMENT:* As has been explained in the introductory comments, the audit function, which this
20 term is intended to define, is the principal kind of professional accounting service for which a
21 license would be required under the Uniform Act. The term has its most important operative use
22 in Section 14(a) of the Act, which prohibits persons not licensed from performing that function
23 as well as any attest or compilation services as defined above.
24

25 It is a point of fundamental significance that the audit function is defined, not in terms of the
26 work actually done, but rather in terms of the issuance of an opinion or a report--that is, the
27 making of assertions, explicit or implied--about work that has been done. It is such reports, or
28 assertions, upon which persons using attested information (whether clients or third parties) rely,
29 reliance being invited by the assertion, whether explicit or by implication, of expertise on the
30 part of the person or firm issuing the opinion or report. Thus, this definition is sought to be
31 drawn broadly enough to encompass all those cases where either the language of the report itself,
32 or other language accompanying the report, carries both a positive assurance regarding the
33 reliability of the information in question, and an implication (which may be drawn from the
34 language of the report itself) that the person or firm issuing the report has special competence
35 which gives substance to the assurance.
36

37 The definition includes disclaimers of opinion when they are phrased in a fashion which is
38 conventionally understood as implying some positive assurance, because authoritative
39 accounting literature contemplates several circumstances in which a disclaimer of opinion in
40 standard form implies just such assurances. The same reasoning that makes it appropriate to
41 include disclaimers of opinion in conventional form within the definition of this term makes it
42 appropriate to apply the prohibition on the issuance by unlicensed persons of reports, as so
43 defined, on “reviews” and “compilations” and other communications with respect to
44 “compilations” within the meaning of the AICPA’s Statements on Standards for Accounting and
45 Review Services (SSARS), when the language in which the report or other compilation

1 communication is phrased is that prescribed by SSARS or any report that is prescribed by the
2 AICPA’s Statements on Standards for Attestation Engagements (SSAE). This is done in Section
3 14(a). These prohibitions, again, do not apply to the services actually performed--which is to say
4 that there is no prohibition on the performance by unlicensed persons of either reviews or
5 compilations, in the sense contemplated by SSARS, but only on the issuance of reports or other
6 compilation communications asserting or implying that their author has complied or will comply
7 with the SSARS standards for such reviews and compilations and has the demonstrated
8 capabilities so to comply.

9
10 (s) **“Rule” means any rule, regulation, or other written directive of general application**
11 **duly adopted by the Board.**

12
13 (t) **“State” means any state of the United States, the District of Columbia, Puerto Rico,**
14 **the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and**
15 **Guam; except that “this State” means the State of _____.**

16
17 (u) **“Substantial Equivalency” is a determination by the board of accountancy or its**
18 **designee that the education, examination and experience requirements contained in**
19 **the statutes and administrative rules of another jurisdiction are comparable to, or**
20 **exceed the education, examination and experience requirements contained in the**
21 **Uniform Accountancy Act or that an individual CPA’s education, examination and**
22 **experience qualifications are comparable to or exceed the education, examination**
23 **and experience requirements contained in the Uniform Accountancy Act. In**
24 **ascertaining substantial equivalency as used in this act the Board shall take into**
25 **account the qualifications without regard to the sequence in which experience,**
26 **education, or examination requirements were attained.**

27
28 *COMMENT:* For purposes of practice privileges, an applicant that has an active certificate as a
29 certified public accountant from any jurisdiction that has obtained from the Board of
30 Accountancy or NASBA a determination of substantial equivalency with the Uniform
31 Accountancy Act’s CPA licensure requirements shall be presumed to have qualifications
32 substantially equivalent to this jurisdiction’s. An individual who has obtained from the Board of
33 Accountancy or NASBA a determination of substantial equivalency with the Uniform
34 Accountancy Act’s CPA licensure requirements shall be entitled to reciprocity under the
35 substantial equivalency standard.

1 **SECTION 10**
2 **ENFORCEMENT- GROUNDS FOR DISCIPLINE**

3
4 **(a) After notice and hearing pursuant to the Administrative Procedures Act, the Board**
5 **may revoke any license issued under Sections 6, 7 or 8 of this Act or corresponding**
6 **provisions of prior law or revoke or limit privileges under Section 23 of this Act;**
7 **suspend any such license or refuse to renew any such license for a period of not**
8 **more than ___ years; reprimand, censure, or limit the scope of practice of any**
9 **licensee; impose an administrative fine not exceeding ____, or place any licensee on**
10 **probation, all with or without terms, conditions, and limitations, for any one or**
11 **more of the following reasons:**

- 12 **(1) Dishonesty, fraud or deceit in obtaining a license;**
- 13
- 14 **(2) Cancellation, revocation, suspension or refusal to renew a license or privileges**
15 **under Section 23 for disciplinary reasons in any other state for any cause;**
16
- 17
- 18 **(3) Failure, on the part of a licensee under Sections 6 or 7 or registration under**
19 **Section 8, to maintain compliance with the requirements for issuance or**
20 **renewal of such certificate, permit or registration or to report changes to the**
21 **Board under Sections 6(f) or 7(f);**
22
- 23 **(4) Revocation or suspension of the right to practice by any state or federal**
24 **regulatory authority or by the PCAOB;**
25
- 26 **(5) Dishonesty, fraud, deceit or gross negligence in the performance of services as**
27 **a licensee or individual granted privileges under Section 23 or in the filing or**
28 **failure to file one's own income tax returns;**
29
- 30 **(6) Violation of any provision of this Act or rule promulgated by the Board under**
31 **this Act or violation of professional standards;**
32
- 33 **(7) Violation of any rule of professional conduct promulgated by the Board under**
34 **Section 4(h)(4) of this Act;**
35
- 36 **(8) Conviction of a felony, or of any other crime an element of which is dishonesty,**
37 **fraud or deceit, under the laws of the United States, of this State, or of any**
38 **other state if the acts involved would have constituted a crime under the laws**
39 **of this State;**
40
- 41 **(9) Performance of any fraudulent act while holding a license or privilege issued**
42 **under this Act or prior law;**
43
- 44 **(10) Any conduct reflecting adversely upon the licensee's fitness to perform services**
45 **while a licensee, or individual granted privileges under Section 23; or**
- 46 **(11) Making any false or misleading statement or verification, in support of an**

1 **application for a license filed by another.**

2
3 *COMMENT:* This provision departs from the typical corresponding provision of some
4 accountancy laws now in effect in two respects. One of these is the provision for an
5 administrative fine, in addition to other possible penalties. There is such a provision in some
6 accountancy laws; whether such a provision is permissible in the laws of other states is a matter
7 for individual determination in each jurisdiction.

8
9 The other departure from the prior common pattern is in paragraph (10), a catch-all provision
10 which is phrased in terms of conduct reflecting adversely on the licensee’s fitness to perform
11 services rather than the broader and vaguer conventional phrase, “conduct discreditable to the
12 accounting profession.” This narrower provision is intended to avoid problems of vagueness and
13 overbreadth. A similar change is involved in the requirement of “good moral character” in
14 section 5(b).

15
16 **(b) In lieu of or in addition to any remedy specifically provided in subsection (a) of this**
17 **Section, the Board may require of a licensee--**

- 18
19 **(1) A peer review conducted in accordance with a Board approved peer review**
20 **program-in a time frame such fashion as the Board may specify; and/or**
21
22 **(2) Satisfactory completion of such continuing professional education programs as**
23 **the Board may specify.**
24

25 *COMMENT:* This subsection is intended to provide rehabilitative remedies for enforcement
26 proceedings against licensees, in addition to (or in place of) the more traditional punitive
27 remedies provided in subsection (a). The term “peer review” is defined in section 3(n).

28
29 **(c) In any proceeding in which a remedy provided by subsections (a) or (b) of this**
30 **Section is imposed, the Board may also require the respondent licensee to pay the**
31 **costs of the proceeding.**
32

33 *COMMENT:* This provision appears appropriate in terms of both equity and the economics of
34 Board operations.

