

The
Public Accountancy Act

**Chapter 901
of the
*Occupations Code***

Effective September 1, 2007

Prepared as an information brochure only,
and not necessarily in conformity
with Chapter 901, Occupations Code (Vernon's 2007)

TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

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CHAPTER 901. ACCOUNTANTS

SUBCHAPTER A *General Provisions*

Sec. 901.001. SHORT TITLE.

- (a) This chapter may be cited as the Public Accountancy Act.
- (b) A reference in law to the Public Accountancy Act of 1979 or the Public Accountancy Act of 1991 means this chapter.

Sec. 901.002. GENERAL DEFINITIONS.

- (a) In this chapter:
 - (1) "Attest service" means:
 - (A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;
 - (B) an engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;
 - (C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board; or
 - (D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.
 - (2) "Board" means the Texas State Board of Public Accountancy.
 - (3) "Certificate" means a certificate issued to a certified public accountant.
 - (4) "Certified public accountant" means a person who holds a certificate issued under this chapter or who practices in this state under Section 901.462.
 - (5) "Certified public accountancy firm" means a person who holds a firm license or a firm that practices in this state under Section 901.461.

(6) "Client" means a person who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service.

(7) "Corporation" means a corporation authorized by a statute applicable to this state or by an equivalent law of another state or a foreign country, including a professional public accounting corporation organized under The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes).

(8) "Firm" means a sole proprietorship, partnership, corporation, limited liability company, or other business entity engaged in the practice of public accountancy.

(9) "Firm license" means a license issued under Subchapter H.

(10) "License" means a license issued under Subchapter I.

(11) "Peer review" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm.

(12) "Professional accounting services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including:

(A) issuing reports on financial statements;

(B) providing management or financial advisory or consulting services;

(C) preparing tax returns; and

(D) providing advice in tax matters.

(13) "Public accountant" means a person authorized to practice public accountancy under the Public Accountancy Act of 1945 (Article 41a, Vernon's Texas Civil Statutes).

(b) The board by rule may define "financial statement" to comply with the standards adopted by generally recognized bodies responsible for setting accounting standards.

Sec. 901.0021. MEANING AND IMPLICATION OF REPORT.

(a) In this chapter, a reference to a report used with respect to a financial statement means an opinion, report, or other document, including an assurance prepared in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board, that:

(1) states or implies assurance as to the reliability of the financial

statement; and

(2) includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing.

(b) A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication.

(c) A statement or implication of special knowledge or competence in accounting or auditing may arise from:

(1) the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor; or

(2) the language of the opinion, report, or other document itself.

Sec. 901.003. PRACTICE OF PUBLIC ACCOUNTANCY.

(a) In this chapter, "practice of public accountancy" means:

(1) the performance for a client by a person who is certified, licensed, or registered under this chapter of a service that involves the use of accounting, attesting, or auditing skills;

(2) the performance or offer of performance for a client or potential client by a person who represents to the public that the person is certified, licensed, or registered under this chapter of a service that involves the use of accounting, attesting, or auditing skills;

(3) the performance of activities of a person or practice unit licensed under this chapter in:

(A) preparing or reporting on a financial statement or report that is to be used by an investor, the management of an organization, a third party, or a financial institution, unless the report is prepared for internal use only; or

(B) preparing a tax return that is filed with a taxing authority; or

(4) the supervision of an activity described by Subdivision (3).

(b) For purposes of this section, a service that involves the use of accounting, attesting, or auditing skills includes:

(1) issuing a report on or preparing a financial statement;

(2) providing management or financial advisory or consulting services; and

(3) preparing a tax return or advising or consulting on a tax matter.

(c) For purposes of this section, a person represents to the public that the person is certified, licensed, or registered under this chapter if the person makes an oral or written representation that the person is certified, licensed, or registered. A written representation includes a representation communicated by office sign, business card, letterhead, or advertisement. A representation does not include:

- (1) the display of an original certificate or registration unless a license is also displayed;
- (2) a representation made by a faculty member of an educational institution solely in connection with the duties of the person as a faculty member; or
- (3) a representation in a book, article, or other publication, or a representation made in connection with the promotion of the publication, unless the representation includes an offer to perform a service or to sell a product other than the publication.

Sec. 901.004. CONSTRUCTION; LIMITATIONS.

- (a) This chapter does not:
- (1) restrict an official act of a person acting in the person's capacity as:
 - (A) an officer of the state or of a county, municipality, or other political subdivision, including a county auditor;
 - (B) an officer of a federal department or agency; or
 - (C) an assistant, deputy, or employee of a person described by Paragraph (A) or (B);
 - (2) prohibit a person who is not a certified public accountant or public accountant from serving as an employee of:
 - (A) a certified public accountant or public accountant licensed by the board; or
 - (B) a firm composed of certified public accountants or public accountants licensed by the board;
 - (3) prohibit a person licensed by the federal government as an enrolled agent from performing an act or using a designation authorized by federal law;
 - (4) prohibit an attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney's or firm's professional work in the practice of law; or

(5) prohibit an employee, officer, or director of a financial institution, as defined by Section 201.101, Finance Code, from preparing or presenting records or documents when lawfully acting within the scope of the activities of the institution.

(b) A person who serves as an employee as described by Subsection (a)(2) may not issue an accounting or financial statement over the employee's name.

Sec. 901.005. FINDINGS; PUBLIC POLICY; PURPOSE.

(a) The practice of public accountancy is a learned profession that requires specialized education and experience. That practice has historically been defined to include a broad range of financial, advisory, and attest services, including:

- (1) issuing a report on a financial statement;
- (2) preparing a tax return;
- (3) providing advice in a tax matter;
- (4) providing management or financial advisory or consulting services;
- (5) recommending the sale of a product if the recommendation requires or implies accounting or auditing skill; and
- (6) providing litigation support services.

(b) The attest service is part of the practice of public accountancy. That service provides assurance to the public, especially the public markets, that the management of commercial entities has reasonably described the financial status of those entities. That assurance contributes to the strength of the economy and public markets of this state and to the soundness and reliability of the financial system. The strength of the financial system in this state is supported by the competence, integrity, and expertise of the persons who attest to financial statements in this state.

(c) Notwithstanding Subsection (b), the public relies on the competence and integrity of certified public accountants in all of its dealings with certified public accountants and not merely in connection with their performance of the attest service.

(d) The terms "accountant" and "auditor," and derivations, combinations, and abbreviations of those terms, have an implication of competence in the profession of public accountancy on which the public relies in personal, business, and public activities and enterprises.

(e) The policy of this state and the purpose of this chapter are to provide

that:

- (1) the admission of persons to the practice of public accountancy require education and experience commensurate with the requirements of the profession;
- (2) a person who represents that the person practices public accountancy be qualified to do so;
- (3) a person licensed as a certified public accountant:
 - (A) maintain high standards of professional competence, integrity, and learning; and
 - (B) demonstrate competence and integrity in all dealings with the public that rely on or imply the special skills of a certified public accountant and not merely in connection with the performance of the attest service;
- (4) areas of specialized practice require special training; and
- (5) the activities and competitive practices of persons practicing public accountancy be regulated to be free of commercial exploitation to provide the public with a high level of professional competence at reasonable fees by independent, qualified persons.

Sec. 901.006. APPLICATION OF SUNSET ACT.

The Texas State Board of Public Accountancy is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2015.

SUBCHAPTER B
Texas State Board of Public Accountancy

Sec. 901.051. BOARD MEMBERSHIP.

- (a) The Texas State Board of Public Accountancy consists of 15 members appointed by the governor with the advice and consent of the senate as follows:
- (1) 10 certified public accountant members, at least eight of whom are, on the date of appointment:
 - (A) a sole practitioner; or
 - (B) an owner or employee of a certified public accountancy firm;
- and
- (2) five public members who are not:

- (A) licensed under this chapter; or
 - (B) financially involved in an organization subject to board regulation.
- (b) Each member of the board must be a United States citizen.
 - (c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 901.052. ELIGIBILITY OF PUBLIC MEMBERS.

A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of public accountancy;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Sec. 901.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

- (1) the person is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy; or
- (2) the person's spouse is acting in the capacity of an officer, executive board or executive committee member, manager, or paid consultant

of a Texas trade association in the field of public accountancy.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 901.054. TERMS.

- (a) Board members serve staggered six-year terms.
- (b) A board member who has served all or part of six consecutive years is not eligible for reappointment until the second anniversary of the expiration date of the member's most recent term.

Sec. 901.055. OFFICERS; EXECUTIVE COMMITTEE.

- (a) The governor shall designate a member of the board as presiding officer. The presiding officer serves in that capacity at the will of the governor.
- (b) The board shall annually elect from its members an assistant presiding officer, secretary, treasurer, and other officers the board considers necessary to serve with the presiding officer on the executive committee.

Sec. 901.056. GROUNDS FOR REMOVAL.

- (a) It is a ground for removal from the board that a member:
 - (1) does not have at the time of taking office the qualifications required by Section 901.051;
 - (2) does not maintain during service on the board the qualifications required by Section 901.051;
 - (3) is ineligible for membership under Section 901.052 or 901.053;
 - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
 - (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.
- (b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive

director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 901.057. PER DIEM; REIMBURSEMENT.

- (a) A board member is entitled to receive:
- (1) \$100 for each day that the member conducts board business;
- and
- (2) reimbursement for actual and necessary expenses incurred in performing board functions.
- (b) The board by rule may determine the activities that constitute board business.

Sec. 901.058. MEMBER EQUALITY.

A board member who is not a certified public accountant has the same authority, responsibility, and duties as any other board member.

Sec. 901.059. TRAINING

- (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.
- (b) The training program must provide the person with information regarding:
- (1) this chapter;
 - (2) the programs operated by the board;
 - (3) the role and functions of the board;
 - (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
 - (5) the current budget for the board;
 - (6) the results of the most recent formal audit of the board;
 - (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SUBCHAPTER C ***Executive Director and Other Board Personnel***

Sec. 901.101. EXECUTIVE DIRECTOR AND PERSONNEL.

The board shall employ an executive director, independent contractors, and personnel selected by the executive director as necessary to assist the board in performing its duties.

Sec. 901.102. DIVISION OF RESPONSIBILITIES.

The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Sec. 901.103. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION.

The board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 901.104. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Sec. 901.105. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with federal and state law and a description of reasonable methods to achieve compliance with federal and state law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Sec. 901.106. INFORMATION ON STATE EMPLOYEE INCENTIVE PROGRAM.

The executive director or the executive director's designee shall provide to board employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

SUBCHAPTER D
Board Powers and Duties

Sec. 901.151. GENERAL POWERS AND DUTIES OF BOARD.

(a) The board shall:

(1) administer this chapter;

(2) adopt rules the board determines are necessary or advisable to administer this chapter;

(3) keep a record of each proceeding conducted before or action taken by the board; and

(4) keep an official seal.

(b) On its own motion or on the complaint of any person, the board may initiate:

(1) proceedings to determine the eligibility of a person for examination, certification, registration, or licensing under this chapter; or

(2) disciplinary proceedings under Subchapter K.

(c) The board may solicit, contract for, and accept money and other assistance from any source to administer this chapter.

Sec. 901.152. ADVISORY COMMITTEES.

(a) The board may appoint advisory committees to perform the advisory functions assigned to the committees by the board.

(b) A member of an advisory committee who is not a member of the board may not receive compensation for service on the committee. The member may receive reimbursement for actual and necessary expenses incurred in performing committee functions as provided by Section 2110.004, Government Code.

(c) A member of an advisory committee serves at the will of the board.

Sec. 901.1525. APPOINTMENT OF BOARD COMMITTEES.

(a) The board may appoint policy-making and working committees to assist the board in performing its responsibilities under this chapter. The board's policy-making committees shall assist the board in establishing policies, drafting rules, setting budgets, representing the board, and performing other oversight duties necessary to administer this chapter. The board's working committees shall assist the board in carrying out the board's functions, including reviewing enforcement cases and other licensing matters. In establishing committees, the board shall maintain the distinction between the types of committees authorized by this section.

(b) A person may not serve on a policy-making committee unless the person is a board member. A working committee may consist of members who are members of the board and members who are not board members. A member of a working committee who is not a board member may participate as a full voting member of the committee.

(c) A person may not be a non-board member of a committee if:

(1) the person is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy;

(2) the person's spouse is acting in the capacity of an officer, ex-

ecutive board or executive committee member, manager, or paid consultant of a Texas trade association in the field of public accountancy; or

(3) the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(d) For purposes of Subsection (c), "Texas trade association" has the meaning assigned by Section 901.053.

(e) A committee member who is not a member of the board is subject to the same financial disclosure requirements that apply to a member of the board, except that the financial disclosures shall be maintained by the executive director.

(f) A committee member who is not a member of the board may not serve on the committee if the member:

(1) violates Subsection (c);

(2) cannot, because of illness or disability, discharge the member's duties for a substantial time;

(3) is absent from more than half of the regularly scheduled meetings of the committee that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the committee; or

(4) does not comply with Subsection (e).

(g) The board shall adopt rules that provide that a committee member shall refrain from participating in the discussion of and may not vote on an issue before a committee in which the member has a personal or financial interest. A committee member who is not permitted to vote on a matter described by this subsection shall state at the time of the vote the reason why the member is not voting on the matter.

Sec. 901.153. ENFORCEMENT COMMITTEES.

(a) The board may appoint enforcement committees. An enforcement committee operates as a board working committee. The membership of each enforcement committee must include at least one public member of the board.

(b) An enforcement committee shall consider and make recommendations to the board on matters relating to the enforcement of this chapter and board rules.

(c) The board may adopt rules necessary for the performance of each enforcement committee's duties.

(d) In appointing the members of an enforcement committee, the board

must determine whether a prospective committee member who is a license holder under this chapter has been the subject of any disciplinary action under this chapter. A license holder who has been found in violation of this chapter may not serve on an enforcement committee.

(e) A board member who serves on an enforcement committee that participates in the investigation of a specific complaint may not participate in any subsequent disciplinary proceeding of the board that pertains to the complaint and may not vote on the final disposition of the case. The board shall adopt rules necessary to implement the requirements of this subsection.

Sec. 901.154. FEES.

(a) The board shall set the fee for the issuance of a certificate under this chapter and the fee for the issuance or renewal of a license under this chapter in an amount not to exceed \$250.

(b) The board may increase the fee for the issuance or renewal of a license as necessary to cover the costs of enforcing this chapter.

(c) The board may not waive the collection of any fee or penalty provided by this chapter.

Sec. 901.155. SCHOLARSHIP FUND ACCOUNT FOR FIFTH-YEAR ACCOUNTING STUDENTS.

(a) The fee for the issuance or renewal of a license under this chapter is the amount of the fee set by the board under Section 901.154 together with the fee increase imposed under Section 901.406 and an additional \$20 fee to be deposited to the credit of the scholarship fund account for fifth-year accounting students in the general revenue fund.

(b) The scholarship fund account for fifth-year accounting students may be used only to:

(1) provide scholarships under Subchapter N, Chapter 61, Education Code, to accounting students in the fifth year of a program designed to qualify each student to apply for certification as a certified public accountant; and

(2) pay administrative costs under Subsection (c).

(c) The administrative costs incurred to collect the fee imposed under Subsection (a) and to disburse the money may not exceed 15 percent of the total money collected, with 10 percent of the money allocated to the Texas Higher Education Coordinating Board and five percent of the money allocated to the board.

(d) Notwithstanding Section 404.071, Government Code, interest earned on amounts in the scholarship fund account for fifth-year accounting students shall be credited to that account.

Sec. 901.156. RULES OF PROFESSIONAL CONDUCT.

The board shall adopt rules of professional conduct to:

- (1) establish and maintain high standards of competence and integrity in the practice of public accountancy; and
- (2) ensure that the conduct and competitive practices of license holders serve the purposes of this chapter and the best interest of the public.

Sec. 901.1565. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

(a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific misdemeanor offenses for which a conviction would constitute grounds for the board to take action under Section 53.021. With regard to a misdemeanor conviction in another state, the board shall develop a process for determining whether the conviction is for an offense listed in the rules required by this subsection.

Sec. 901.157. RULES FOR SPECIALIZATION.

The board by rule may recognize an area of specialization in the practice of public accountancy if the area of specialization is generally recognized by other bodies that regulate or issue authoritative pronouncements in the field of public accountancy.

Sec. 901.158. RULES RESTRICTING COMPETITIVE PRACTICES.

The board in its rules of professional conduct may regulate the competitive practices of a license holder as necessary to ensure that the license holder does not engage in a competitive practice that:

- (1) impairs the independence or quality of a service provided by a license holder;
- (2) impairs or restricts the public's opportunity to obtain professional accounting services of high quality at a reasonable price; or
- (3) unreasonably restricts competition among license holders.

Sec. 901.159. PEER REVIEW.

(a) The board by rule shall provide for a peer review program to review the work product of a license holder or of the certified public accountancy firm in which the license holder is a member, in lieu of the license holder, to the extent necessary to comply with any applicable standards adopted by generally recognized bodies responsible for setting accounting standards. Peer review must include a verification that each individual in a certified public accountancy firm who is responsible for supervising attest services and who signs or authorizes another person to sign an accountant's reports on financial statements on behalf of the firm meets the competency requirements of the professional standards that apply to those services.

(b) The board by rule shall establish a fee in an amount not to exceed \$200 to be paid by a certified public accountancy firm, or by a license holder who is not a member of a certified public accountancy firm, for each peer review required by the board under this section.

Sec. 901.160. AVAILABILITY AND CONFIDENTIALITY OF CERTAIN BOARD FILES.

(a) The board shall make available at the board's offices in Austin any file maintained or information gathered or received by the board from a third party regarding a license applicant or current or former license holder for inspection by the applicant or license holder during normal business hours.

(b) A license applicant or current or former license holder may authorize the board in writing to make available for inspection by a designated person or by the public any information gathered or received by the board from a third party regarding the applicant or license holder.

(c) Except on written authorization as provided by Subsection (b), the following information gathered or received by the board is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) information regarding the qualifications of an applicant or license holder to be certified as a certified public accountant;

(2) information regarding the qualifications of an applicant or firm license holder to be issued a firm license as a certified public accountancy firm; and

(3) information regarding a disciplinary action under Subchapter K against a license holder or an applicant to take the uniform CPA examination, before a public hearing on the matter.

(d) A final order of the board relating to a disciplinary action against a license holder, including a reprimand, that results from an informal proceeding or a formal public hearing is subject to disclosure to the public and is available on request.

(e) The board may disclose information that is confidential under this section to another governmental, regulatory, or law enforcement agency engaged in an enforcement action. The board by rule shall adopt guidelines to assist the board in exercising its authority to share information under this subsection. Subsections (a) and (c) do not apply to information disclosed under this subsection.

Sec. 901.161. PRIVILEGE FOR CERTAIN INFORMATION.

(a) Any statement or record prepared or an opinion formed in connection with a positive enforcement or peer review is privileged and is not:

- (1) subject to discovery, subpoena, or other means of legal compulsion for release to a person other than the board; or
- (2) admissible as evidence in a judicial or administrative proceeding other than a board hearing.

(b) The privilege provided by Subsection (a) does not apply to information involved in a dispute between a reviewer and the person, including an entity, who is the subject of the review.

Sec. 901.162. IMMUNITY FROM LIABILITY.

(a) Each board member and each officer, director, or employee of a state agency, board, or commission is immune from liability arising out of a disclosure made to the board in connection with a complaint filed with the board.

(b) The board and each board member is immune from liability to a person for damages incident to:

- (1) the board's investigation of the person; or
- (2) any complaint, charge, or proceeding that results from the investigation.

(c) The state shall hold each board member, employee or agent of the board, and volunteer member of a constructive enforcement committee of the board harmless from any cost, damage, or attorney's fees arising from a claim or suit against that person for an action taken by the person in good faith in the discharge of the board's responsibilities.

Sec. 901.163. STATISTICAL ANALYSIS OF COMPLAINTS.

(a) The board shall develop and maintain a system for tracking a complaint filed with the board against a person who holds a license or firm license.

(b) At the time the board files an annual report under Section 901.164, the board shall also report a statistical analysis of the disciplinary actions taken by the board during the preceding year. The report must contain a statistical analysis of:

- (1) the number of complaints received;
- (2) the number of complaints resolved and the manner in which they were resolved;
- (3) a categorization of complaints received and the number of complaints in each category;
- (4) the average length of time required to resolve a complaint for each category of complaints; and
- (5) other information the board determines necessary.

(c) If the board does not receive any complaint in a category during a reporting period, the board shall report that a complaint was not received in that category.

Sec. 901.164. ANNUAL FISCAL REPORT.

(a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the board during the preceding calendar year.

(b) The report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 901.165. RULES FOR ATTEST SERVICES.

(a) The board by rule shall specify those services that constitute attest services.

(b) Attest services are required to be performed in accordance with professional standards. The board may adopt by reference the standards developed for general application by the American Institute of Certified Public Accountants or another nationally recognized accountancy organization.

Sec. 901.166. AUTHORITY TO ISSUE SUBPOENA, ADMINISTER OATH, AND RECEIVE EVIDENCE.

(a) The board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection and copying, of relevant documents, records, and other evidence, maintained by electronic or other means, that is in this state.

(b) The board may administer oaths and take testimony and other evidence regarding any matter under the board's jurisdiction.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its own records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

Sec. 901.167. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY.

(a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

- (1) coordinate the implementation of the policy adopted under Sub-section (a);
- (2) serve as a resource for any training necessary for implementation of the negotiated rulemaking or alternative dispute resolution procedures; and
- (3) collect data on the effectiveness of the procedures implemented by the board.

Sec. 901.168. TECHNOLOGY POLICY.

The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to easily find information about the board on the Internet;
- (2) ensure that persons who want to use the board's services are able to:
 - (A) interact with the board through the Internet; and
 - (B) access any service that can be provided effectively through the Internet; and
- (3) be cost-effective and developed through the board's planning processes.

SUBCHAPTER E

Public Interest Information and Complaint Procedures

Sec. 901.201. PUBLIC INTEREST INFORMATION.

- (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.
- (b) The board shall make the information available to the public and appropriate state agencies.

Sec. 901.202. COMPLAINTS.

The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone num-

ber of the board for the purpose of directing a complaint to the board. The board may require that notice:

- (1) on each registration form, application, or written contract for services of a person regulated under this chapter; or
- (2) in a bill for service provided by a person regulated under this chapter.

Sec. 901.203. COMPLAINT INFORMATION.

(a) The board shall maintain a file on each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 901.204. PUBLIC PARTICIPATION.

(a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board's programs.

SUBCHAPTER F
Certificate Requirements

Sec. 901.251. CERTIFICATE REQUIRED.

(a) A person who is an individual may not engage in the practice of public accountancy unless the person holds a certificate issued under this chapter or practices in this state under a privilege under Section 901.462.

(b) The board shall issue a certificate to a person who meets the applicable requirements of this chapter.

Sec. 901.252. ELIGIBILITY REQUIREMENTS.

To be eligible to receive a certificate, a person must:

(1) be of good moral character as determined under Section 901.253;
(2) meet the education requirements established under Section 901.254 or 901.255;

(3) pass the uniform CPA examination;

(4) meet the work experience requirements established under Section 901.256; and

(5) pass an examination on the rules of professional conduct as determined by board rule.

Sec. 901.253. CHARACTER INVESTIGATION.

(a) The board shall ensure that an applicant to take the uniform CPA examination or to receive a certificate is of good moral character as demonstrated by a lack of history of dishonest or felonious acts.

(b) The board by rule may adopt a system to investigate an applicant's background.

(c) The board may obtain criminal history record information maintained by a law enforcement agency, including the Department of Public Safety and the Federal Bureau of Investigation identification division, to investigate the qualifications of an individual who applies to take the uniform CPA examination or to be certified or issued a firm license under this chapter.

(d) The board may require the applicant to submit a complete set of fingerprints. If an applicant does not provide a complete set of fingerprints on request of the board, the board may:

(1) deny the applicant's application to take the uniform CPA examination; or

(2) refuse to issue a certificate to the applicant.

Sec. 901.254. EDUCATION REQUIREMENTS.

To be eligible to take the uniform CPA examination, an applicant must:

- (1) hold a baccalaureate or graduate degree, or its equivalent as determined by board rule, conferred by a board-recognized institution of higher education; and
- (2) complete at least 150 semester hours or quarter-hour equivalents in board-recognized courses, including an accounting concentration or equivalent courses as determined by board rule.

Sec. 901.255. SPECIAL EDUCATION REQUIREMENTS FOR PART-TIME STUDENT.

(a) This section applies only to an applicant to take the uniform CPA examination who:

- (1) was enrolled in an accounting program on September 1, 1994;
- (2) notified the board not later than September 1, 1997, of the applicant's intent to take the examination;
- (3) is enrolled in fewer than 12 semester hours in each semester that the applicant attends a college or university; and
- (4) completes the accounting program not later than September 1, 2002.

(b) To be eligible to take the uniform CPA examination, an applicant subject to this section must:

- (1) hold a baccalaureate or graduate degree, or its equivalent as determined by board rule, conferred by a board-recognized institution of higher education; and
- (2) complete at least:
 - (A) 30 semester hours or quarter-hour equivalents in board-recognized accounting courses, as defined by board rule; and
 - (B) 20 semester hours or quarter-hour equivalents in board-recognized accounting-related courses in other areas of business administration.

Sec. 901.256. WORK EXPERIENCE REQUIREMENTS.

(a) To be eligible to receive a certificate, a person must complete:

- (1) at least two years of work experience under the supervision of a certified public accountant; or
- (2) at least one year of work experience acceptable to the board,

including experience providing a service or advice involving accounting, attest services, management or financial advisory or consulting services, tax services, or other services the board considers appropriate for an accountant, if the person:

(A) has completed at least 150 semester hours of college credits; or

(B) holds a graduate degree.

(b) The board by rule shall define the work experience that is acceptable for purposes of this section.

(c) The board is the final authority regarding work experience. The board may not consider a petition from another entity in resolving a dispute under this section.

Sec. 901.257. OATH AND CERTIFICATE FEE.

Before the board issues a certificate to a person, the person must:

(1) take an oath, administered by a board member or by another person authorized to administer oaths, to support:

(A) the constitution and laws of this state and the United States;

and

(B) the board's rules; and

(2) pay a fee for the certificate in an amount set by board rule not to exceed \$50.

Sec. 901.258. TRANSFER OF COMPLETE EXAMINATION CREDIT BETWEEN STATES.

(a) The board may accept the completion of the uniform CPA examination given by the licensing authority of another state if:

(1) the examination was prepared and graded by the American Institute of Certified Public Accountants or, if doing so would result in a greater degree of reciprocity with the examination results of other states, the National Association of State Boards of Accountancy; and

(2) the applicant met the requirements in effect in this state at the time the credit was earned.

(b) The board may transfer to the licensing authority of another state active credits earned as a result of completing the uniform CPA examination in this state.

(c) The board by rule shall establish:

- (1) a fee in an amount not to exceed \$100 to receive credits from another licensing authority; and
- (2) a fee in an amount not to exceed \$50 to transfer credits to another licensing authority.

Sec. 901.259. CERTIFICATION BASED ON RECIPROCITY.

(a) The board shall issue a certificate to a person who holds a certificate or license issued by another state if the person:

(1) satisfies at least one of the following:

(A) holds a certificate or license as a certified public accountant from a state that the National Association of State Boards of Accountancy's National Qualification Appraisal Service has verified as having education, examination, and experience requirements for certification or licensure that are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter;

(B) obtains from the National Association of State Boards of Accountancy's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter;

(C) meets the requirements for issuance of a certificate in this state other than the requirement providing the grades necessary to pass the uniform CPA examination;

(D) met the requirements in effect for issuance of a certificate in this state on the date the person was issued a certificate by the other state; or

(E) has completed at least four years of experience practicing public accountancy, if the experience:

- (i) occurred after the person passed the uniform CPA examination and within the 10 years preceding the date of application; and
- (ii) satisfies requirements established by board rule; and

(2) has met the continuing professional education requirements that apply to a license holder under this chapter for the three-year period preceding the date of application.

(b) The board shall issue a certificate by reciprocity to the extent required by a United States treaty.

Sec. 901.260. CERTIFICATE BASED ON FOREIGN CREDENTIALS.

(a) The board may issue a certificate to an applicant who holds a substantially equivalent foreign credential if:

(1) the foreign jurisdiction that granted the credential has an analogous provision allowing a person who holds a certificate issued by this state to obtain that foreign jurisdiction's comparable credential;

(2) the foreign credential:

(A) entitles the holder to issue reports on financial statements;

(B) was issued by a foreign jurisdiction that regulates the practice of public accountancy on the basis of education, examination, and experience requirements established by the jurisdiction; and

(C) has not expired or been revoked, suspended, limited, or probated; and

(3) the applicant:

(A) received the credential based on education and examination requirements that are comparable to or exceed those in effect in this state on the date that the foreign credential was granted;

(B) satisfied one of the following:

(i) completed an experience requirement in the jurisdiction that granted the foreign credential that is comparable to or exceeds the experience requirements established under this chapter;

(ii) completed at least four years of professional accounting experience in this state; or

(iii) within the 10 years preceding the date of the application, has met equivalent requirements prescribed by board rule;

(C) passed a uniform qualifying examination acceptable to the board covering national standards; and

(D) passed an examination acceptable to the board covering the laws, rules, and code of ethical conduct in effect in this state.

(b) An applicant for a certificate under Subsection (a) must list in the application each jurisdiction, foreign and domestic, in which the applicant has applied for or holds a credential to practice public accountancy. Each

holder of a certificate issued under Subsection (a) shall notify the board in writing of the issuance, denial, revocation, suspension, limitation, or probation of a credential or the commencement of a disciplinary or enforcement action by any jurisdiction not later than the 30th day after the effective date of that action.

(c) The board's determination of whether a foreign credential is substantially equivalent to a certificate issued under this chapter is not subject to judicial review.

SUBCHAPTER G ***Uniform CPA Examination***

Sec. 901.301. ADMINISTRATION; BOARD RULES

(a) The board shall conduct or contract with another person to conduct uniform CPA examinations administered under this chapter.

(b) The board by rule may establish the:

- (1) manner in which a person may apply for the examination;
- (2) time, date, and place for the examination;
- (3) manner in which the examination is conducted; and
- (4) manner in which a person's examination score is reported to the person.

Sec. 901.302. APPLICATION OF INTENT.

(a) The board may establish an application of intent for a person pursuing a certificate.

(b) The board shall maintain an application of intent filed under this section as an active application until the second anniversary of the date the application is filed.

Sec. 901.303. FILING FEE.

The board by rule may set a filing fee in an amount not to exceed \$100 to be paid by an applicant at the time the applicant files an initial application to take the uniform CPA examination.

Sec. 901.304. EXAMINATION FEE.

(a) For each examination or reexamination, the board by rule shall apportion an amount of the total examination fee among the parts of the exami-

nation that an applicant is eligible to take on a particular examination date. For each examination or reexamination, the board shall set a fee by board rule not to exceed the cost of administering the examination.

(b) [REPEALED]

(c) The board by rule may provide for a refund of the examination fee paid by an applicant who:

- (1) fails to attend the examination; and
- (2) presents the board with a satisfactory reason for that failure.

Sec. 901.305. FREQUENCY OF EXAMINATION.

A uniform CPA examination shall be administered under this chapter as often as necessary but at least once each year.

Sec. 901.306. CONTENT AND SECURITY OF EXAMINATION.

(a) The board may use or require the use of all or part of the uniform CPA examination and any related service available from:

- (1) the American Institute of Certified Public Accountants; or
- (2) the National Association of State Boards of Accountancy.

(b) The examination must test the person's knowledge of accounting, auditing, and any other subject the board determines is appropriate.

(c) If the examination is secured by the preparer, the board may not release a copy of any question or answer to any person.

(d) The board by rule may adopt a system to maintain the security and integrity of the examination process.

Sec. 901.307. GRADING EXAMINATION.

(a) The board by rule shall:

- (1) adopt a method for grading the examination; and
- (2) establish the criteria for passing the examination.

(b) Rules adopted under this section must, to the extent possible, be uniform with those of other states.

Sec. 901.308. EXAMINATION RESULTS.

(a) The board shall send to each examinee the examinee's results not later than the 30th day after the date the board receives the results.

(b) The board may withhold delivery of the examination results if:

- (1) board action is pending; and
- (2) the examinee is precluded from receiving the results until

the action is resolved.

(c) If the notice of the examination results graded or reviewed by a national testing service will be delayed for more than 120 days after the examination date, the board shall notify the examinee of the reason for the delay before the 120th day.

(d) A person who fails an examination is entitled to inspect the examination questions and the person's answers not later than the 91st day after the date the board receives the results. An inspection must be by appointment at the board's offices during regular office hours. The person's grade must be clearly shown on the examination. A copy of the examination questions or answers may not be made.

(e) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

Sec. 901.309. REEXAMINATION.

A person who fails all or part of an examination may apply for a subsequent examination, subject to the board's satisfaction that the person meets the requirements of this chapter relating to the person's moral character and education.

Sec. 901.310. CONDITIONAL EXAMINATION CREDIT.

(a) The board by rule shall award conditional credit to a person who:

- (1) passes two or more subjects in a single examination;
- (2) takes each part of the examination the person is eligible to take; and
- (3) attains a minimum grade of 50 percent on each part of the examination the person does not pass.

(b) The board shall award credit to a person who attains a passing score on a subsequent examination if the person:

- (1) takes each part of the examination the person is eligible to take; and
- (2) attains a minimum grade of 50 percent on each part of the examination that the person does not pass.

(c) The board shall consider a person to have passed an examination if the person receives credit for each subject by receiving conditional credit after September 1, 1989, and passing the remaining subjects within the six consecutive examinations following the examination for which the person receives conditional credit.

Sec. 901.311. RESTRUCTURE OF EXAMINATION.

If the uniform CPA examination is restructured, the board by rule shall determine the manner in which credit for a subject is integrated into the new structure.

Sec. 901.312. TRANSFER OF PARTIAL EXAMINATION CREDIT BETWEEN STATES.

(a) The board may accept the partial completion of the uniform CPA examination given by the licensing authority of another state if:

(1) the examination was prepared and graded by the American Institute of Certified Public Accountants or, if doing so would result in a greater degree of reciprocity with the examination results of other states, the National Association of State Boards of Accountancy;

(2) the credit is active in the other state; and

(3) at the time the credit was earned, the applicant met the requirements in effect in the other state and the other state's standards are equal to or higher than the standards prescribed by this chapter.

(b) The board may transfer to the licensing authority of another state active credits earned as a result of partially completing the uniform CPA examination in this state.

(c) The board by rule shall establish:

(1) a fee in an amount not to exceed \$100 to receive credits from another licensing authority; and

(2) a fee in an amount not to exceed \$50 to transfer credits to another licensing authority.

SUBCHAPTER H
Firm License Requirements

Sec. 901.351. FIRM LICENSE REQUIRED.

(a) A firm may not provide attest services or use the title "CPA's," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or a variation of one of those titles unless the firm holds a firm license issued under this subchapter or practices in this state under a privilege under Section 901.461.

(a-1) A firm is required to hold a firm license under this subchapter if the firm:

(1) establishes or maintains an office in this state; or
(2) for an entity with its principal office in this state, performs in this state:

(A) a financial statement audit or other engagement in accordance with the Statements on Auditing Standards;

(B) an examination of prospective financial information in accordance with the Standards for Attestation Engagements; or

(C) an engagement in accordance with auditing standards of the Public Company Accounting Oversight Board or its successor.

(b) The board shall grant or renew a firm license to practice as a certified public accountancy firm to:

(1) a firm that applies and demonstrates the necessary qualifications in accordance with this subchapter; or

(2) a firm originally licensed as a certified public accountancy firm in another state that:

(A) is required to hold a firm license under Subsection (a-1);
and

(B) demonstrates the necessary qualifications in accordance with this subchapter.

(c) A firm license issued under Subsection (b)(2) is automatically revoked and may not be renewed if the firm does not maintain a license as a certified public accountancy firm in the other state.

(d) A firm license must be renewed annually.

(e) The board by rule shall specify:

(1) the form of the application for a firm license;

(2) the fee for an original or renewal firm license, which may be based on the number of owners, members, partners, shareholders, or employee license holders in this state, not to exceed \$25 for each of those persons; and

(3) the requirements for renewal of a firm license.

Sec. 901.352. APPLICATION FOR FIRM LICENSE OR REGISTRATION.

(a) An applicant for a firm license or registration must provide the board with satisfactory evidence of eligibility for a firm license or registration.

(b) The board may examine an application and may refuse to issue a firm license or register an applicant who does not meet the standards imposed under this chapter.

Sec. 901.353. RESIDENT MANAGER.

(a) An office established or maintained in this state by a firm of certified public accountants, a firm of public accountants, or a person described by Section 901.355 must be under the direct supervision of a resident manager who:

- (1) is an owner, member, partner, shareholder, or employee of the firm or person that occupies the office; and
- (2) is licensed under this chapter.

(b) A resident manager may serve in that capacity in only one office at a time except as authorized by board rule. The board by rule may establish a registration procedure under which a person may serve as resident manager of more than one office at a time.

Sec. 901.354. FIRM LICENSE INFORMATION AND ELIGIBILITY.

(a) An applicant for initial issuance or renewal of a firm license must show that a majority of the ownership of the firm, in terms of financial interests and voting rights, belongs to persons who hold certificates issued under this chapter or are licensed in another state. A firm and its owners shall comply with board rules regardless of whether the firm includes owners who are not license holders.

(b) A certified public accountancy firm may include individuals as owners who are not license holders if:

(1) the firm designates to the board as responsible for the firm's license and the supervision of the firm:

(A) a license holder who resides in this state; or

(B) an individual practicing under a privilege under Section 901.462 if the firm consists only of individuals practicing under Section 901.462.

(2) each owner who is not a license holder and who is a resident of this state as determined by board rule:

(A) is actively involved in the firm or an affiliated entity;

(B) is of good moral character as demonstrated by a lack of history of dishonest or felonious acts;

(C) holds a baccalaureate or graduate degree conferred by a college or university acceptable to the board or equivalent education as determined by the board;

(D) maintains any professional designation held by the individual in good standing with the appropriate organization or regulatory body that is

identified or used in an advertisement, letterhead, business card, or other firm-related communication;

(E) has passed an examination on the rules of professional conduct as determined by board rule;

(F) complies with the rules of professional conduct as determined by board rule; and

(G) maintains professional continuing education applicable to license holders as required by board rule; and

(3) the firm and the owners who are not license holders comply with board disciplinary actions and other requirements the board may impose by rule.

(c) The board by rule may adopt a system to investigate the background of individual owners who are not license holders under this chapter.

(d) The board may obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, and other law enforcement agencies to investigate the qualifications of an individual who is not a license holder under this chapter.

(e) The board may require an individual who is not a license holder under this chapter to submit a complete set of fingerprints. If the individual does not provide the complete set of fingerprints on request, the board may refuse to allow that individual to become an owner of a certified public accountancy firm and may cancel or refuse to issue or renew a firm license to the firm.

(f) An applicant for issuance or renewal of a firm license under this section must register each office of the firm in this state and show that all attest services performed in this state and each office in this state are under the supervision of a person who holds a certificate issued under this chapter or by another state.

(g) An application for a firm license under this chapter must be made on an affidavit of the owner, an officer, or the general partner of the firm, as applicable, stating:

(1) the name of the firm;

(2) the firm's post office address in this state if the firm has an office in this state;

(3) the address of the firm's principal office;

(4) the address of each office of the firm in this state if the firm has an office in this state;

(5) the name of the resident manager of each office of the firm in this state; and

(6) the name, residence, and post office address of:
 (A) each partner, member, shareholder, or other owner; and
 (B) if the firm is a partnership, each shareholder of a partner that is a professional corporation.

(h) A sole proprietorship is eligible for a firm license if the sole proprietor and each resident manager of an office of the sole proprietorship in this state are certified public accountants in good standing.

(i) The board shall determine whether an applicant is eligible for a firm license under this section. The board by rule shall define "good standing" for purposes of this section.

(j) A certified public accountancy firm shall notify the board not later than the 31st day after the date on which information in the affidavit is changed, including information regarding the admission or withdrawal of an owner or resident manager.

(k) A certified public accountancy firm that is no longer in compliance with this section because of a change in firm ownership or personnel that occurs after the firm receives or renews a firm license shall report that fact to the board not later than the 30th day after the date the firm ceases to be in compliance and shall take corrective action to bring the firm into compliance. Failure to bring the firm into compliance within a reasonable time as determined by board rule is grounds for the suspension or revocation of the firm's firm license.

Sec. 901.355. REGISTRATION FOR CERTAIN FOREIGN APPLICANTS.

(a) The holder of a certificate, license, or degree authorizing the person to practice public accountancy in a foreign country may register with the board as the holder of a certificate, license, or degree issued by the foreign country, if the board determines that the standards under which the applicant was certified or otherwise authorized to practice public accountancy were at least as high as the standards of this state at the time that authority was granted.

(b) To register with the board under this section, the person must pay:
 (1) the fee for issuance of a license as provided by Section 901.154;
and
 (2) a processing fee in an amount set by the board not to exceed \$250.

(c) A person registered under this section may renew the registration in the manner provided for renewal of a license under Subchapter I.

(d) A person's registration under this section is automatically revoked and may not be renewed if the person does not maintain the authority to practice public accountancy in the other country. The board shall adopt rules to ensure that the person maintains that authority.

SUBCHAPTER I
License Requirements, Issuance, and Renewal

Sec. 901.401. LICENSE REQUIRED.

- (a) An individual who holds a certificate issued under this chapter must also hold a license issued under this chapter.
- (b) Each office in this state of a certified public accountancy firm or a firm of public accountants must hold a license issued under this chapter.

Sec. 901.402. ELIGIBILITY REQUIREMENTS; GENERAL PROHIBITION.

- (a) On payment of the required fees, the board shall issue a license to an applicant who:
 - (1) holds a certificate issued under this chapter; or
 - (2) holds a firm license issued under this chapter.
- (b) The board may not issue a license to or renew the license of a person who does not meet the licensing requirements of:
 - (1) this chapter; or
 - (2) the rules adopted under this chapter.

Sec. 901.403. APPLICATION FOR AND RENEWAL OF LICENSE.

- (a) The board shall specify:
 - (1) the form of the application for a license;
 - (2) the term of a license; and
 - (3) the requirements for renewal of a license.
- (b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the board shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 901.404. NOTICE OF LICENSE EXPIRATION.

(a) Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

(b) The board shall determine the amount of the renewal fee and shall mail notice of that amount to the person within the time provided by Subsection (a).

Sec. 901.405. PROCEDURE FOR RENEWAL.

(a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1½ times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for at least one year but less than two years may renew the license by paying to the board a renewal fee that is equal to three times the normally required renewal fee.

(e) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(f) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. A person described by this subsection whose license has been revoked under Section 901.502(3) or (4) may obtain a new license under this subsection. A person described by this subsection must pay to the board a fee that is equal to two times the normally required renewal fee for the license and is not subject to additional fees under Section 901.408.

Sec. 901.406. FEE INCREASE.

(a) The fee for the issuance of a certificate under this chapter and the

fee for the issuance or renewal of a license under this chapter is the amount of the fee set by the board under Section 901.154 and a fee increase of \$200.

(b) For each fee increase collected under this section, \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited in the general revenue fund.

Sec. 901.407. ADDITIONAL FEE.

(a) Each license holder shall pay to the board a biennial fee of \$200 in each year that the license holder is not required to pay a fee for the issuance or renewal of a license. The fee provided for by this section is due not later than the first anniversary of the date the license holder was last required to pay a fee for the issuance or renewal of the license.

(b) Not later than the 31st day before the date the additional fee is due, the board shall send written notice that the fee is due to the license holder at the license holder's last known address according to the board's records.

(c) The board shall impose a late fee in an amount not less than \$50 on a license holder who does not pay the additional fee on or before the date the fee is due. The board by rule may impose additional late fees.

(d) Each additional fee collected under this section shall be deposited as provided by Section 901.406(b).

Sec. 901.408. CONSEQUENCE OF FAILURE TO PAY CERTAIN FEES.

(a) A person, other than a person described by Section 901.405(f), who fails to pay the license renewal fee or the additional fee imposed under Section 901.407, as applicable, and any late fee before the first anniversary of the due date of the renewal fee or additional fee may renew the person's license only by submitting to the board an application for renewal accompanied by payment of:

- (1) all accrued fees, including late fees; and
- (2) the direct administrative costs incurred by the board in renewing the person's license.

(b) The board by rule shall prescribe the information to be included in an application for renewal under this section.

Sec. 901.409. FEE REDUCTION FOR RETIRED OR DISABLED PERSONS.

The board by rule may establish a reduced fee to issue or renew the license of a person who does not engage in the practice of public accountancy because of retirement or permanent disability.

Sec. 901.410. FEE EXEMPTION FOR CERTAIN LICENSE HOLDERS.

The fee increase imposed under Section 901.406 and the additional fee imposed under Section 901.407 do not apply to a license holder who is:

- (1) an employee of the federal government, the government of another state, or a municipal or county government and who is restricted by virtue of that employment from engaging in the practice of public accountancy outside the scope of employment; or
- (2) an employee of a state agency that has authorized the payment of the fee increase and additional fee for the license holder.

Sec. 901.411. CONTINUING PROFESSIONAL EDUCATION.

(a) A license holder who is an individual shall participate in a program of continuing professional education designed to maintain professional competency. The program must comply with rules adopted by the board.

(b) The board may recognize a continuing professional education course only if the course directly contributes to the license holder's professional competence.

(c) The board by rule shall provide for the reporting of continuing professional education by a license holder to coincide with the person's license renewal date.

(d) The board by rule may exempt certain license holders, including license holders who are disabled, retired, or not associated with accounting, as defined by board rule, from all or part of the requirements of this section.

SUBCHAPTER J
Practice of Public Accountancy

Sec. 901.451. USE OF TITLE OR ABBREVIATION FOR "CERTIFIED PUBLIC ACCOUNTANT."

(a) A person may not assume or use the title or designation "certified public accountant," the abbreviation "CPA," or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant unless the person holds a certificate under this chapter.

(b) A person may not provide attest services or assume or use the title "certified public accountants," the abbreviation "CPAs," or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountancy firm unless:

(1) the person holds a firm license issued under this chapter or practices in this state under a privilege under Section 901.461;

(2) ownership of the person complies with the requirements of this chapter and rules adopted by the board; and

(3) the person complies with board rules authorizing the practice.

(c) The title or designation "certified public accountant" and the abbreviation "CPA" may not be used in connection with an office that is required to be under the supervision of a resident manager under Section 901.353 unless the resident manager holds a certificate and a license issued under this chapter.

Sec. 901.452. USE OF TITLE OR ABBREVIATION FOR "PUBLIC ACCOUNTANT."

A person may not assume or use the title or designation "public accountant" or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a public accountant, or a firm composed of public accountants, unless:

(1) the person is certified and licensed under this chapter; and

(2) each of the person's offices in this state for the practice of public accounting is maintained and practices under a firm license as required under Subchapter H.

Sec. 901.453. USE OF OTHER TITLES OR ABBREVIATIONS.

(a) Except as provided by Subsection (b), a person may not assume or use:

(1) a title or designation likely to be confused with "certified public accountant" or "public accountant," including "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or "accredited accountant"; or

(2) an abbreviation likely to be confused with "CPA," including "CA," "PA," "EA," "RA," "LA," or "AA."

(b) A person may hold the person out to the public as an "accountant," "auditor," or any combination of those terms or assert that the person has expertise in accounting or auditing only if:

(1) the person holds a license issued under this chapter and each of the person's offices in this state for the practice of public accounting is maintained and practices under a firm license as required under Subchapter H; or

(2) the person practices under a privilege under Section 901.461 or 901.462.

Sec. 901.454. TITLE USED BY CERTAIN OUT-OF-STATE OR FOREIGN ACCOUNTANTS.

(a) A person who is an accountant of another state may use the title under which the accountant is generally known in the state from which the accountant received a certificate, license, or degree if:

(1) the person holds a license issued under this chapter or practices in this state under a privilege under Section 901.461 or 901.462; or

(2) any of the person's offices established or maintained in this state for the practice of public accountancy are licensed under this chapter.

(b) A person who holds a certification, degree, license, or other credential granted in a foreign jurisdiction that entitles the person to engage in the practice of public accountancy or its equivalent in that jurisdiction may use in this state any title or designation under which the person practices in the foreign jurisdiction, followed by a translation of the title or designation into English if it is in a different language and by the name of that jurisdiction, if:

(1) the person's activities in this state are limited to the provision of professional accounting services to persons who are residents, governments, or business entities of that foreign jurisdiction; and

(2) the person does not perform attest services or issue reports on the financial statements of any other person in this state.

(c) A person registered under Section 901.355 shall use the title held in the country from which the person received a certificate, license, or degree, and shall indicate the name of the country.

Sec. 901.455. NAME REQUIREMENTS AND RESTRICTIONS.

(a) The name or designation assumed or used by a license holder must include:

(1) the individual's name, if the license holder is an individual;

(2) the name of at least one current or former partner, if the license holder is a partnership; or

(3) the name of at least one current or former shareholder, if the license holder is a corporation.

(b) A license holder may not assume or use a name that is misleading as to the legal form of the license holder's firm or as to the persons who are

partners, officers, or shareholders of the firm. A firm licensed under this chapter may assume or use the designation "and company" or "and associates," or any abbreviation of those terms, only if at least two persons licensed under this chapter are involved in the practice of the firm.

(c) A corporation that is licensed under this chapter may practice public accountancy under a corporate name indicating that it is engaged in that practice.

(d) A license holder may not use a trade name or descriptive words indicating the character or grade of service offered, except as authorized by board rule.

(e) A firm that practices under Section 901.461 must use the firm name that it uses in the state in which it is licensed and has its principal place of business.

Sec. 901.456. REPORTS ON FINANCIAL STATEMENTS; USE OF NAME OR SIGNATURE ON CERTAIN DOCUMENTS.

(a) Only a license holder or a person who practices under a privilege under Section 901.461 or 901.462 may issue a report on a financial statement of another person or otherwise perform or offer to perform an attest service.

(b) A person who is not a license holder and who does not practice under a privilege under Section 901.461 or 901.462:

(1) may not use language in any statement related to the financial affairs of a person that is conventionally used by license holders in reports on financial statements;

(2) may prepare financial statements; and

(3) may issue nonattest transmittals or information regarding nonattest transmittals if the transmittals or information do not purport to be in compliance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.

(c) The following safe harbor language may be used by a person who is not a license holder without violating Subsection (b): "(I/We) have prepared the accompanying balance sheet of (client's name) as of (date) and the related statements of income, retained earnings, and cash flow changes in financial position for the (period then ended). These financial statements, which are the representation of management and which are presented to be used for federal income tax purposes, (are/are not) in agreement with the

company's financial records. Management has elected to omit substantially all informative disclosures with respect to these financial statements. If the omitted disclosures were included in the above financial statements, they might influence the user's conclusion concerning the company's financial position, results of operations, and/or changes in financial position. (I/We) do not express any form of assurance with respect to these financial statements."

(d) Unless a person is in compliance with this chapter, the person may not sign on or affix to an accounting or financial statement, or an opinion on, report on, or certificate to an accounting or financial statement, the person's name or a trade or assumed name used by the person in the person's profession or business with any wording indicating that the person:

- (1) is an accountant or auditor; or
- (2) has expert knowledge in accounting or auditing.

(e) This section does not prohibit:

(1) a partner, officer, employee, or principal of an organization from signing a statement or report regarding the financial affairs of the organization with wording that designates the position, office, or title held by the person in the organization;

(2) any act of a public official or public employee in the performance of the person's duties as a public official or public employee; or

(3) the performance by a person who is not a license holder of a service that is not an attest service and that involves the use of bookkeeping skills, including:

- (A) the preparation of tax returns;
- (B) management advisory services; or
- (C) the preparation of financial statements without the issuance

of reports.

(f) A license holder or an individual who practices under a privilege under Section 901.462 who performs attest services must provide those services in accordance with standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.

Sec. 901.457. ACCOUNTANT-CLIENT PRIVILEGE.

(a) A license holder or a partner, member, officer, shareholder, or employee of a license holder may not voluntarily disclose information communicated to the license holder or a partner, member, shareholder, or employee of

the license holder by a client in connection with services provided to the client by the license holder or a partner, member, shareholder, or employee of the license holder, except with the permission of the client or the client's representative.

(b) This section does not prohibit a license holder from disclosing information that is required to be disclosed:

(1) by the professional standards for reporting on the examination of a financial statement;

(2) under a summons under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, or the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments or under a court order if the summons or order:

(A) is addressed to the license holder;

(B) mentions the client by name; and

(C) requests specific information concerning the client;

(3) in an investigation or proceeding conducted by the board;

(4) in an ethical investigation conducted by a professional organization of certified public accountants; or

(5) in the course of a peer review under Section 901.159.

Sec. 901.458. LOSS OF INDEPENDENCE.

(a) In this section, "direct labor cost" means:

(1) the total compensation paid to a person who performs services;

and

(2) the employer payroll expenses related to that compensation, including workers' compensation insurance premiums, social security contributions, costs of participating in retirement plans, group insurance costs, and unemployment taxes.

(b) A person creates a presumption of loss of independence if the person:

(1) holds a certificate or firm license issued under this chapter; and

(2) performs or offers to perform an attest service for compensation that is less than the direct labor cost reasonably expected to be incurred in performing the service.

(c) This section does not apply to the donation of services to a charitable organization as defined by board rule.

Sec. 901.459. APPLICABILITY OF PARTNERSHIP REQUIREMENTS TO PARTNER.

Each partner in a partnership governed by this chapter is subject to the statutory requirements and rules that apply to the partnership.

Sec. 901.460. PERFORMING ATTEST SERVICES.

(a) A certificate holder may perform attest services only in a certified public accountancy firm.

(b) An individual who is a license holder or practices under a privilege under Section 901.462 and who is responsible for supervising attest services or signs or authorizes another person to sign an accountant's reports on financial statements on behalf of a certified public accountancy firm must meet the competency requirements of the professional standards that apply to those services.

Sec. 901.461. PRACTICE BY CERTAIN OUT-OF-STATE FIRMS.

(a) A certified public accountancy firm that is licensed and has its primary place of business in another state and is not required to hold a firm license under Section 901.351 (a-1) may practice in this state without a firm license or notice to the board if the firm's practice in this state is performed by an individual who holds a license under this chapter or who practices under a privilege under Section 901.462.

(b) A firm described by Subsection (a) may exercise all the practice privileges of a firm license holder, except that the firm:

(1) may not perform the services described by Section 901.351 (a-1); and

(2) may perform the services described by Sections 901.002 (a)(1)(B) and (D) for an entity with its home office in this state only if:

(A) the firm meets the requirements of Sections 901.354(a) and (b);

(B) the firm complies with the board's peer review program under Section 901.159; and

(C) the services are performed by an individual who holds a license under this chapter or practices under a privilege under Section 901.462.

(c) A firm practicing under a privilege under this section, as a condition of the privilege of practicing without a firm license:

(1) is subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) must comply with this chapter and board rules; and

(3) is considered to have appointed the regulatory agency of the state that issued the firm's license as the firm's agent on whom process may be served in any action or proceeding by the board against the firm.

(d) A firm practicing under a privilege under this section shall promptly cease offering or rendering professional services in this state if the firm's license to practice as a certified public accountancy firm in the state in which the firm's primary place of business is no longer valid.

Sec. 901.462. PRACTICE BY OUT-OF-STATE PRACTITIONER WITH SUBSTANTIALLY EQUIVALENT QUALIFICATIONS.

(a) An individual who holds a certificate or license as a certified public accountant issued by another state and whose principal place of business is not in this state may exercise all the privileges of certificate and license holders of this state without obtaining a certificate or license under this chapter if:

(1) the National Association of State Boards of Accountancy's National Qualification Appraisal Service has verified that the other state has education, examination, and experience requirements for certification or licensure that are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter; or

(2) the individual obtains from the National Association of State Boards of Accountancy's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter.

(b) An individual who meets the requirements of Subsection (a)(1) or (2) and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the board.

(c) An individual practicing under the privilege under this section, as a

condition of the privilege of practicing without a certificate or license:

(1) is subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) must comply with this chapter and the board's rules; and

(3) is considered to have appointed the regulatory agency of the state that issued the individual's certificate or license as the agent on whom process may be served in any action or proceeding by the board against the individual.

(d) An individual who practices under a privilege under this section shall promptly cease offering or rendering professional services in this state if the individual's certificate or license in the state of the individual's principal place of business is no longer valid.

(e) An individual practicing under this section must practice through a firm that holds a license under this chapter if, for an entity with its principal office in this state, the individual performs:

(1) a financial statement audit or other engagement in accordance with the Statements on Auditing Standards;

(2) an examination of prospective financial information in accordance with the Statements on Standards of Attestation Engagements; or

(3) an engagement in accordance with auditing standards of the Public Company Accounting Oversight Board or its successor.

SUBCHAPTER K

Prohibited Practices and Disciplinary Procedures

Sec. 901.501. DISCIPLINARY POWERS OF BOARD.

(a) On a determination that a ground for discipline exists under Section 901.502, after notice and hearing as provided by Section 901.509, the board may:

(1) revoke a certificate, firm license, or practice privilege issued under this chapter;

(2) suspend under any terms a certificate, firm license, practice privilege, or license issued under this chapter for a period not to exceed five years;

(3) refuse to renew a license;

(4) place a license holder on probation;

(5) reprimand a license holder;

(6) limit the scope of a license holder's practice;

- (7) require a license holder to complete a peer review program conducted in the manner prescribed by the board;
 - (8) require a license holder to complete a continuing education program specified by the board;
 - (9) impose on a license holder the direct administrative costs incurred by the board in taking action under Subdivisions (1) through (8);
 - (10) require a license holder to pay restitution as provided by Section 901.6015;
 - (11) impose an administrative penalty under Subchapter L; or
 - (12) impose any combination of the sanctions provided by this subsection.
- (b) If a person's license suspension is probated, the board may require the person to:
- (1) report regularly to the board on matters that are the basis of the probation;
 - (2) limit practice to the areas prescribed by the board; or
 - (3) continue or renew professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Sec. 901.502. GROUNDS FOR DISCIPLINARY ACTION.

The board may discipline a person under Section 901.501 for:

- (1) fraud or deceit in obtaining a certificate, firm license, or license under this chapter;
- (2) fraud, dishonesty, or gross negligence in the performance of services as a license holder, including:
 - (A) knowingly participating in the preparation of a false or misleading financial statement or tax return; or
 - (B) failing to file the license holder's own income tax return;
- (3) the failure of a person who is certified or required to hold a firm license under this chapter to obtain a license not later than the third anniversary of the date on which the person was certified or required to obtain a firm license;
- (4) the failure of a person who is licensed under this chapter to renew the license not later than the third anniversary of the date on which the person most recently obtained or renewed the license;
- (5) a violation of Subchapter J;
- (6) a violation of a rule of professional conduct adopted by the board;

(7) a revocation or suspension of the certificate or firm license or a revocation, suspension, or refusal to renew the license of the person's partner, member, or shareholder;

(8) a revocation, cancellation, placement on probation, limitation on the scope of practice, or suspension by another state, or a refusal of renewal by another state, of the authority issued by that state to the person, or to the person's partner, member, or shareholder, to engage in the practice of public accountancy for a reason other than the failure to pay the appropriate authorization fee;

(9) a revocation or suspension of, or a voluntary consent decree concerning, the right of the person, or of the person's partner, member, or shareholder, to practice before a state or federal agency for a reason the board determines warrants its action;

(10) a final conviction of or the imposition of deferred adjudication for an offense under the laws of any state or the United States that:

(A) is a felony; or

(B) includes fraud or dishonesty as an element of the offense;

(11) conduct indicating lack of fitness to serve the public as a professional accountant; or

(12) a violation by a license holder or an owner of a certified public accountancy firm who is not a license holder of:

(A) this chapter;

(B) professional standards adopted by the board; or

(C) a rule or order adopted by the board.

Sec. 901.503. BOARD ACTION INVOLVING APPLICANT.

(a) On a determination that a ground for discipline exists under Subsection (b), after notice and hearing as provided by Section 901.509, the board may:

(1) deny an individual's application to take the uniform CPA examination;

(2) prohibit an individual from taking the uniform CPA examination for a period not to exceed five years; or

(3) void an individual's uniform CPA examination grades.

(b) The board may discipline an individual under Subsection(a) for:

(1) fraud or deceit on an application for the uniform CPA examination;

(2) cheating on the uniform CPA examination;

(3) a final conviction of or the imposition of deferred adjudication for

an offense under the laws of any state or the United States that:

- (A) is a felony; or
- (B) includes fraud or dishonesty as an element of the offense;

or

(4) conduct indicating lack of fitness to serve the public as a professional accountant.

(c) The board shall provide for the refund of the examination fee paid by a person whose application for examination is denied under this section.

Sec. 901.504. LICENSE REVOCATION BASED ON VIOLATION OF CHAPTER.

After notice and hearing as provided by Section 901.509, the board:

- (1) may revoke a license that was issued or renewed in violation of this chapter or a rule adopted under this chapter; and
- (2) shall revoke the firm license of a sole proprietorship, partnership, corporation, limited liability company, or other business entity that does not meet each qualification for a firm license prescribed by this chapter.

Sec. 901.5045. EMERGENCY SUSPENSION.

(a) On determining that a license holder is engaged in or about to engage in an act of fraud or a violation of this chapter and that the license holder's continued practice constitutes an immediate threat to the public welfare, the board may issue an order suspending the license holder's license without notice or a hearing. The board shall immediately serve notice of the suspension on the license holder.

(b) The notice required by Subsection (a) must:

- (1) be personally served on the license holder or be sent by registered or certified mail, return receipt requested, to the license holder's last known address according to the board's records;
- (2) state the grounds for the suspension; and
- (3) inform the license holder of the right to a hearing on the suspension order.

(c) A license holder whose license is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Not later than the fifth day after the date a hearing is requested, the board shall issue a notice of hearing as provided by Section 901.509.

(d) The hearing shall be held not later than the fifth day after the date

notice of hearing is issued, unless the parties agree to a later date. A hearing on a suspension order under this section is subject to Chapter 2001, Government Code. If the hearing is before an administrative law judge, after the hearing, the administrative law judge shall recommend to the board whether to uphold, vacate, or modify the suspension order.

(e) A suspension order issued under this section remains in effect until further action is taken by the board. If the administrative law judge's recommendation under Subsection (d) is to vacate the order, the board shall determine whether to vacate the order not later than the second day after the date of the recommendation.

Sec. 901.505. PROCEDURE PENDING FINAL CONVICTION OF CERTAIN OFFENSES.

(a) On conviction of a person of an offense under the laws of any state or the United States that is a felony or that includes fraud or dishonesty as an element of the offense, after notice and hearing as provided by Section 901.509, the board may:

(1) suspend a certificate or firm license issued under this chapter;

or

(2) suspend or refuse to renew a license issued under this chapter.

(b) The period of the suspension or refusal to renew begins on the date of conviction and ends on the date the conviction becomes final or is reversed, set aside, or modified as provided by Subsection (d).

(c) If the conviction becomes final, the board may, without further notice and hearing, take disciplinary action under Section 901.501.

(d) If the conviction is reversed, set aside, or modified so that the underlying offense is not a felony or an offense that includes fraud or dishonesty as an element of the offense, the board shall reinstate the certificate, firm license, or license suspended under this section. A reinstatement under this subsection does not limit the board's right to take other disciplinary action authorized by this subchapter.

Sec. 901.506. VOLUNTARY SURRENDER OF CERTIFICATE OR FIRM LICENSE.

(a) Subject to board approval, a person who holds a certificate or firm license issued under this chapter may resign and surrender the certificate or firm license to the board at any time and for any reason.

(b) A person who resigns and surrenders a certificate or firm license may not apply for reinstatement of the certificate or firm license. The person may be issued a new certificate or firm license on completion of all requirements for the issuance of an original certificate or firm license. The board may not issue a certificate to an individual who previously resigned a certificate unless:

(1) after the date of resignation, the individual completes the examination requirement for a new certificate; or

(2) on application, the board waives the examination requirement.

(c) A person who applies for a new certificate or firm license must, if applicable, disclose in the application the fact that the person previously resigned and surrendered a certificate or firm license during the course of a disciplinary investigation or proceeding conducted by the board. The board shall consider that fact in determining whether to issue a new certificate or firm license to the person.

Sec. 901.507. REINSTATEMENT.

On receipt of a written application, and after notice and hearing, the board may:

(1) issue a new certificate to an individual whose certificate was revoked;

(2) issue a new firm license to a person whose firm license was revoked;

(3) reinstate a suspended license or modify the terms of the suspension;

(4) approve a previously denied application to take the uniform CPA examination; or

(5) reinstate an individual's previously voided uniform CPA examination grades.

Sec. 901.508. RIGHT TO HEARING.

(a) If the board proposes to take disciplinary action against a person under this subchapter, the person is entitled to a hearing before the board or a hearings officer appointed by the board.

(b) The board shall establish procedures by which a decision to take disciplinary action under this subchapter is made by or is appealable to the board.

Sec. 901.509. NOTICE OF HEARING.

(a) The board shall provide written notice of a hearing under this subchapter to the person who is the subject of the proposed disciplinary action not later than the 21st day before the date of the hearing.

(b) The notice must state:

- (1) the time and place of the hearing; and
- (2) the nature of each charge against the person.

(c) The notice may be served in person or by registered or certified mail to the person's last known address.

Sec. 901.510. LEGAL REPRESENTATION AT HEARING.

The attorney general or an attorney employed by the board shall represent the board at each hearing under this subchapter.

Sec. 901.511. DISCIPLINARY ACTION FOR ACT COMMITTED IN ANOTHER STATE.

(a) A license holder of this state who offers to perform or performs professional accounting services or who uses the license holder's title as a certified public accountant in another state or jurisdiction is subject to disciplinary action in this state for an act committed in the other state or jurisdiction for which the license holder would be subject to discipline as a license holder of the other state or jurisdiction.

(b) The board shall investigate any complaint made by the regulatory agency of another state or jurisdiction concerning a license holder of this state.

SUBCHAPTER L
Administrative Penalty

Sec. 901.551. IMPOSITION OF ADMINISTRATIVE PENALTY.

The board may impose an administrative penalty on a person regulated under this chapter who violates this chapter or a rule or order adopted under this chapter in a manner that constitutes a ground for disciplinary action.

Sec. 901.552. AMOUNT OF PENALTY.

(a) The amount of an administrative penalty may not exceed \$100,000 for each violation.

(b) In determining the amount of the penalty, the board shall consider:

- (1) the seriousness of the violation, including:
 - (A) the nature, circumstances, extent, and gravity of any prohibited act; and
 - (B) the hazard or potential hazard to the public;
 - (2) the economic damage to property caused by the violation;
 - (3) the history of previous violations;
 - (4) the amount necessary to deter a future violation;
 - (5) efforts to correct the violation; and
 - (6) any other matter that justice may require.
- (c) The board by rule shall adopt a schedule for purposes of this subchapter that prescribes ranges in the amounts of administrative penalties to be imposed for specified types of conduct and circumstances.

Sec. 901.553. REPORT AND NOTICE OF VIOLATION AND PENALTY.

- (a) If, after examination of a possible violation and the facts relating to that violation, the board determines that a violation has occurred, the board shall issue a preliminary report stating:
- (1) the facts on which the determination is based;
 - (2) the fact that an administrative penalty is to be imposed; and
 - (3) the amount of the penalty.
- (b) Not later than the 10th day after the date the report is issued, the board shall send a copy of the report by certified mail to the person charged with the violation, together with a statement of the person's right to a hearing relating to the alleged violation and the amount of the penalty.

Sec. 901.554. PENALTY TO BE PAID OR HEARING REQUESTED.

- (a) Not later than the 20th day after the date the person receives the report, the person may:
- (1) make a written request for a hearing; or
 - (2) pay the administrative penalty to the board.
- (b) Failure to request a hearing or pay the penalty within the time provided by this section waives the right to a hearing under this chapter.
- (c) If the board determines without a hearing that the person committed a violation and a penalty is to be imposed, the board shall:
- (1) provide written notice to the person of the board's findings; and
 - (2) enter an order requiring the person to pay the penalty.

Sec. 901.555. HEARING.

(a) If the person requests a hearing, the board shall conduct a hearing in the manner provided for a contested case hearing under Chapter 2001, Government Code.

(b) If the board determines after a hearing that the person committed the alleged violation, the board shall:

- (1) provide written notice to the person of the findings established by the hearing and the amount of the administrative penalty imposed; and
- (2) enter an order requiring the person to pay any penalty.

Sec. 901.556. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Not later than the 30th day after the date the board's order becomes final as provided by Section 2001.144, Government Code, the person shall:

- (1) pay the administrative penalty; or
- (2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may stay enforcement of the penalty by:

- (1) paying the penalty to the board for placement in an escrow account;
- (2) giving to the board a supersedeas bond in a form approved by the board that:
 - (A) is for the amount of the penalty; and
 - (B) is effective until judicial review of the board's order is final; or
- (3) filing with the board an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond.

(c) A person who fails to take action as provided by this section waives the right to judicial review of the board's order.

Sec. 901.557. COLLECTION OF PENALTY.

If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the board may refer the matter to the attorney general for collection of the penalty.

Sec. 901.558. REMITTANCE OF PENALTY AND INTEREST.

(a) If after judicial review, the administrative penalty is reduced or is not upheld by the court, the board shall:

(1) remit the appropriate amount, plus accrued interest, to the person if the person paid the penalty; or

(2) execute a release of the bond if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a) is paid at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

SUBCHAPTER M ***Other Penalties and Enforcement Provisions***

Sec. 901.601. CEASE AND DESIST ORDER.

(a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of public accountancy without a license under this chapter, the board, after notice and an opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

(b) A violation of an order under this section constitutes grounds for imposition of an administrative penalty under Subchapter L. Notwithstanding Section 901.552, the amount of an administrative penalty for a violation of an order under this section may not exceed \$25,000.

(c) The board by rule shall adopt a schedule for purposes of this section that prescribes ranges in the amounts of administrative penalties to be imposed for specified types of conduct and circumstances that violate an order under this section.

Sec. 901.6015. RESTITUTION.

(a) The board may order a license holder to pay restitution under Section 901.501(a)(10) to a person harmed by the license holder's:

(1) violation of this chapter; and

(2) failure to fulfill the terms of a contract with the person.

(b) The amount of restitution ordered under this section may not exceed the actual amount paid by the person to the license holder under the contract.

Sec. 901.602. CRIMINAL PENALTY.

(a) A person commits an offense if the person violates this chapter. Each violation is a separate offense.

(b) Except as otherwise provided by this subsection, an offense under this section is a Class B misdemeanor. An offense under this section that involves intentional fraud is punishable as:

(1) a state jail felony if it is shown on the trial of the offense that the violation resulted in a monetary loss of less than \$10,000 or did not result in a monetary loss;

(2) a felony of the third degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least \$10,000 but less than \$100,000; or

(3) a felony of the second degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least \$100,000.

(c) A complaint filed under this section must be filed in a district court in:

(1) Travis County, if the complaint is filed against a person who is licensed under this chapter or is not a resident of this state; or

(2) the county in which the person resides, if the complaint is filed against a person who is a resident of this state but is not licensed under this chapter.

Sec. 901.603. INTERVENTION IN ACTION.

Subject to approval by the board, a license holder or a professional organization of certified public accountants may intervene in an action by the board or may bring an action in the name of the license holder or professional organization to enforce any provision of this chapter against a person who does not hold a license or firm license.

Sec. 901.604. SINGLE ACT AS EVIDENCE OF PRACTICE.

In an action brought under this chapter, evidence of a single act prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order, or conviction without evidence of a general course of conduct.

Sec. 901.605. APPOINTMENT OF SECRETARY OF STATE AS AGENT.

A person who is not a resident of this state and who applies for a certificate or firm license is considered to have appointed the secretary of state as

the applicant's agent for service of process in any action or proceeding against the applicant arising out of any transaction connected with or incidental to professional accounting services performed by the applicant while the applicant holds a certificate or firm license.

Sec. 901.606. IMMUNITY FROM LIABILITY.

(a) A person acting in good faith who voluntarily reports or assists in the investigation of a report of an alleged violation of this chapter or who testifies or otherwise participates in an administrative or judicial proceeding arising from a report or investigation of an alleged violation of this chapter is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) A person who reports the person's own violation of this chapter or who acts in bad faith or with malicious purpose in reporting an alleged violation of this chapter is not immune from civil or criminal liability.

APPENDIX

Other amendments to section 901 of the *Occupations Code*

Section 16

Sections 901.356 and 901.412, Occupations Code, are repealed.

Section 17

This act takes effect September 1, 2007.