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AMENDED IN ASSEMBLY FEBRUARY 22, 2006
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1868

Introduced by Assembly Member Bermudez
(Coauthors: Assembly Members Koretz, Maze, and Tran)

January 17, 2006

An act to amend ~~and repeal Sections 5050 and 5054 of Section 5050 of, to amend, repeal, and add Section 5054 of, to add Sections 5050.1 and 5054.1 to, and to add and repeal Section 5096.12 of,~~ the Business and Professions Code, relating to accountancy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1868, as amended, Bermudez. Accountancy: licensure.

Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy, in the Department of Consumer Affairs. Existing law prohibits a person from engaging in the practice of public accountancy in this state unless he or she holds either a valid permit issued by the board or a practice privilege, as specified. ~~Existing law authorizes a licensed accountant from another state, who does not physically enter California, does not solicit California clients, and does not assert or imply licensure in California, to prepare individual or estate tax returns for natural persons who are or were California residents. A violation of this provision is a crime.~~

This bill would provide that the prohibition against practicing accountancy in California without a license does not apply to a ~~certified public accountant or public accountant licensed and lawfully~~

~~practicing in another state or person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country to the extent that he or she is temporarily practicing in this state incident to his or her regular practice and does not make specified misrepresentations an engagement in that country, provided that the temporary practice is regulated by the foreign country and performed under the accounting or auditing standards of that country and that the person does not hold himself or herself out as being the holder of a California license or practice privilege. The bill would also, until January 1, 2011, provide that the prohibition against practicing accountancy in California without a license does not apply to a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state to the extent that the practice is incident to practice in that state, provided that the person or firm does not solicit clients in California and does not assert or imply licensure in California.~~

Existing law authorizes a licensed accountant or accounting firm from another state that does not physically enter California, does not solicit California clients, and does not assert or imply licensure in California to prepare individual or estate tax returns for natural persons who are or were California residents. A violation of these provisions is a crime.~~The~~

This bill would, until January 1, 2011, instead apply~~the this~~ authorization for a licensed accountant who does not enter California to the performance provision of any tax services, litigation support, expert witness testimony, or consulting incidental to their practice in another state, and would also prohibit the foreign licensee from asserting or implying that he or she is the holder of a practice privilege, and would require that California not be his or her principal place of business. *The bill would exempt a California firm using such a licensee to provide those tax services from all of the requirements applicable under those provisions.*~~The bill would repeal all of these provisions on January 1, 2013.~~

Existing law authorizes an individual whose principal place of business is not in California and who has a valid and current license, certificate, or permit to practice public accountancy from another state to engage in the practice of public accountancy in California under a practice privilege if certain conditions are met.

This bill would, until January 1, 2011, permit a firm authorized to practice in another state that does not have an office in this state to practice public accountancy in California through the holder of a practice privilege if certain conditions are met.

This bill would provide that a person who engages in accountancy in California consents to the jurisdiction of the board and is deemed to have appointed the regulatory agency of his or her state or foreign jurisdiction as the person’s agent for a service of process in actions or proceedings by or before the board. The bill would, until January 1, 2011, authorize the board to revoke, suspend, or otherwise restrict an authorization to practice granted to a foreign accounting firm or discipline the holder of that authorization for any violation of the accountancy provisions. The bill would allow an application for reinstatement to practice, as specified.

Because this bill would subject additional persons to requirements within the licensing provisions, the violation of which are a crime, and because the bill would create new requirements and prohibitions within the licensing provisions, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5050 of the Business and Professions
- 2 Code is amended to read:
- 3 5050. (a) ~~No~~ Except as provided in subdivisions (b) and (c)
- 4 of this section, in subdivisions (a) and (b) of Section 5054, and in
- 5 Section 5096.12, no person shall engage in the practice of public
- 6 accountancy in this state unless ~~he or she~~ that person is the
- 7 holder of a valid permit to practice public accountancy issued by
- 8 the board or ~~is the~~ a holder of a practice privilege pursuant to
- 9 Article 5.1 (commencing with Section 5096).

1 (b) (1) Nothing in this chapter shall prohibit a certified public
 2 accountant or a public accountant licensed in another state or
 3 foreign country lawfully practicing therein from temporarily
 4 practicing in this state incident to an engagement in another state
 5 or country, provided that both:

6 (1) ~~The temporary and incidental practice is regulated by the~~
 7 ~~accountant's state or country of licensure.~~

8 (2) ~~The accountant does not hold himself or herself out as~~
 9 ~~being licensed or certified by this state or as the holder of a~~
 10 ~~practice privilege pursuant to Article 5.1 (commencing with~~
 11 ~~Section 5096).~~

12 ~~This subdivision applies only to certified public accountants~~
 13 ~~who physically enter California to provide services to clients.~~

14 (e) ~~This section shall remain in effect only until January 1,~~
 15 ~~2013, and as of that date is repealed, unless a later enacted~~
 16 ~~statute, that is enacted before January 1, 2013, deletes or extends~~
 17 ~~that date.~~

18 *accountant, a public accountant, or a public accounting firm*
 19 *lawfully practicing in another state from temporarily practicing*
 20 *in this state incident to practice in another state. An individual*
 21 *providing services under this subdivision may not solicit clients*
 22 *in California and may not assert or imply that the individual is*
 23 *licensed to practice public accountancy in California. A firm not*
 24 *registered to practice public accountancy in California that is*
 25 *providing services under this subdivision may not solicit clients*
 26 *in California and may not assert or imply that the firm is licensed*
 27 *to practice public accountancy in California.*

28 (2) *This subdivision shall become inoperative on January 1,*
 29 *2011.*

30 (c) *Nothing in this chapter shall prohibit a person who holds a*
 31 *valid and current license, registration, certificate, permit, or*
 32 *other authority to practice public accountancy from a foreign*
 33 *country, and who is lawfully practicing therein, from temporarily*
 34 *engaging in the practice of public accountancy in this state*
 35 *incident to an engagement in that country, provided that:*

36 (1) *The temporary practice is regulated by the foreign country*
 37 *and is performed under accounting or auditing standards of that*
 38 *country.*

39 (2) *The person does not hold himself or herself out as being*
 40 *the holder of a valid California license to practice public*

1 *accountancy or the holder of a practice privilege pursuant to*
2 *Article 5.1 (commencing with Section 5096).*

3 *SEC. 2. Section 5050.1 is added to the Business and*
4 *Professions Code, to read:*

5 *5050.1. Any person who engages in any act that is the*
6 *practice of public accountancy in this state consents to the*
7 *personal, subject matter, and disciplinary jurisdiction of the*
8 *board and is deemed to have appointed the regulatory agency of*
9 *the state or foreign jurisdiction that issued the person's permit,*
10 *certificate, license or other authorization to practice as the*
11 *person's agent on whom notice, subpoenas, or other process may*
12 *be served in any action or proceeding by or before the board*
13 *against or involving that person.*

14 ~~SEC. 2.~~

15 *SEC. 3. Section 5054 of the Business and Professions Code is*
16 *amended to read:*

17 *5054. (a) Notwithstanding any other provision of this*
18 *chapter, an individual or firm holding a valid and current license,*
19 *certificate, or permit to practice public accountancy from another*
20 *state may ~~perform tax services, litigation support, expert witness~~*
21 *~~testimony, or consulting incidental to their practice in another~~*
22 *~~state without provide tax services without~~ obtaining a permit to*
23 *practice public accountancy issued by the board under this*
24 *chapter or a practice privilege pursuant to Article 5.1*
25 *(commencing with Section 5096) ~~provided that the subject to the~~*
26 *following restrictions:*

27 *(1) The individual or firm does not physically enter California*
28 *to practice public accountancy pursuant to Section ~~5051, does~~*
29 *5051.*

30 *(2) The individual or firm does not solicit California ~~clients,~~*
31 *~~and clients.~~*

32 *(3) The individual or firm does not assert or imply that the*
33 *individual or firm is licensed or registered to practice public*
34 *accountancy in California or a holder of a practice privilege*
35 *pursuant to Article 5.1 (commencing with Section 5096) and*
36 *California is not their principal place of business.*

37 *(b) Notwithstanding subdivision (a), any firm that is licensed*
38 *to practice public accountancy in this state may provide the*
39 *services set forth in subdivision (a) through individuals qualified*

1 to practice under subdivision (a), however, the restrictions in
 2 subdivision (a) shall not apply to the firm.

3 (c) The board may, by regulation, limit the number of tax
 4 returns that may be prepared pursuant to subdivision (a).

5 (e)

6 (d) This section shall remain in effect only until January 1,
 7 ~~2013~~ 2011, and as of that date is repealed unless a later enacted
 8 statute, that is enacted before January 1, ~~2013~~ 2011, deletes or
 9 extends that date.

10 SEC. 4. Section 5054 is added to the Business and
 11 Professions Code, to read:

12 5054. (a) Notwithstanding any other provision of this
 13 chapter, an individual or firm holding a valid and current
 14 license, certificate, or permit to practice public accountancy
 15 from another state may prepare tax returns for natural persons
 16 who are California residents or estate tax returns for the estates
 17 of natural persons who were clients at the time of death without
 18 obtaining a permit to practice public accountancy issued by the
 19 board under this chapter or a practice privilege pursuant to
 20 Article 5.1 (commencing with Section 5096) provided that the
 21 individual or firm does not physically enter California to practice
 22 public accountancy pursuant to Section 5051, does not solicit
 23 California clients, and does not assert or imply that the
 24 individual or firm is licensed or registered to practice public
 25 accountancy in California.

26 (b) The board may, by regulation, limit the number of tax
 27 returns that may be prepared pursuant to subdivision (a).

28 (c) This section shall become operative on January 1, 2011.

29 SEC. 5. Section 5054.1 is added to the Business and
 30 Professions Code, to read:

31 5054.1. The board may revoke, suspend, or otherwise restrict
 32 the authorization to practice under subdivision (b) or (c) of
 33 Section 5050, under subdivision (a) or (b) of Section 5054, or
 34 under Section 5096.12, or discipline the holder of that
 35 authorization for any act that would be a violation of this
 36 chapter, ground for discipline against a licensee or practice
 37 privilege holder, or ground for denial of a license or practice
 38 privilege under this chapter. The provisions of the Administrative
 39 Procedure Act, including, but not limited to, the provisions
 40 regarding commencement of a disciplinary proceeding by the

1 *filing of an accusation by the board shall apply to proceedings*
2 *commenced under this section. Any person whose authorization*
3 *to practice under subdivision (b) or (c) of Section 5050, under*
4 *subdivision (a) or (b) of Section 5054, or under Section 5096.12*
5 *has been revoked may apply for reinstatement of the*
6 *authorization to practice under subdivision (b) or (c) of Section*
7 *5050, under subdivision (a) or (b) of Section 5054, or under*
8 *Section 5096.12 not less than one year after the effective date of*
9 *the board's decision revoking the temporary practice*
10 *authorization unless a longer time, not to exceed three years, is*
11 *specified in the board's decision revoking the temporary practice*
12 *authorization.*

13 *SEC. 6. Section 5096.12 is added to the Business and*
14 *Professions Code, to read:*

15 *5096.12. (a) A firm that is authorized to practice in another*
16 *state and that does not have an office in this state may engage in*
17 *the practice of public accountancy in this state through the*
18 *holder of a practice privilege provided that:*

19 *(1) The practice of public accountancy by the firm is limited to*
20 *authorized practice by the holder of the practice privilege.*

21 *(2) The firm consents to the personal, subject matter, and*
22 *disciplinary jurisdiction of the board with respect to any practice*
23 *under this section.*

24 *(b) The board may revoke, suspend, or otherwise restrict the*
25 *authorization under this section or discipline the firm for any act*
26 *that would be grounds for discipline against a holder of a*
27 *practice privilege through which the firm practices. A proceeding*
28 *under this subdivision shall be subject to Section 5054.1.*

29 *(c) This section shall remain in effect only until January 1,*
30 *2011, and as of that date is repealed unless a later enacted*
31 *statute, that is enacted before January 1, 2011, extends that date.*

32 *SEC. 7. No reimbursement is required by this act pursuant to*
33 *Section 6 of Article XIII B of the California Constitution because*
34 *the only costs that may be incurred by a local agency or school*
35 *district will be incurred because this act creates a new crime or*
36 *infraction, eliminates a crime or infraction, or changes the*
37 *penalty for a crime or infraction, within the meaning of Section*
38 *17556 of the Government Code, or changes the definition of a*

- 1 *crime within the meaning of Section 6 of Article XIII B of the*
- 2 *California Constitution.*

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