

AN ACT

ENTITLED, An Act to regulate the practice of accountancy.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That sections 36-20A-1 to 36-20A-36, inclusive, be repealed.

Section 2. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Terms as used in this chapter mean:

- (1) "Board," the South Dakota Board of Accountancy established pursuant to this chapter or its predecessor;
- (2) "Certificate," a certificate as a certified public accountant issued pursuant to this chapter or corresponding provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state;
- (3) "Client," a person or entity that agrees with a licensee to receive any professional service other than an employer-employee relationship;
- (4) "CPA firm" and "PA firm," a sole proprietorship, a corporation, a partnership, or any other form of organization permitted by law issued a permit under this chapter;
- (5) "Compilation," providing a service to be performed in accordance with Statements on Standards for Accounting and Review Services (SSARS) that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements;
- (6) "Domestic," referring to a jurisdiction of a state;
- (7) "Foreign," referring to a jurisdiction outside of the United States;
- (8) "License," a certificate issued pursuant to this chapter, a permit issued pursuant to this chapter, or a registration pursuant to this chapter; or in each case, a certificate, license, or

- permit issued under corresponding provisions of prior law;
- (9) "Licensee," the holder of a certificate issued pursuant to this chapter or of a license issued under prior law, or of a permit issued pursuant to this chapter; or in each case, a certificate, license, or permit issued under corresponding provisions of prior law;
 - (10) "Manager," manager of a limited liability company;
 - (11) "Member," a member of a limited liability company;
 - (12) "Peer review," a study, appraisal, or review of one or more aspects of the professional work of a certificate holder or CPA firm that performs attest or compilation services, by a qualified person or persons who hold certificates and who are not affiliated with the certificate holder or CPA firm being reviewed;
 - (13) "Permit," a permit to practice public accountancy issued to a firm pursuant to this chapter or corresponding provisions of prior law or under corresponding provisions of the laws of other states;
 - (14) "Professional," arising out of or related to the specialized knowledge or skills associated with CPAs or PAs;
 - (15) "Public accountant," a person holding a public accountant license issued pursuant to provisions of prior law;
 - (16) "State," any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam;
 - (17) "Substantial equivalency," a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements contained in this chapter or that an individual CPA's education, examination, and experience qualifications are comparable to or exceed the education,

examination, and experience requirements contained in this chapter.

Section 3. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, attest means providing the following financial statement services:

- (1) Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);
- (2) Any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);
- (3) Any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); and
- (4) The issuance of any report prescribed by the Statements on Auditing Standards, the Statements on Standards for Accounting and Review Services, or the Statements on Standards for Attestation Engagements on any services to which those statements on standards apply, indicating that the service was performed in accordance with standards established by the American Institute of Certified Public Accountants.

The statements on standards specified in this definition shall be adopted by reference by the board, by rule promulgated pursuant to chapter 1-26, and shall be those developed for general application by recognized national accountancy organizations.

Section 4. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, report, if used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements or assertion. It also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting

or auditing and that the service reported upon was performed under standards for such services established by the American Institute of Certified Public Accountants. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term, report, includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language or both; and it includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence or both.

Section 5. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

There is created the South Dakota Board of Accountancy, which has responsibility for the administration and enforcement of this chapter. The board consists of six members, all of whom shall be residents of this state. Five members shall be appointed by the Governor for four-year terms. Four of the appointed members shall be holders of active certificates and three of these shall be in the practice of public accountancy. One appointed member shall be a lay member who is not a holder of a certificate under this chapter but shall have had professional or practical experience in the use of accounting services and financial statements, so as to be qualified to make judgments about the qualifications and conduct of persons and firms subject to regulation under this chapter. The auditor general shall serve as an ex officio member. Any vacancy occurring during a term shall be filled by appointment by the Governor for the unexpired term. Upon the expiration of the member's term of office, a member shall continue to serve until a successor is appointed and takes office. Any member of the board whose certificate is revoked or suspended shall automatically cease to be a member of the board, and the Governor may remove any member of the board for cause. No person who has

served two successive complete terms is eligible for reappointment, but appointment to fill an unexpired term is not considered a complete term for this purpose.

Section 6. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board shall elect annually from among its members a chair, vice chair, and secretary-treasurer. A quorum for the transaction of board business shall consist of a majority of the members. The board shall meet at such times and places as may be determined by the board. The board shall have a seal which shall be judicially noticed. The board shall retain or arrange for the retention of all applications and all documents under oath that are filed with the board and also records of its proceedings, and it shall maintain a registry of the names and addresses of all active licensees under this chapter. The board may maintain a registry of the names and addresses of all other licensees. In any proceeding in court, whether civil or criminal, arising out of or founded upon any provision of this chapter, copies of any records certified as true copies under the seal of the board are admissible in evidence as tending to prove the contents of the records.

Section 7. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board is within the Department of Commerce and Regulation and shall submit reports of its activities in the form and at such times as required by the secretary of commerce and regulation.

Section 8. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

All money coming into the custody of the board each calendar month shall be paid by the board to the state treasurer on or before the tenth day of the next month. The state treasurer shall credit the money to the South Dakota Board of Accountancy fund. The money in the South Dakota Board of Accountancy fund is continuously appropriated to the board for the purpose of paying the expense

of administering and enforcing the provisions of this chapter. However, the total expense incurred may not exceed the total money collected by the board under the provisions of this chapter.

Section 9. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Each member of the board shall be paid an amount established by law for each day or portion thereof spent in the discharge of the member's official duties and shall be reimbursed for the member's expenses incurred in the discharge of the member's official duties in accordance with the schedule adopted by the Board of Finance for state employees.

Section 10. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board may employ an executive director and such other personnel as it deems necessary in its administration and enforcement of this chapter. The board may appoint committees or persons to advise or assist it in such administration and enforcement. The board may retain legal counsel to advise and assist it in addition to the advice and assistance provided by the attorney general.

Section 11. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

In addition to any other power granted to the board, the board may take any action that is necessary and proper to effectuate the purposes of this chapter, including:

- (1) The power to sue and be sued in its official name as an agency of this state;
- (2) To issue subpoenas to compel the attendance of witnesses and the production of documents;
- (3) To administer oaths;
- (4) To take testimony and to cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of this chapter and comparable acts

of other states; and

- (5) To receive evidence, concerning all matters within the scope of this chapter.

In case of disobedience of a subpoena, the board may invoke the aid of any court in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Section 12. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board, its members, and its agents are immune from personal liability for actions taken in good faith in the discharge of the board's responsibilities, and the state shall hold the board, its members, and its agents harmless from all costs, damages, and attorneys' fees arising from claims and suits against them with respect to matters to which such immunity applies.

Section 13. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board may promulgate rules, pursuant to chapter 1-26, governing its administration and enforcement of this chapter and the conduct of licensees, including:

- (1) Rules governing the board's meetings and the conduct of its business;
- (2) Rules of procedure governing the conduct of investigations and hearings by the board;
- (3) Rules specifying the fees, educational and experience qualifications required for the issuance of certificates, the date for renewal of firm permits and certificates, and the continuing professional education required for renewal of certificates;
- (4) Rules of professional conduct to control the quality and integrity of the practice of public accountancy by licensees, covering such areas as independence, integrity, and objectivity; competence and technical and professional standards; responsibilities to the public; and responsibilities to clients;
- (5) Rules governing the manner and circumstances of use by holders of certificates who do not

practice public accountancy, as defined under this chapter, of the titles certified public accountant and CPA;

- (6) Rules specifying procedures and fees for registration of certificate holders who do not practice public accountancy, as defined under this chapter;
- (7) Rules governing the manner and circumstances of use by holders of licenses issued under prior law who do not practice public accountancy, as defined under this chapter, of the titles public accountant and PA;
- (8) Rules specifying procedures and fees for registration of license holders who do not practice public accountancy, as defined under this chapter;
- (9) Rules regarding peer review pursuant to this chapter;
- (10) Rules specifying peer review administrative fees;
- (11) Rules specifying procedures and fees for required peer review documentation not filed in a timely manner;
- (12) Rules specifying fees for examination and reexamination and issuance of a certificate;
- (13) Rules specifying procedures and fees for proctoring applicants from another jurisdiction;
- (14) Rules specifying the procedures and fees for initial issuance or renewal of a firm permit;
- (15) Rules governing the application and fees for a modification of a disciplinary action or reissue of a certificate or firm permit;
- (16) Rules governing the methods, eligibility, and requirements for applying for examination and reexamination;
- (17) Rules specifying procedures and fees for renewal of certificates and firm permits not filed in a timely manner;
- (18) Rules specifying procedures and fees for replacement of a certificate or permit;
- (19) Rules specifying methods and requirements for conducting the examination;

- (20) Rules specifying methods, eligibility, and requirements of applying for a certificate;
- (21) Rules specifying procedures and fees for issuance of certificates and firm permits not filed within the required period of time;
- (22) Rules defining active and inactive status of both certificate and PA license holders who are not practicing public accountancy; and
- (23) Rules specifying procedures and fees on substantial equivalency.

Section 14. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board shall grant a certificate to any applicant who meets the requirements of good moral character, education, examination, and experience requirements and who pays the fees prescribed in this chapter.

Section 15. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Good moral character for purposes of section 14 of this Act means lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the board or lack of good moral character is supported by clear and convincing evidence. If an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal.

Section 16. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The education requirement for a certificate, which shall be met before one hundred days after an

applicant sits for the examination prescribed in this chapter, is at least one hundred fifty semester hours of college education, including graduation from an accredited college or university with a baccalaureate or a graduate degree in accounting, or the satisfactory completion of a course of study which the board has determined to be substantially the equivalent of an accounting degree, including related courses in other areas of business administration. Such courses of study may be in a college or university, recognized by the board.

Section 17. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The examination required to be passed as a condition for the granting of a certificate shall be held at least annually and shall test the applicant's knowledge of the subjects of accounting, auditing, and such other related subjects as the board may specify by rule promulgated pursuant to chapter 1-26. The time for holding such examination shall be determined by the board and may be changed from time to time. The board shall prescribe, by rule promulgated pursuant to chapter 1-26, the methods of applying for and conducting the examination, including methods for grading and determining a passing grade required of an applicant for a certificate. However, the board shall, to the extent possible, assure that the examination, grading of the examination, and the passing grades are uniform with those applicable in other states. The board may make use of any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants and may contract with third parties to perform such administrative services with respect to the examination to assist it in performing its duties.

Section 18. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An applicant shall pass all parts of the examination provided for in this section to qualify for a certificate. If at any sitting of the examination an applicant passes the number of parts specified by

the board, by rule promulgated pursuant to chapter 1-26, then the applicant shall be given credit for those parts passed and need not sit for reexamination in those parts if:

- (1) The applicant wrote all parts of the examination specified by the board, by rule promulgated pursuant to chapter 1-26;
- (2) The applicant attained a minimum grade specified by the board, by rule promulgated pursuant to chapter 1-26, on each section not passed at that sitting;
- (3) The applicant passes the remaining parts of the examination within a period of time specified by the board, by rule promulgated pursuant to chapter 1-26, given after the initial examination at which the first parts were passed;
- (4) At each subsequent sitting at which the applicant seeks to pass any additional parts, the applicant writes all parts as specified by the board, by rule promulgated pursuant to chapter 1-26; and
- (5) In order to receive credit for passing additional parts in any such subsequent sitting, the applicant attains such grades on parts written but not passed on such sitting as specified by the board, by rule promulgated pursuant to chapter 1-26.

Section 19. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An applicant shall be given credit for any parts of an examination passed in another state if such credit would have been given, under then applicable requirements, if the applicant had taken the examination in this state. The board may in particular cases waive or defer any of the foregoing requirements regarding the circumstances in which the various parts of the examination shall be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet such requirement.

Section 20. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as

follows:

An applicant shall pass an examination covering the rules of ethics and professional conduct promulgated by the board pursuant to chapter 1-26. The examination may be part of the uniform CPA examination or may be a separate examination.

Section 21. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board may charge, or provide for a third-party administering the examination to charge, each applicant a fee, in an amount prescribed by the board, by rule promulgated pursuant to chapter 1-26, for each section of the examination or reexamination taken by the applicant.

Section 22. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An applicant for initial issuance of a certificate under this chapter shall show that the applicant has acquired one year of experience. This experience shall include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills, all of which were verified by a licensee, meeting requirements prescribed by the board, by rule promulgated pursuant to chapter 1-26. Acceptable experience may be gained through employment in government, industry, academia, or public practice. Any person holding a valid certificate issued by this state prior to July 1, 2002, is deemed to have met the requirements of this section.

Section 23. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An individual who passes the examination as a South Dakota candidate may apply for a certificate in accordance with requirements and by such date established by rule, promulgated pursuant to chapter 1-26. The board shall grant or renew a certificate to any person who makes application and

demonstrates qualifications that are in accordance with the provisions of this chapter eligibility under the substantial equivalency standard provided in this chapter.

Section 24. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

A certificate shall be initially issued, and renewed, for a period of one year. However, certificates shall expire on the renewal date as established by the board, by rule promulgated pursuant to chapter 1-26. Applications for such certificates shall be made in such form, and in the case of applications for renewal, between such dates, as the board shall specify by rule promulgated pursuant to chapter 1-26. The board shall grant or deny any such application no later than ninety days after the application is filed in proper form. If the applicant seeks the opportunity to show that issuance or renewal of a certificate was mistakenly denied, or if the board is not able to determine whether it should be granted or denied, the board may issue to the applicant a provisional certificate, which shall expire ninety days after its issuance or when the board determines whether to issue or renew the certificate for which application was made, whichever occurs first.

The failure of an applicant to renew under this chapter does not deprive the applicant of the right of renewal thereafter if the applicant is otherwise qualified.

Section 25. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Any holder of a certificate or registration shall relinquish such document to the board within thirty days after such certificate or registration has been suspended or revoked.

Section 26. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board shall issue a certificate to an applicant who does not qualify for reciprocity under the substantial equivalency standard provided in this chapter but who holds a certificate, license, or permit

issued by another state upon a showing that:

- (1) The applicant passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in this state;
- (2) The applicant had four years of experience of the type described in this chapter or meets equivalent requirements prescribed by the board, by rule promulgated pursuant to chapter 1-26, after passing the examination upon which the applicant's certificate was based and within the ten years immediately preceding the application; and
- (3) The applicant has fulfilled the requirements of continuing professional education that would have been applicable under subdivision (2) if the applicant's certificate, license, or permit was issued more than four years prior to the application for issuance of an initial certificate under this chapter.

Section 27. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

A certificate holder licensed by another state, before establishing a principal place of business in this state, shall request the issuance of a certificate from the board. The board shall issue a certificate to any applicant who obtains from the board of the other state verification that such applicant's qualifications are substantially equivalent to the CPA licensure requirements of this chapter.

Section 28. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

For renewal of a certificate under this chapter, a licensee shall participate in a program of learning designed to maintain professional competency. The program of learning shall comply with rules, promulgated by the board pursuant to chapter 1-26. A licensee shall complete one hundred twenty hours of continuing education in each three-year renewal period. The board may, by rule promulgated pursuant to chapter 1-26, establish an exception to this requirement for certificate holders who do

not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Any licensee granted such an exception by the board must place the word, inactive, adjacent to their CPA title or PA title on any business card, letterhead, or any other document or device, with the exception of their CPA certificate or PA license, on which their CPA or PA title appears.

Section 29. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board shall charge a fee for each application for initial issuance or renewal of a certificate under this chapter in an amount prescribed by the board, by rule promulgated pursuant to chapter 1-26.

Section 30. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An applicant for initial issuance or renewal of a certificate under this chapter shall in the application, list any state in which the applicant has applied for or holds a certificate, license, or permit and list any past denial, revocation, or suspension of a certificate, license, or permit. Each holder of or applicant for a certificate under this chapter shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate, license, or permit by another state, change of address or employment, or any conviction of a felony.

Section 31. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board shall issue a certificate to a holder of a substantially equivalent foreign designation if the following conditions are satisfied:

- (1) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid certificate issued by this state to obtain such foreign authority's comparable designation;
- (2) The foreign designation was duly issued by a foreign authority that regulates the practice of public accountancy, based on educational and examination requirements established by the foreign authority or by statute and the foreign designation has not expired or been revoked or suspended;
- (3) The applicant received the designation, based on educational and examination standards substantially equivalent to those in effect in this state at the time the foreign designation was granted, and the designation was issued upon the basis of educational, examination, and experience requirements established by the foreign authority or by law;
- (4) The applicant passed a qualifying examination, with the examination grading and passing grades being uniform with those applicable in other states, and an examination acceptable to the board on the law, rules, and code of ethical conduct in effect in this state; and
- (5) The applicant received the designation based on educational and examination standards substantially equivalent to those in effect in this state at the time the foreign designation was granted; completed an experience requirement substantially equivalent to the requirement provided in this chapter in the jurisdiction which granted the foreign designation or has completed four years of professional experience in this state; or meets equivalent requirements prescribed by the board, by rule promulgated pursuant to chapter 1-26, within the ten years immediately preceding the application; and passed a uniform qualifying examination consistent with national standards and an examination on the laws, rules, and code of ethical conduct in effect in this state.

An applicant under this section shall list in the application all jurisdictions, foreign and domestic,

in which the applicant has applied for or holds a designation to practice public accountancy, and each holder of a certificate issued under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction. The board has the sole authority to interpret the application of the provisions of this section.

Section 32. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Any certificate holder who performs compilation services for the public other than through a CPA firm shall undergo, no more frequently than once every three years, as a condition for renewal of a certificate, a peer review conducted in such manner as the board shall specify by rule, promulgated pursuant to chapter 1-26. The review shall include verification that the certificate holder has met the competency requirements set out in professional standards for such services.

Section 33. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board shall grant or renew a permit to practice as a CPA firm or PA firm to an entity that makes application and demonstrates its qualifications in accordance with this chapter or to a CPA firm originally licensed in another state that establishes an office in this state. A firm with multiple locations shall obtain a permit for each location. A firm must hold a permit issued under this section in order to provide attest services as defined in this chapter or to use the title, CPAs, CPA firm, PAs, or PA firm.

A permit shall be initially issued and renewed for periods of not more than one year. However, a permit expires on the date as established by the board, by rule promulgated pursuant to chapter 1-26 following issuance or renewal. An application for a permit shall be made in such form, and in the case of an application for renewal, between such dates as the board may, by rule promulgated pursuant

to chapter 1-26, specify. If the applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied or if the board is not able to determine whether it should be granted or denied, the board may issue to the applicant a provisional permit, which expires ninety days after its issuance, or when the board determines whether to issue or renew the permit for which the application was made, whichever occurs first.

Section 34. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An applicant for initial issuance or renewal of a permit to practice under this chapter shall comply with the following:

- (1) Notwithstanding any other provision of law, a majority of the owners of the firm, in terms of financial interests and voting rights, are holders of a certificate and are licensed in some state, and such owners whose principal place of business is in this state and who perform professional services in this state hold a valid certificate issued under this chapter or the corresponding provision of prior law or are public accountants registered under this chapter. Firms may include nonlicensee owners. However, such firms must be controlled by the majority vote of owners who are holders of a certificate and who are licensed in some state, and such control may not be relinquished by contract, such as through veto rights held by owners of less than a majority of the owners. The firm and its ownership shall comply with rules promulgated by the board pursuant to chapter 1-26. For firms of public accountants, at least a majority of the owners of the firm must be holders of registrations under this chapter;
- (2) Any CPA or PA firm as defined in this chapter may include nonlicensee owners if the firm designates a licensee of this state who is responsible for the proper registration of the firm and identifies non-license owners to the board;

- (3) All nonlicensee owners are active individual participants in the CPA or PA firm or an affiliated entity;
- (4) The firm complies with such other requirements as the board may establish by rule promulgated pursuant to chapter 1-26;
- (5) Any individual licensee who is responsible for supervising attest or compilation services and signs or authorizes another individual to sign the accountant's report on the financial statements on behalf of the firm shall meet the experience requirements set out in the professional standards for such services; and
- (6) Any individual licensee who signs or authorizes an individual to sign the accountant's report on the financial statements on behalf of the firm shall meet the experience requirement of this chapter.

An applicant for initial issuance or renewal of a permit to practice shall register each office of the firm within this state with the board and show that all attest and compilation services rendered in this state are under the charge of a person holding a valid certificate issued under this chapter or the corresponding provision of prior law or some other state.

Section 35. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An applicant for initial issuance or renewal of a permit under this chapter shall list in the application any state in which the applicant has applied for or holds a permit as a CPA firm and shall list any past denial, revocation, or suspension of a permit by any other state.

Section 36. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Each holder of or applicant for a permit under this chapter shall notify the board in writing, within thirty days after its occurrence, of any change in the identity of any partner, officer, shareholder,

member, or manager whose principal place of business is in this state, any change in the number or location of offices within this state, any change in the identity of the person in charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any other state.

Firms failing to comply with the provisions of this chapter due to changes in firm ownership or personnel, after receiving or renewing a permit, shall take immediate corrective action to return the firm to compliance. The board may grant a reasonable period of time for a firm to take corrective action as specified by rule promulgated pursuant to chapter 1-26. Failure of the firm to comply within a reasonable period as defined by the board shall result in the suspension or revocation of the firm permit.

Section 37. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board may, by rule promulgated pursuant to chapter 1-26, require, on either a uniform or a random basis, as a condition of renewal of firm permits pursuant to this chapter, that an applicant undergo peer review conducted in such manner and producing such satisfactory result as the board may specify. However, any such requirement shall include reasonable provision for compliance by means of an applicant furnishing evidence of a satisfactory peer review performed for other purposes. Such review shall include a verification that individuals in the firm who are responsible for supervising attest and compilation services and who sign or authorize someone to sign the accountant's report on the financial statements on behalf of the firm, meet the competency requirements set out in the professional standards for such services. Any rule promulgated pursuant to this section shall:

- (1) Include reasonable provision for compliance by an applicant showing that it has, within the preceding three years, undergone a peer review that is a satisfactory equivalent to peer review generally required pursuant to this section;
- (2) Require, with respect to a peer review contemplated by subdivision (1), that it be subject

to oversight by an oversight body established or sanctioned by board rule, promulgated pursuant to chapter 1-26, which body shall periodically report to the board on the effectiveness of the review program under its charge, and provide to the board a listing of firms that have participated in a peer review program that is satisfactory to the board; and

- (3) Require, with respect to peer review contemplated by subdivision (1), that any peer review process be operated and any documents maintained in a manner designed to preserve confidentiality, and that neither the board nor any third party, other than the oversight body, may have access to documents furnished or generated in the course of the review.

Pursuant to the peer review process, the board shall treat the reports of the reviewer and any records submitted to the reviewer by the firm subject to review as confidential information. The board may not disclose such information to any persons other than staff members, legal counsel, and other persons retained by the board to assist it in fulfilling its responsibilities under this chapter and the rules, promulgated by the board pursuant to chapter 1-26.

Section 38. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board shall charge a fee for each application for initial issuance or renewal of a permit in an amount prescribed by the board, by rule promulgated pursuant to chapter 1-26.

Section 39. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Any person who, on the effective date of this Act, holds any license or permit as a public accountant issued under prior law of this state may have the registration renewed upon fulfillment of the continuing professional education requirements for renewal of certificates provided in this chapter, and on the renewal cycle and payment of fees therein prescribed for renewal of certificates. Any registration not so renewed expires three years after the effective date of this Act. Firms of public

accountants holding permits to practice issued under prior law of this state may have their permits to practice renewed pursuant to the procedures, and subject to the requirements for renewal of permits to practice for firms of certified public accountants, provided in this chapter. So long as such public accountant licensees hold valid registrations and permits to practice, they may perform attest and compilation services to the same extent as holders of certificates, and other holders of permits, and in addition they may use the title, public accountants and PA, but no other title. The holder of a registration issued under this section may only perform attest services in a firm that holds a permit issued under this chapter.

Section 40. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An application by a person or a firm not a resident of this state for a certificate or a firm permit to practice shall constitute appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to services performed by the applicant while a licensee within this state.

Section 41. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board may, in accordance with chapter 1-26, revoke any certificate, license, or permit issued pursuant to this chapter or corresponding provisions of prior law or revoke or limit privileges under this chapter; suspend any such certificate, license, or permit, or refuse to renew any such certificate, license, or permit for a period of not more than five years; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative fine not exceeding one thousand dollars, or place any licensee on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons:

- (1) Fraud or deceit in obtaining a certificate or permit;
- (2) Cancellation, revocation, suspension, or refusal to renew a certificate, license, or permit to engage in the practice of public accountancy in any other state for any cause;
- (3) Failure, on the part of a holder of a certificate, license, or permit under this chapter or registration under this chapter, or of a certificate, license or permit issued by another state, to maintain compliance with the requirements for issuance or renewal of such certificate, license, permit, or registration or to report changes to the board;
- (4) Revocation or suspension of the right to practice before any state or federal agency;
- (5) Dishonesty, fraud, or gross negligence in the performance of services as a licensee or individual granted privileges under this chapter or in the filing or failure to file one's own income tax returns;
- (6) Violation of any provision of this chapter or rule, promulgated by the board pursuant to chapter 1-26, or violation of professional standards;
- (7) Violation of any rule of professional conduct promulgated by the board pursuant to chapter 1-26;
- (8) Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
- (9) Performance of any fraudulent act while holding a certificate, license, or permit or privilege issued under this chapter or prior law;
- (10) Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee, or individual granted privileges under this chapter;
- (11) Making any false or misleading statement or verification, in support of an application for a certificate, registration, or permit filed by another; and

(12) Dishonesty or gross negligence in the performance of peer reviews.

In lieu of or in addition to any remedy specifically provided in this section, the board may require of a licensee a peer review conducted in such manner as the board may specify or satisfactory completion of such continuing professional education programs as the board may specify, or both.

In any proceeding in which a remedy provided by this section is imposed, the board may also require the respondent licensee to pay the costs of the proceeding.

Section 42. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board may, upon receipt of a complaint or other information suggesting violations of this chapter or of the rules of the board, conduct investigations to determine whether there is probable cause to institute proceedings under chapter 1-26 or of this chapter against any person or firm for such violation. However, no investigation under this section may be a prerequisite to such proceedings in the event that a determination of probable cause can be made without investigation. In aid of such investigations, the board or the chair thereof may issue subpoenas to compel witnesses to testify and to produce evidence.

Section 43. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall file a report with the board. The board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation. Unless there has been a determination of probable cause, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of pendency of the investigation shall be

treated as confidential information and may not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

Section 44. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Upon a finding of probable cause, if the subject of the investigation is a licensee or an individual with privileges under this chapter, the board shall proceed in accordance with chapter 1-26. If the subject of the investigation is not a licensee or an individual with privileges under this chapter, the board shall take appropriate action under this chapter. Upon a finding of no probable cause, the board shall close the matter and shall thereafter release information relating thereto only with the consent of the person or firm under investigation.

Section 45. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The board may review the publicly available professional work of licensees or an individual with privileges under this chapter on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular licensee. If, as a result of such review, the board discovers grounds for a more specific investigation, the board may proceed as prescribed under this chapter.

Section 46. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

If probable cause with respect to a violation by a licensee or an individual with privileges granted under this chapter has been determined by the board, or upon receipt of notice of a decision by the board of another state furnishing grounds for a determination of probable cause, the board may issue

a complaint setting forth appropriate charges and set a date for hearing before the board on such charges. If a complaint is issued and a hearing date set, the board shall, not less than thirty days prior to the date of the hearing, serve a copy of the complaint and notice of the time and place of the hearing upon the licensee or an individual with privileges granted under this chapter, together with a copy of the board's rules governing proceedings under this section, either by personal delivery or by mailing a copy thereof by registered mail to the licensee at the licensee's address, last known to the board. In the case of an individual exercising privileges under this chapter, service shall be by certified or registered mail to the address last known to the board, or pursuant to chapter 1-26.

Section 47. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

A licensee or an individual with privileges under this chapter against whom a complaint has been issued under this section may, reasonably in advance of the hearing, examine and copy the report of investigation, if any, and any documentary or testimonial evidence and summaries of anticipated evidence in the board's possession relating to the subject matter of the complaint. The board shall adopt rules, promulgated pursuant to chapter 1-26, governing proceedings under this section to specify the manner in which such right may be exercised.

Section 48. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The respondent licensee or an individual with privileges granted under this chapter may appear at the hearing in person or, in the case of a firm, through a partner, officer, director, shareholder, member, or manager, and by counsel, examine witnesses and evidence presented in support of the complaint, and present evidence and witnesses on the licensee's or an individual's own behalf. The licensee or an individual granted privileges under this chapter is entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses and the production of

documentary evidence.

Section 49. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

The evidence supporting the complaint shall be presented by the investigating officer, by a board member designated for that purpose, or by counsel. A board member who presents the evidence, or who has conducted the investigation of the matter under this chapter, may not participate in the board's decision of the matter.

The board shall be advised by counsel, who may be the same counsel who presents or assists in presenting the evidence supporting the complaint.

A stenographic or electronic record may be made and filed with the board. A transcript need not be prepared unless review is sought or the board determines that there is other good cause for its preparation.

A recorded vote of a majority of all members of the board, other than members disqualified by reason of this section, is required to sustain any charge and to impose any penalty with respect thereto.

Section 50. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

If after service of a complaint and notice of hearing the respondent licensee fails to appear at the hearing, the board may proceed to hear evidence against the licensee or an individual granted privileges under this chapter and may enter an order as it deems warranted by the evidence. Any order shall be final unless the licensee or an individual granted privileges under this chapter petitions for review. However, within thirty days from the date of any such order, upon a showing of good cause for the licensee's or an individual's failure to appear and defend, the board may set aside the order and schedule a new hearing on the complaint, to be conducted in accordance with the provisions of this

section.

Section 51. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Any person or firm adversely affected by any order of the board entered after a hearing under this chapter may obtain review thereof by filing a written petition for review with the circuit court within thirty days after the entry of the order. The procedures for review and the scope of the review shall be as specified in chapter 1-26.

Section 52. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

If the board renders a decision imposing discipline against a licensee or an individual granted privileges under this chapter, the board shall notify any board of accountancy of any other state in which the licensee also holds certificates, licenses, or permits of its decision, by mail, within forty-five days of rendering the decision. The board may also furnish information relating to proceedings resulting in disciplinary action to other public authorities and to private professional organizations having a disciplinary interest in the licensee.

If a petition for review has been filed pursuant to this chapter, the notification and furnishing of information provided for in this section shall await the resolution of such review and, if resolution is in favor of the licensee or an individual granted privileges under this chapter, no such notification or furnishing of information may be made.

Section 53. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

If the board has suspended or revoked a certificate, license, permit, or registration or revoked or limited privileges under this chapter or refused to renew a certificate, license, permit, or registration, the board may, upon application in writing by the person or firm affected and for good cause shown,

modify the suspension, or reissue the certificate, license, permit, or registration or remove the limitation or revocation of privileges.

The board shall, by rule promulgated pursuant to chapter 1-26, specify the manner in which such applications shall be made, the times within which they shall be made, and the circumstances in which hearings will be held.

Section 54. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Before reissuing or terminating the suspension of a certificate, license, permit, or registration under this section or of privileges under this chapter, and as a condition thereto, the board may require the applicant to show successful completion of specified continuing professional education. The board may make the reinstatement of a certificate, license, permit, or registration or of privileges under this chapter conditional and subject to satisfactory completion of a peer review conducted in such manner as the board may specify.

Section 55. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

No person other than a licensee may issue a report on financial statements of any person, firm, organization, or governmental unit or offer to render or render any attest or compilation service. This restriction does not prohibit any act of a public official or public employee in the performance of that person's duties as such, or prohibit the performance by any nonlicensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. A nonlicensee may prepare financial statements and issue nonattest transmittals or information thereon which do not purport to be in compliance with the Statements on Standards for Accounting and Review Services (SSARS).

A licensee performing attest or compilation services shall provide those services in accordance with professional standards.

Section 56. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

A person who does not hold a valid certificate may not use or assume the title, certified public accountant, the abbreviation, CPA, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

No firm may provide attest services or assume or use the title, certified public accountants, or the abbreviation, CPAs, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a CPA firm unless:

- (1) The firm holds a valid permit issued under this chapter; and
- (2) Ownership of the firm is in accordance with this chapter and rules promulgated by the board in accordance with chapter 1-26.

Section 57. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

No person who does not hold a valid license may use or assume the title, public accountant, or the abbreviation, PA, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant.

No firm may provide attest services or assume or use the title, public accountants, or the abbreviation, PAs, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a PA firm unless:

- (1) The firm holds a valid permit issued under this chapter; and
- (2) Ownership of the firm is in accordance with this chapter and rules promulgated by the board in accordance with chapter 1-26.

Section 58. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

No person or firm, not holding a valid certificate, permit, or registration issued under this chapter, may assume or use the title, certified accountant, chartered accountant, enrolled accountant, licensed accountant, registered accountant, accredited accountant, or any other title or designation likely to be confused with the titles, certified public accountant or public accountant, or use any of the abbreviations CA, LA, RA, AA, or similar abbreviation likely to be confused with the abbreviations, CPA or PA. The title, Enrolled Agent or EA may only be used by individuals so designated by the Internal Revenue Service.

No nonlicensee may use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements.

Section 59. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

No person or firm which does not hold a valid certificate, permit, or registration issued under this chapter may assume or use any title or designation that includes the words, accountant, auditor, or accounting, in connection with any other language, including the language of a report, that implies that such person or firm holds such a certificate, permit, or registration or has special competence as an accountant or auditor. However, this section does not prohibit any officer, partner, member, manager, or employee of any firm or organization from affixing that person's own signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds therein nor prohibit any act of a public official or employee in the performance of the persons duties as such.

Any person or firm who violates the provisions of this section is guilty of a Class 2 misdemeanor.

Section 60. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as

follows:

The provisions of this chapter do not apply to any person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy or its equivalent in such country, whose activities in this state are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of, the country in which the person holds such entitlement, who performs no attest or compilation services and who issues no reports with respect to the financial statements of any other persons, firms, or governmental units in this state, and who does not use in this state any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

Section 61. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

No holder of a certificate issued under this chapter or a registration issued under this chapter may perform attest services through any business form that does not hold a valid permit issued under this chapter. This restriction does not prohibit any act of a public official or public employee in the performance of that person's duties as such.

Section 62. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

No individual licensee may issue a report in standard form upon a compilation of financial information through any form of business that does not hold a valid permit issued under this chapter unless the report discloses the name of the business through which the individual is issuing the report, and the individual:

- (1) Signs the compilation report identifying the individual as a CPA or PA;

- (2) Meets the competency requirement provided in applicable standards; and
- (3) Undergoes no less frequently than once every three years, a peer review conducted in such manner as the board shall, by rule promulgate in accordance with chapter 1-26, specify. Such review shall include verification that the individual has met the competency requirements set out in professional standards for such services.

Section 63. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this chapter prohibits a practicing 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 professional work in the practice of law.

Section 64. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

If, as a result of an investigation under this chapter or otherwise, the board believes that any person or firm has engaged in, or is about to engage in any act or practice which constitutes or will constitute a violation of this chapter, the board may make application to the appropriate court for an order enjoining such act or practice, and upon a showing by the board that such person or firm has engaged, or is about to engage, in any such act or practice, the court may grant an injunction, restraining order, or other order as may be appropriate.

Section 65. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

If, by reason of an investigation under this chapter or otherwise, the board has reason to believe that any person or firm has knowingly engaged in any act or practice that constitutes a violation of this chapter, the board may bring its information to the attention of the attorney general of any state or other appropriate law enforcement officer who may cause appropriate criminal proceedings to be

brought thereon.

Any person or firm who knowingly violates any provision of this chapter is guilty of a Class 1 misdemeanor.

Section 66. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

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

Section 67. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An individual whose principal place of business is not in this state having a valid certificate or license as a certified public accountant from any state which the board has verified to be in substantial equivalence with the licensure requirements of this chapter is presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of certificate holders and licensees of this chapter without the need to obtain a certificate or permit under this chapter. However, such individuals shall notify the board of their intent to enter the state under this provision completing procedures and paying fees specified by the board and promulgated by rule pursuant to chapter 1-26.

Section 68. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

An individual whose principal place of business is not in this state having a valid certificate or license as a certified public accountant from any state which the board or its designee has not verified to be in substantial equivalence with the licensure requirements of this chapter shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges

of certificate holders and licensees of this state without the need to obtain a certificate or permit under this chapter. However, such individuals shall notify the board of their intent to enter the state under this provision completing procedures and paying fees specified by the board and promulgated by rule pursuant to chapter 1-26.

Section 69. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

Any licensee of another state exercising the privilege afforded under this chapter hereby consents, as a condition of the grant of this privilege, to the personal and subject matter jurisdiction and disciplinary authority of the board, to comply with this chapter and the board's rules, and to the appointment of the state board which issued their license as their agent upon whom process may be served in any action or proceeding by this board against the licensee.

Section 70. That chapter 36-20A be amended by adding thereto a NEW SECTION to read as follows:

A licensee of this state offering or rendering services or using their CPA title in another state is subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state. Notwithstanding the provisions in this chapter, the board shall investigate any complaint made by the board of accountancy of another state.

Section 71. That § 47-13B-2 be amended to read as follows:

47-13B-2. The corporation shall be organized solely for the purpose of conducting the practice of accountancy.

Section 72. That § 47-13B-5 be repealed.

An Act to regulate the practice of accountancy.

I certify that the attached Act
originated in the

SENATE as Bill No. 50

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 50
File No. _____
Chapter No. _____

Received at this Executive Office
this ____ day of _____ ,

20__ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State