

A BILL FOR AN ACT

To provide for the issuance of certificates as certified public accountants to regulate the practice of accountancy in the public interest; to establish a Board of Accountancy and prescribe its powers and duties, and for other purposes

BE IT ENACTED BY THE THIRTEEN NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

- 1 Section 1. Title. This Act may be cited as the "Accountancy Act of 2002".
2 Section 2. Purpose. It is the policy of the Commonwealth of the Northern
3 Marianas Islands (CNMI) and the purpose of this Act, to promote the reliability of
4 information that is used for guidance in financial transactions or for accounting for or
5 assessing the financial status or performance of commercial, noncommercial, and
6 governmental enterprises. The public interest requires that persons professing special
7 competence in accountancy or offering assurance as to the reliability or fairness of
8 presentation of such information shall have demonstrated their qualifications to do so,
9 and that no persons who have not demonstrated and maintained such qualifications,
10 including certificate holders not in public practice, be permitted to hold themselves out
11 as having such special competence or to offer such assurance; that the professional
12 conduct of persons licensed as having special competence in accountancy be regulated in
13 all aspects of the practice of public accountancy; that a public authority competent to
14 prescribe and assess the qualifications and to regulate the professional conduct of
15 practitioners of public accountancy be established; and that the use of titles relating to the
16 practice of public accountancy that are likely to mislead the public as to the status or
17 competence of the persons using such titles be prohibited.

1 Section 3. Definitions. When used in this Act, the following terms have the
2 meanings indicated:

3 (a) "Board" means the CNMI Board of Accountancy established under
4 Section 4 of this Act.

5 (b) "Certificate" means a certificate as "certified public accountant "
6 issued under Section 6 of this Act, or a corresponding certificate as certified public
7 accountant issued after examination under the law of any other state.

8 (c) "Firm" means a sole proprietorship, a corporation, a partnership or
9 any other form of organization.

10 (d) "License" means a certificate issued under Section 6 of this Act or
11 permit issued under Section 7.

12 (e) "Licensee" means the holder of a license as defined in Section
13 3(d).

14 (e) "Permit" means a permit to practice public accountancy issued
15 under Section 7 of this Act or under corresponding provisions of the laws of other states.

16 (f) "Practice of (or practicing) public accountancy" means the
17 performance or the offering to perform by a person or firm holding itself out to the public
18 as a licensee, for a client or potential client, of one or more kinds of services involving
19 the use of accounting or auditing skills, including the issuance of reports on financial
20 statements, or of one or kinds of management advisory, financial advisory or consulting
21 services, or the preparation of tax returns or the furnishing of advice on tax matters.

22 (g) "Quality Review" means a study, appraisal, or review of one or
23 more aspects of the professional work of a person or firm in the practice of public
24 accountancy, by a person or persons who hold certificates and who are not affiliated with
25 the person or firm being reviewed.

26 (h) "Report", when used with reference to financial statements, means
27 an opinion, report, or other form of language that states or implies assurance as to the
28 reliability of any financial statements and that also includes or is accompanied by any
29 statement or implication that the person or firm issuing it has special knowledge or
30 competence in accounting or auditing. Such a statement or implication of special
31 knowledge or competence may arise from use by the issuer of the report of names or
32 titles indicating that the person or it is an accountant or auditor, or from the language of
33 the report itself. The term "report" includes any form of language which disclaims an

1 opinion when such form of language is conventionally understood to imply any positive
2 assurance as to the reliability of the financial statements referred to and/or special
3 competence on the part of the person or firm issuing such language; and it includes any
4 other form of language that is conventionally understood to imply such assurance and/or
5 such special knowledge or competence.

6 (i) "Rule" means any rule, regulation, or other written directive of
7 general application duly adopted by the Board.

8 (j) "State" means any State of the United States, the District of
9 Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

10 Section 4. CNMI Board of Accountancy.

11 (a) There is hereby created the CNMI Board of Accountancy, which
12 shall have responsibility for the administration and enforcement of this Act. The Board
13 shall consist of five members, appointed by the Governor, all of whom shall be residents
14 of the CNMI. All of such members shall be holders of currently valid certificates issued
15 under Section 6 of this Act (except that original Board members will be holders of a
16 certificate as certified public accountants issued after examination under the law of any
17 other state) the majority of whom are practicing public accountancy. The term of each
18 member of the Board shall be four years; except that, of the members first to be
19 appointed, two shall hold office for one year, two for two years, and one for three years
20 from the effective date of this Act, the term of each to be designated by the Governor.
21 Vacancies occurring during a term shall be filled by appointment by the Governor for the
22 unexpired term. Upon the expiration of the member's term office, a member shall
23 continue to serve until a successor shall have been appointed and taken office. Any
24 member of the Board whose certificate under Section 6 of this Act is revoked or
25 suspended shall automatically cease to be a member of the Board, and the Governor may,
26 after a hearing, remove any member of the Board for neglect of duty or other just cause.

27 (b) The Board shall elect annually from among its members a
28 chairman and such other officers as the Board may determine to be appropriate. The
29 Board shall meet at such times and places as may be fixed by the Board. Meetings of the
30 Board shall be open to the public except in so far as they are concerned with
31 investigations under Section 10 of this Act and except as may be necessary to protect
32 information that is required to be kept confidential by Board rules or by the laws of the
33 CNMI. A majority of the Board members then in office shall constitute a quorum at any

1 meeting duly called. The Board shall have a seal which shall be judicially noticed. The
2 Board shall retain or arrange for the retention of all applications and all documents under
3 oath that are filed with the Board and also records of its proceedings, and it shall
4 maintain a registry of the names and addresses of all licensees under this Act. In any
5 proceeding in court, civil or criminal, arising out of or founded upon any provision of this
6 Act, copies of any of said records certified as true copies under the seal of the Board shall
7 be admissible in evidence as tending to prove the contents of said records.

8 (c) Each member of the Board shall be reimbursed for the member's
9 actual and necessary expenses incurred in the discharge of the member's official duties.

10 (d) All moneys collected by the Board from fees authorized to be
11 charged by this Act shall be received and accounted for by the Board and shall be
12 deposited in the CNMI General Fund to the credit of the Board. Appropriation shall be
13 made for the expenses of administering the provisions of this Act, which may include,
14 but shall not be limited to , the costs of conducting investigations and of taking testimony
15 and procuring the attendance of witnesses before the Board or its committees; all legal
16 proceedings taken under this Act for the enforcement thereof; and educational programs
17 for the benefit of the public and licensees and their employees.

18 (e) The Board shall file an annual report of its activities with the
19 Governor and the legislature, which report shall include a statement of all receipts and
20 disbursements and a listing of all current licensees under this Act. The Board shall mail a
21 copy of the annual report to any person requesting it and paying a reasonable charge
22 therefor.

23 (f) The Board may employ an executive director and such other
24 personnel as it deems necessary in its administration and enforcement of this Act. It may
25 appoint such committees or persons, to advise or assist it in such administration and
26 enforcement, as it may see fit. It may retain its own counsel to advise and assist it in
27 addition to such advice and assistance as is provided by the Attorney General of the
28 CNMI.

29 (g) The Board shall have the power to take all action that is necessary
30 and proper to effectuate the purposes of this Act, including the power to sue and be sued
31 in its official name as an agency of the CNMI; to issue subpoenas to compel the
32 attendance of witnesses and the production of documents; to administer oaths; to take
33 testimony and to receive evidence concerning all matters within its jurisdiction. In case

1 of disobedience of a subpoena, the Board may invoke the aid of any court of the CNMI in
2 requiring the attendance and testimony of witnesses and the production of documentary
3 evidence. The Board, its members, and its agents shall be immune from personal liability
4 for actions taken in good faith in the discharge of the Board's responsibilities, and the
5 CNMI shall hold the Board, its members, and its agents harmless from all costs,
6 damages, and attorneys' fees arising from claims and suits against them with respect to
7 matters to which such immunity applies.

8 (h) The Board may adopt by regulation rules governing its
9 administration and enforcement of this Act and the conduct of licensees, including but
10 not limited to:

11 (1) Rules governing the Board's meetings and the
12 conduct of its business;

13 (2) Rules of procedure governing the conduct of
14 investigations and hearings by the Board;

15 (3) Rules specifying the educational and experience
16 qualifications required for the issuance of certificates under
17 Section 6 of this Act and the continuing professional education
18 required for renewal of certificates under Section 6;

19 (4) Rules of professional conduct directed to controlling
20 the quality and probity of the practice of public accountancy by
21 licensees, and dealing among other things with independence,
22 integrity, and objectivity; competence and technical standards;
23 responsibilities to the public; and responsibilities to clients;

24 (5) Rules specifying actions and circumstance that
25 shall be deemed to constitute holding oneself out as a licensee in
26 connection with practice of public accountancy within the
27 meaning of Section 3i(g);

28 (6) Rules governing the manner and circumstances of
29 use of the titles "certified public accountant" and "CPA",

30 (7) Rules regarding quality reviews that may be

31 required

32 to be performed under provisions of this Act; and

33 (8) Such other rules as the Board may deem necessary

1 or appropriate for implementing the provisions and the purposes
2 of this Act.

3 (i) The Administrative Procedure Act (ICMC §9101 et seq.) shall
4 govern the publication of all rules and regulations adopted under subsection (h) of this
5 Section or any other provision of this Act.

6 Section 5. Qualifications for a Certificate as a Certified Public Accountant

7 (a) The certificate of "certified public accountant" shall be granted to persons
8 of good character who meet the education, experience and examination requirements of
9 the following subsections of this Section and who make application therefor pursuant to
10 Section 6 of this Act.

11 (b) Good character for purposes of this Section means lack of a history
12 of dishonest or felonious acts. The Board may refuse to grant a certificate on the ground
13 of failure to satisfy this requirement only if there is a substantial connection between the
14 lack of good character of the applicant and the professional responsibilities of a licensee
15 and if the finding by the Board of lack of good character is supported by clear and
16 convincing evidence. When an applicant is found to be unqualified for a certificate
17 because of a lack of good character, the Board shall furnish the applicant a statement
18 containing the findings of the Board, a complete record of the evidence upon which the
19 determination was based, and a notice of the applicant's right of appeal.

20 (c) The education requirement for a certificate, which must be met
21 before an applicant is eligible to apply for the examination prescribed in subsection(d),
22 shall be as follows:

23 (1) During the four- year period immediately following
24 the effective date of this Act, a baccalaureate degree or its
25 equivalent conferred by a college or university acceptable to the Board, with an
26 accounting concentration or equivalent as determined by Board rule to be appropriate;

27 (2) After the expiration of the four- year period
28 immediately following the effective date of this Act, at least 150
29 semester hours of college education including a baccalaureate or higher
30 degree conferred by a college or university acceptable to the Board, the total
31 educational program to include an accounting concentration or equivalent as
32 determined by Board rule to be appropriate.

1 (d) The examination required to be passed as a condition for the
2 granting of a certificate shall be in writing, shall be held twice a year, and shall test the
3 applicant's knowledge of the subjects of accounting and auditing, and such other related
4 subjects as the Board may specify by rule. The time for holding such examination shall
5 be fixed by the Board and may be changed from time to time. The Board shall prescribe
6 by rule the methods of applying for and conducting the examination, including methods
7 for grading papers and determining a passing grade required of an applicant for a
8 certificate provided, however, that the Board shall to the extent possible see to it that the
9 grading of the examination, and the passing grades, are uniform with those applicable in
10 all other states. The Board may make such use of all or any part of the Uniform
11 Certified Public Accountant Examination and Advisory Grading Service of the American
12 Institute of Certified Public Accountants and may contract with third parties to perform
13 such administrative services with respect to the examination as it deems appropriate to
14 assist it in performing its duties hereunder.

15 (e) A applicant shall be required to pass all Sections of the
16 examination provided for in subsection(d) in order to qualify for a certificate. A passing
17 grade for each section shall be 75. If at a given sitting of the examination an applicant
18 passes two or more but not all sections, then the applicant shall be given credit for those
19 sections that the applicant has passed and need not sit for reexamination in those sections,
20 provided that:

21 (1) at that sitting the applicant wrote all sections of the
22 examination for which the applicant does not have credit;

23 (2) the applicant attained a minimum grade of 50 on
24 each section taken at that sitting;

25 (3) the applicant passes the remaining sections of the
26 examination within six consecutive examinations given after the one at which the
27 first sections were passed;

28 (4) at each subsequent sitting at which the applicant
29 seeks to pass any additional sections, the applicant writes all
30 sections for which the applicant does not have credit; and

31 (5) in order to receive credit for passing additional
32 sections in any such subsequent sitting, the applicant attains a

1 minimum grade of 50 on each section taken at that sitting, in
2 addition to the required 75 grade for each section passed.

3 (f) An applicant shall be given credit for any and all sections of an
4 examination passed in another state if such credit would have been given, under then
5 applicable requirements, if the applicant had taken the examination in the CNMI.

6 (g) The Board may in particular cases waive or defer any of the
7 requirements of subsections(e) and (f) regarding the circumstances in which the various
8 sections of the examination must be passed, upon a showing that, by reason of
9 circumstances beyond the applicant's control, the applicant was unable to meet such
10 requirement.

11 (h) The Board may charge, or provide for a third party administering
12 the examination to charge, each applicant a fee, in an amount prescribed by the Board by
13 rule, for each section of the examination or reexamination taken by the applicant.

14 (i) An applicant for initial issuance of a certificate under this Section
15 shall show that the applicant has had two years of experience, providing one or more
16 kinds of services involving the use of accounting or auditing skills, including the issuance
17 of reports on financial statements, or one or more kinds of management advisory,
18 financial advisory, or consulting services, or the preparation of tax returns or the
19 furnishing of advice on tax matters, or the equivalent, all of which was under the
20 direction of a licensee or a person licensed within another State, meeting requirements
21 prescribed by the Board by rule.

22 Section 6. Issuance and Renewal of Certificates.

23 (a) The Board shall grant or renew certificates to persons who make
24 application and demonstrate that their qualifications, including where applicable the
25 qualifications prescribed by Section 5, are in accordance with the following subsections
26 of this Section. The holder of a certificate issued under this Section may only practice
27 public accountancy in a firm that holds a permit issued under Section 7 of this Act.

28 (b) Certificates shall be initially issued, and renewed, for periods of
29 not more than three years but in any event shall expire on the third year following
30 issuance or renewal. Applications for such certificates shall be made in such form, and in
31 the case of applications for renewal, between such dates, as the Board shall by rule
32 specify, and the Board shall grant or deny any such application no later than 60 days after
33 the application is filed in proper form. In any case where the applicant seeks the

1 opportunity to show that issuance or renewal of a certificate was mistakenly denied, or
2 where the Board is not able to determine whether it should be granted or denied, the
3 Board may issue to the applicant a provisional certificate, which shall expire ninety days
4 after its issuance or when the Board determines whether or not to issue or renew the
5 certificate for which application was made, whichever shall first occur.

6 (c) The Board shall issue a certificate to a holder of a certificate,
7 license, or permit issued by another state upon a showing that:

8 (1) The applicant passed the examination required for
9 issuance of the applicant's certificate with grades that would have been passing
10 grades in accordance with Section 5 of the Act.

11 (2) The applicant:

12 (A) meets all current requirements in the CNMI
13 for issuance of a certificate at the time application is made; or

14 (B) at the time of the issuance of the applicant's
15 certificate in the other state, met all such requirements
16 applicable to this Act; or

17 (C) had five years of experience outside of the
18 CNMI in the practice of public accountancy or meets
19 equivalent requirements prescribed by the Board by rule, after passing the
20 examination upon which the applicant's certificate was based and within the ten
21 years immediately preceding the application;

22 (3) The applicant has had experience in the practice of
23 public accountancy meeting the requirements of Section 5(i); and

24 (4) If the applicant's certificate, license, or permit was
25 issued more than four years prior the application for issuance of an initial
26 certificate under this Section, that the applicant has fulfilled the requirements of
27 continuing professional education that would have been applicable under
28 subsection(d) of this Section.

29 (d) For renewal of a certificate of this Section an applicant shall show
30 that the applicant has completed 120 hours of continuing professional education which
31 contribute to the general professional competence of the applicant during a three-year
32 period with a minimum of twenty hours each year. The Board may prescribe by rule the
33 content, duration and organization of continuing professional education courses that

1 qualify for this requirement. The Board may also provide by rule for prorated continuing
2 professional education requirements to be met by applicants whose initial certificates
3 were issued substantially less than three years prior to the renewal date, and it may
4 prescribe by rule special lesser requirements to be met by applicants for certificates
5 renewal whose prior certificates lapsed substantially prior to their applications for
6 renewal, and regarding whom it would in consequence be inequitable to require a full
7 compliance with all requirements of continuing professional education that would
8 otherwise have been applicable to the period of lapse.

9 (e) The Board shall charge a fee for each application for initial
10 issuance or renewal of a certificate under this Section in an amount prescribed by the
11 Board by rule.

12 (f) Applicants for initial issuance or renewal of certificates under this
13 Section shall in their applications list all states in which they have applied for or hold
14 certificates, licenses, or permits, and each holder of or applicant for a certificate under
15 this Section shall notify the Board in writing, within 30 days after its occurrence, of any
16 issuance, denial, renovation, or suspension of a certificate, license or permit by another
17 state.

18 (g) The Board shall issue a certificate to a holder of a foreign
19 designation, granted in a foreign country entitling the holder thereof to engage in the
20 practice of public accountancy, provided that:

21 (1) The foreign authority which granted the
22 designation makes similar provision to allow a person who holds a valid
23 certificate issued by the CNMI to obtain such foreign authority's comparable designation;
24 and

25 (2) The foreign designation
26 (A) was duly issued by a foreign authority that
27 regulates the practice of public accountancy and the foreign designation
28 has not expired or been revoked or suspended;

29 (B) entitles the holder to issue reports upon
30 financial statements; and

31 (C) was issued upon the basis of educational,
32 examination, and experience requirements established by the
33 foreign authority or by law; and

1 (3) The applicant:

2 (A) received the designation, based on
3 educational and examination standards substantially
4 equivalent to those required by this Act, at the time the foreign designation was
5 granted;

6 (B) completed an experience requirement,
7 substantially equivalent to the requirement set out in Section 5(i), in the
8 jurisdiction which granted the foreign designation or has completed five years of
9 experience in the practice of public accountancy in the CNMI or meets equivalent
10 requirements prescribed by the Board by rule, within the ten years immediately
11 preceding the application; and

12 (C) passed a uniform qualifying examination in
13 national standards (and an examination on the laws, regulations and code
14 of ethical conduct in effect in this Territory) acceptable to the Board.

15 (h) An applicant under subsection (g) shall in the application list all
16 jurisdictions, foreign and domestic, in which the applicant has applied for or holds a
17 designation to practice public accountancy, and each holder of a certificate issued under
18 this subsection shall notify the Board in writing, within thirty days after its occurrence, of
19 any issuance, denial, revocation or suspension of a designation or commencement of a
20 disciplinary or enforcement action by any jurisdiction.

21 (i) The Board has the sole authority to interpret the application of the
22 provisions of subsection(g) and (h).

23 Section 7. Firm Permits to Practice.

24 (a) The Board shall grant or renew permits to practice public
25 accountancy to firms that make application and demonstrate their qualifications therefore
26 in accordance with the following subsections of this Section. A firm must hold a permit
27 issued under this Section in order to practice public accountancy.

28 (b) Permits shall be initially issued and renewed for periods of not
29 more than three years but in any event shall expire on the third year following issuance or
30 renewal. Applications for permits shall be made in such form, and in the case of
31 applications for renewal, between such dates as the Board may by rule specify, and the
32 Board shall grant or deny any such application no later than 60 days after the application
33 is filed in proper form. In any case where the applicant seeks the opportunity to show that

1 issuance or renewal of a permit was mistakenly denied or where the Board is not able to
2 determine whether it should be granted or denied, the Board may issue to the applicant a
3 provisional permit, which shall expire ninety days after its issuance or when the Board
4 determines whether or not to issue or renew the permit for which application was made,
5 whichever shall first occur.

6 (c) An applicant for initial issuance or renewal of a permit to practice
7 under this Section shall be required to show that each sole proprietor, partner, officer,
8 shareholder, member or manager who regularly works in the CNMI, holds a valid
9 certificate issued under Section 6 of this Act and that each other partner, officer,
10 shareholder, member or manager holds a certificate and is licensed to practice public
11 accountancy in some other state.

12 (d) An applicant for initial issuance or renewal of a permit to practice
13 under this Section shall be required to register each office of the firm within the CNMI
14 with the Board and to show that each such office is under the charge of a person holding
15 a valid certificate issued under Section 6 of this Act.

16 (e) The Board shall charge a fee for each application for initial
17 issuance or renewal of a permit under this Section in an amount prescribed by the Board
18 by rule.

19 (f) Applicants for initial issuance or renewal of permits under this
20 Section shall in their application list all states in which they have applied for or hold
21 permits to practice public accountancy, and each holder of or applicant for a permit under
22 Section shall notify the Board in writing, within 30 days after its occurrence, of any
23 change in the identities of partners, officers, shareholders, members or managers who
24 work regularly within the CNMI, any change in the number or location of offices within
25 the CNMI, any change in the identity of the persons in charge of such offices, and any
26 issuance, denial, revocation, or suspension of a permit by any other state.

27 (g) The Board may by rule require, on either a uniform or a random
28 basis, as a condition to renewal of permits under this Section, that applicants undergo, no
29 more frequently than once every three years, quality reviews conducted in such manner
30 as the Board may specify, provided, however, that any such rule:

31 (1) shall be promulgated reasonably in advance of the
32 time when it first becomes effective;

1 (2) shall include reasonable provision for compliance
2 by an applicant showing that it has, within the preceding three years, undergone a
3 quality review that is satisfactory equivalent to quality review generally required
4 pursuant to this subsection(g);

5 (3) shall require, with respect to quality reviews
6 contemplated by paragraph (2), that they be subject to oversight by an oversight
7 body established or sanctioned by Board rule, which body shall periodically report to
8 the Board on the effectiveness of the review program under its charge, and
9 provide to the Board a listing of firms that have participated in a quality review
10 program that is satisfactory to the Board; and

11 (4) shall require, with respect to quality reviews
12 contemplated by paragraph (2), that the quality review processes be operated and
13 documents maintained in a manner designed to
14 preserve confidentiality, and that neither the Board nor any third party
15 (other than the oversight body) shall have access to documents furnished or generated in
16 the course of the review.

17 Section 8. Appointments of Secretary of Commerce as Agent. Application by
18 a person or a firm not a resident of the CNMI for a certificate under Section 6 of this Act
19 or a permit to practice under Section 7 shall constitute appointment of the Secretary of
20 Commerce as the applicant's agent upon whom process may be served in any action or
21 proceeding against the applicant arising out of any transaction or operation connected
22 with or incidental to the practice of public accountancy by the applicant within the
23 CNMI.

24 Section 9. Enforcement Against Holders of Certificates, Permits, and
25 Registrations.

26 (a) After notice and hearing pursuant to Section 11 of this Act, the
27 Board may revoke any certificate, permit, or registration issued under Sections 6 or 7 of
28 this Act, suspend any such certificate, permit, or registration or refuse to renew any such
29 certificate, permit, or registration for a period of not more than five years; reprimand,
30 censure, or limit the scope of practice of any licensee; impose an administrative fine not
31 exceeding \$1,000, or place any licensee on probation, all with or without terms,
32 conditions, and limitations, for any one or more of the following reasons;

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- 1 (1) Fraud or deceit in obtaining a certificate, permit or
2 registration;
- 3 (2) Cancellation, revocation, suspension or refusal to
4 renew authority to engage in the practice of public accountancy in any other state
5 for any cause;
- 6 (3) Failure, on the part of a holder of a certificate or
7 permit under Sections 6 or 7, to maintain compliance with the
8 requirements for issuance or renewal of such certificate, permit or registration or
9 to report changes to the Board under Section 6 (f) or 7 (f);
- 10 (4) Revocation or suspension of the right to practice
11 before any state or federal agency;
- 12 (5) Dishonesty, fraud, or gross negligence in the
13 practice of public accountancy or in the filing or failure to file the licensee's own
14 income tax returns;
- 15 (6) Violations of any provision of this Act or rule
16 promulgated by the Board under this Act;
- 17 (7) Violations of any of professional conduct
18 promulgated by the Board under Section 4(h)(4) of this Act;
- 19 (8) Conviction of a felony, or of any crime an element
20 of which is dishonesty or fraud, under the laws of the United States, of the CNMI,
21 or of any other state if the acts involved would have constituted a crime under the laws of
22 the CNMI;
- 23 (9) Performance of any fraudulent act while holding a
24 certificate or permit issued under this Act or prior law; and
- 25 (10) Any conduct reflecting adversely upon the
26 licensee's fitness to engage in the practice of public accountancy.
- 27 (b) In lieu of or in addition to any remedy specifically provided in
28 subsection (a) of this Section, the Board may require of a licensee:
- 29 (1) A quality review conducted in such fashion as the
30 Board may specify; and/or
- 31 (2) Satisfactory completion of such continuing
32 professional education programs as the Board may specify.

1 (c) In any proceeding in which a remedy provided by subsections (a)
2 or (b) of this Section is imposed, the Board may also require the respondent licensee to
3 pay the costs of the proceeding.

4 Section 10. Enforcement Procedures - Investigations.

5 (a) The Board may, upon receipt of a compliant or other information
6 suggesting violations of this Act or of the rules of the Board, conduct investigations to
7 determine whether there is probable cause to institute proceedings under Sections 11, 14,
8 or 15 of this Act against any person or firm for such violation, but an investigation under
9 this Section shall not be a prerequisite to such proceedings in the event that a
10 determination of probable cause can be made without investigation. In aid of such
11 investigations, the Board or the chairperson thereof may issue subpoenas to compel
12 witnesses to testify and/or to produce evidence.

13 (b) The Board may designate a member, or any other person of
14 appropriate competence, to serve as investigating officer to conduct an investigation.
15 Upon completion of an investigation, the investigating officer shall file a report with the
16 Board. The Board shall find probable cause or lack of probable cause upon the basis of
17 the report or shall return the report to the investigating officer for further investigation.
18 Unless there has been a determination of probable cause, the report of the investigating
19 officer, the complaint, if any, the testimony and documents submitted in support of the
20 complaint or gathered in the investigation, and the fact of pendency of the investigation
21 shall be treated as confidential information and shall not be disclosed to any person
22 except law enforcement authorities and, to the extent deemed necessary in order to
23 conduct the investigation, the subject of the investigation, persons whose complaints are
24 being investigated, and witnesses questioned in the course of the investigation. This
25 confidentiality requirement relating to investigations shall apply notwithstanding any
26 provision of the Open Government Act (1CMC §9901 et. seq.) or other Commonwealth
27 law to the contrary.

28 (c) Upon a finding of probable cause, if the subject of the
29 investigation is a licensee, the Board shall direct that a complaint be issued under Section
30 11 of this Act, and if the subject of the investigation is not a licensee, the Board shall take
31 appropriate action under Sections 14 and 15 of this Act. Upon a finding of no probable
32 cause, the Board shall close the matter and shall thereafter release information relating
33 thereto only with the consent of the person or firm under investigation.

1 (d) The Board may review the publicly available professional work of
2 licensees on a general and random basis, without any requirement of a formal complaint
3 or suspicion of impropriety on the part of any particular licensee. In the event that as a
4 result of such review the Board discovers reasonable grounds for a more specific
5 investigation, the Board may proceed under subsections(a) through(c)of this Section.

6 Section 11. Enforcement Procedures- Hearings by the Board.

7 (a) In any case where probable cause with respect to a violation by a
8 licensee has been determined by the Board, whether following an investigation under
9 Section 10 of this Act, or upon receipt of a written complaint furnishing grounds for a
10 determination of such probable cause, or upon receipt of notice of a decision by the
11 Board of Accountancy of another state furnishing such grounds, the Board shall issue a
12 complaint setting forth appropriate charges and set a date for hearing before the Board on
13 such charges. The Board shall, not less than 30 days prior to the date of the hearing,
14 serve a copy of the complaint and notice of the time and place of the hearing upon the
15 licensee, together with a copy of the Board's rules governing proceedings under this
16 Section, either by personal delivery or by mailing a copy thereof by registered mail to the
17 licensee at the licensee's address last known to the Board.

18 (b) A licensee against whom a complaint has been issued under this
19 Section shall have the right, reasonably in advance of the hearing, to examine and copy
20 the report of investigation, if any, and any documentary or testimonial evidence and
21 summaries of anticipated evidence in the Board's possession relating to the subject matter
22 of the complaint. The Board's rules governing proceedings under this Section shall
23 specify the manner in which such right may be exercised.

24 (c) In a hearing under this Section the respondent licensee may appear
25 in person (or, in the case of a firm, through a partner, officer, director, shareholder,
26 member or manager) and/or by counsel, examine witnesses and evidence presented in
27 support of the complaint, and present evidence and witnesses on the licensee's own
28 behalf. The licensee shall be entitled, on application to the Board, to the issuance of
29 subpoenas to compel the attendance of witnesses and the production of documentary
30 evidence.

31 (d) The evidence supporting the complaint shall be presented by the
32 investigating officer, by a Board member designated for that purpose, or by counsel. A
33 Board member who presents the evidence, or who has conducted the investigation of the

1 matter under Section 10 of this Act, shall not participate in the Board's decision of the
2 matter.

3 (e) In a hearing under this Section the Board shall be advised by
4 counsel, who shall not be the same counsel who presents or assists in presenting the
5 evidence supporting the complaint under subsection (d) of this Section.

6 (f) In a hearing under this Section the Board shall not be bound by
7 technical rules of evidence.

8 (g) In a hearing under this Section a stenographic or electronic record
9 shall be made and filed with the Board. A transcript need not be prepared unless review
10 is sought under subsection(j) of this Section or the Board determines that there is other
11 good cause for its preparation.

12 (h) In a hearing under this Section a recorded vote of a majority of all
13 members of the Board then in office (excluding members disqualified by reason of
14 subsection (d) of this Section) shall be required to sustain any charge and to impose any
15 penalty with respect thereto.

16 (i) If, after service of a complaint and notice of hearing as provided in
17 subsection (a) of this Section, the respondent licensee fails to appear at the hearing, the
18 Board may proceed to hear evidence against the licensee and may enter such order as it
19 deems warranted by the evidence, which order shall be final unless the licensee petitions
20 for review thereof under subsection(j) of this Section, provided, however, that within
21 thirty days from the date of any such order, upon a showing of good cause for the
22 licensee's failure to appear and defend, the Board may set aside the order and schedule a
23 new hearing on the complaint, to be conducted in accordance with applicable subsections
24 of this Section.

25 (j) Any person or firm adversely affected by any order of the Board
26 entered after a hearing under this Section may seek judicial review thereof pursuant to
27 procedures set forth in the Administrative Procedures Act (ICMC §9101 et seq.)

28 (k) In any case where the Board renders a decision imposing discipline
29 against a licensee under this Section and Section 9 of this Act, the Board shall examine
30 its records to determine whether the licensee holds a certificate or a permit to practice
31 public accountancy in any other state; and if so, the Board shall notify the Board of
32 Accountancy of such other state of its decision, by mail, within forty-five days of
33 rendering the decision. The Board may also furnish information relating to proceedings

1 resulting in disciplinary action to other public authorities and to private professional
2 organizations having a disciplinary interest in the licensee. Where a petition for review
3 has been filed pursuant to Section 11(j), the notification and furnishing of information
4 provided for in this subsection shall await the resolution of such review and, if resolution
5 is in favor of the licensee, no such notification or furnishing of information shall be
6 made.

7 Section 12. Reinstatement.

8 (a) In any case where the Board has suspended or revoked a certificate
9 or a permit or registration or refused to renew a certificate, permit, or registration, the
10 Board may, upon application in writing by the person or firm affected and for good cause
11 shown, modify the suspension, or reissue the certificate, permit, or registration.

12 (b) The Board shall by rule specify the manner in which such
13 applications shall be made, the times within they shall be made, and the circumstances in
14 which hearings will be held thereon.

15 (c) Before reissuing, or terminating the suspension of, a certificate,
16 permit or registration under this Section, and as a condition thereto, the Board may
17 require the applicant therefor to show successful completion of specified continuing
18 professional education; and the Board may make the reinstatement of a certificate, permit
19 or registration conditional and subject to satisfactory completion of a quality review
20 conducted in such fashion as the Board may specify.

21 Section 13. Unlawful Acts.

22 (a) No person or firm not holding a valid certificate, permit or
23 registration issued under Sections 6 or 7 of this Act shall issue a report on financial
24 statements of any other person, firm, organization, or governmental unit. This
25 prohibition does not apply to an officer, partner, member, manager or employee of any
26 firm or organization affixing that person's own signature to any statement or report in
27 reference to the financial affairs of such firm or organization with any wording
28 designating the position, title, or office that the person holds therein; nor prohibit any act
29 of a public official or employee in the performance of that person's duties as such; nor
30 prohibit the performance by any person of other services involving the use of accounting
31 skills, including the preparation of tax returns, management advisory services, and the
32 preparation of financial statements without the issuance of reports thereon.

1 (b) The prohibition contained in subsection (a) of this Section is
2 applicable to issuance, by a person not holding a valid certificate, or registration or a firm
3 not holding a valid permit, of a report using any form of language conventionally used by
4 licensees respecting a review of financial statements.

5 (c) The prohibition contained in subsection (a) of this Section is
6 applicable to issuance, by a person not holding a valid certificate or registration or a firm
7 not holding a valid permit, of a report using any from of language conventionally used by
8 licensees with respect to a compilation of financial statements.

9 (d) No person not holding a valid certificate shall use or assume the
10 title or designation "certified public accountant", or the abbreviation "CPA" or any other
11 title, designation, words, letters, abbreviation, sign, card, or device tending to indicate
12 that such person is a certified public accountant.

13 (e) No firm shall practice public accountancy or assume or use the title
14 or designation "certified public accountant", or the abbreviation "CPA", or any other title,
15 designation, words, letters, abbreviation, sign, card, or device tending to indicate that
16 such firm is composed of certified public accountants, unless (1) the firm holds a valid
17 permit issued under Section 7 of this Act, and (2) all partners, officers, members,
18 managers and shareholders of the firm hold certificates.

19 (f) No person or firm not holding a valid certificate, permit or
20 registration issued under Sections 6 or 7 of this Act shall assume or use the title or
21 designation "certified accountant", "chartered accountant", "enrolled accountant",
22 "licensed accountant", "registered accountant", "accredited accountant", or any other title
23 or designation likely to be confused with the titles "certified public accountant", or use
24 any of the abbreviations "CA", "LA", "RA", "AA", or similar abbreviation likely to be
25 confused with the abbreviation "CPA",. The title "Enrolled Agent" or "EA" may only be
26 used by individuals so designated by the Internal Revenue Service.

27 (g) No person or firm not holding a valid certificate, permit or
28 registration issued under Section 6 or 7 of this Act shall assume or use any title or
29 designation that includes the words "accountant", "auditor", or "accounting", in
30 connection with any other language (including the language of a report) that implies that
31 such person of firm holds such a certificate, permit, or registration or has special
32 competence as an accountant or auditor, provided, however, that this subsection does not
33 prohibit any officer, partner, member, manager or employee of any firm or organization

1 from affixing that person's own signature to any statement in reference to the financial
2 affairs of such firm or organization with any wording designating the position, title, or
3 office that the person holds therein nor prohibit any act of a public official or employee in
4 the performance of the person's duties as such.

5 (h) No person holding a certificate or registration or firm holding a
6 permit under this Act shall engage in the practice of public accountancy using a
7 professional or firm name or designation that is misleading about the legal form of the
8 firm, or about the person's who are partners, officer, members, managers or shareholds of
9 the firm, or about any other matter, provided, however, that names of one or more former
10 partner, members, managers or shareholders may be included in the name of a firm or its
11 successor.

12 (i) None of the foregoing provisions of this Section shall have any
13 application to a person or firm holding a certification, designation, degree, or license
14 granted in a foreign country entitling the holder thereof to engage in the practice of
15 public accountancy or its equivalent in such country, whose activities in the CNMI are
16 limited to the provision of professional services to persons or firms who are residents of,
17 governments of, or business entities of the country in which the persons holds such
18 entitlement, who issues no reports with respect to the financial statements of any other
19 persons, firm, or government units in the CNMI, and who does not use in the CNMI any
20 title or designation other than the one under which the person practices in such country,
21 followed by a translation of such title or designation into the English language, if it is in a
22 different language, and by the name of such country.

23 (j) No holder of a certificate issued under Section 6 of this Act shall
24 practice public accountancy in any firm that does not hold a valid permit issued under
25 Section 7 of this Act.

26 (k) Nothing herein shall prohibit a practicing attorney or firm of
27 attorneys from preparing or presenting records or documents customarily prepared by an
28 attorney or firm of attorneys in connection with the attorney's professional work in the
29 practice of law.

30 Section 14. Injunctions Against Unlawful Acts. Whenever, as a result of an
31 investigation under Section 10 of this Act or otherwise, the Board believes that any
32 person or firm has engaged, or is about to engage, in any acts or practices which
33 constitute or will constitute a violation of Section 13 of this Act, the Board may make

1 application to the appropriate court for an order enjoining such acts or practices, and
2 upon a showing by the Board that such person or firm has engaged, or is about to engage,
3 in any such acts or practices, an injunction, restraining order, or other order as may be
4 appropriate shall be granted by such court.

5 Section 15. Criminal Penalties.

6 (a) Whenever, by reason of an investigation under Section 10 of this
7 Act or otherwise, the Board has reason to believe that any person or firm has knowingly
8 engaged in acts or practices that constitute a violation of Section 13 of this Act, the Board
9 may bring its information to the attention of the Attorney General of the CNMI (or other
10 appropriate law enforcement officer) who may, in the officer's discretion, cause
11 appropriate criminal proceedings to be brought thereon.

12 (b) Any person or firm who knowingly violates any provision of
13 Section 13 of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall
14 be subject to a fine of not more than \$10,000 or to imprisonment for not more than one
15 year, or to both such fine and imprisonment.

16 Section 16. Single Act Evidence of Practice. In any action brought
17 under Sections 11, 14, or 15 of this Act, evidence of the commission of a single act
18 prohibited by this Act shall be sufficient to justify a penalty, injunction, restraining order,
19 or conviction, respectively, without evidence of a general course of conduct.

20 Section 17. Confidential Communications. Except by permission of the
21 client engaging a licensee under this Act, or the heirs, successors, or personal
22 representatives of such client, a licensee or any partner, officer, member, manager,
23 shareholder, or employee of a licensee shall not voluntarily disclose information
24 communicated to the licensee by the client relating to and in connection with services
25 rendered to the client by the licensee in the practice of public accountancy. Such
26 information shall be deemed confidential, provided, however, that nothing herein shall
27 be construed as prohibiting the disclosure of information required to be disclosed by the
28 standards of the public accounting profession in reporting on the examination of financial
29 statements or as prohibiting disclosures in court proceedings, in investigations or
30 proceedings under Section 10 or 11 of this Act, in ethical investigations conducted by
31 private professional organizations, or in the course of quality reviews.

32 Section 18. Licensees' Working Papers; Clients' Records.

1 (a) All statements, records, schedules, working papers, and
2 memoranda made by a licensee or a partner, shareholder, officer, director, member,
3 manager or employee of a licensee, incident to, or in the course of, rendering services to
4 a client in the practice of public accountancy, except the reports submitted by the licensee
5 to the client and except for records that are part of the client's records, shall be and
6 remain the property of the licensee in the absence of an express agreement between the
7 licensee and the client to the contrary. No such statement, record, schedule, working
8 paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of
9 the client or the client's personal representative or assignee, to anyone other than one or
10 more surviving partners, stockholders, members or new partners, new stockholders, or
11 new members of the licensee, or any combined or merged firm or successor in interest to
12 the licensee. Nothing in this Section should be construed as prohibiting any temporary
13 transfer of workpapers or other material necessary in the course of carrying out quality
14 reviews or as otherwise interfering with the disclosure of information pursuant to Section
15 17.

16 (b) A licensee shall furnish to a client or former client, upon request
17 and reasonable notice:

18 (1) A copy of the licensee's working papers, to the extent that
19 such working papers include records that would ordinarily constitute part of the client's
20 records and are not otherwise available to the client; and

21 (2) Any accounting or other records belonging to, or obtained
22 from or on behalf of, the client that the licensee removed from the client's premises or
23 received for the client's account; the licensee may make and retain copies of such
24 documents of the client when they form the basis for work done by the licensee.

25 (c) Nothing herein shall require a licensee to keep any workpaper
26 beyond the period prescribed in any other applicable statute.

27 Section 19. Privity of Contract.

28 (a) This Section applies to all causes of action of the type specified
29 herein filed on or after the effective date.

30 (b) This Section governs any action based on negligence brought
31 against any accountant or firm of accountants practicing in the CNMI by any person or
32 entity claiming to have been injured as a result of financial statements or other
33 information examined, compiled, reviewed, certified, audited or otherwise reported or

1 opined on by the defendant accountant or in the course of an engagement to provide other
2 public accountancy services.

3 (c) No action covered by this Section may be brought unless:

4 (1) The plaintiff (1) is issuer (or successor of the issuer) of the
5 financial statements or other information examined, compiled, reviewed, certified,
6 audited or otherwise reported or opined on by the defendant and (2) engaged the
7 defendant accountant to examine, compile, review, certify, audit or otherwiser report or
8 render an opinion on such financial statements or to provide other public accountancy
9 services; or

10 (2) The defendant accountant or firm: (1) was aware at the
11 time the engagement was undertaken that the financial statements or other information
12 were to be made available for use in connection with a specified transaction by the
13 plaintiff who was specifically identified to the defendant accountant, (2) was aware that
14 the plaintiff intended to rely upon such financial statements or other information in
15 connection with the specified transaction, and (3) had direct contact and communication
16 with the plaintiff and expressed by words or conduct the defendant accountant's
17 understanding of the reliance on such financial statements or other information.

18 Section 20. Uniform Statute of Limitations.

19 (a) This Section applies to all causes of action of the type specified
20 herein filed on or after the effective date.

21 (b) This Section governs any action based on negligence or breach of
22 contract brought against any accountant, or any accounting firm practicing in the CNMI
23 by any person or entity claiming to have been injured as a result of financial statements
24 or other information examined, compiled, reviewed, certified, audited or otherwise
25 reported or opined on by the defendant accountant as a result of an engagement to
26 provide public accountancy services.

27 (c) No action covered by this Section may be brought unless the suit is
28 commenced on or before the earlier of:

29 (1) one year from the date the alleged act, omission or
30 neglect is discovered or should have been discovered by the
31 exercise of reasonable diligence;

32 (2) three years after completion of the service for
33 which the suit is brought has been performed; or

1 (3) three years after the date of the initial issuance of
2 the accountant's report on the financial statements or other information
3 Section 21. Proportionate Liability.

4 (a) This Section applies to all causes of action of the type specified
5 herein filed on or after the effective date.

6 (b) This Section governs any claim for money damages brought
7 against any accountant; or any accounting firm registered, licensed, or practicing in the
8 CNMI; or any employee or principal of such firm by any person or entity claiming to
9 have been injured as a result of the practice of public accountancy by the defendant
10 accountant or other person or entity.

11 (c) No judgment for money damages may be entered against any
12 accountant, firm, employee, or principal described in subsection (b) (collectively referred
13 to in this subsection as the "accountant") in an action covered by this Section except in
14 accordance with the provisions of this subsection.

15 (1) If the party seeking a judgment for damages against
16 the accountant proves that the accountant acted with the
17 deliberate intent to deceive, manipulate or defraud for the
18 accountant's own direct pecuniary benefit, the liability of the
19 accountant shall be determined according to the principles that
20 generally apply to such an action.

21 (2) If the accountant is not proven to have acted with
22 the deliberate intent to deceive, manipulate or defraud for the
23 accountant's own direct pecuniary benefit, the amount of the
24 accountant's liability in damages shall be determined as follows:

25 (A) The trier of fact shall determine the percentage of responsibility of
26 the plaintiff, of each of the defendants, and of each of the other persons or entities alleged
27 by the parties to have caused or contributed to the harm alleged by the plaintiff. In
28 determining the percentages of responsibility, the trier of fact shall consider both the
29 nature of the conduct of each person and the nature and extent of the casual relationship
30 between that conduct and the damage claimed by the plaintiff.

31 (B) The trier of fact shall next determine the total amount of damage
32 suffered by the plaintiff caused in whole or in part by the plaintiff, the defendants, and
33 other persons alleged to have caused or contributed to the damage.

1 (C) The trier of fact shall then multiply the percentage of responsibility
2 of the account (determined under (A) by the total amount of damages (determined under
3 (B) and shall enter a judgment or verdict against the accountant in an amount no greater
4 than the product of those two factors.

5 (D) In no event shall the damages awarded against or paid by an
6 accountant exceed the amount determined under (C). The accountant shall not be jointly
7 liable on any judgment entered against any other party to the action.

8 (E) Except where a contractual relationship permits, no defendant shall
9 have a right to recover from an accountant any portion of the
10 percentage of damages assessed against such other defendant.

11
12 Section 22. Severability. If any provision of this Act or the application of any
13 such provision to any person or circumstance should be held invalid by a court of
14 competent jurisdiction, the remainder of this Act or the application of its provisions to
15 persons or circumstances other than those to which it is held invalid shall not be affected
16 thereby.

17 Section 23. Savings Clause. This Act and any repealer contained herein shall not
18 be construed as affecting any existing right acquired under contract or acquired under
19 statutes repealed or under any rule, regulation or order adopted under the statutes.
20 Repealers contained in this Act shall not affect any proceeding instituted under or
21 pursuant to prior law. The enactment of this Act shall not have the effect of terminating,
22 or in any way modifying, any liability, civil or criminal, which shall already be in
23 existence at the date this Act becomes effective.

24 Section 24. Effective Date. This Act shall take effect upon its approval by the
25 Governor or upon its becoming law without such approval.

Date: _____ Introduced By: _____
Sen. Paul A. Manglona (by request)

Reviewed for Legal Sufficiency:
