

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 943

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGIRL.

1998H.01P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 326.289, RSMo, and to enact in lieu thereof two new sections relating to consumer protections for preparation of financial documents.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 326.289, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 143.980 and 326.289, to read as follows:

143.980. 1. This section shall be known as the "Taxpayer Protection Act".

2. For the purposes of this section, the following terms shall mean:

(1) "Department", the Missouri department of revenue;

(2) "Paid tax return preparer", a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any income tax return or claim for refund required to be filed under this chapter. The preparation of a substantial portion of a return or claim for refund shall be treated as the preparation of such return or claim for refund. A paid tax return preparer shall not include any certified public accountant who holds an active license issued by any state and the employees of such certified public accountant or certified public accounting firm or an enrolled agent enrolled to practice before the federal Internal Revenue Service pursuant to 31 C.F.R. Section 10.4;

(3) "Willful or reckless conduct", the same meaning as defined under 26 U.S.C. Section 6694;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 **3. For all tax years beginning on or after January 1, 2020, any income tax return**
16 **or claim for refund prepared by a paid tax return preparer shall be signed by the paid tax**
17 **return preparer and shall bear the paid tax return preparer's Internal Revenue Service**
18 **preparer tax identification number. Any person who is the paid tax return preparer with**
19 **respect to any income tax return or claim for refund and who fails to sign the return or**
20 **claim for refund, or who fails to provide his or her preparer tax identification number,**
21 **shall pay a penalty of fifty dollars for each such failure, unless it can be shown that the**
22 **failure was due to reasonable cause and not willful or reckless conduct. The aggregate**
23 **penalty that may be imposed by the department on any paid tax return preparer with**
24 **respect to returns or claims for refund filed during any calendar year shall not exceed**
25 **twenty-five thousand dollars per paid tax return preparer.**

26 **4. (1) In a court of competent jurisdiction, the director of revenue may commence**
27 **suit to enjoin any paid tax return preparer from further engaging in any conduct described**
28 **in subdivision (2) of this subsection, or from further action as a paid tax return preparer.**

29 **(2) In any action under subdivision (1) of this subsection, if the court finds that**
30 **injunctive relief is appropriate to prevent the recurrence of willful or reckless conduct, the**
31 **court may enjoin the paid tax return preparer from further engaging in any conduct**
32 **specified in the action. The court may enjoin conduct when a paid tax return preparer has**
33 **done any of the following:**

34 **(a) Prepared any income tax return or claim for refund that includes an**
35 **understatement of a taxpayer's liability due to an unreasonable position. For purposes of**
36 **this subdivision, the term "unreasonable position" shall have the same meaning as defined**
37 **under 26 U.S.C. Section 6694;**

38 **(b) Prepared any income tax return or claim for refund that includes an**
39 **understatement of a taxpayer's liability due to the paid tax return preparer's willful or**
40 **reckless conduct;**

41 **(c) Where required, failed to sign an income tax return or claim for refund;**

42 **(d) Where required, failed to furnish his or her preparer tax identification number;**

43 **(e) Where required, failed to retain a copy of an income tax return;**

44 **(f) Where required by due diligence requirements imposed by department rules**
45 **and regulations, failed to be diligent in determining a taxpayer's eligibility for tax benefits;**

46 **(g) Negotiated a check issued to a taxpayer by the department without the**
47 **permission of the taxpayer;**

48 **(h) Engaged in any conduct subject to any criminal penalty provided under**
49 **chapters 135 to 155;**

50 (i) Misrepresented to the department the paid tax return preparer's eligibility to
51 practice or otherwise misrepresented the paid tax return preparer's experience or
52 education;

53 (j) Guaranteed the payment of any income tax refund or the allowance of any
54 income tax credit; or

55 (k) Engaged in any other fraudulent or deceptive conduct that substantially
56 interferes with the proper administration of the laws of this state.

57 (3) (a) If the court finds that a paid tax return preparer has continually or
58 repeatedly engaged in any conduct described in subdivision (2) of this subsection and that
59 an injunction prohibiting the conduct would not be sufficient to prevent the paid tax return
60 preparer's interference with the proper administration of the laws of this state, the court
61 may enjoin the paid tax return preparer from acting as a paid tax return preparer in
62 Missouri.

63 (b) Being enjoined from preparing tax returns or claims for refund for the United
64 States or any other state in the five years preceding the petition for an injunction under
65 this section shall establish a prima facie case for an injunction to be issued under this
66 section. For purposes of this paragraph, the term "state" shall mean a state of the United
67 States, the District of Columbia, Puerto Rico, United States Virgin Islands, or any territory
68 or insular possession subject to the jurisdiction of the United States.

326.289. 1. The board may grant or renew permits to practice as a certified public
2 accounting firm to applicants that demonstrate their qualifications in accordance with this
3 chapter.

4 (1) The following shall hold a permit issued under this chapter:

5 (a) Any firm with an office in this state, as defined by the board by rule, offering or
6 performing attest or compilation services; or

7 (b) Any firm with an office in this state that uses the title "CPA" or "CPA firm".

8 (2) Any firm that does not have an office in this state may offer or perform attest or
9 compilation services in this state without a valid permit only if it meets each of the following
10 requirements:

11 (a) It complies with the qualifications described in subdivision (1) of subsection 4 of this
12 section;

13 (b) It complies with the requirements of peer review as set forth in this chapter and the
14 board's promulgated regulations;

15 (c) It performs such services through an individual with practice privileges under section
16 326.283; and

17 (d) It can lawfully do so in the state where said individual with the privilege to practice
18 has his or her principal place of business.

19 (3) A firm which is not subject to the requirements of subdivisions (1) or (2) of this
20 subsection may perform other nonattest or noncompilation services while using the title "CPA"
21 or "CPA firm" in this state without a permit issued under this section only if it:

22 (a) Performs such services through an individual with the privilege to practice under
23 section 326.283; and

24 (b) Can lawfully do so in the state where said individual with privilege to practice has
25 his or her principal place of business.

26 (4) (a) All firms practicing public accounting in this state shall register with the
27 secretary of state.

28 (b) Firms which may be exempt from this requirement include:

29 a. Sole proprietorships;

30 b. Trusts created pursuant to revocable trust agreements, of which the trustee is a natural
31 person who holds a license or privilege to practice as set forth in section 326.280, 326.283, or
32 326.286;

33 c. General partnerships not operating as a limited liability partnership; or

34 d. Foreign professional corporations which do not meet criteria of chapter 356 due to
35 name or ownership, shall obtain a certificate of authority as a general corporation.
36 Notwithstanding the provisions of chapter 356, the secretary of state may issue a certificate of
37 authority to a foreign professional corporation which does not meet the criteria of chapter 356
38 due to name or ownership, if the corporation meets the requirements of this section and the rules
39 of the board.

40 2. Permits shall be initially issued and renewed for periods of not more than three years
41 or for a specific period as prescribed by board rule following issuance or renewal.

42 3. The board shall determine by rule the form for application and renewal of permits and
43 shall annually determine the fees for permits and their renewals.

44 4. An applicant for initial issuance or renewal of a permit to practice under this section
45 shall be required to show that:

46 (1) A simple majority of the ownership of the firm, in terms of financial interests and
47 voting rights of all partners, officers, principals, shareholders, members or managers, belongs
48 to licensees who are licensed in some state, and the partners, officers, principals, shareholders,
49 members or managers, whose principal place of business is in this state and who perform
50 professional services in this state are licensees under section 326.280 or the corresponding
51 provision of prior law. Although firms may include nonlicensee owners, the firm and its
52 ownership shall comply with rules promulgated by the board;

53 (2) Any certified public accounting firm may include owners who are not licensees
54 provided that:

55 (a) The firm designates a licensee of this state, or in the case of a firm which must have
56 a permit under this section designates a licensee of another state who meets the requirements of
57 section 326.283, who is responsible for the proper registration of the firm and identifies that
58 individual to the board;

59 (b) All nonlicensee owners are active individual participants in the certified public
60 accounting firm or affiliated entities;

61 (c) All owners are of good moral character; and

62 (d) The firm complies with other requirements as the board may impose by rule;

63 (3) Any licensee who is responsible for supervising attest services, or signs or authorizes
64 someone to sign the licensee's report on the financial statements on behalf of the firm, shall meet
65 competency requirements as determined by the board by rule which shall include one year of
66 experience in addition to the experience required under subdivision (6) of subsection 1 of section
67 326.280 and shall be verified by a licensee. The additional experience required by this
68 subsection shall include experience in attest work supervised by a licensee.

69 5. An applicant for initial issuance or renewal of a permit to practice shall register each
70 office of the firm within this state with the board and show that all attest and compilation
71 services rendered in this state are under the charge of a licensee.

72 6. No licensee or firm holding a permit under this chapter shall use a professional or firm
73 name or designation that is misleading as to:

74 (1) The legal form of the firm;

75 (2) The persons who are partners, officers, members, managers or shareholders of the
76 firm; or

77 (3) Any other matter.

78 The names of one or more former partners, members or shareholders may be included in the
79 name of a firm or its successor unless the firm becomes a sole proprietorship because of the
80 death or withdrawal of all other partners, officers, members or shareholders. A firm may use a
81 fictitious name if the fictitious name is registered with the board and is not otherwise misleading.
82 The name of a firm shall not include the name or initials of an individual who is not a present
83 or a past partner, member or shareholder of the firm or its predecessor. The name of the firm
84 shall not include the name of an individual who is not a licensee.

85 7. Applicants for initial issuance or renewal of permits shall list in their application all
86 states in which they have applied for or hold permits as certified public accounting firms and list
87 any past denial, revocation, suspension or any discipline of a permit by any other state. Each
88 holder of or applicant for a permit under this section shall notify the board in writing within

89 thirty days after its occurrence of any change in the identities of partners, principals, officers,
90 shareholders, members or managers whose principal place of business is in this state; any change
91 in the number or location of offices within this state; any change in the identity of the persons
92 in charge of such offices; and any issuance, denial, revocation, suspension or any discipline of
93 a permit by any other state.

94 8. Firms which fall out of compliance with the provisions of this section due to changes
95 in firm ownership or personnel after receiving or renewing a permit shall take corrective action
96 to bring the firm back into compliance as quickly as possible. The board may grant a reasonable
97 period of time for a firm to take such corrective action. Failure to bring the firm back into
98 compliance within a reasonable period as defined by the board may result in the suspension or
99 revocation of the firm permit.

100 9. The board shall require by rule, as a condition to the renewal of permits, that firms
101 undergo, no more frequently than once every three years, peer reviews conducted in a manner
102 as the board shall specify. The review shall include a verification that individuals in the firm
103 who are responsible for supervising attest and compilation services or sign or authorize someone
104 to sign the accountant's report on the financial statements on behalf of the firm meet the
105 competency requirements set out in the professional standards for such services, provided that
106 any such rule:

107 (1) Shall include reasonable provision for compliance by a firm showing that it has
108 within the preceding three years undergone a peer review that is a satisfactory equivalent to peer
109 review generally required under this subsection;

110 (2) May require, with respect to peer reviews, that peer reviews be subject to oversight
111 by an oversight body established or sanctioned by board rule, which shall periodically report to
112 the board on the effectiveness of the review program under its charge and provide to the board
113 a listing of firms that have participated in a peer review program that is satisfactory to the board;
114 and

115 (3) Shall require, with respect to peer reviews, that the peer review processes be operated
116 and documents maintained in a manner designed to preserve confidentiality, and that the board
117 or any third party other than the oversight body shall not have access to documents furnished or
118 generated in the course of the peer review of the firm except as provided in subdivision (2) of
119 this subsection.

120 10. The board may, by rule, charge a fee for oversight of peer reviews, provided that the
121 fee charged shall be substantially equivalent to the cost of oversight. **Notwithstanding any**
122 **other provision in this section, the board may obtain the following information regarding**
123 **peer review from any approved American Institute for Certified Public Accountants peer**
124 **review program:**

- 125 **(1) The firm's name and address;**
126 **(2) The firm's dates of enrollment in the program;**
127 **(3) The date of acceptance and the period covered by the firm's most recently**
128 **accepted peer review; and**
129 **(4) If applicable, whether the firm's enrollment in the program has been dropped**
130 **or terminated.**

131 11. In connection with proceedings before the board or upon receipt of a complaint
132 involving the licensee performing peer reviews, the board shall not have access to any documents
133 furnished or generated in the course of the performance of the peer reviews except for peer
134 review reports, letters of comment and summary review memoranda. The documents shall be
135 furnished to the board only in a redacted manner that does not specifically identify any firm or
136 licensee being peer reviewed or any of their clients.

137 12. The peer review processes shall be operated and the documents generated thereby
138 be maintained in a manner designed to preserve their confidentiality. No third party, other than
139 the oversight body, the board, subject to the provisions of subsection 11 of this section, or the
140 organization performing peer review shall have access to documents furnished or generated in
141 the course of the review. All documents shall be privileged and closed records for all purposes
142 and all meetings at which the documents are discussed shall be considered closed meetings under
143 subdivision (1) of section 610.021. The proceedings, records and workpapers of the board and
144 any peer review subjected to the board process shall be privileged and shall not be subject to
145 discovery, subpoena or other means of legal process or introduction into evidence at any civil
146 action, arbitration, administrative proceeding or board proceeding. No member of the board or
147 person who is involved in the peer review process shall be permitted or required to testify in any
148 civil action, arbitration, administrative proceeding or board proceeding as to any matters
149 produced, presented, disclosed or discussed during or in connection with the peer review process
150 or as to any findings, recommendations, evaluations, opinions or other actions of such
151 committees or any of its members; provided, however, that information, documents or records
152 that are publicly available shall not be subject to discovery or use in any civil action, arbitration,
153 administrative proceeding or board proceeding merely because they were presented or considered
154 in connection with the peer review process.

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