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Code: Section:

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] (*Heading of Division 3 added by Stats. 1939, Ch. 30.)*

CHAPTER 1. Accountants [5000 - 5158] (*Chapter 1 repealed and added by Stats. 1945, Ch. 1353.)*

ARTICLE 5.1. Practice Privileges [5096 - 5096.22] (*Article 5.1 added by Stats. 2004, Ch. 921, Sec. 11.)*

5096. (a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least 4 of the last 10 years.

(2) The individual has a license, certificate, or permit from a state that has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure that have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) An individual who qualifies for the practice privilege under this section may engage in the practice of public accountancy in this state, and a notice, fee, or other requirement shall not be imposed on that individual by the board.

(d) An individual who qualifies for the practice privilege under this section may perform the following services only through a firm of certified public accountants that has obtained a registration from the board pursuant to Section 5096.12:

(1) An audit or review of a financial statement for an entity headquartered in California.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence for an entity headquartered in California.

(3) An examination of prospective financial information for an entity headquartered in California.

(e) An individual who holds a practice privilege under this article, and is exercising the practice privilege in California:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under practice privileges in this state, except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when the individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit on which the substantial equivalency is based.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of

business or residence.

(4) Is deemed to have appointed the regulatory agency of the state that issued the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall cease exercising the practice privilege in this state if the regulatory agency in the state in which the individual's certificate, license, or permit was issued takes disciplinary action resulting in the suspension or revocation, including stayed suspension, stayed revocation, or probation of the individual's certificate, license, or permit, or takes other disciplinary action against the individual's certificate, license, or permit that arises from any of the following:

(A) Gross negligence, recklessness, or intentional wrongdoing relating to the practice of public accountancy.

(B) Fraud or misappropriation of funds.

(C) Preparation, publication, or dissemination of false, fraudulent, or materially incomplete or misleading financial statements, reports, or information.

(7) Shall cease exercising the practice privilege in this state if convicted in any jurisdiction of any crime involving dishonesty, including, but not limited to, embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(8) Shall cease exercising the practice privilege if the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board bars the individual from practicing before them.

(9) Shall cease exercising the practice privilege if any governmental body or agency suspends the right of the individual to practice before the body or agency.

(10) Shall report to the board in writing any pending criminal charges, other than for a minor traffic violation, in any jurisdiction within 30 days of the date the individual has knowledge of those charges.

(f) An individual who is required to cease practice pursuant to paragraphs (6) to (9), inclusive, of subdivision (e) shall notify the board within 15 calendar days, on a form prescribed by the board, and shall not practice public accountancy in this state pursuant to this section until the individual has received from the board written permission to do so.

(g) An individual who fails to cease practice as required by subdivision (e) or who fails to provide the notice required by subdivision (f) shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the board as if the practice privilege were a license and the individual were a licensee. An individual in violation of subdivision (e) or (f) shall, for a minimum of one year from the date the board learns there has been a violation of subdivision (e) or (f), not practice in this state and shall not have the possibility of reinstatement during that period. If the board determines that the failure to cease practice or provide the notice was intentional, that individual's practice privilege shall be revoked and there shall be no possibility of reinstatement for a minimum of two years.

(h) The board shall require an individual who provides notice to the board pursuant to subdivision (f) to cease the practice of public accountancy in this state until the board provides the individual with written permission to resume the practice of public accountancy in this state.

(i) (1) An individual to whom, within the last seven years immediately preceding the date on which the individual wishes to practice in this state, any of the following criteria apply, shall notify the board, on a form prescribed by the board, and shall not practice public accountancy in this state pursuant to this section until the board provides the individual with written permission to do so:

(A) The individual has been the subject of any final disciplinary action by the licensing or disciplinary authority of any other jurisdiction with respect to any professional license or has any charges of professional misconduct pending against that individual in any other jurisdiction.

(B) The individual has had their license in another jurisdiction reinstated after a suspension or revocation of the license.

(C) The individual has been denied issuance or renewal of a professional license or certificate in any other jurisdiction for any reason other than an inadvertent administrative error.

(D) The individual has been convicted of a crime or is subject to pending criminal charges in any jurisdiction other than a minor traffic violation.

(E) The individual has otherwise acquired a disqualifying condition as described in subdivision (a) of Section 5096.2.

(2) An individual who fails to cease practice as required by subdivision (e) or who fails to provide the notice required by paragraph (1) shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the board as if the practice privilege were a license and the individual were a licensee. An individual in violation of subdivision (e) or paragraph (1) shall, for a minimum of one year from the date the board knows there has been a violation of subdivision (e) or paragraph (1), not practice in this state and shall not have the possibility of reinstatement during that period. If the board determines that the failure to cease practice or provide the notice was intentional, that individual shall be prohibited from practicing in this state in the same manner as if a licensee has that licensee's practice privilege revoked and there shall be no possibility of reinstatement for a minimum of two years.

(j) At the time of notification pursuant to subdivision (f) or (i), if the individual has a valid email address, that individual shall provide that email address to the board.

(Amended by Stats. 2019, Ch. 359, Sec. 11. (AB 1521) Effective January 1, 2020.)

5096.1. (a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who does not qualify to practice pursuant to the practice privilege described in Section 5096 and who has a license, certificate, or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:

(1) Deemed to be practicing public accountancy unlawfully in this state.

(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.

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

(b) The board may revoke a practice privilege from any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.

(Amended (as added by Stats. 2012, Ch. 411, Sec. 12) by Stats. 2018, Ch. 447, Sec. 5. (SB 795) Effective January 1, 2019.)

5096.2. (a) (1) Practice privileges may be revoked for any of the following reasons:

(A) If an individual no longer qualifies under, or complies with, the provisions of this article, including, but not limited to, Section 5096, or implementing regulations.

(B) If an individual commits any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480.

(C) If an individual commits any act that if committed by a licensee would be grounds for discipline under Section 5100.

(D) If an individual commits any act outside of this state that would be a violation if committed within this state.

(E) If an individual acquires at any time, while exercising the practice privilege, any disqualifying condition under paragraph (2).

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender, or other discipline or sanctions involving any license, permit, registration, certificate, or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars (\$30,000) or greater.

(D) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

(b) The board may revoke practice privileges using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the practice privilege is revoked.

(B) The reasons for revocation.

(C) The earliest date on which the individual may qualify for a practice privilege.

(D) That the individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) if a written notice of appeal and request for hearing is made within 60 days.

(E) That, if the individual does not submit a notice of appeal and request for hearing within 60 days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) An individual whose practice privilege has been revoked may only subsequently exercise the practice privilege upon application to the board for reinstatement of the practice privilege not less than one year after the effective date of the notice or decision revoking the practice privilege, unless a longer time period is specified in the notice or decision revoking the practice privilege.

(d) Holders of practice privileges are subject to suspension, citations, fines, or other disciplinary actions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations adopted thereunder.

(e) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against the holder of a practice privilege.

(f) The provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board, shall apply under this article.

(g) If the board revokes or otherwise limits an individual's practice privilege, the board shall promptly notify the regulatory agency of the state or states in which the individual is licensed, and the United States Securities and Exchange Commission, the Public Company Accounting Oversight Board, and the National Association of State Boards of Accountancy.

(Amended (as amended by Stats. 2013, Ch. 319, Sec. 4) by Stats. 2018, Ch. 447, Sec. 7. (SB 795) Effective January 1, 2019.)

5096.4. (a) The right of an individual to practice in this state under a practice privilege may be administratively suspended at any time by an order issued by the board or its executive officer, without prior notice or hearing, for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the individual's competence or qualifications to practice under practice privileges, failure to timely respond to a board inquiry or request for information or documents, or under other conditions and circumstances provided for by board regulation. The board shall consult the Public Company Accounting Oversight Board and the United States Securities and Exchange Commission at least once every six months to identify out-of-state licensees who may have disqualifying conditions or who may be obliged to cease practice, and shall disclose, pursuant to this subdivision, whether those out-of-state licensees are lawfully permitted to exercise the privilege. Disclosure of this information shall not be considered discipline.

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

(1) The reason for the suspension.

(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing.

(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) applicable to individuals who are denied licensure, including the filing of a statement of issues by the board setting forth the reasons for the administrative suspension of practice privileges and specifying the statutes and rules with which the individual must show compliance by

producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the revocation of practice privileges.

(d) The burden is on the holder of the suspended practice privilege to establish both qualification and fitness to practice under practice privileges.

(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer.

(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state.

(g) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for revocation or discipline of a practice privilege.

(Amended (as amended by Stats. 2014, Ch. 400, Sec. 7) by Stats. 2018, Ch. 447, Sec. 10. (SB 795) Effective January 1, 2019.)

5096.5. Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095.

(Amended (as added by Stats. 2012, Ch. 411, Sec. 23) by Stats. 2018, Ch. 447, Sec. 12. (SB 795) Effective January 1, 2019.)

5096.6. In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf of the board, including, but not limited to, issuing an interim suspension order, subject to the right of the individual to timely appeal and request a hearing as provided for in this article.

(Amended (as added by Stats. 2012, Ch. 411, Sec. 26) by Stats. 2018, Ch. 447, Sec. 14. (SB 795) Effective January 1, 2019.)

5096.7. (a) Anywhere the term "license," "licensee," "permit," or "certificate" is used in this chapter or Division 1.5 (commencing with Section 475), it shall include persons holding practice privileges under this article, unless otherwise inconsistent with the provisions of the article.

(b) Anywhere the term "employee" is used in this article it shall include, but is not limited to, partners, shareholders, and other owners.

(c) For purposes of this article, the term "license" includes certificate or permit.

(Amended (as added by Stats. 2012, Ch. 411, Sec. 29) by Stats. 2018, Ch. 447, Sec. 16. (SB 795) Effective January 1, 2019.)

5096.8. In addition to the authority otherwise provided by this code, all investigative powers of the board, including those delegated to the executive officer, shall apply to investigations concerning compliance with, or actual or potential violations of, the provisions of this article or implementing regulations, including, but not limited to, the power to conduct investigations and hearings by the executive officer under Section 5103 and to issuance of subpoenas under Section 5108.

(Added by Stats. 2004, Ch. 921, Sec. 11. Effective January 1, 2005.)

5096.9. (a) The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

(b) The board may adopt emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to establish policies, guidelines, and procedures to initially implement this article as it goes into effect on July 1, 2013. The adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, or general welfare. The emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State in accordance with the Administrative Procedure Act.

(c) (1) Notwithstanding any other law, to ensure uninterrupted implementation of this article, the board may adopt or amend regulations consistent with Section 100 of Title 1 of the California Code of Regulations to remove or extend the inoperative date of its regulations in Article 3 (commencing with Section 18) of Division 1 of Title 16 of the California Code of Regulations, or to remove the inoperative dates for the regulations in Article 4 (commencing with Section 26) of Division 1 of Title 16 of the California Code of Regulations.

(2) Notwithstanding any other law, the Office of Administrative Law shall consider the board's action to remove or extend the inoperative dates of these regulations as a change without regulatory effect as described in Section 100 of Title 1 of the California Code of Regulations that exempts the board from complying with the rulemaking procedure specified in the Administrative Procedure Act (Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code).

(Amended by Stats. 2018, Ch. 447, Sec. 18. (SB 795) Effective January 1, 2019.)

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

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

(2) A firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), issue a citation and fine pursuant to Section 125.9, or otherwise restrict or discipline the firm for any act that would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) A firm that provides the services described in subdivision (d) of Section 5096 shall obtain a registration from the board. At the time of registration, if the firm has a valid email address, it shall provide that email address to the board.

(Amended by Stats. 2019, Ch. 359, Sec. 12. (AB 1521) Effective January 1, 2020.)

5096.20. (a) To ensure that Californians are protected from out-of-state licensees with disqualifying conditions who may unlawfully attempt to practice in this state under a practice privilege, prior to July 1, 2013, the board shall add an out-of-state licensee feature to its license lookup tab of the home page of its internet website that allows consumers to obtain information about an individual whose principal place of business is not in this state and who seeks to exercise a practice privilege in this state, that is at least equal to the information that was available to consumers through its home page prior to January 1, 2013, through the practice privilege form previously filed by out-of-state licensees pursuant to Section 5096, as added by Chapter 921 of the Statutes of 2004, and the regulations adopted thereunder. At minimum, these features shall include all of the following:

(1) The ability of the consumer to search by name and state of licensure.

(2) The disclosure of information in the possession of the board, which the board is otherwise authorized to publicly disclose, about an individual exercising a practice privilege in this state, including, but not limited to, whether the board has taken action of any form against that individual and, if so, what the action was or is.

(3) A disclaimer that the consumer must click through prior to being referred to any other internet website, which in plain language explains that the consumer is being referred to an internet website that is maintained by a regulatory agency or other entity that is not affiliated with the board. This disclaimer shall include a link to relevant sections of this article that set forth disqualifying conditions, including, but not limited to, Section 5096.2.

(4) A statement in plain language that notifies consumers that they are permitted to file complaints against such individuals with the board.

(5) A link to the internet website or sites that the board determines, in its discretion, provides the consumer the most complete and reliable information available about the individual's status as a licenseholder, permitholder, or certificate holder.

(6) If the board of another state does not maintain an internet website that allows a consumer to obtain information about its licensees including, but not limited to, disciplinary history, and that information is not available through a link to an internet website maintained by another entity, a link to contact information for that board, which contains a disclaimer in plain language that explains that the consumer is being referred to a board that does not permit the consumer to obtain information, including, but not limited to, disciplinary history, about individuals through the internet website, and that the out-of-state board is not affiliated with the board.

(b) The board shall biennially survey the internet websites and disclosure policies of other boards to ensure that its disclaimers are accurate.

(Amended by Stats. 2023, Ch. 510, Sec. 80. (SB 887) Effective January 1, 2024.)

5096.21. (a) (1) On and after January 1, 2016, if the board determines, through a majority vote of the board at a regularly scheduled meeting, that allowing individuals from a particular state to practice in this state pursuant to a practice privilege as described in Section 5096, violates the board's duty to protect the public, pursuant to Section 5000.1, the board shall require out-of-state individuals licensed from that state, as a condition to exercising a practice privilege in this state, to file the notification form and pay the applicable fees as required by Section 5096.22.

(2) A state for which the board has made a determination pursuant to paragraph (1) to require individuals licensed from that state to file a notification form and pay the applicable fees may subsequently be redetermined by the board, by majority vote of the

board at a regularly scheduled meeting, to allow individuals from that state to practice in this state pursuant to a practice privilege as described in Section 5096.

(b) The board shall, at minimum, consider the following factors when making a determination or redetermination pursuant to subdivision (a):

(1) Whether the state timely and adequately addresses enforcement referrals made by the board to the accountancy regulatory board of that state, or otherwise fails to respond to requests the board deems necessary to meet its obligations under this article.

(2) Whether the state makes the disciplinary history of its licensees publicly available through the Internet in a manner that allows the board to adequately link consumers to an internet website to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form.

(3) Whether the state imposes discipline against licensees that is appropriate in light of the nature of the alleged misconduct.

(4) Whether the state has in place and is operating pursuant to enforcement practices substantially equivalent to the current best practices guidelines adopted by the National Association of State Boards of Accountancy provided those guidelines have been determined by the board to meet or exceed the board's own enforcement practices.

(Amended by Stats. 2024, Ch. 586, Sec. 13. (AB 3251) Effective January 1, 2025.)

5096.22. (a) An individual whose principal place of business is in a state subject to an action of the board pursuant to Section 5096.21 shall do both of the following:

(1) Prior to practicing, submit a notification form to the board in a manner prescribed by board regulation.

(2) Pay a fee equal to the reasonable administrative costs, as established by the board.

(b) Except as otherwise provided by this article or by board regulation, a practice privilege subject to this section shall commence when the individual submits a properly completed notification form to the board, provided that the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.

(c) An individual shall not be deemed to be in violation of this section solely because he or she begins the practice of public accounting in California prior to notifying the board as indicated in subdivision (a), provided the notice is given within five business days of the date practice begins. An individual who properly notifies the board within the five-day period provided for in this subdivision shall be deemed to have a practice privilege from the first day of practice in California unless the individual fails to timely submit the required fee. Failure to comply with this section means that the individual is practicing public accountancy unlawfully in this state and is in violation of Section 5120. In addition to any other available remedy, the board may issue a fine equal to reasonable enforcement costs if an individual notifies the board more than five business days after beginning practice in California.

(d) An individual whose principal place of business is in a state subject to an action by the board pursuant to Section 5096.21 shall not be deemed in violation of the notice and fee requirements of this section if the failure to comply occurs within 60 days of the date of the board action.

(Added by Stats. 2018, Ch. 447, Sec. 27. (SB 795) Effective January 1, 2019.)