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2           An act relating to public accountancy; amending  
3           s. 473.309, F.S.; revising practice  
4           requirements for partnerships, corporations,  
5           and limited liability companies; providing that  
6           business entities are practicing public  
7           accounting if their employees are practicing  
8           public accounting; amending s. 473.319, F.S.;  
9           restricting the prohibition on contingency fees  
10          to certain public accounting services; amending  
11          s. 473.3205, F.S.; prohibiting licensees from  
12          accepting or paying commissions or referral  
13          fees in connection with the sale or referral of  
14          certain public accounting services; requiring  
15          written disclosure to clients relating to the  
16          acceptance of certain commissions; amending s.  
17          473.323, F.S.; providing that failing to  
18          provide any required written disclosure to a  
19          client or the public is a ground for  
20          disciplinary action; providing penalties;  
21          amending s. 517.021, F.S., revising an  
22          exemption from the definition of investment  
23          adviser for certified public accountants;  
24          providing an effective date.

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26   Be It Enacted by the Legislature of the State of Florida:

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28           Section 1.   Section 473.309, Florida Statutes, is  
29   amended to read:

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1           473.309 Practice requirements for partnerships,  
2 ~~professional service~~ corporations, and limited liability  
3 companies; business entities practicing public accounting.--

4           (1) A partnership may ~~shall~~ not engage in the practice  
5 of public accounting in this state unless:

6           (a) It is a form of partnership recognized by Florida  
7 law.

8           (b) Partners owning at least two-thirds of the  
9 financial interest and voting rights of the partnership are  
10 certified public accountants ~~Each partner is a certified~~  
11 ~~public accountant~~ in some state. ~~†~~ and

12           (c)(a) At least one general partner and each partner  
13 ~~domiciled in this state~~ is a certified public accountant of  
14 this state and holds an active license. ~~†~~

15           (d) All noncertified public accountant partners are  
16 engaged in the business of the partnership as their principal  
17 occupation.

18           (e) It is in compliance with rules adopted by the  
19 board pertaining to minimum capitalization and adequate public  
20 liability insurance.

21           (f)(c) It ~~The partnership~~ is currently licensed as  
22 required by s. 473.3101.

23           (2) A corporation may ~~shall~~ not engage in the practice  
24 of public accounting in this state unless:

25           (a) It is a ~~professional service~~ corporation duly  
26 organized in this or some ~~any~~ other state. ~~†~~

27           (b) Shareholders ~~Each shareholder~~ of the corporation  
28 owning at least two-thirds of the financial interest and  
29 voting rights of the corporation are certified public  
30 accountants ~~is licensed as a certified public accountant~~ in  
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1 some state and are ~~is~~ principally engaged in the business of  
2 the corporation.~~†~~

3 (c) The principal officer of the corporation ~~and any~~  
4 ~~officer or director having authority over the practice of~~  
5 ~~public accounting by the corporation~~ is a certified public  
6 accountant in some state.~~†~~

7 (d) At least one shareholder of the corporation, ~~and~~  
8 ~~each shareholder, director, and officer domiciled in this~~  
9 ~~state having authority over the practice of public accounting~~  
10 ~~by the corporation,~~ is a certified public accountant and holds  
11 an active license in this state.~~†~~

12 (e) All noncertified public accountant shareholders  
13 are engaged in the business of the corporation as their  
14 principal occupation.

15 (f)~~(e)~~ It is in compliance with rules adopted by the  
16 board pertaining to minimum capitalization and adequate public  
17 liability insurance.~~†~~ ~~and~~

18 (g)~~(f)~~ It is currently licensed as required by s.  
19 473.3101.

20 (3) A limited liability company may not engage in the  
21 practice of public accounting in this state unless:

22 (a) It is a limited liability company duly ~~that is~~  
23 organized in this or some ~~any~~ other state.

24 (b) Members ~~Each member~~ of the limited liability  
25 company owning at least two-thirds of the financial interest  
26 and voting rights of the company are certified public  
27 accountants ~~is a certified public accountant~~ in some state.

28 (c) At least one member of the limited liability  
29 company, ~~and each member or manager domiciled in this state~~  
30 ~~having authority over the practice of public accounting by the~~

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1 ~~limited liability company,~~ is a certified public accountant  
2 and holds an active license in this state.

3 (d) All noncertified public accountant members are  
4 engaged in the business of the company as their principal  
5 occupation.

6 (e)~~(e)~~ It is in compliance with rules adopted by the  
7 board pertaining to minimum capitalization and adequate public  
8 liability insurance.

9 (f)~~(d)~~ It is currently licensed as required by s.  
10 473.3101.

11 (4) A partnership, corporation, limited liability  
12 company, or any other business entity is engaged in the  
13 practice of public accounting if its employees are engaged in  
14 the practice of public accounting.

15 Section 2. Section 473.319, Florida Statutes, is  
16 amended to read:

17 473.319 Contingent fees.--Public accounting services  
18 as defined in s. 473.302(5)(a), and those that include tax  
19 filings with federal, state, or local government, shall not be  
20 offered or rendered for a fee contingent upon the findings or  
21 results of such service. This section does not apply to  
22 services involving federal, state, or other taxes in which the  
23 findings are those of the tax authorities and not those of the  
24 licensee. Fees to be fixed by courts or other public  
25 authorities, which are of an indeterminate amount at the time  
26 a public accounting service is undertaken, shall not be  
27 regarded as contingent fees for purposes of this section.

28 Section 3. Section 473.3205, Florida Statutes, is  
29 amended to read:

30 473.3205 Commissions or referral fees.--A licensee may  
31 not accept or pay a commission or referral fee in connection

1 with the sale or referral of public accounting services as  
2 defined in s. 473.302(5)(a). Any certified public accountant  
3 or business entity that is engaged in the practice of public  
4 accounting and that accepts a commission for the sale of a  
5 product or service to a client must disclose that fact to the  
6 client in writing in accordance with rules adopted by the  
7 board. ~~A licensee who is engaged in the practice of public~~  
8 ~~accounting shall not pay a commission to obtain a client, nor~~  
9 ~~shall he accept compensation for the sale of products, other~~  
10 ~~than the work product of the licensee, or for referral of~~  
11 ~~products or services of others.~~ However, this section shall  
12 not prohibit:

13 (1) Payments for the purchase of an accounting  
14 practice;

15 (2) Retirement payments to individuals formerly  
16 engaged in the practice of public accounting or payments to  
17 their heirs or estates; or

18 (3) Payment of fees to a referring licensee for public  
19 accounting services to either the successor licensee or the  
20 client in connection with an engagement.

21 Section 4. Paragraph (m) is added to subsection (1) of  
22 section 473.323, Florida Statutes, 1996 Supplement, to read:

23 473.323 Disciplinary proceedings.--

24 (1) The following acts constitute grounds for which  
25 the disciplinary actions in subsection (3) may be taken:

26 (m) Failing to provide any written disclosure to a  
27 client or the public which is required by this chapter or rule  
28 of the board.

29 Section 5. Paragraph (b) of subsection (10) of section  
30 517.021, Florida Statutes, is amended to read:

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1           517.021 Definitions.--When used in this chapter,  
2 unless the context otherwise indicates, the following terms  
3 have the following respective meanings:

4           (10)(a) "Investment adviser" includes any person who  
5 for compensation engages for all or part of his time, directly  
6 or indirectly, or through publications or writings, in the  
7 business of advising others as to the value of securities or  
8 as to the advisability of investments in, purchasing of, or  
9 selling of securities, except a dealer whose performance of  
10 these services is solely incidental to the conduct of his  
11 business as a dealer and who receives no special compensation  
12 for such services.

13           (b) The term "investment adviser" does not include the  
14 following:

15           1. Any licensed practicing attorney ~~or certified~~  
16 ~~public accountant~~ who renders or performs any of such services  
17 in connection with the regular practice of his profession;

18           2. Any licensed certified public accountant whose  
19 performance of such services is solely incidental to the  
20 practice of his profession;

21           ~~3.2.~~ Any bank authorized to do business in this state;

22           ~~4.3.~~ Any bank holding company as defined in the Bank  
23 Holding Company Act of 1956, as amended, authorized to do  
24 business in this state;

25           ~~5.4.~~ Any trust company having trust powers which it is  
26 authorized to exercise in the state, which trust company  
27 renders or performs services in a fiduciary capacity  
28 incidental to the exercise of its trust powers;

29           ~~6.5.~~ Any person who renders investment advice  
30 exclusively to insurance or investment companies; or  
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7.6. Any person who does not hold himself out to the  
general public as an investment adviser and has no more than  
15 clients within 12 consecutive months in this state.

Section 6. This act shall take effect October 1, 1997.