

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 688

SPONSOR: Regulated Industries Committee and Senator Sullivan

SUBJECT: Public Accountancy

DATE: January 19, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill extends the time period during which a public accountancy license applicant with the requisite experience in another state or a foreign country may obtain a waiver of educational requirements from the current application filing deadline of August 1, 2000, until October 1, 2005. It also decreases the percentage of a partnership, corporation, or limited liability company that must be owned by certified public accountants for the business to engage in the practice of public accountancy from two-thirds to fifty-one percent. The bill prohibits a person who does not hold an active license in Florida from assuming or using any title or designation that tends to indicate that the person holds a license to practice public accounting under Florida law *or the laws of any other state, territory, or foreign jurisdiction*.

This bill substantially amends the following sections of the Florida Statutes: 473.308, 3473.309, and 473.322.

II. Present Situation:

Chapter 473, F.S., provides for the regulation of public accountancy. To be licensed as a certified public accountant in Florida, a person must:

- ▶ be of good moral character;
- ▶ if the application for licensure is made after August 1, 1983, have obtained, from an accredited college or university, a baccalaureate degree with a major in accounting or its equivalent plus at least 30 semester or 45 quarter hours in excess of those required for a 4-year baccalaureate degree, with a concentration in accounting and business in the total educational program as is specified by the Board of Accountancy; and
- ▶ pass the licensure examination.

However, if a person applies for licensure prior to August 1, 2000, and the person has 5 years of experience in the practice of public accountancy in the United States, or in the practice of public

accountancy or its equivalent in a foreign country having licensure standards that have been determined to be substantially equivalent to those in the United States, the board is to waive the educational requirements in excess of the baccalaureate degree. s. 473.308(4), F.S.

The chapter also regulates the practice of public accountancy by business entities other than sole proprietorships, including partnerships, corporations, and limited liability companies. s. 473.309, F.S. These business entities cannot engage in the practice of public accountancy unless persons who are certified public accountants in some state own at least two-thirds of the financial interest and voting rights of the business entity. Additionally, each partner who is a certified public accountant in another state but is domiciled in Florida must be a certified public accountant and hold an active license in Florida as well.

The statutes prohibit a person who does not hold an active license to practice public accountancy in Florida from knowingly assuming or using the title or designation "certified public accountant" or "public accountant" or any other title or designation that tends to indicate that the person does hold such a license. s. 473.322(1)(b), F.S.

Certified public accountants who are licensed in another state or territory and in good standing can obtain a temporary license in Florida, enabling them to practice public accounting. Rule 61H1-29.002, F.A.C.

III. Effect of Proposed Changes:

The bill extends the time period during which a license applicant may obtain a waiver of educational requirements by virtue of experience in the practice of public accountancy in another state or a foreign country. Currently, to obtain the waiver, the application must be filed prior to August 1, 2000. The bill extends this until October 1, 2005.

Current statutes prohibit a partnership, corporation, or limited liability company from engaging in the practice of public accountancy unless at least two-thirds of the financial interest and voting rights of the business are owned by persons who are certified public accountants in some state. The bill lowers this ownership interest requirement from two-thirds to fifty-one percent.

Regarding restrictions on the use of the title or designation "certified public accountant," the bill revises the existing language in s. 473.322(1)(b), F.S., to prohibit a person who does not hold an active license in Florida from assuming or using any title or designation which tends to indicate that the person holds a license to practice public accounting under Florida law *or the laws of any other state, territory, or foreign jurisdiction.*

The bill takes effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The prohibition against using any title or designation that tends to indicate that the person holds a license to practice public accounting under the laws of any other state or territory is subject to challenge as an unconstitutional regulation of speech. Although the prohibition is not limited to the context of using the designations on business cards, letterhead, written advertisements, and other similar business communications, presumably these are the only types of communications to which it would be applied. These forms of communication likely would be held to be commercial speech, and, as such, the test of constitutionality for the regulation would be that created by the United States Supreme Court in *Central Hudson Gas & Electric Corporation v. Public Service Commission*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed2d 341 (1980). Under this test, the state must show that:

(a) the speech concerns unlawful activity or is misleading. *Edenfield*, 507 U.S. at 768, 113 S.Ct. at 1799. The government may completely ban false and inherently misleading commercial speech. *Id.*;

(b) it has a substantial interest in proscribing speech. *Edenfield*, 507 U.S. at 769, 113 S.Ct. at 1799. “[T]he *Central Hudson* standard does not permit us to supplant the precise interests put forward by the State with other suppositions.” *Id.* at 768, 113 S.Ct. at 1798;

(c) the regulation advances the asserted state interest in a direct and material way. *Edenfield*, 507 U.S. at 770, 113 S.Ct. at 1800. “[T]he regulation may not be sustained if it provides only ineffective or remote support for the government's purpose.” *Id.* (quoting *Central Hudson*, 447 U.S. at 564, 100 S.Ct. at 2350); and

(d) the extent of the restriction is in reasonable proportion to the interest served. *Board of Trustees of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480, 109 S.Ct. 3028, 3035, 106 L.Ed.2d 388 (1989).

Miller v. Stuart, 117 F.3d 1379 (11th Cir. 1997) *cert. denied*, 118 S.Ct. 852 (1998).

In making this showing, “a state may not rely on ‘speculation or conjecture,’ but must ‘demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.’ *Miller* (quoting *Edenfield*, 507 U.S. at 770-71, 113 S.Ct. at 1800.)

The Florida Institute of Certified Public Accountants (FICPA) and the attorney for the Board of Accountancy believe that the language proposed in the bill can survive such a challenge. They believe that there is a real risk of harm to the citizens of this state if persons who are licensed as certified public accountants in other states come to Florida and hold themselves out as certified public accountants here without obtaining a Florida license. Different states have different licensing requirements, and some other states' requirements are not as stringent as Florida's. As such, licensees from these states would not have the training that Florida citizens would expect and would rely on. Additionally, as these licensees from other states are not licensed by the State of Florida, they would not be regulated by Florida's Board of Accountancy. With these risks to the Florida public and the substantial state interest of preventing confusion and insuring that persons receiving accounting services from a certified public accountant receive those services from persons who are licensed and regulated by the State of Florida, the FICPA and the Board attorney believe that the bill would survive a constitutional challenge.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will allow more time for experienced certified public accountants to relocate to Florida without the expense of additional education.

By lowering the percentage of a partnership, corporation, or limited liability company which must be owned by certified public accountants in order for the business to practice public accountancy, the bill will allow such businesses to more easily branch out into other fields such as investment counseling.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
