

AMENDED IN ASSEMBLY APRIL 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1995**

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**Introduced by Assembly Member Correa**

February 15, 2002

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An act to ~~amend Sections 5037 and 5100 of~~ *add Section 5062.1* to the Business and Professions Code, relating to accountancy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1995, as amended, Correa. ~~Accountancy: destruction of records~~ *Audits.*

*Existing law establishes the California Board of Accountancy in the Department of Consumer Affairs for the purpose of licensing and regulating public accountants. In addition to other requirements, a licensee is required to issue a report conforming to professional standards upon completion of a compilation, review, or audit of financial statements. Existing law prohibits a public accountant who performs specified services for a client, including an audit or a review of financial statements from performing other services for the client for a commission or receiving a commission from the client, during the period in which he or she performs the service and during the period covered by historical financial statements involved in the service.*

*This bill would provide that a licensee would not be considered independent for purposes of certifying an audit client's financial statements if the licensee's firm performs nonaudit services for the client or an affiliate of the client. The bill would specify the services that qualify as audit services.*

~~Existing law provides for the licensing and regulation of the practice of accountancy by the State Board of Accountancy in the Department of Consumer Affairs. Existing law requires a licensee to furnish to his or her client or former client, upon request, any accounting or other records belonging to, or obtained from or on behalf of, the client. Existing law authorizes a licensee furnishing these documents to make and retain copies of the documents when they form the basis for work done by him or her.~~

~~This bill would require a licensee furnishing documents to a client or former client pursuant to the above provisions to make and retain copies of documents of the client for a period of 5 years when they form the basis for his or her work.~~

~~Existing law provides that the board may revoke, suspend, or refuse to renew any permit or certificate, or may censure the holder of that permit or certificate, for unprofessional conduct.~~

~~The bill would make willful destruction of records, as defined, unprofessional conduct subject to disciplinary action by the board.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1.~~ The Legislature finds and declares that it is
- 2     ~~SECTION 1.~~ *Section 5062.1 is added to the Business and*
- 3     ~~Professions Code, to read:~~
- 4     ~~5062.1. (a) A licensee shall not be considered independent~~
- 5     ~~for purposes of certifying an audit client's financial statements if~~
- 6     ~~the firm employing the licensee performs nonaudit services for the~~
- 7     ~~client or for an affiliate of the client.~~
- 8     ~~(b) Audit services that may be performed by a licensee are~~
- 9     ~~limited to the following:~~
- 10    ~~(1) Audit work performed in the course of forming an opinion~~
- 11    ~~regarding financial statements.~~
- 12    ~~(2) Preparation of tax returns.~~
- 13    ~~(3) Review of documents filed with the Securities Exchange~~
- 14    ~~Commission, including Forms 10-K and 10-Q, during the period~~
- 15    ~~under audit.~~
- 16    ~~(4) Attending meetings with a client's audit committee, board~~
- 17    ~~of directors' meetings, or annual shareholders meetings.~~



1 (5) Reissuing audit opinions from prior periods and  
2 preparation of consents relating to client's filings with the  
3 Securities Exchange Commission.

4 (6) Responding to client inquiries regarding generally  
5 accepted accounting procedure (GAAP) financial reporting  
6 issues.

7 (7) Responding to regulatory inquiries, including inquiries by  
8 the Securities Exchange Commission, relative to a client's fiscal  
9 period audited by the licensee. A licensee's response to an inquiry  
10 shall not qualify under this paragraph if the licensee acts as an  
11 advocate for the client in the course of providing the response.

12 (8) Responding to a successor accounting firm if replaced as a  
13 client's auditor.

14 (9) Preparation of management recommendation letters that  
15 are an integral part of the audit process.

16 (10) Providing testimony to governmental agencies, legislative  
17 inquiries, or in court proceedings regarding audit work performed.  
18 ~~necessary to enact legislation to provide consumer protection and~~  
19 ~~audit integrity in the field of accountancy.~~

20 ~~SEC. 2. Section 5037 of the Business and Professions Code~~  
21 ~~is amended to read:~~

22 ~~5037. (a) All statements, records, schedules, working papers,~~  
23 ~~and memoranda made by a licensee or a partner, shareholder,~~  
24 ~~officer, director, or employee of a licensee, incident to, or in the~~  
25 ~~course of, rendering services to a client in the practice of public~~  
26 ~~accountancy, except the reports submitted by the licensee to the~~  
27 ~~client and except for records which are part of the client's records,~~  
28 ~~shall be and remain the property of the licensee in the absence of~~  
29 ~~an express agreement between the licensee and the client to the~~  
30 ~~contrary. No such statement, record, schedule, working paper, or~~  
31 ~~memoranda shall be sold, transferred, or bequeathed, without the~~  
32 ~~consent of the client or his or her personal representative or~~  
33 ~~assignee, to anyone other than one or more surviving partners or~~  
34 ~~stockholders or new partners or stockholders of the licensee, or any~~  
35 ~~combined or merged firm or successor in interest to the licensee.~~

36 ~~(b) A licensee shall furnish to his or her client or former client,~~  
37 ~~upon request and reasonable notice:~~

38 ~~(1) A copy of the licensee's working papers, to the extent that~~  
39 ~~those working papers include records that would ordinarily~~



1 ~~constitute part of the client's records and are not otherwise~~  
2 ~~available to the client.~~

3 ~~(2) Any accounting or other records belonging to, or obtained~~  
4 ~~from or on behalf of, the client that the licensee removed from the~~  
5 ~~client's premises or received for the client's account. The licensee~~  
6 ~~shall make and retain copies of documents of the client for a period~~  
7 ~~of five years when they form the basis for work done by him or her.~~

8 ~~(c) Willful destruction of records, electronic, and written, as~~  
9 ~~described in subdivisions (a) and (b), shall be grounds for~~  
10 ~~disciplinary procedures pursuant to Article 6 (commencing with~~  
11 ~~Section 5100).~~

12 ~~SEC. 3. Section 5100 of the Business and Professions Code~~  
13 ~~is amended to read:~~

14 ~~5100. After notice and hearing the board may revoke,~~  
15 ~~suspend, or refuse to renew any permit or certificate granted under~~  
16 ~~Article 4 (commencing with Section 5070) and Article 5~~  
17 ~~(commencing with Section 5080), or may censure the holder of~~  
18 ~~that permit or certificate for unprofessional conduct which~~  
19 ~~includes, but is not limited to, one or any combination of the~~  
20 ~~following causes:~~

21 ~~(a) Conviction of any crime substantially related to the~~  
22 ~~qualifications, functions and duties of a certified public accountant~~  
23 ~~or a public accountant.~~

24 ~~(b) A violation of Section 478, 498, or 499 dealing with false~~  
25 ~~statements or omissions in the application for a license, in~~  
26 ~~obtaining a certificate as a certified public accountant, in obtaining~~  
27 ~~registration under this chapter, or in obtaining a permit to practice~~  
28 ~~public accountancy under this chapter.~~

29 ~~(c) Dishonesty, fraud, or gross negligence in the practice of~~  
30 ~~public accountancy or in the performance of the bookkeeping~~  
31 ~~operations described in Section 5052.~~

32 ~~(d) Cancellation, revocation, or suspension of a certificate or~~  
33 ~~other authority to practice as a certified public accountant or a~~  
34 ~~public accountant, refusal to renew the certificate or other~~  
35 ~~authority to practice as a certified public accountant or a public~~  
36 ~~accountant, or any other discipline by any other state or foreign~~  
37 ~~country.~~

38 ~~(e) Violation of subdivision (e) of Section 5037.~~

39 ~~(f) Violation of Section 5120.~~



1 ~~(g) Willful violation of this chapter or any rule or regulation~~  
2 ~~promulgated by the board under the authority granted under this~~  
3 ~~chapter.~~

4 ~~(h) Suspension or revocation of the right to practice before any~~  
5 ~~governmental body or agency.~~

6 ~~(i) Fiscal dishonesty or breach of fiduciary responsibility of~~  
7 ~~any kind.~~

8 ~~(j) Knowing preparation, publication or dissemination of false,~~  
9 ~~fraudulent, or materially misleading financial statements, reports,~~  
10 ~~or information.~~

11 ~~(k) Embezzlement, theft, misappropriation of funds or~~  
12 ~~property, or obtaining money, property, or other valuable~~  
13 ~~consideration by fraudulent means or false pretenses.~~

