

AMENDED IN SENATE APRIL 14, 2011

**SENATE BILL**

**No. 542**

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**Introduced by Senator Price**

February 17, 2011

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~~An act to amend Sections 5000, 5015.6, and 6510 of the Business~~  
*An act to amend Sections 5000, 5015.6, 5076, 5076.1, 6510, and 6530 of, and to add Section 6582.2 to, the Business and Professions Code, relating to professions and vocations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 542, as amended, Price. Professions and vocations: regulatory boards.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the ~~department~~ *Department of Consumer Affairs*, including; the California Board of Accountancy and the Professional Fiduciaries Bureau. Existing law authorizes the board to appoint an executive officer and authorizes the Governor to appoint the chief of the bureau. Under existing law, these provisions are repealed on January 1, 2012. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of these provisions until January 1, 2016, and would specify that these boards would be subject to review by the appropriate policy committees of the Legislature.

*With respect to accounting firms, existing law, until January 1, 2014, requires a firm, in order to renew its registration, to have a specified peer review report accepted by a board-recognized peer review group. Existing law, until January 1, 2014, requires the board to appoint a peer review oversight committee of certified public accountants to*

*provide recommendations to the board relating to the effectiveness of mandatory peer review. Existing law also requires the board, by January 1, 2013, to provide the Legislature and the Governor with a report regarding specified peer review requirements.*

*This bill would extend the operation of the peer review report requirement and the peer review oversight committee to January 1, 2016, and would require the report to the Legislature and the Governor to be submitted by January 1, 2015.*

*With respect to professional fiduciaries, existing law prohibits a person from holding himself or herself out as a professional fiduciary without a license issued by the bureau. Existing law exempts from the license requirement a person enrolled as an agent to practice before the Internal Revenue Service, as specified. Under existing law, a license may be suspended, revoked, denied, or other disciplinary action may be imposed for various reasons.*

*This bill would revise the exemption requirement by additionally requiring that the enrolled agent provide only fiduciary services that are ancillary to the primary services of an enrolled agent and that those services be provided at the request of a client with which the enrolled agent has an existing professional relationship. The bill would authorize the bureau, instead of issuing an accusation or statement of issues against a licensee or applicant, to enter into a specified settlement with a licensee or applicant.*

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

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

- 1 SECTION 1. Section 5000 of the Business and Professions
- 2 Code is amended to read:
- 3 5000. There is in the Department of Consumer Affairs the
- 4 California Board of Accountancy, which consists of 15 members,
- 5 seven of whom shall be licensees, and eight of whom shall be
- 6 public members who shall not be licentiates of the board or
- 7 registered by the board. The board has the powers and duties
- 8 conferred by this chapter.
- 9 The Governor shall appoint four of the public members, and the
- 10 seven licensee members as provided in this section. The Senate
- 11 Rules Committee and the Speaker of the Assembly shall each
- 12 appoint two public members. In appointing the seven licensee

1 members, the Governor shall appoint members representing a cross  
2 section of the accounting profession with at least two members  
3 representing a small public accounting firm. For the purposes of  
4 this chapter, a small public accounting firm shall be defined as a  
5 professional firm that employs a total of no more than four  
6 licensees as partners, owners, or full-time employees in the practice  
7 of public accountancy within the State of California.

8 This section shall remain in effect only until January 1, 2016,  
9 and as of that date is repealed, unless a later enacted statute, that  
10 is enacted before January 1, 2016, deletes or extends that date.  
11 Notwithstanding any other provision of law, the repeal of this  
12 section renders the board subject to review by the appropriate  
13 policy committees of the Legislature. However, the review of the  
14 board shall be limited to reports or studies specified in this chapter  
15 and those issues identified by the appropriate policy committees  
16 of the Legislature and the board regarding the implementation of  
17 new licensing requirements.

18 SEC. 2. Section 5015.6 of the Business and Professions Code  
19 is amended to read:

20 5015.6. The board may appoint a person exempt from civil  
21 service who shall be designated as an executive officer and who  
22 shall exercise the powers and perform the duties delegated by the  
23 board and vested in him or her by this chapter.

24 This section shall remain in effect only until January 1, 2016,  
25 and as of that date is repealed, unless a later enacted statute, that  
26 is enacted before January 1, 2016, deletes or extends that date.

27 SEC. 3. Section 5076 of the Business and Professions Code is  
28 amended to read:

29 5076. (a) In order to renew its registration, a firm, as defined  
30 in Section 5035.1, shall have a peer review report of its accounting  
31 and auditing practice accepted by a board-recognized peer review  
32 program no less frequently than every three years.

33 (b) For purposes of this article, the following definitions apply:

34 (1) "Peer review" means a study, appraisal, or review conducted  
35 in accordance with professional standards of the professional work  
36 of a firm, and may include an evaluation of other factors in  
37 accordance with the requirements specified by the board in  
38 regulations. The peer review report shall be issued by an individual  
39 who has a valid and current license, certificate, or permit to practice

1 public accountancy from this state or another state and is  
2 unaffiliated with the firm being reviewed.

3 (2) “Accounting and auditing practice” includes any services  
4 that are performed using professional standards defined by the  
5 board in regulations.

6 (c) The board shall adopt regulations as necessary to implement,  
7 interpret, and make specific the peer review requirements in this  
8 section, including, but not limited to, regulations specifying the  
9 requirements for board recognition of a peer review program,  
10 standards for administering a peer review, extensions of time for  
11 fulfilling the peer review requirement, exclusions from the peer  
12 review program, and document submission.

13 (d) The board shall adopt emergency regulations in accordance  
14 with the Administrative Procedure Act (Chapter 3.5 (commencing  
15 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
16 Government Code) to establish policies, guidelines, and procedures  
17 as outlined in subdivision (c). The adoption of the regulations shall  
18 be considered by the Office of Administrative Law to be necessary  
19 for the immediate preservation of the public peace, health and  
20 safety, or general welfare. The emergency regulations shall be  
21 submitted to the Office of Administrative Law for filing with the  
22 Secretary of State and publication in the California Code of  
23 Regulations, and shall be replaced in accordance with the  
24 Administrative Procedure Act.

25 (e) Nothing in this section shall prohibit the board from initiating  
26 an investigation and imposing discipline against a firm or licensee,  
27 either as the result of a complaint that alleges violations of statutes,  
28 rules, or regulations, or from information contained in a peer review  
29 report received by the board.

30 (f) A firm issued a substandard peer review report, as defined  
31 by the board in regulation, shall submit a copy of that report to the  
32 board. The board shall establish in regulation the time period that  
33 a firm must submit the report to the board. This period shall not  
34 exceed 60 days from the time the report is accepted by a  
35 board-recognized peer review program provider to the date the  
36 report is submitted to the board.

37 (g) (1) A board-recognized peer review program provider shall  
38 file a copy with the board of all substandard peer review reports  
39 issued to California-licensed firms. The board shall establish in  
40 regulation the time period that a board-recognized peer review

1 program provider shall file the report with the board. This period  
2 shall not exceed 60 days from the time the report is accepted by a  
3 board-recognized peer review program provider to the date the  
4 report is filed with the board. These reports may be filed with the  
5 board electronically.

6 (2) Nothing in this subdivision shall require a board-recognized  
7 peer review program provider, when administering peer reviews  
8 in another state, to violate the laws of that state.

9 (h) The board shall, by January 1, 2010, define a substandard  
10 peer review report in regulation.

11 (i) Any requirements imposed by a board-recognized peer review  
12 program on a firm in conjunction with the completion of a peer  
13 review shall be separate from, and in addition to, any action by  
14 the board pursuant to this section.

15 (j) Any report of a substandard peer review submitted to the  
16 board in conjunction with this section shall be collected for  
17 investigatory purposes.

18 (k) Nothing in this section affects the discovery or admissibility  
19 of evidence in a civil or criminal action.

20 (l) Nothing in this section requires any firm to become a member  
21 of any professional organization.

22 (m) A peer reviewer shall not disclose information concerning  
23 licensees or their clients obtained during a peer review, unless  
24 specifically authorized pursuant to this section, Section 5076.1, or  
25 regulations prescribed by the board.

26 (n) (1) By January 1, ~~2013~~ 2015, the board shall provide the  
27 Legislature and Governor with a report regarding the peer review  
28 requirements of this section that includes, without limitation:

29 ~~(1)~~

30 (A) The extent to which mandatory peer review of small firms  
31 or sole practitioners that prepare nondisclosure compiled financial  
32 statements on an other comprehensive basis of accounting enhances  
33 consumer protection.

34 ~~(2)~~

35 (B) The impact of peer review required by this section on small  
36 firms and sole practitioners that prepare nondisclosure compiled  
37 financial statements on an other comprehensive basis of accounting.

38 ~~(3)~~

39 (C) The impact of peer review required by this section on small  
40 businesses, nonprofit corporations, and other entities that utilize

1 small firms or sole practitioners for the purposes of nondisclosure  
2 compiled financial statements prepared on an other comprehensive  
3 basis of accounting.

4 (2) *A report to the Legislature pursuant to this section shall be*  
5 *submitted in compliance with Section 9795 of the Government*  
6 *Code.*

7 (o) This section shall remain in effect only until January 1, ~~2014~~  
8 2016, and as of that date is repealed, unless a later enacted statute,  
9 that is enacted before January 1, ~~2014~~ 2016, deletes or extends  
10 that date.

11 *SEC. 4. Section 5076.1 of the Business and Professions Code*  
12 *is amended to read:*

13 5076.1. (a) The board shall appoint a peer review oversight  
14 committee of certified public accountants of this state who maintain  
15 a license in good standing and who are authorized to practice public  
16 accountancy to provide recommendations to the board on any  
17 matter upon which it is authorized to act to ensure the effectiveness  
18 of mandatory peer review.

19 (b) The committee may request any information from a  
20 board-recognized peer review program provider deemed necessary  
21 to ensure the provider is administering peer reviews in accordance  
22 with the standards adopted by the board in regulations. Failure of  
23 a board-recognized peer review program provider to respond to  
24 the committee shall result in referral by the committee of the  
25 provider to the board for further action. Any information obtained  
26 by the board, its representatives, or the peer review oversight  
27 committee in conjunction with its review of peer review program  
28 providers shall not be a public record, and shall be exempt from  
29 public disclosure, provided, however, this information may be  
30 disclosed under any of the following circumstances:

- 31 (1) In connection with disciplinary proceedings of the board.
- 32 (2) In connection with legal proceedings in which the board is  
33 a party.
- 34 (3) In response to an official inquiry by a federal or state  
35 governmental regulatory agency.
- 36 (4) In compliance with a subpoena or summons enforceable by  
37 court order.
- 38 (5) As otherwise specifically required by law.

1 (c) The members of the committee shall be appointed to  
2 two-year terms and may serve a maximum of four consecutive  
3 terms.

4 (d) The board may adopt, as necessary, regulations further  
5 defining the minimum qualifications for appointment as a  
6 committee member and additional administrative elements designed  
7 to ensure the effectiveness of mandatory peer review.

8 (e) This section shall remain in effect only until January 1, ~~2014~~  
9 2016, and as of that date is repealed, unless a later enacted statute,  
10 that is enacted before January 1, ~~2014~~ 2016, deletes or extends  
11 that date.

12 ~~SEC. 3.~~

13 *SEC. 5.* Section 6510 of the Business and Professions Code is  
14 amended to read:

15 6510. (a) There is within the jurisdiction of the department  
16 the Professional Fiduciaries Bureau. The bureau is under the  
17 supervision and control of the director. The duty of enforcing and  
18 administering this chapter is vested in the chief of the bureau, who  
19 is responsible to the director. Every power granted or duty imposed  
20 upon the director under this chapter may be exercised or performed  
21 in the name of the director by a deputy director or by the chief,  
22 subject to conditions and limitations as the director may prescribe.

23 (b) The Governor shall appoint, subject to confirmation by the  
24 Senate, the chief of the bureau, at a salary to be fixed and  
25 determined by the director with the approval of the Director of  
26 Finance. The chief shall serve under the direction and supervision  
27 of the director and at the pleasure of the Governor.

28 (c) This section shall remain in effect only until January 1, 2016,  
29 and as of that date is repealed, unless a later enacted statute, that  
30 is enacted before January 1, 2016, deletes or extends that date.  
31 Notwithstanding any other provision of law, the repeal of this  
32 section renders the board subject to review by the appropriate  
33 policy committees of the Legislature.

34 Notwithstanding any other provision of law, upon the repeal of  
35 this section, the responsibilities and jurisdiction of the bureau shall  
36 be transferred to the Professional Fiduciaries Advisory Committee,  
37 as provided by Section 6511.

38 *SEC. 6.* Section 6530 of the Business and Professions Code is  
39 amended to read:

1 6530. (a) On and after January 1, 2009, no person shall act or  
2 hold himself or herself out to the public as a professional fiduciary  
3 unless that person is licensed as a professional fiduciary in  
4 accordance with the provisions of this chapter.

5 (b) This section does not apply to a person licensed as an  
6 attorney under the State Bar Act (Chapter 4 (commencing with  
7 Section 6000)).

8 (c) This section does not apply to a person licensed as, and  
9 acting within the scope of practice of, a certified public accountant  
10 pursuant to Chapter 1 (commencing with Section 5000) of Division  
11 3.

12 (d) This section does not apply to a person enrolled as an agent  
13 to practice before the Internal Revenue Service ~~who is acting within~~  
14 ~~the scope of practice~~ pursuant to Part 10 of Title 31 of the Code  
15 of Federal Regulations, *who is providing fiduciary services that*  
16 *are ancillary to the primary services of an enrolled agent, and*  
17 *those services are provided at the request of a client with which*  
18 *the enrolled agent has an existing professional relationship.*  
19 *However, an enrolled agent who is soliciting clients for fiduciary*  
20 *services or holding himself or herself out as a professional*  
21 *fiduciary is required to obtain a license in accordance with this*  
22 *chapter.*

23 SEC. 7. Section 6582.2 is added to the Business and Professions  
24 Code, to read:

25 6582.2. (a) *Notwithstanding Section 6582 and Section*  
26 *11415.60 of the Government Code, the bureau may enter into a*  
27 *settlement with a licensee or applicant instead of the issuance of*  
28 *an accusation or statement of issues against that licensee or*  
29 *applicant.*

30 (b) *The settlement shall identify the factual basis for the action*  
31 *being taken and the statutes or regulations violated.*

32 (c) *A person who enters a settlement pursuant to this section is*  
33 *not precluded from filing a petition, in the timeframe permitted by*  
34 *Section 11522 of the Government Code, to modify the terms of the*  
35 *settlement or a petition for early termination of probation, if*  
36 *probation is part of the settlement.*

37 (d) *Any settlement with a licensee executed pursuant to this*  
38 *section shall be considered discipline and a public record and*  
39 *shall be posted on the bureau's Internet Web site. Any settlement*  
40 *with an applicant executed pursuant to this section shall be*

- 1 *considered a public record and shall be posted on the bureau's*
- 2 *Internet Web site.*

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