

AMENDED IN SENATE JANUARY 22, 1998

AMENDED IN SENATE MAY 21, 1997

**SENATE BILL**

**No. 1289**

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**Introduced by Senator Calderon**

February 28, 1997

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An act to repeal and add Section 5061 of the Business and Professions Code, relating to accountancy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1289, as amended, Calderon. Public accountancy: commissions.

Existing law prohibits any person engaged in the practice of public accountancy from paying a commission to obtain a client, or from accepting a commission for a referral to a client of products or services of others. Existing law further provides that these provisions shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accounting or payments to their heirs or estates.

This bill would repeal the above provisions and instead would prohibit a ~~licensee under the public accountancy provisions from recommending or referring to a client, for a commission, any product or service, or recommending or referring, for a commission, any product or service to be supplied by a client, or receiving a commission when that licensee or that licensee's firm also performs specified services. The bill would also require a licensee who is not prohibited from performing services for a commission, or~~

~~from receiving a commission, and who is paid or expects to be paid a commission, to disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates, and would require a licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity, or who pays a referral fee to obtain a client, to disclose that acceptance or payment to the client person engaged in the practice of public accountancy from paying a fee or commission to obtain a client or from accepting a fee or commission for referring a client to the products or services of a 3rd party, subject to certain exceptions. This bill would also prohibit a person engaged in the practice of public accountancy from performing services for a client for a commission or from receiving a commission from a client when that person also performs specified services for that client.~~

*The bill would also require a person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, to disclose that fact to any client or entity to whom that person recommends or refers a product or service to which the commission relates.*

*This bill would also provide that its provisions shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates. It would also require the State Board of Accountancy to adopt regulations to implement these provisions, as specified.*

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

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

- 1 SECTION 1. Section 5061 of the Business and
- 2 Professions Code is repealed.
- 3 SEC. 2. Section 5061 is added to the Business and
- 4 Professions Code, to read:



1 ~~5061. (a) A licensee may not recommend or refer to~~  
2 ~~a client, for a commission, any product or service, or~~  
3 ~~recommend or refer, for a commission, any product or~~  
4 ~~service to be supplied by a client, or receive a commission~~  
5 ~~when that licensee or that licensee's firm also performs~~  
6 ~~for that client any of the following services:~~

7 ~~(1) An audit or review of a financial statement.~~

8 ~~(2) A compilation of a financial statement when that~~  
9 ~~licensee expects, or reasonably might expect, that a third~~  
10 ~~party will use the financial statement and the licensee's~~  
11 ~~compilation report does not disclose a lack of~~  
12 ~~independence.~~

13 ~~(3) An examination of prospective financial~~  
14 ~~information.~~

15 ~~(b) The prohibition specified in subdivision (a)~~  
16 ~~applies during the period in which the licensee is engaged~~  
17 ~~to perform any of the services listed, and during the~~  
18 ~~period covered by any historical financial statements~~  
19 ~~involved in those listed services.~~

20 ~~(c) A licensee who is not prohibited under subdivision~~  
21 ~~(a) from performing services for a commission, or from~~  
22 ~~receiving a commission, and who is paid or expects to be~~  
23 ~~paid a commission, shall disclose that fact to any person~~  
24 ~~or entity to whom the licensee recommends or refers a~~  
25 ~~product or service to which the commission relates.~~

26 ~~(d) A licensee who accepts a referral fee for~~  
27 ~~recommending or referring any service of a licensee to~~  
28 ~~any person or entity, or who pays a referral fee to obtain~~  
29 ~~a client, shall disclose that acceptance or payment to the~~  
30 ~~client.~~

31 *5061. (a) Except as expressly permitted by this*  
32 *section, a person engaged in the practice of public*  
33 *accountancy shall not: (1) pay a fee or commission to*  
34 *obtain a client or (2) accept a fee or commission for*  
35 *referring a client to the products or services of a third*  
36 *party.*

37 *(b) A person engaged in the practice of public*  
38 *accountancy who is not performing any of the services set*  
39 *forth in subdivision (c) and who complies with the*  
40 *disclosure requirements of subdivision (d) may accept a*



1 *fee or commission for providing a client with the products*  
2 *or services of a third party where the products or services*  
3 *of a third party are provided in conjunction with*  
4 *professional services provided to the client by the person*  
5 *engaged in the practice of public accountancy.*

6 (c) *A person engaged in the practice of public*  
7 *accountancy is prohibited from performing services for a*  
8 *client for a commission or from receiving a commission*  
9 *from a client during the period in which the person also*  
10 *performs for that client any of the services listed below*  
11 *and during the period covered by any historical financial*  
12 *statements involved in those listed services:*

13 (1) *An audit or review of a financial statement.*

14 (2) *A compilation of a financial statement when that*  
15 *person expects, or reasonably might expect, that a third*  
16 *party will use the financial statement and the compilation*  
17 *report does not disclose a lack of independence.*

18 (3) *An examination of prospective financial*  
19 *information.*

20 (d) *A person engaged in the practice of public*  
21 *accountancy who is not prohibited from performing*  
22 *services for a commission, or from receiving a*  
23 *commission, and who is paid or expects to be paid a*  
24 *commission, shall disclose that fact to any client or entity*  
25 *to whom the person engaged in the practice of public*  
26 *accountancy recommends or refers a product or service*  
27 *to which the commission relates.*

28 (e) *The board shall adopt regulations to implement,*  
29 *interpret, and make specific the provisions of this section*  
30 *including, but not limited to, regulations specifying the*  
31 *terms of any disclosure required by subdivision (d), the*  
32 *manner in which the disclosure shall be made, and other*  
33 *matters regarding the disclosure that the board deems*  
34 *appropriate. These regulations shall require, at a*  
35 *minimum, that a disclosure shall comply with all of the*  
36 *following:*

37 (1) *Be in writing and be clear and conspicuous.*

38 (2) *Be signed by the recipient of the product or*  
39 *service.*



1 (3) *State the amount of the commission or the basis on*  
2 *which it will be computed.*

3 (4) *Identify the source of the payment and the*  
4 *relationship between the source of the payment and the*  
5 *person receiving the payment.*

6 (5) *Be presented to the client at or prior to the time*  
7 *the recommendation of the product or service is made.*

8 (f) *This section shall not prohibit payments for the*  
9 *purchase of any accounting practice or retirement*  
10 *payments to individuals presently or formerly engaged in*  
11 *the practice of public accountancy or payments to their*  
12 *heirs or estates.*

13 SEC. 3. By modifying the regulation of commissions  
14 in Section 5061 of the Business and Professions Code, it is  
15 not the intent of the Legislature in enacting this act to  
16 diminish in any manner the duties of certified public  
17 ~~accounts~~ *accountants* to clients, nor to abrogate  
18 regulations of the *State* Board of Accountancy relating to  
19 objectivity.

