AMENDED IN SENATE SEPTEMBER 2, 2009

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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 138

Introduced by Assembly Member Hayashi

January 20, 2009

An act to amend *and repeal* Section 5076 of, and to add ~~Sections 5076.1 and 5076.2 to~~ *and repeal Section 5076.1 of,* the Business and Professions Code, relating to accountants.

LEGISLATIVE COUNSEL'S DIGEST

AB 138, as amended, Hayashi. Accounting firms: peer review.

Existing law provides for the licensing and regulation of certified public accountants and other licensees by the California Board of Accountancy. Existing law requires an accounting firm providing attest services, with certain exceptions, to complete a peer review every 3 years in order to renew its registration, if the board, prior to September 1, 2011, determines that a peer review program should be implemented and identifies the resources necessary for that implementation.

This bill would instead impose a peer review requirement for all accounting firms relative to accounting and auditing practice, which would be conducted by a board-recognized peer review program. The bill would require the board to adopt emergency regulations as necessary to implement the program and to adopt, by January 1, 2010, regulations defining a substandard peer review report. The bill would require an accounting firm and a peer review program provider to file copies of substandard peer review reports with the board. The bill would also require the board to appoint a peer review oversight committee, as specified. *The bill would require the board to provide a report to the Legislature and Governor, by January 1, 2013, that includes specified information on the impact of these peer review requirements on certain small firms and sole practitioners.* The bill would specify that these provisions shall become inoperative on ~~June 30, 2010, if sufficient hiring authority is not granted pursuant to a budget change proposal to provide staffing to implement these provisions~~ *January 1, 2014, unless a later enacted statute, enacted prior to that date, deletes or extends that date*. The bill would also make specified findings and declarations of the Legislature regarding the value of peer review.

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

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

SECTION 1. The Legislature hereby finds and declares the following:

(a) The highest priority of the California Board of Accountancy is to protect the public in exercising the board's licensing, regulatory, and disciplinary functions.

(b) The board protects the public by ensuring that only qualified persons and firms are licensed to practice public accountancy and that appropriate standards of competency and practice, including ethics, objectivity, and independence, are established and enforced.

(c) Mandatory peer review is designed to assist the board in ensuring the competency of licensees and their adherence to professional standards.

(d) Firms that complete a peer review will be better equipped to perform quality accounting and auditing engagements.

(e) By completing a peer review, quality control systems can be designed or refined to ensure that work is performed in conformity with professional standards and that licensees develop and refine their technical skills.

(f) Mandatory peer review demonstrates the board's commitment to enhance the quality of the services provided by accounting firms and contributes to the public's confidence in the profession.

(g) Consumer confidence is paramount to a healthy economy. Consumer confidence is achieved in the field of accounting when consumers feel that the firms providing them with accounting and auditing services are doing so in accordance with professional standards.

SEC. 2. Section 5076 of the Business and Professions Code is amended to read:

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

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

(1) "Peer review" means a study, appraisal, or review conducted in accordance with professional standards of the professional work of a firm by an individual who has a valid and current license, certificate, or permit to practice public accountancy from this state or another state and is unaffiliated with the firm being reviewed, and may include an evaluation of other factors in accordance with requirements specified by the board in regulations.

(2) "Accounting and auditing practice" includes any services that are performed using professional standards defined by the board in regulations.

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

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

~~within 120 days of their adoption.~~ *in accordance with the Administrative Procedure Act.*

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

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

(g) (1) A board-recognized peer review program provider shall file a copy with the board of all substandard peer review reports issued to California-licensed firms. The board shall establish in regulation the time period that a board-recognized peer review program provider shall file the report with the board. This period shall not exceed 60 days from the time the report is accepted by a board-recognized peer review program provider to the date the report is filed with the board. These reports may be filed with the board electronically.

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

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

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

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

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

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

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

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

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

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

(3) The impact of peer review required by this section on small businesses, nonprofit corporations, and other entities that utilize small firms or sole practitioners for the purposes of nondisclosure compiled financial statements prepared on an other comprehensive basis of accounting.

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

SEC. 3. Section 5076.1 is added to the Business and Professions Code, to read:

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

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

(1) In connection with disciplinary proceedings of the board.

(2) In connection with legal proceedings in which the board is a party.

(3) In response to an official inquiry by a federal or state governmental regulatory agency.

(4) In compliance with a subpoena or summons enforceable by court order.

(5) As otherwise specifically required by law.

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

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

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

~~SEC. 4. Section 5076.2 is added to the Business and Professions Code, to read:~~

~~5076.2. The provisions of Sections 5076 and 5076.1 shall become inoperative on June 30, 2010, if sufficient hiring authority is not granted pursuant to a budget change proposal to the board to provide staffing to implement those sections.~~

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