

32 §12275. UNLAWFUL ACTS

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1. Issuance of reports. No person or firm not holding a valid license issued under this chapter may issue a report, including reviews and compilations, on financial statements of any other person, firm, organization or governmental unit. This prohibition does not apply to the following:

A. An officer, partner or employee of any firm or organization affixing that person's signature to any statement or report in reference to the financial affairs of that firm or organization with any wording designating the position, title or office that that person holds in the organization; [2007, c. 402, Pt. Z, §24 (AMD).]

B. Any act of a public official or employee in the performance of that person's duties as such; or [2007, c. 402, Pt. Z, §24 (AMD).]

C. The performance by any person of other services involving the use of accounting skills, including management advisory or consulting services, the preparation of tax returns, the furnishing of advice on tax matters and the preparation of financial statements without the issuance of reports. [1987, c. 489, §2 (NEW).]

[2009, c. 242, §29 (AMD).]

2. Misuse of title; individual; certified public accountants. No person not licensed as a certified public accountant under this chapter may use or assume the title of "certified public accountant," the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device indicating that the person is a certified public accountant.

[2009, c. 242, §30 (AMD).]

3. Use of title. A firm may not assume or use the title or designation "certified public accountant," the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device indicating that the firm is composed of certified public accountants, unless:

A. The firm holds a valid license issued under section 12252; and [2007, c. 402, Pt. Z, §24 (AMD).]

B. A simple majority of all partners, officers, shareholders, members or managers of the firm are certified public accountants licensed in a state. [2009, c. 242, §31 (AMD).]

[2009, c. 242, §31 (AMD).]

4. Misuse of title; public accountant. No person may assume or use the title or designation "public accountant," the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign, card or device indicating that the person is a public accountant unless that person holds a valid public accountant license issued under former section 12251.

[2009, c. 242, §32 (AMD).]

5. Misuse of title; firm; public accountant. No firm not holding a valid license issued under section 12252 may assume or use the title or designation "public accountant," the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign, card or device indicating that the firm is composed of public accountants.

[2007, c. 402, Pt. Z, §24 (AMD).]

6. Similar titles prohibited. No person or firm not holding a valid license issued under this chapter may assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited accountant" or any other title or designation likely to be confused with the titles "certified public accountant," "public accountant" or use any of the abbreviations "CA," "LA," "RA," "AA" or similar abbreviations likely to be confused with the abbreviations "CPA" or "PA," provided that a holder of a certificate who does not also hold a license may use the titles pertaining to that certificate in any manner not prohibited by rules adopted by the board under section 12214, subsection 4.

[2009, c. 242, §33 (AMD) .]

7. Similar designation prohibited. No person or firm not holding a valid license issued under this chapter may assume or use any title or designation that includes the words "auditor" or "auditing" in connection with any other language, including the language of a report, that implies that the person or firm holds such a license or has special competence as an auditor, except that this subsection does not prohibit any officer, partner or employee of any firm or organization from affixing that person's signature to any statement in reference to the financial affairs of that firm or organization with any wording designating the position, title or office that that person holds in the firm or organization or prohibit any act of a public official or employee in the performance of that person's duties.

[2009, c. 242, §34 (AMD) .]

8. Unauthorized practice. No person holding a certificate may engage in the practice of public accountancy, unless that person also holds a valid license issued under this chapter.

[2009, c. 242, §35 (AMD) .]

9. Form of firm. No person or firm holding a license may engage in the practice of public accountancy using a professional or firm name or designation that is misleading about the legal form of the firm, about the persons who are partners, officers or shareholders of the firm or about any other matter, except that the names of one or more former partners or shareholders may be included in the name of a firm or its successor.

[2007, c. 402, Pt. Z, §24 (AMD) .]

10. Foreign practice. Subsections 1 to 11 do not apply to a person or firm holding a certificate, designation, degree or license granted in a foreign country entitling the holder to engage in the practice of public accountancy or its equivalent in that country, whose activities in this State are limited to the provision of professional services to persons or firms who are residents of, governments of or business entities of the country in which that person holds that entitlement, who issues no reports with respect to the financial statements of any other persons, firms or governmental units in this State, and who does not use in this State any title or designation other than the one under which that person practices in that country, followed by a translation of that title or designation into the English language, if it is in a different language and by the name of that country.

[2007, c. 402, Pt. Z, §24 (AMD) .]

11. Employees. Nothing in this chapter prohibits any person, not a certified public accountant or public accountant, from serving as an employee of, or an assistant to, a certified public accountant, public accountant, a firm of certified public accountants or of public accountants holding a license issued under this chapter, provided that the employee or assistant may not issue any accounting or financial statements over the employee's or assistant's name.

[2009, c. 242, §36 (AMD) .]

12. Commissions; referral fees. A licensee, when performing for a client a defined service, may not receive a commission or a referral fee:

A. For recommending or referring to a client any product or service; [1999, c. 245, §12 (NEW).]

B. For recommending or referring any product or service to be supplied by a client; or [1999, c. 245, §12 (NEW).]

C. As a consequence of a decision by a client to purchase or supply a particular product or service. [1999, c. 245, §12 (NEW).]

Notwithstanding paragraphs A, B and C, a licensee may receive a commission or a referral fee if the licensee's compilation report discloses in writing a lack of independence.

This prohibition applies during the period in which the licensee is engaged to perform any of the defined services and the period covered by any historical financial statements involved in the defined services.

A licensee who is not prohibited by this section from receiving a commission or a referral fee shall disclose in writing to any person or entity to whom the licensee recommends or refers a product or service to which the commission or referral fee relates the fact that the licensee has been paid or expects to be paid a commission or referral fee.

[1999, c. 245, §12 (NEW).]

13. Contingency fees. A licensee or a licensee's firm may not:

A. When involved in providing for a client a defined service:

(1) Perform for a contingent fee any services for a client; or

(2) Receive a contingency fee from a client; or [1999, c. 245, §12 (NEW).]

B. Prepare an original or amended tax return or claim for a tax refund for a contingent fee. [1999, c. 245, §12 (NEW).]

Notwithstanding paragraph A, a licensee when providing a defined service may receive a contingency fee if the licensee's compilation report discloses in writing a lack of independence.

The prohibitions apply during the period in which the licensee is engaged to perform any of the services listed in this section and the period covered by any historical financial statements involved in any of the listed services.

As used in this subsection a "contingent fee" or "contingency fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee is charged unless a specified finding or result is attained or in which the amount of the fee is otherwise dependent upon the finding or result of the service. For purposes of this subsection, fees are not regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending on the complexity of services rendered.

[1999, c. 245, §12 (NEW).]

14. Substantial equivalency. For purposes of this section:

A. An individual practicing as a certified public accountant without a license on the basis of substantial equivalency pursuant to section 12232 and complying with the restrictions on the scope of such a practice is equivalent to an individual licensed as a certified public accountant under section 12230 or 12231 or a corresponding provision of prior law, and each reference in this section to a licensed certified public accountant is deemed to include, on an equal basis, such an individual; [2009, c. 242, §37 (AMD).]

B. A firm in compliance with section 12252, subsection 1 must, for the purposes of this section, be deemed to hold a valid license issued under section 12252; and [2009, c. 242, §37 (AMD).]

C. Notwithstanding any other provision of this section, it is not a violation of this section if a firm that does not hold a valid license under section 12252 and that does not maintain an office in this State provides professional services in this State if the firm complies with the requirements of section 12252, subsection 1, paragraph B or C, whichever is applicable. [2009, c. 242, §37 (AMD).]

[2009, c. 242, §37 (AMD) .]

SECTION HISTORY

1987, c. 489, §2 (NEW). 1999, c. 200, §2 (AMD). 1999, c. 245, §12 (AMD). 1999, c. 619, §4 (AMD). 2007, c. 384, §14 (AMD). 2007, c. 402, Pt. Z, §24 (AMD). 2009, c. 242, §§29-37 (AMD).

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