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SENATE BILL NO. 539

Senate Amendments in [] — February 2, 2004

A BILL to amend and reenact §§ 54.1-4400, 54.1-4402, 54.1-4403, 54.1-4407, 54.1-4409, 54.1-4410, 54.1-4412, 54.1-4413, and 54.1-4414 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 54.1-4405.1 and 54.1-4413.1, relating to the Board of Accountancy.

Patron Prior to Engrossment—Senator Stosch

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-4400, 54.1-4402, 54.1-4403, 54.1-4407, 54.1-4409, 54.1-4410, 54.1-4412, 54.1-4413, and 54.1-4414 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 54.1-4405.1 and 54.1-4413.1 as follows:

§ 54.1-4400. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

"Assurance" means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards.

"Attestation engagement" means performing an engagement in accordance with attestation standards promulgated by the American Institute of Certified Public Accountants and issuing a written communication that expresses a conclusion about the reliability of a written assertion that is the responsibility of another party.

"Board" means the Board of Accountancy continued by the provisions of this chapter and established by its predecessor under prior law.

"Commission" means compensation generated from the purchase or sale of a product or service and which would not be generated but for the purchase or sale of the product or service.

"Compilation" or "Compile," when used by a CPA, refers to a firm (including sole proprietors) presenting in the form of financial statements information that is the representation of management (owners) without undertaking to express any assurance on the statements and performing such service in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

"Contingent fee" means a fee established for the performance of a service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is obtained, or in which the amount of the fee is dependent upon the finding or result obtained. Fees shall not be considered 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 CPA certificate holder's fees may vary depending on the complexity of services rendered, and such variation shall not be considered a contingent fee.

"CPA certificate" means a certificate as a certified public accountant (CPA) issued by the Board pursuant to this chapter or corresponding provisions of prior law, which shall function as a license, if currently valid, or a certificate as a certified public accountant issued after meeting the CPA exam and other requirements under the laws of any other state.

"CPA exam" means the National Uniform CPA exam approved and administered by the Board of Accountancy to candidates for a CPA certificate.

"CPA title" means using "CPA," "Certified Public Accountant," "public accountant," or "CPA firm" in any form or manner that communicates (including but not limited to any title, phrase, acronym, abbreviation, business cards, CPA wall certificate, letterhead, reports, tax returns, sign, card, or any other document or device) [~~to the public~~] that the individual or firm holds a currently valid CPA certificate or permit.

"Director" means the Executive Director of the Board of Accountancy.

"Financial statement" means a written or other form of presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position of any person, corporation, partnership or other entity.

"Firm" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"License" means a CPA certificate or permit.

"Licensee" means a holder of a CPA certificate or permit.

"Non-CPA owner" means an individual who does not hold a license, provides professional services

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SB539E

59 to clients, and holds an ownership interest in a CPA firm.

60 "Peer review" means a study, appraisal, or review, by a CPA certificate holder ~~who~~ *or CPA firm*
61 *holding a currently valid license that* is not affiliated with the firm being reviewed, of one or more
62 aspects of the professional work of a firm that engages in the practice of public accounting or compiles
63 financial statements in accordance with the American Institute of Certified Public Accountants'
64 Statements on Standards for Accounting and Review Services (SSARS).

65 "Permit" means a permit issued to a firm that has met all of the requirements for registration under
66 this chapter. Issuance of a permit shall constitute licensure as defined in § 54.1-300.

67 "Practice of public accountancy" or "public accounting" means the giving of an assurance, in a report
68 or otherwise, whether expressly or implicitly, unless this assurance is given by an employee to his
69 employer.

70 "Registration" or "registered" means the process through which a firm obtains a permit from the
71 Board.

72 "Report" or "reports," when used with reference to financial statements, means an opinion or
73 disclaimer of opinion or other form of language or representation that states or implies any form of
74 assurance or denial of assurance.

75 "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin
76 Islands and Guam.

77 "Statements on Standards for Accounting and Review Services" or "SSARS" means Statements on
78 Standards for Accounting and Review Services established by the American Institute of Certified Public
79 Accountants.

80 "Substantial equivalency" means a determination by the Board or its designee that the education,
81 CPA exam and experience requirements contained in the statutes and administrative rules of another
82 jurisdiction are comparable to, or exceed, the education, CPA exam and experience requirements
83 contained in this chapter, or that an individual CPA from another jurisdiction has met education, CPA
84 exam and experience requirements that are comparable to, or exceed, the education, CPA exam, and
85 experience requirements contained in this chapter.

86 § 54.1-4402. Board of Accountancy; membership; qualifications; powers and duties.

87 A. The Board of Accountancy established under the former § 54.1-2000 and previously operating in
88 the Department of Professional and Occupational Regulation is hereby continued and reestablished as an
89 independent board in the executive branch of state government.

90 The Board shall consist of seven members appointed by the Governor as follows: one public member
91 who may be an accountant who does not hold a CPA certificate but otherwise meets the requirements of
92 clauses (i) and (ii) of § 54.1-107; one educator in the field of accounting; and five certified public
93 accountants as follows: (a) four of whom have been actively engaged in the practice of public
94 accounting for at least three years prior to appointment to the Board and (b) one of whom may be a
95 certified public accountant not engaged in the practice of public accounting at the time of his
96 appointment but who has at least three years of experience in the accounting field prior to appointment.

97 Members of the Board shall serve for terms of four years. The Governor may remove any member as
98 provided in subsection B of § 2.2-108. Any certified public accountant member of the Board whose
99 CPA certificate is revoked or suspended shall automatically cease to be a member of the Board.

100 B. The Board shall certify and issue CPA certificates to persons to practice public accountancy and
101 restrict the practice of public accountancy to those persons who are so certified, who ~~may call~~
102 ~~themselves CPAs~~ *may use the CPA title*, and shall take such actions as may be authorized by this chapter
103 to ensure their continued competence and to aid the public in determining the qualifications of such
104 persons.

105 The Board shall issue permits to firms to engage in the practice of public accountancy in the
106 Commonwealth as set forth in § 54.1-4412 *or to use the CPA title* and take such actions as may be
107 authorized by this chapter to ensure that such firms and their certified public accountants adhere to
108 standards of conduct and practice.

109 C. The Board shall have the responsibility of enforcing this chapter and may by regulation establish
110 rules and procedures for the implementation of the provisions of this chapter.

111 § 54.1-4403. General powers and duties of Board.

112 The Board shall have the following powers and duties to:

113 1. Establish the qualifications of applicants for licensure, provided that all qualifications shall be
114 necessary to ensure competence and integrity.

115 2. Examine, or cause to be examined, the qualifications of each applicant for licensure, including the
116 preparation, administration and grading of examinations.

117 3. Promulgate regulations [*in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)*
118 *in accordance with the Administrative Process Act (§ 2.2-4000 et seq.)*] necessary to assure continued
119 competency, to prevent deceptive or misleading practices by practitioners and to effectively administer
120 the regulatory system. [*Such regulations shall be promulgated in accordance with the Administrative*

Process Act (§ 2.2-4000 et seq.), except that subsection H and subdivision (v) of subsection I of § 2.2-4007 shall not apply.]

4. Levy and collect fees for licensure and registration and renewal that are sufficient to cover all expenses for the administration and operation of the Board.

5. Levy on licensees special assessments necessary to cover expenses of the Board.

6. ~~Receive~~ *Initiate or receive* complaints concerning the conduct of persons and businesses licensed or registered by the Board as well as persons and businesses violating the provisions of this chapter and to take appropriate disciplinary action if warranted.

7. Revoke, suspend or fail to renew a certificate or license for just causes as enumerated in regulations of the Board.

8. Establish requirements for peer reviews of accounting practices or other related programs established to ensure that firms are conducting their practice in accordance with the standards of conduct and practice.

9. Establish continuing professional education standards as a condition for issuance or renewal of a CPA certificate.

10. Establish applicable standards of conduct and practice for CPA certificate holders.

11. Enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board.

12. Do all things necessary and convenient for carrying into effect this chapter or as enumerated in regulations promulgated by the Board.

§ 54.1-4405.1. *Board of Accountancy Trust Account; creation; expenditures; excess moneys.*

A. *There is hereby created in the state treasury a special nonreverting fund (except as set forth in subsection B), to be known as the Board of Accountancy Trust Account (the Trust Account). The purpose of the Trust Account is to provide a supplemental source of funds to the Board on a timely basis for its use in the study, research, investigation and adjudication of matters involving possible violations of any statute or regulation pertaining to the professional practices of any Certified Public Accountant (CPA) or CPA firm licensed in the Commonwealth, or for any other purpose that the Board determines is germane to the Board's statutory purposes and cannot otherwise be funded with available funds. The Trust Account shall consist of such funds as may be (i) transferred from time to time by the Board from the Board of Accountancy Fund, and (ii) earnings on the Trust Account.*

B. *All disbursements from the Trust Account shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the Director as authorized by the Board. Funds remaining in the Trust Account at the end of a biennium shall remain in the Trust Account and shall accrue earnings throughout the existence of the Trust Account. Upon a determination by the Board that the Trust Account balance exceeds the amount needed for the purposes set forth in subsection A, the Board may transfer such excess to the Board of Accountancy Fund.*

§ 54.1-4407. *Enforcement of laws by Director or investigators; authority of investigators appointed by Director.*

The Director or investigators appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Board. The Director or investigators appointed by him shall have the authority to investigate violations of the statutes and regulations that the Director is required to enforce. The Director or investigators appointed by him shall also have the authority to issue summonses for violations of the statutes and regulations governing the unlicensed practice of public accountancy, *including regulants with expired licenses*. In the event a person or entity issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

All investigators appointed by the Director are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this chapter, or any regulation promulgated pursuant to authority given by this chapter or in connection with any investigation conducted on behalf of the Board. Such investigators are vested with the authority to obtain, serve and execute any warrant, paper or process issued by any court or magistrate or by the Board under the authority of the Director and request and receive criminal history information under the provisions of § 19.2-389.

§ 54.1-4409. *Grant of CPA certificate; restrictions on practice; educational and experience requirements.*

A. The Board shall issue a CPA certificate only to a person who meets the character, education, experience, continuing professional education (CPE), and CPA exam requirements established in this chapter and by regulations of the Board and shall renew such certificate only if the certificate holder meets the requirements established by § 54.1-4410.

B. Before an applicant for a CPA certificate may sit for the CPA exam prescribed by this section,

the following education requirements shall be met:

1. For persons applying to sit for the CPA exam prior to July 1, 2006, a baccalaureate degree or its equivalent conferred by an accredited college or university with an accounting concentration or equivalent as defined by Board regulations.

2. For persons applying to sit for the CPA exam on or after July 1, 2006, at least 150 semester hours of college education, including a baccalaureate or higher degree conferred by an accredited college or university with the total educational program to include an accounting concentration or equivalent as defined by Board regulations.

C. An applicant for initial issuance of a CPA certificate shall provide proof acceptable to the Board that the applicant has had at least one year of acceptable experience in accounting or a related field. This experience may include providing any type of service or advice involving the use of accounting, management, financial, tax or consulting advisory skills or services. Acceptable experience shall include employment in government, industry, academia or public accounting or related services.

D. The Board shall grant all privileges of Virginia CPA certificate holders to persons who were granted CPA certificates or licenses in other jurisdictions who can demonstrate that they are eligible under the substantial equivalency provisions set forth in § 54.1-4411.

E. For the purpose of meeting the CPA exam requirements of this section, the Board may admit for CPA exam graduates of (i) Bristol College, Bristol, Tennessee, who have otherwise completed the course work and credit hours required by this chapter and (ii) Benjamin Franklin School of Accountancy and Financial Administration, Washington, D.C., who have otherwise completed the course work and credit hours required by this chapter.

[F. For the purpose of meeting the CPA exam requirements of this section, the Board shall admit graduates with a baccalaureate degree with a major in accounting or a concentration in accounting from the National College of Business and Technology who have otherwise completed the course work and credit hours required by this chapter. E. For the purpose of meeting the CPA exam requirements of this section, the Board shall admit graduates with a baccalaureate degree with a major in accounting or a concentration in accounting from the National College of Business and Technology who have otherwise completed the course work and credit hours required by this chapter.]

§ 54.1-4410. Renewal of CPA certificate; continuing education requirements.

A. The Board shall promulgate regulations establishing procedures and requirements for the renewal of a CPA certificate granted by the Board, including the payment of a renewal fee.

B. Any person referring to himself as a Certified Public Accountant or "CPA," including the use of the "CPA" CPA title on individual business cards, letterhead and all other documents and devices except the CPA certificate, and who is performing or offering to perform any services involving accounting skills or auditing skills, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters, for the public, shall meet the continuing professional education (CPE) requirements established by the Board as a condition of renewal of a CPA certificate. Such CPE requirements shall include at least 120 credit hours during each three-year period. The certificate holder may choose the areas of study and courses except as provided in subsection D.

C. Effective July 1, 2002, any person referring to himself as a Certified Public Accountant or "CPA," including the use of the "CPA" CPA title on individual business cards, letterhead and all other documents and devices except the CPA certificate, and who is performing or offering to perform any services involving accounting skills or auditing skills, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters, for an employer or other organization and not for the public, or who is employed as an educator in the field of accounting, shall meet CPE requirements as a condition of renewal of the person's CPA certificate as follows: (i) for the three-year reporting period beginning January 1, 2003, a minimum of 45 credit hours, (ii) for the three-year reporting period beginning January 1, 2006, a minimum of 90 credit hours, and (iii) for three-year reporting periods beginning on or after January 1, 2009, a minimum of 120 credit hours. The certificate holder may choose the areas of study and courses except as provided in subsection D.

D. The Board shall establish by regulation a requirement for continuing professional education in ethics for CPAs.

§ 54.1-4412. Firms.

A. Any person holding a valid CPA certificate may organize a firm as a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form or organization permitted by law. Any person holding a valid CPA certificate may offer services that do not constitute the practice of public accounting as defined in § 54.1-4400 through any lawful form of organization while representing himself as a "Certified Public Accountant" or "CPA."

B. Any firm with one or more offices in the Commonwealth that practices, directly or indirectly, public accounting or that uses the CPA title shall register under this chapter.

Only one permit shall be required for a firm with multiple offices. Each firm registered under this section shall designate an individual to register as the primary contact on behalf of the firm. A firm with

no offices in the Commonwealth may offer public accounting services in ~~this~~^{the} Commonwealth if the individual members or employees providing services are (i) holders of CPA certificates from the Board, (ii) have met the substantial equivalency requirements of this chapter, or (iii) are otherwise eligible to practice in the Commonwealth as determined by the Board. The Board may revoke the privileges of such firm to offer public accounting services in the Commonwealth for good cause shown, pursuant to regulations promulgated by the Board.

C. Any firm with an office in the Commonwealth providing or offering to provide public accounting services shall register under this chapter and be issued a permit by the Board upon application and payment of the required fee and shall maintain such certificate provided that:

1. At least 51 percent of the owners of the firm, as determined on a firm-wide basis, hold a valid CPA certificate.

2. At least 51 percent of the voting equity interest in the firm, as determined on a firm-wide basis, is owned by persons holding a valid CPA certificate. If this requirement or the requirement of subdivision C 1 is not met due to the death, retirement or departure of an owner, the requirements shall be met within one year of such event.

3. All non-CPA owners work in the firm as prescribed by Board regulations. Retirees or heirs who do not meet this requirement shall have a period specified by Board regulation to dispose of their interest. ~~Firms in existence as of July 1, 1999, shall comply with this requirement within a period specified by Board regulation.~~

4. All public accounting services are under the supervision of a person holding a valid CPA certificate.

5. The firm provides, *as may be required by regulations of the Board*, evidence satisfactory to the Board that the firm has undergone, no less frequently than every three years, a peer review in accordance with requirements established by the Board.

6. The firm conducts its accounting practice in conformity with the Board's standards of practice for firms and also with standards of conduct and practice that its CPA certificate holders are required to observe in the practice of public accountancy.

7. Any individual CPA who is responsible for supervising public accounting services and signs or authorizes another person to sign the accountant's report on the financial statement on behalf of the firm shall meet the experience requirements for these individuals as established by the Board.

8. The name of the firm is not false, misleading or deceptive.

D. Any firm with an office in the Commonwealth that is not engaged in the practice of public accounting but uses the CPA title shall register under this chapter and be issued a permit by the Board upon its application and payment of the required fee provided that such firm is in compliance with subdivisions C 1, 2, 3 and 8 of this section and the firm:

1. Conducts its practice in conformity with the ethical standards and standards of practice that the CPA certificate holders in the firm are required to observe; and

2. Affirms that it has met the requirements of this section and has not provided nor offered to provide services involving the practice of public accounting in the previous two years and will not provide or offer to provide such services in the future, unless it first meets the requirements set forth in subsection C.

In addition, any such firm using certified public accountants to compile financial statements shall compile such statements in compliance with SSARS and shall provide evidence satisfactory to the Board that the firm has undergone, no less frequently than every three years, a peer review in accordance with the requirements established by the Board.

E. A firm's permit shall be renewed ~~biennially~~^{annually} on the anniversary date if such firm meets the requirements for registration and has paid the required fee. The Board shall establish a renewal fee.

§ 54.1-4413. Unprofessional conduct; enforcement against holders of CPA certificates and permits.

A. The Board may revoke any CPA certificate or permit; suspend any CPA certificate or permit or refuse to renew any CPA certificate or permit for a period of not more than five years; reprimand, censure or limit the scope of practice of any CPA certificate holder or registered firm; impose a monetary penalty as provided in § 54.1-4417 ~~or~~, and place any CPA certificate holder or registered firm on probation, with or without terms, conditions and limitations, for any of the following reasons:

1. Fraud or deceit in obtaining or renewing a CPA certificate or permit.

2. Cancellation, revocation, suspension or refusal to renew the CPA certificate or license to engage in the practice of public accountancy for disciplinary reasons in another state or foreign jurisdiction.

3. Failure to comply with the requirements for issuance or renewal of a CPA certificate or permit.

4. Revocation or suspension of the right to practice before any state or federal agency.

5. Dishonesty, fraud, or gross negligence in the practice of public accountancy, including but not limited to the content of a CPA certificate holder's state or federal income tax returns or his failure to file his own state or federal income tax returns or those of his client.

305 6. Violation of any provision of this chapter or regulation promulgated by the Board under this
306 chapter.

307 7. Violation of any standard of conduct or applicable standard of practice promulgated by the Board.

308 8. Subject to the provisions of § 54.1-4419, conviction of a felony, or of any crime involving fraud
309 or dishonesty, under the laws of the United States, of this Commonwealth, or of any other state if the
310 acts involved would have constituted a crime under the laws of the Commonwealth.

311 B. In lieu of, or in addition to, any authority provided in subsection A or other provisions of this
312 chapter, the Board may require a registered firm to submit to a peer review conducted as the Board may
313 specify, provided such firm performs services involving public accounting or compiles financial
314 statements in accordance with SSARS. The Board may also require a CPA certificate holder to attain
315 satisfactory completion of additional or specific continuing professional education credit hours as the
316 Board may specify.

317 C. Any person referring to himself as a Certified Public Accountant or "CPA," including the use of
318 the title on business cards, letterhead or other documents or devices other than the person's CPA
319 certificate, who compiles financial statements must create the report in compliance with SSARS.

320 § 54.1-4413.1. *Unlicensed practice of public accounting; using the CPA title without a license.*

321 *The Board may refuse to renew or reinstate any CPA certificate or permit for a period of not more*
322 *than five years; reprimand, censure or limit the scope of practice of former licensees; and,*
323 *notwithstanding the limitations provided in § 54.1-4412, impose a monetary penalty on former licensees*
324 *or other individuals or entities engaged in the unlicensed practice of public accounting or using the*
325 *CPA title without a license.*

326 § 54.1-4414. Prohibited acts.

327 A. A person who does not hold a valid CPA certificate shall not:

328 1. Claim to hold a valid CPA certificate;

329 2. Practice or offer to practice public accountancy or public accounting;

330 3. Make any other claim of licensure, registration, or approval related to the preparation of financial
331 statements that is false or misleading;

332 4. Describe himself as or assume any of the following titles or designations: certified public
333 accountant, CPA, public accountant, PA, certified accountant, CA, chartered accountant, licensed
334 accountant, LA, registered accountant, RA, independent auditor, IA or auditor;

335 5. Claim to have used "generally accepted accounting principles," "generally accepted accounting
336 standards," "public accountancy standards," "public accountancy principles," "generally accepted auditing
337 principles," "generally accepted auditing standards," or "standards promulgated by the American Institute
338 of Certified Public Accountants" or any successor thereto including SSARS, in connection with his
339 preparation of any financial statement; nor shall he use any of these terms in describing any complete or
340 partial variation from such standards or principles or to imply complete or partial conformity with such
341 standards or principles;

342 6. Use the words "audit," "audit report," "independent audit," "attest," "attestation," "examine,"
343 "examination," "opinion," or "review" in a report, as that term is defined in this chapter, and that
344 expresses assurance on a financial statement; or

345 7. State or imply that he is tested, competent, qualified, or proficient in financial standards
346 established by (i) the American Institute of Certified Public Accountants or any agency thereof, (ii) the
347 Governmental Accounting Standards Board or any agency thereof, (iii) the Securities and Exchange
348 Commission or any agency thereof, (iv) the Financial Accounting Standards Board, or (v) any successor
349 entity to an entity named in this subdivision.

350 B. A firm shall not use a name that is false, misleading or deceptive.

351 C. This section shall not prohibit any officer, partner, member, manager, or employee of any firm or
352 organization from affixing that person's signature to any statement in reference to the financial affairs of
353 such firm or organization with any wording designating the position, title, or office that person holds
354 therein, nor does this section prohibit any act of a public official or employee in the performance of his
355 duties.

356 D. No CPA certificate holder shall:

357 1. Recommend or refer to a client any product or services for a commission, or, for a commission,
358 recommend or refer any product or service to be supplied by a client, or receive a commission when the
359 CPA certificate holder also performs for that client any service that involves the practice of public
360 accounting. This prohibition applies during the period in which the CPA certificate holder is providing
361 services that involve the giving of an assurance or during the period covered by any financial statements
362 that were prepared by the CPA certificate holder as a part of such services.

363 2. Perform for a contingent fee any services for, or receive such a fee from, a client for whom the
364 CPA certificate holder or the CPA certificate holder's firm performs services that involve the practice of
365 public accounting, during the period when such services are being provided and during the period
366 covered by the financial statements.

367 3. Prepare an original tax return or claim for a tax refund for a contingent fee for any client.
368 E. A CPA certificate holder who is not prohibited by this section from accepting a commission and
369 who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom
370 the CPA certificate holder recommends or refers a product or service to which the commission applies.
371 F. A CPA certificate holder who accepts a referral fee for recommending or referring any service of
372 a CPA certificate holder shall disclose such payment to the client.

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