

Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
EFISINAN I MAGA LAH
AGANA, GUAM 96910

(GAA)
6-07-90

MAY 17 1990

The Honorable Joe T. San Agustin
Speaker
155 Herman Cortez St.
Twentieth Guam Legislature
Agana, Guam 96910

Dear Mr. Speaker:

Enclosed is Substitute Bill 257 which I have signed into law as Public Law 20-173.

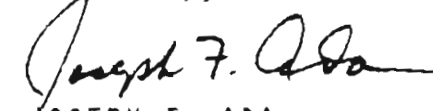
I have signed this measure with reservation because it provides a disincentive for auditors and accountants to remain in government service. Under former Government Code Section 54002.1 experience requirements for licensure could be met through government employment. However, under Public Law 20-173 it appears that the only experience allowable for licensure is in the private sector.

It is unfortunate that the government may lose some of its valuable employees who must leave government service to obtain their licenses. I request that the Legislature reinstate the following provision through amendment of Section 54005(c)(2):

"The Board may accept in fulfillment of this requirement on the same level of experience, year for year or portion thereof, employment as an auditor or accountant with the federal, state or territorial government or an agency or instrumentality thereof."

Further, I request clarification of Section 54003 (d). Is it the intention of the Legislature to appropriate the money collected by the Board for its operations or did the Legislature intend that the Board could expend funds collected without further appropriation? As the law stands now, further legislative action is required for expenditure of these funds. Thus, the Board may not be able to begin its operations absent availability of funds.

Cordially,


JOSEPH F. ADA
Governor




Commonwealth Now!

TWENTIETH GUAM LEGISLATURE
1990 (SECOND) Regular Session

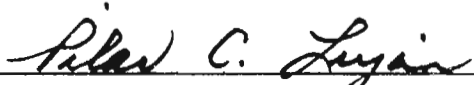
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 257 (LS), "AN ACT TO REPEAL AND REENACT CHAPTER I TITLE LVII OF THE GOVERNMENT CODE TO PROVIDE A NEW PUBLIC ACCOUNTANCY LAW; TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES AS CERTIFIED PUBLIC ACCOUNTANTS AND THE ISSUANCE OF PERMITS TO PRACTICE PUBLIC ACCOUNTANCY; TO REGULATE THE PRACTICE OF PUBLIC ACCOUNTANCY; AND TO ESTABLISH A BOARD OF ACCOUNTANCY AND PRESCRIBE ITS POWERS AND DUTIES," was on the 1st day of May, 1990, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



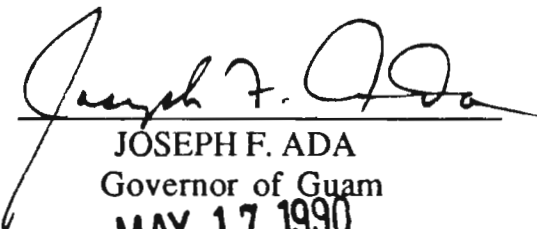
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 7th day of May, 1990, at
4:35 o'clock P.m.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam
MAY 17 1990
Date: _____

Public Law No. 20-173

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 257 (LS)
As substituted By The
Committee on Ways & Means

Introduced by:

H. D. Dierking
C. T. C. Gutierrez
J. T. San Agustin
D. F. Brooks
J. P. Aguon
E. P. Arriola
J. G. Bamba
M. Z. Bordallo
E. R. Duenas
E. M. Espaldon
P. C. Lujan
G. Mailloux
M. D. A. Manibusan
T. S. Nelson
D. Parkinson
F. J. A. Quitugua
E. D. Reyes
M. C. Ruth
F. R. Santos
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO REPEAL AND REENACT CHAPTER I TITLE LVII OF THE GOVERNMENT CODE TO PROVIDE A NEW PUBLIC ACCOUNTANCY LAW; TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES AS CERTIFIED PUBLIC ACCOUNTANTS AND THE ISSUANCE OF PERMITS TO PRACTICE PUBLIC ACCOUNTANCY; TO REGULATE THE PRACTICE OF PUBLIC ACCOUNTANCY; AND TO

ESTABLISH A BOARD OF ACCOUNTANCY AND PRESCRIBE
ITS POWERS AND DUTIES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. CHAPTER 1 Title LVII, Government Code of Guam is
3 hereby repealed and reenacted to read:

4 "Chapter 1
5 Public Accountancy

6 §54000. Title.

7 This Chapter may be cited as the "Public Accountancy Act of
8 1990."

9 §54001. Purpose.

10 It is the policy of this Territory, and the purpose of this Chapter,
11 to promote the reliability of information that is used for guidance in
12 financial transactions or for accounting for or assessing the financial
13 status or performance of commercial, noncommercial, and governmental
14 enterprises. The public interest requires that persons professing special
15 competence in accountancy or offering assurance as to the reliability or
16 fairness of presentation of such information shall have demonstrated
17 their qualifications to do so, and that no persons who have not
18 demonstrated and maintained such qualifications be permitted to hold
19 themselves out as having such special competence or to offer such
20 assurance; that the professional conduct of persons licensed as having
21 special competence in accountancy be regulated in all aspects of the
22 practice of public accountancy; that a public authority competent to
23 prescribe and assess the qualifications and to regulate the professional
24 conduct of practitioners of public accountancy be established; and that
25 the use of titles relating to the practice of public accountancy that are
26 likely to mislead the public as to the status or competence of the
27 persons using such titles be prohibited.

28 §54002. Definitions.

29 When used in this Chapter, the following terms have the following
30 meanings:

1 (a) "Board" means the Guam Board of Accountancy
2 established under §54003 of this Chapter or its predecessor under
3 prior law.

4 (b) "Certificate" means a certificate as "certified public
5 accountant" issued under §54004 of this Chapter or corresponding
6 provisions of prior law, or a corresponding certificate as certified
7 public accountant issued after examination under the law of any
8 other state.

9 (c) "Firm" means a sole proprietorship, a corporation, or a
10 partnership.

11 (d) "Licensee" means the holder of a certificate issued under
12 §54004 of this Chapter, or of a permit issued under §§54005 or
13 54006; or in each case a certificate or permit issued under
14 corresponding provisions of prior law.

15 (e) "Permit" means a permit to practice public accountancy
16 issued under §§54005 and 54006 of this Chapter or corresponding
17 provisions of prior law or under corresponding provisions of the
18 laws of other states.

19 (f) "Practice of, or practicing public accountancy" means the
20 performance or the offering to perform by a person or firm
21 holding itself out to the public as a licensee, for a client or
22 potential client, of one or more kinds of services involving the use
23 of accounting or auditing skills, including the issuance of reports
24 on financial statements or of one or more kinds of management
25 advisory or consulting service, or the preparation of tax returns or
26 the furnishing of advice on tax matters.

27 (g) "Quality review" means a study appraisal, or review of
28 one or more aspects of the professional work of a person or firm
29 in the practice of public accountancy, by a person or persons who
30 hold certificates or permits to practice in Guam or other states
31 deemed qualified by the Board and who are not affiliated with the
32 person or firm being reviewed.

33 (h) "Report," when used with reference to financial
34 statements, means an opinion, report, or other form of language

1 that states or implies assurance as to the reliability of any
2 financial statements and that also includes or is accompanied by
3 any statement or implication that the person or firm issuing it has
4 special knowledge or competence in accounting or auditing. Such
5 a statement of implication of special knowledge or competency
6 may arise from use by the issuer of the report of names or titles
7 indicating that he or it is an accountant or auditor, or from the
8 language of the report itself. The term "report" includes any form
9 of language which disclaims an opinion when such form of
10 language is conventionally understood to imply any positive
11 assurance as to the reliability of the financial statements referred
12 to or special competence on the part of the person or firm issuing
13 such language; and it includes any other form of language that is
14 conventionally understood to imply such assurance or such special
15 knowledge or competence.

16 (i) "Rule" means any rule, regulation, or other written
17 directive of general application duly adopted by the Board.

18 (j) "State" means any state of the United States, the District of
19 Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

20 §54003. Guam Board of Accountancy.

21 (a) There is hereby created the Guam Board of Accountancy,
22 which shall have responsibility for the administration and enforcement
23 of this Chapter. The Board shall consist of five members, appointed by
24 the Governor, all of whom shall be residents of Guam and holders of
25 certificates currently valid under §54004 of this Chapter. At least a
26 majority plus one of such members shall be holders of currently valid
27 permits issued under §54005 of this Chapter or corresponding
28 provisions of prior law. The term of each member of the Board shall be
29 four years. Vacancies occurring during a term shall be filled by
30 appointment by the Governor for the unexpired term. Upon the
31 expiration of a member's term of office, such member shall continue to
32 serve until successor shall have been appointed and taken office. Any
33 member of the Board whose permit under §54004 of this Chapter is
34 revoked or suspended shall automatically cease to be a member of the

1 Board, and the Governor may, after a hearing pursuant to the
2 Administration Adjudication Law, remove any member of the Board for
3 neglect of duty or other cause.

4 (b) The Board shall elect annually from among its members a
5 chairman and such other officers as the Board may determine to be
6 appropriate. The Board shall meet at such times and places as may be
7 fixed by the Board. Meetings of the Board shall be open to the public
8 except insofar as they are concerned with investigations under §54010
9 of this Chapter and except as may be necessary to protect information
10 that is required to be kept confidential by Board rules or by the laws of
11 Guam. A majority of the Board members then in office shall constitute a
12 quorum at any meeting duly called. The Board shall have a seal which
13 shall be judicially noticed. The Board shall retain or arrange for the
14 retention of all applications and all documents under oath that are filed
15 with the Board and also records of its proceedings, and it shall maintain
16 a registry of the names and addresses of all licensees under this
17 Chapter. In any proceeding in court, civil or criminal, arising out of or
18 founded upon any provision of this Chapter, copies of any of said
19 records certified as true copies under the seal of the Board shall be
20 admissible in evidence as tending to prove the contents of said records.

21 (c) Each member of the Board shall be paid an amount
22 established by law for each day or portion thereof spent in the
23 discharge of official duty and shall be reimbursed for actual and
24 necessary expenses incurred in the discharge of such duty.

25 (d) All monies collected by the Board from fees authorized to be
26 charged by this Chapter shall be received and accounted for by the
27 Board and shall be deposited with the Treasurer of Guam to the credit
28 of the Board. Such monies shall be made available for the expenses of
29 administering the provisions of this Chapter, which may include, but
30 shall not be limited to, the costs of conducting investigations and of
31 taking testimony and procuring the attendance of witnesses before the
32 Board or its committees; all legal proceedings taken under this Chapter
33 for the enforcement thereof; and educational programs for the benefit
34 of the public and licensees and their employees.

1 (e) The Board shall file an annual report of its activities with the
2 Governor and the Legislature, which report shall include a listing of all
3 current licensees under this Chapter. The Board shall mail a copy of the
4 annual report to any person requesting it and paying a reasonable
5 charge therefor.

6 (f) The Board may employ an executive director and such other
7 personnel as it deems necessary in its administration and enforcement
8 of this Chapter. It may appoint such committees and persons, to advise
9 or assist it in such administration and enforcement, as it may see fit. It
10 may retain its own counsel to advise and assist it in addition to such
11 advice and assistance as is provided by the Attorney General of Guam.

12 (g) The Board shall have the power to take all action that is
13 necessary and proper to effectuate the purposes of this Chapter,
14 including the power to sue and be sued in its official name as an agency
15 of government of Guam; to issue subpoenas to compel the attendance of
16 witnesses and the production of documents; to administer oaths; to take
17 testimony and to receive evidence concerning all matters within its
18 jurisdiction. In case of disobedience of a subpoena, the Board may
19 invoke the aid of any court of Guam in requiring the attendance and
20 testimony of witnesses and the production of documentary evidence.
21 The Board, its members, and its agents shall be immune from personal
22 liability for actions taken in good faith in the discharge of the Board's
23 responsibilities, and the government of Guam shall hold the Board, its
24 members, and its agents harmless from all costs, damages, and
25 attorneys' fees arising from claims and suits against them with respect
26 to matters to which such immunity applies.

27 (h) The Board may adopt rules governing its administration and
28 enforcement of this Chapter and the conduct of licensees, including but
29 not limited to --

30 (1) Rules governing the Board's meetings and the conduct of
31 its business;

32 (2) Rules of procedure governing the conduct of
33 investigations and hearings by the Board;

1 (3) Rules specifying the educational qualifications required
2 for the issuance of certificates under §54004 of this Chapter (the
3 experience required for initial issuance of permits under
4 subsection (c) and (z) of §54005 and the continuing professional
5 education required for renewal of permits under subsection (e) of
6 §54005;

7 (4) Rules of professional conduct directed to controlling the
8 quality and probity of the practice of public accountancy by
9 permit holders, and dealing among other things with
10 independence, integrity, and objectivity; competence and technical
11 standards; responsibilities to the public; and responsibilities to
12 clients;

13 (5) Rules specifying actions and circumstances that shall be
14 deemed to constitute holding oneself out as a licensee in
15 connection with the practice of public accountancy within the
16 meaning of subsection (g) of §54002;

17 (6) Rules governing the manner and circumstances of use by
18 holders of certificates who do not also hold permits under this
19 Chapter of the titles "certified public accountant" and "CPA";

20 (7) Rules regarding quality reviews that may be required to
21 be performed under the provisions of this Chapter; and

22 (8) Such other rules as the Board may deem necessary or
23 appropriate for implementing the provisions and the purposes of
24 this Chapter.

25 (i) All rules or amendments thereto as promulgated under
26 subsection (h) of this §54003 or under any other provision of this
27 Chapter shall be adopted pursuant to the rule making procedures set
28 forth in the Administrative Adjudication Law..

29 §54004. Certified Public Accountants.

30 (a) The Board shall grant the certificate of "certified public
31 accountant" to any person who meets the good character, education and
32 examination requirements of, and who pays the fees prescribed by, the
33 following subsections of this §54004.

1 (b) Good character for purposes of this §54004 means lack of a
2 history of dishonest or felonious acts. The Board may refuse to grant a
3 certificate if the finding by the Board of lack of good character is
4 supported by clear and convincing evidence. When an applicant is
5 found to be unqualified for a certificate because of lack of good
6 character, the Board shall furnish the applicant a statement containing
7 the findings of the Board, a complete record of the evidence upon which
8 the determination was based, and a notice of the applicant's right of
9 appeal.

10 (c) The education requirement for a certificate, which must be
11 met no later than 120 days after an applicant sits for the examination
12 prescribed in subsection (d), shall be a baccalaureate degree or its
13 equivalent conferred by a college or university acceptable to the Board,
14 with an accounting concentration or equivalent as determined by the
15 Board by rule to be appropriate.

16 (d) The examination required to be passed as a condition for the
17 granting of a certificate shall include but not be limited to the Uniform
18 Certified Public Accountancy examination of the American Institute of
19 Certified Public Accountants ("AICPA") (or other uniformly adopted
20 examination of every accountancy licensing jurisdiction of the United
21 States), shall be in writing, shall be held twice a year, and shall test the
22 applicant's knowledge of the subjects of accounting theory, accounting
23 practice, auditing and such other related subjects as the Board may
24 specify by rule. The time for holding such examination shall be fixed by
25 the Board and may be changed from time to time. The Board shall
26 prescribe by rule the methods of applying for and conducting the
27 examination, including methods of grading papers and determining a
28 passing grade required of an applicant for a certificate provided,
29 however, that the Board shall to the extent possible see to it that the
30 grading of the examination, and the passing grades, are uniform with
31 those applicable in all other states. The Board may make such use of all
32 or any part of the AICPA Uniform Certified Public Accountant
33 Examination and Advisory Grading Service and may contract with third
34 parties to perform such administrative services with respect to the

1 examination as it deems appropriate to assist it in performing its duties
2 hereunder.

3 (e) An applicant shall be required to pass all parts of the
4 examination provided for in subsection (d) in order to qualify for a
5 certificate. If at a given sitting of the examination an applicant passes
6 two or more but not all parts (with the accounting practice part of the
7 examination being treated for this purpose as two parts), then such
8 applicant shall be given credit for those parts that such applicant has
9 passed and need not sit for reexamination in those parts; provided,
10 that--

11 (1) The applicant wrote all parts of the examination at that
12 sitting;

13 (2) The applicant attained a minimum grade of 50 on each
14 part not passed at that sitting;

15 (3) The applicant passes the remaining parts of the
16 examination within six consecutive examinations given after the
17 one at which the first parts were passed;

18 (4) At each subsequent sitting at which the applicant seeks
19 to pass any additional parts, the applicant writes all parts not yet
20 passed; and

21 (5) In order to receive credit for passing additional parts in
22 any such subsequent sitting, the applicant attains a minimum
23 grade of 50 on parts written but not passed on such sitting.

24 (f) An applicant shall be given credit for any and all parts of an
25 examination passed in another state if such credit would have been
26 given, under then applicable requirements, if the applicant had taken
27 the examination in GUAM.

28 (g) The Board may in particular cases waive or defer any of the
29 requirements of subsections (e) and (f) regarding the circumstances in
30 which the various parts of the examination must be passed, upon a
31 showing that, by reason of circumstances beyond such applicant's
32 control, such applicant was unable to meet such requirement.

33 (h) The Board may charge, or provide for a third party
34 administering the examination to charge, each applicant a fee, in an

1 amount prescribed by the Board by rule, for each part of the
2 examination or reexamination taken by the applicant.

3 (i) Upon the effective date of this Chapter, any person holding a
4 valid certificate issued under prior Guam law shall be deemed to have
5 met the requirements for certification set out in this §54004.

6 §54005. Permits to Practice--Individual.

7 (a) The Board shall grant or renew permits to practice public
8 accountancy to persons who make application and demonstrate their
9 qualifications therefor in accordance with the following subsections of
10 this §54005.

11 (b) Permits shall be initially issued, and renewed, for a period of
12 one year but in any event shall expire on the last day of December of
13 each year and may be renewed annually for a period of one year by
14 certificate holders and registrants in good standing upon payment of an
15 annual renewal fee of not to exceed Twenty-Five Dollars (\$25.00).
16 Applications for such permits shall be made in such form, and in the
17 case of applications for renewal, between such dates, as the Board shall
18 by rule specify, the Board shall grant or deny any such application no
19 later than sixty days after the application is filed in proper form. In
20 any case where the applicant seeks the opportunity to show that
21 issuance or renewal of a permit was mistakenly denied, or where the
22 Board is not able to determine whether it should be granted or denied,
23 the Board may issue to the applicant a provisional permit, which shall
24 expire ninety days after its issuance or when the Board determines
25 whether to issue or renew the permit for which application was made,
26 whichever shall first occur.

27 (c) An applicant for initial issuance of a permit under this §54005
28 shall show--

29 (1) That such applicant holds a valid certificate;

30 (2) That such applicant has had two years of experience in
31 the practice of public accountancy, meeting requirements
32 prescribed by the Board by rule; or, if the applicant's educational
33 qualifications comprise a baccalaureate degree with an accounting
34 concentration or equivalent as determined by the Board by rule to

1 be appropriate under subsection (c) of §54004, and not less than
2 thirty semester hours of additional study, then that such applicant
3 has had one year of experience in such practice;

4 (3) If the applicant's certificate was issued more than four
5 years prior to application for issuance of an initial permit under
6 this Section, that such applicant has fulfilled the requirements of
7 continuing professional education that would have been applicable
8 under subsection (e) of this §54005 if such applicant had secured
9 an initial permit within four years of issuance of certificate and
10 was now applying under subsection (e) for renewal of such
11 permit.

12 (d) The Board shall issue a permit to a holder of a certificate
13 issued by another state upon a showing that--

14 (1) The applicant passed the examination required for
15 issuance of a certificate with grades that would have been passing
16 grades at the time in Guam;

17 (2) The applicant--

18 (A) meets all current requirements of Guam for issuance
19 of a certificate at the time application is made; or

20 (B) at the time of the issuance of the applicant's
21 certificate in the other state, met all such requirements then
22 applicable in Guam; or

23 (C) had four years of experience in the practice of
24 public accountancy or equivalent meeting requirements
25 prescribed by the Board by rule, after passing the
26 examination upon which the certificate was based and within
27 the ten years immediately preceding such applicant's
28 application; and

29 (3) The applicant meets the requirements of subsection (c),
30 subparagraphs (2) and (3).

31 (e) An applicant for renewal of a permit under this §54005 must
32 show:

33 (1) During the three year period immediately following the
34 effective date of this Chapter, that such applicant has fulfilled the

1 requirements of continuing professional education which the
2 Board may establish by rule.

3 (2) After the expiration of the three year period immediately
4 following the effective date of this Chapter, that such applicant
5 has fulfilled requirements of continuing professional education
6 consisting of no less than twenty hours in each one year renewal
7 period and one hundred twenty hours in any three year period
8 that has elapsed since the permit was last renewed, (or if never
9 renewed, first issued), of such general kinds and in such subjects
10 as shall have been specified by the Board by rule.

11 (3) The Board may provide by rule that fulfillment of
12 continuing professional education requirements of other states
13 will be accepted in lieu of the foregoing requirements. The Board
14 may also provide by rule for prorated continuing professional
15 education requirements to be met by applicants whose initial
16 permits were issued substantially less than one year prior to the
17 renewal date, and it may prescribe by rule special lesser
18 requirements to be met by applicants for permit renewal whose
19 prior permits lapsed substantially prior to their applications for
20 renewal, and regarding whom it would in consequence be
21 inequitable to require a full compliance with all requirements of
22 continuing professional education that would otherwise have been
23 applicable to the period of lapse.

24 (f) The Board shall charge a fee for each application for initial
25 issuance or renewal of a permit under this §54005 in an amount
26 prescribed by the Board by rule.

27 (g) Applicants for initial issuance or renewal of permits
28 under this §54005 shall in their applications list all states in
29 which they have applied for or hold certificates or permits, and
30 each holder of or applicant for a permit under this §54005 shall
31 notify the Board in writing, within thirty days after its occurrence,
32 of any issuance, denial, revocation, or suspension of a certificate or
33 permit by another state.

1 (h) Upon the effective date of this Chapter, any person
2 holding a valid certificate issued under prior Guam law shall be
3 automatically issued an initial permit practice.

4 §54006. Permits to practice--firms.

5 (a) The Board shall grant or renew permits to practice public
6 accountancy to firms that make application and demonstrate their
7 qualifications therefor in accordance with the following
8 subsections of this §54006.

9 (b) Permits shall be initially issued and renewed for periods
10 of one year but in any event expiring on December 31 of each
11 year. Applications for permits shall be made in such form, and in
12 the case of applications for renewal, between such dates as the
13 Board may by rule specify, and the Board shall grant or deny any
14 such application no later than thirty days after the application is
15 filed in proper form. In any case where the applicant seeks the
16 opportunity to show that issuance or renewal of a permit was
17 mistakenly denied or where the Board is not able to determine
18 whether it should be granted or denied, the Board may issue to
19 the applicant a provisional permit, which shall expire ninety days
20 after its issuance or when the Board determines whether to issue
21 or renew the permit for which application was made, whichever
22 shall first occur.

23 (c) An applicant for initial issuance or renewal of a permit to
24 practice under this §54006 shall be required to show that each
25 partner, officer, or shareholder who regularly works in this
26 Territory, and each employee holding a certificate who regularly
27 works in Guam (except for employees who have not yet
28 accumulated sufficient experience to qualify for a permit under
29 subsection (c)(2) of §54005, holds a valid individual permit to
30 practice issued under §54005 or the corresponding provision of
31 prior law and that each other partner, officer, or shareholder
32 holds a certificate and is licensed to practice public accountancy in
33 some other state.

1 (d) An applicant for initial issuance or renewal of a permit to
2 practice under this §54006 shall be required to register each
3 office of the firm within Guam with the Board and to show that
4 each such office is under the charge of a person holding a valid
5 permit to practice issued under §54005 or the corresponding
6 provision of prior law. If an applicant does not maintain a
7 permanent office Guam, such applicant shall be required to obtain
8 a valid business license prior to issuance of a permit to practice.

9 (e) The Board shall charge a fee for each application for
10 initial issuance or renewal of a permit under this §54006 in an
11 amount prescribed by the Board by rule.

12 (f) Applicants for initial issuance or renewal of permits
13 under this §54006 shall in their application list all states in which
14 they have applied for or hold permits to practice public
15 accountancy, and each holder of or applicant for a permit under
16 this §54006 shall notify the Board in writing, within thirty days
17 after its occurrence, of any change in the identities of partners,
18 officers, or shareholders who work regularly within Guam, any
19 change in the number or location of offices within Guam, any
20 change in the identity of the persons in charge of such office, and
21 any issuance, denial, revocation, or suspension of a permit by any
22 other state.

23 (g) Upon the effective date of this Chapter, any firm holding
24 a valid Guam business license to practice public accounting shall
25 automatically be issued an initial permit to practice.

26 §54007. Public accountants and firms of public accountants.

27 Persons and firms who on the effective date of this Chapter hold
28 registration as public accountants and permits to practice public
29 accountancy issued under prior law shall be entitled to have their
30 permits to practice renewed under §§54005 and 54006; provided, that
31 they fulfill all requirements for renewal under those provisions. So long
32 as such licensees hold valid permits to practice under Sections 54005
33 and 54006, they shall be entitled to engage in the practice of public
34 accountancy to the same extent as other holders of such permits, and in

1 addition they shall be entitled to use the designations "public
2 accountants" and "PA", but no other designation, in connection with the
3 practice of public accountancy.

4 §54008. Appointment of Director of Revenue and Taxation as
5 Agent.

6 Application by a person or firm not a resident of Guam for a
7 certificate under §54004 of this Chapter or a permit to practice under
8 §§54004, 54005 or 54006 shall constitute appointment of the Director
9 of Revenue and Taxation as the applicant's agent upon whom process
10 may be served in any action or proceeding against the applicant arising
11 out of any transaction or operation connected with or incidental to the
12 practice of public accountancy by the applicant within Guam.

13 §54009. Enforcement against holders of certificates and permits.

14 (a) After notice and hearing pursuant to §54011 of this Chapter,
15 the Board may revoke any certificate or permit issued under §§54004,
16 54005, or 54006 or corresponding provisions of prior law; suspend any
17 such certificate or permit or refuse to renew any such permit for a
18 period of not more than five years; reprimand, censure, or limit the
19 scope of practice of any licensee; impose an administrative fine not
20 exceeding One Thousand Dollars (\$1000), or place any licensee on
21 probation, all with or without terms, conditions, and limitations, for any
22 one or more of the following reasons:

23 (1) Fraud or deceit in obtaining a certificate or permit;

24 (2) Cancellation, revocation, suspension or refusal to renew
25 authority to engage in the practice of public accountancy in any
26 other state for any cause;

27 (3) Failure, on the part of a holder of a permit under
28 §§54005 or 54006, to maintain compliance with the requirements
29 for issuance of renewal of such permit or to report changes to the
30 Board under subsection (g) of §54005(g) or subsection (f) of
31 §54006;

32 (4) Revocation or suspension of the right to practice before
33 any state or federal agency;

1 (5) Dishonesty, fraud, or gross negligence in the practice of
2 public accountancy or in the filing or failure to file licensee's own
3 income tax returns;

4 (6) Violation of any provision of this Chapter or rule
5 promulgated by the Board thereunder;

6 (7) Violation of any rule of professional conduct promulgated
7 by the Board under subsection (h)((4) of §54003 of this Chapter;

8 (8) Conviction of a felony, or of any crime an element of
9 which is dishonesty or fraud, under the laws of the United States,
10 of Guam, or of any other state if the acts involved would have
11 constituted a crime under the laws of Guam;

12 (9) Performance of any fraudulent act while holding a
13 certificate or permit issued under this Chapter or prior law; and

14 (10) Any conduct reflecting adversely upon the licensee's
15 fitness to engage in the practice of public accountancy.

16 (b) In lieu of or in addition to any remedy specifically provided
17 in subsection (a) of this §54009, the Board may require of a licensee--

18 (1) A quality review conducted in such fashion as the Board
19 may specify; or

20 (2) Satisfactory completion of such continuing professional
21 education programs as the Board may specify; or both.

22 (c) In any proceeding in which a remedy provided by subsections
23 (a) or (b) of this §54009 is imposed, the Board may also require the
24 respondent licensee to pay the costs of the proceeding.

25 §54010. Enforcement procedures-- investigations.

26 (a) The Board may, upon receipt of a complaint or other
27 information alleging violations of this Chapter or of the rules of the
28 Board, conduct investigations to determine whether there is probable
29 cause to institute proceedings under §§54011, 54014 or 54015 against
30 any person or firm for such violation, but an investigation under this
31 §54010 shall not be a prerequisite to such proceedings in the event that
32 a determination of probable cause can be made without investigation.
33 In aid of such investigations, the Board or the chairman thereof may
34 issue subpoenas to compel witnesses to testify and to produce evidence.

1 (b) The Board may designate a member, or any other person of
2 appropriate competence, to serve as investigating officer to conduct an
3 investigation. Upon completion of an investigation, the investigating
4 officer shall file a report with the Board. The Board shall find probable
5 cause or lack of probable cause upon the basis of the report or shall
6 return the report to the investigating officer for further investigation.
7 Unless there has been a determination of probable cause, the report of
8 the investigating officer, the complaint, if any, the testimony and
9 documents submitted in support of the complaint or gathered in the
10 investigation, and the fact of pendency of the investigation shall be
11 treated as confidential information and shall not be disclosed to any
12 person except law enforcement authorities and, to the extent deemed
13 necessary in order to conduct the investigation, the subject of the
14 investigation, persons whose complaints are being investigated, and
15 witnesses questioned in the course of investigation.

16 (c) Upon a finding of probable cause, if the subject of the
17 investigation is a licensee, the Board shall direct that a complaint be
18 issued under §54011 of this Chapter, and if the subject of the
19 investigation is not a licensee, the Board shall take appropriate action
20 under §§54014 and 54015.. Upon a finding of no probable cause, the
21 Board shall close the matter and shall thereafter release information
22 relating thereto only with the consent of the person or firm under
23 investigation.

24 (d) The Board may review the publicly available professional
25 work of licensees on a general and random basis, without any
26 requirement of a formal complaint or suspicion of impropriety on the
27 part of any particular licensee. In the event that as a result of such
28 review the Board discovers reasonable grounds for a more specific
29 investigation, the Board may proceed under subsections (a) through (c)
30 of this §54010.

31 §54011. Enforcement procedures--hearings by the Board.

32 (a) In any case where probable cause with respect to a violation
33 by a licensee has been determined by the Board, whether following an
34 investigation under §54010 or upon receipt of a written complaint

1 furnishing grounds for a determination of such probable cause, or upon
2 receipt of notice of a decision by the board of Accountancy of another
3 state furnishing such grounds, the Board shall issue a complaint setting
4 forth appropriate charges and set a date for hearing before the Board of
5 such charges. The Board shall, not less than thirty days prior to the
6 date of the hearing, serve a copy of the complaint and notice of the time
7 and place of the hearing upon the licensee, together with a copy of the
8 Board's rules governing proceedings under this §54011, either by
9 personal delivery or by mailing a copy thereof by registered mail to the
10 licensee at the address last known to the Board.

11 (b) A licensee against whom a complaint has been issued under
12 this §54011 shall have the right, reasonably in advance of the hearing,
13 to examine and copy the report of investigation, if any, and any
14 documentary or testimonial evidence and summaries of anticipated
15 evidence in the Board's possession relating to the subject matter of the
16 complaint. The Board's rules governing proceedings under this §54011
17 shall specify the manner in which such right may be exercised.

18 (c) In a hearing under this §54011 the respondent licensee may
19 appear in person (or, in the case of a firm, through a partner, officer,
20 director, or shareholder) and by counsel, examine witnesses and
21 evidence presented in support of the complaint, and present evidence
22 and witnesses on his own behalf. The licensee shall be entitled, on
23 application to the Board, to the issuance of subpoenas to compel the
24 attendance of witnesses and the production of documentary evidence.

25 (d) The evidence supporting the complaint shall be presented by
26 the investigating officer, by a Board member designated for that
27 purpose, or by counsel. A Board member who presents the evidence, or
28 who has conducted the investigation of the matter under §54010 of this
29 Chapter, shall not participate in the Board's decision on the matter.

30 (e) In a hearing under this §54011 the Board shall be advised by
31 counsel, who shall not be the same counsel who presents or assists in
32 presenting the evidence supporting the complaint under subsection (d)
33 of this §54011.

1 (f) In a hearing under this §54011 the Board shall not be bound
2 by technical rules of evidence.

3 (g) In a hearing under this §54011 a stenographic or electronic
4 record shall be made and filed with the Board. A transcript need not be
5 prepared unless review is sought under subsection (j) of this §54011 or
6 the Board determines that there is other good cause for its preparation.

7 (h) In a hearing under this §54011 a recorded vote of a majority
8 of all members of the Board then in office (excluding members
9 disqualified by reason of subsection (d) of this §54011) shall be
10 required to sustain any charge and to impose any penalty with respect
11 thereto.

12 (i) If, after service of a complaint and notice of hearing as
13 provided in subsection (a) of this §54011, the respondent licensee fails
14 to appear at the hearing, the Board may proceed to hear evidence
15 against the licensee and may enter such order as it deems warranted by
16 the evidence, which order shall be final unless the licensee petitions for
17 review thereof under subsection (j) of this §54011; provided, however,
18 that within thirty days from the date of any such order, upon a showing
19 of good cause for the licensee's failure to appear and defend, the Board
20 may set aside the order and schedule a new hearing on the complaint,
21 to be conducted in accordance with applicable subsections of this
22 §54011.

23 (j) Any person or firm adversely affected by any order of the
24 Board entered after a hearing under this §54011 may obtain review
25 thereof by filing a written petition for review with the Superior Court of
26 Guam within thirty days after the entry of said order. The procedures
27 for review and the scope of the review shall be as specified in the
28 Administrative Adjudication Law.

29 (k) In any case where the Board renders a decision imposing
30 discipline against a licensee under this §54011 and §54009, the Board
31 shall examine its records to determine whether the licensee holds a
32 certificate or a permit to practice public accountancy in any other state;
33 and if so, the Board shall notify the board of accountancy of such other
34 state of its decision, by mail, within forty-five days of rendering the

1 decision. The Board may also furnish information relating to
2 proceedings resulting in disciplinary action to other public authorities
3 and to private professional organizations having a disciplinary interest
4 in the licensee.

5 §54012. Reinstatement.

6 (a) In any case where the Board has suspended or revoked a
7 certificate or a permit or refused to renew a
8 permit, the Board may, upon application in writing by the
9 person or firm affected and for good cause shown, modify the
10 suspension, or reissue the certificate or permit.

11 (b) The Board shall by rule specify the manner in which such
12 applications shall be made, the times within which they shall be made,
13 and the circumstances in which hearings will be held thereon.

14 (c) Before reissuing, or terminating the suspension of, a certificate
15 or permit under this §54012, and as a condition thereto, the Board may
16 require the applicant therefor to show successful completion of
17 specified continuing professional education; and the Board may make
18 the reinstatement of a certificate or permit conditional and subject to
19 satisfactory completion of a quality review conducted in such fashion as
20 the Board may specify.

21 §54013. Unlawful Acts.

22 (a) No person or firm not holding a valid permit issued under
23 §§54005 and 54006 of this Chapter shall issue a report on financial
24 statements of any other person, firm, organization, or governmental
25 unit. This prohibition does not apply to an officer, partner, or employee
26 of any firm or organization affixing his signature to any statement or
27 report in reference to the financial affairs of such firm or organization
28 with any wording designating the position, title or office that he holds
29 therein; nor prohibit any act of a public official or employee in the
30 performance of his duties as such; nor prohibit the performance by any
31 persons of other services involving the use of accounting skills,
32 including the preparation of tax returns, management advisory services,
33 and the preparation of financial statements without the issuance of
34 reports thereon.

1 (b) The prohibition contained in subsection (a) of this §54013 is
2 applicable to issuance by a person or firm not holding a valid permit, of
3 a report using any form of language conventionally used by licensees
4 respecting a review of financial statements.

5 (c) The prohibition contained in subsection (a) of this §54013 is
6 applicable to issuance by a person or firm not holding a valid permit of
7 a report using any form of language conventionally used by licensees
8 with respect to a compilation of financial statements.

9 (d) No person not holding a valid certificate shall use or assume
10 the title or designation "certified public accountant," or the abbreviation
11 "CPA" or any other title, designation, words, letters, abbreviation, sign,
12 card, or device tending to indicate that such person is a certified public
13 accountant.

14 (e) No firm shall assume or use the title or designation "certified
15 public accountant," or the abbreviation "CPA," or any other title,
16 designation, words, letters, abbreviation, sign, card, or device tending to
17 indicate that such firm is composed of certified public accountants,
18 unless (1) the firm holds a valid permit issued under §54006 of this
19 Chapter, and (2) all partners, officers, and shareholders of the firm hold
20 certificates.

21 (f) No person shall assume or use the title or designation "public
22 accountant," or the abbreviation "PA," or any other title, designation,
23 words, letters, abbreviation, sign, card, or device tending to indicate that
24 such person is a public accountant unless he holds a valid permit issued
25 under §54005 of this Chapter.

26 (g) No firm not holding a valid permit issued under §54006 shall
27 assume or use the title or designation "public accountant," the
28 abbreviation "PA," or other title, designation, words, letters,
29 abbreviation, sign, card or device tending to indicate that such firm is
30 composed of public accountants.

31 (h) No person or firm not holding a valid permit issued under
32 §§54005 or 54006 shall assume or use the title or designation "certified
33 accountant," "chartered accountant," "enrolled accountant," "licensed
34 accountant," "registered accountant," "accredited accountant," or any

1 other title or designation likely to be confused with the titles "certified
2 public accountant" or "public accountant," or use any of the
3 abbreviations "CA," "EA," "LA," "RA," "AA," or similar abbreviation likely
4 to be confused with the abbreviations "CPA" or "PA," provided, however,
5 that a holder of a certificate who does not also hold a permit may use
6 the titles pertaining to such certificate in any manner not prohibited by
7 rules promulgated by the Board under subsection (h)(6) of §54003 of
8 this Chapter.

9 (i) No person or firm not holding a valid permit issued under
10 §§54005 and 54006 shall assume or use any title or designation that
11 includes the words "accountant," "auditor," or "accounting," in connection
12 with any other language (including the language of a report) that
13 implies that such person or firm holds such a permit or has special
14 competence as an accountant or auditor; provided, however, that this
15 subsection does not prohibit any officer, partner, or employee of any
16 firm or organization from affixing such person's signature to any
17 statement in reference to the financial affairs of such firm or
18 organization with any wording or designating the position, title, or office
19 that he held therein nor prohibit any act of a public official or employee
20 in the performance of official duties.

21 (j) No person holding a certificate shall engage in the practice of
22 public accountancy unless (1) such person also holds a valid permit
23 issued under §54005 of this Act, or (2) is an employee (and not a
24 partner, officer or shareholder) of a firm holding such permit issued
25 under §54006 and has not been such an employee long enough to meet
26 the experience requirements prescribed by subsection (c)(2) of §54005
27 for an individual permit to practice.

28 (k) No person or firm holding a permit under this Chapter shall
29 engage in the practice of public accountancy using a professional or firm
30 name or designation that is misleading about the legal form of the firm,
31 or about the persons who are partners, officers, or shareholders of the
32 firm, or about any other matter; provided, however, that names of one
33 or more former partners or shareholders may be included in the name
34 of a firm or its successor.

1 (l) None of the foregoing provisions of this §54013 shall have any
2 application to a person or firm holding a certification, designation,
3 degree, or license granted in a foreign country entitling the holder
4 thereof to engage in the practice of public accountancy or its equivalent
5 in such country, whose activities in Guam are limited to the provision of
6 professional services to persons or firms who are residents of,
7 governments of, or business entities of the country in which the holder
8 has such entitlement, who issues no reports with respect to the financial
9 statements of any other persons, firms or governmental units in Guam,
10 and who does not use in Guam any title or designation other than the
11 one under which the holder practices in such country, followed by a
12 translation of such title or designation into the English language, if it is
13 in a different language, and by the name of such country.

14 (m) No firm shall practice public accountancy in Guam without a
15 valid permit to practice under §54006.

16 §54014. Injunctions against unlawful acts.

17 Whenever, as a result of an investigation under §54010 of this
18 Chapter or otherwise, the Board believes that any person or firm has
19 engaged, or is about to engage, in any acts or practices which constitute
20 or will constitute a violation of §54013, the Board may make application
21 to the appropriate Superior Court of Guam for an order enjoining such
22 acts or practices, and upon a showing by the Board that such person or
23 firm has engaged, or is about to engage, in any such acts or practices, an
24 injunction, restraining order, or other order as may be appropriate shall
25 be granted by the court.

26 §54015. Criminal penalties.

27 (a) Whenever, by reason of an investigation under §54010 of this
28 Chapter or otherwise, the Board has reason to believe that any person
29 or firm has knowingly engaged in acts or practices that constitute a
30 violation of §54013, the Board may bring its information to the
31 attention of the Attorney General of Guam who may cause appropriate
32 criminal proceedings to be brought thereon.

33 (b) Any person or firm who knowingly violates any provision of
34 §54013 of this Chapter shall be guilty of a misdemeanor, and upon

1 conviction thereof shall be subject to a fine of not more than One
2 Thousand Dollars (\$1,000) or to imprisonment for not more than one
3 year, or to both such fine and imprisonment.

4 §54016. Single act evidence of practice.

5 In any action brought under Sections 54011, 54014 or 54015 of
6 this Chapter, evidence of the commission of a single act prohibited by
7 this Chapter shall be sufficient to justify a penalty, injunction,
8 restraining order, or conviction, respectively, without evidence of a
9 general course of conduct.

10 §54017. Confidential communications.

11 Except by permission of the client engaging a licensee under this
12 Chapter, or the heirs, successors, or personal representatives of such
13 client, a licensee or any partner, officer, shareholders, or employee of a
14 licensee shall not voluntarily disclose information communicated to him
15 by the client relating to and in connection with services rendered to the
16 client by the licensee in the practice of public accountancy. Such
17 information shall be deemed confidential, provided, however, that
18 nothing herein shall be construed as prohibiting the disclosure of
19 information required to be disclosed by the standards of the public
20 accounting profession in reporting on the examination of financial
21 statements or as prohibiting disclosures in court proceedings, in
22 investigations or proceedings under §§54010 or 54011 of this Chapter,
23 in ethical investigations conducted by private professional
24 organizations, or in the course of quality reviews.

25 §54018. Licensees' working papers; clients' records.

26 (a) All statements, records, schedules, working papers, and
27 memoranda made by a licensee or a partner, shareholder, officer,
28 director, or employee of a licensee, incident to, or in the course of,
29 rendering services to a client in the practice of public accountancy,
30 except the reports submitted by the licensee to the client and except for
31 records that are part of the client's records, shall be and remain the
32 property of the licensee in the absence of an express agreement
33 between the licensee and the client to the contrary. No such statement,
34 record, schedule, working paper, or memorandum shall be sold,

1 transferred, or bequeathed, without the consent of the client or such
2 client's personal representative or assignee, to anyone other than one or
3 more surviving partners or stockholders or new partners or
4 stockholders of the licensee, or any combined or merged firm or
5 successor in interest to the licensee.

6 (b) A licensee shall furnish to each client or former client, upon
7 request and reasonable notice--

8 (1) A copy of the licensee's working papers, to the extent
9 that such working papers include records that would ordinarily
10 constitute part of the client's records and are not otherwise
11 available to the client; and

12 (2) Any accounting or other records belonging to, or obtained
13 from or on behalf of, the client that the licensee removed from the
14 client's premises or received for the client's account; the licensee
15 may make and retain copies of such documents of the client when
16 they form the basis for work done by him.

17 §54019. Construction; severability.

18 If any provision of this Chapter or the application thereof to any
19 person or entity or in any circumstances is held invalid, the remainder
20 of the Chapter and the application of such provision to others or in other
21 circumstances shall not be affected thereby.

22 §54020. Repeal of prior law.

23 All other acts or parts of acts in conflict herewith are hereby
24 repealed; provided, however, that nothing contained in this Chapter
25 shall invalidate or affect any action taken or any proceeding instituted
26 under any law in effect prior to the effective date hereof.

27 §54021. Effective date.

28 This Chapter shall take effect upon its enactment.

TWENTIETH GUAM LEGISLATURE
1990 (SECOND) Regular Session

ROLL CALL SHEET

Bill No. 257

Date: 5/1/90

Resolution No. _____

QUESTION: _____

	AYE	NAY	NOT VOTING	ABSENT
J. P. Aguon				✓
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks	✓			
H. D. Dierking	✓			
E. R. Duenas	✓			
E. M. Espaldon	✓			
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux	✓			
M. D. A. Manibusan	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco	✓			

20

1

Twentieth Guam Legislature

155 Hernan Cortez
Pacific Arcade
Agana, Guam 96910
Telephone: (671) 472-3407/8/9
FAX: (671) 477-3161



Chairman, Committee
on Ways & Means

Vice-Chairman, Committee
on Tourism & Transportation

CARL T. C. GUTIERREZ
Senator

April 19, 1990

Honorable Speaker Joe T. San Agustin
Speaker, Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Ways & Means wishes to report out its findings on BILL NO. 257 to the full Legislature with the recommendation to do Pass as Substituted.

The Committee Voting Record is as follows:

TO PASS:	<u> -5- </u>
NOT TO PASS:	<u> -0- </u>
ABSTENTIONS:	<u> -0- </u>
REPORT OUT ONLY:	<u> -1- </u>
OFF-ISLAND:	<u> -3- </u>

Copies of the Committee Report and all pertinent documents are attached for your information.

Sincerely, ^

A handwritten signature in cursive script, appearing to read "Herminia D. Dierking".

HERMINIA D. DIERKING
Acting Chairperson

Twentieth Guam Legislature
Committee on Ways & Means

VOTING SHEET

BILL NO.

257

AN ACT TO REPEAL TITLE LVII, CHAPTER I, SECTIONS 54000 TO 54019, AS AMENDED OF THE GOVERNMENT DOCE OF GUAM AND TO ENACT NEW TITLW LVII, SECTIONS 54000 TO 54021 OF THE GOVERNMENT CODE OF GUAM ADOPTING A NEW PUBLIC ACCOUNTANCY ACT.

	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO REPORT OUT ONLY</u>	<u>TO PLACE IN INACTIVE FILE</u>
<i>Off-Island</i> Senator Carl T. C. GUTIERREZ Chairman				
<i>J. Dierking</i> Senator Herminia D. DIERKING Vice-Chairman	✓			
OFF-ISLAND				
Senator John P. AGUON Member				
<i>George Bamba</i> Senator George BAMBAC Member	✓			
Senator Doris BROOKS Member				
<i>Ernesto Espaldon</i> Senator Ernesto ESPALDON Member				
<i>Marilyn Manibusan</i> Senator Marilyn MANIBUSAN Member	✓		4/19/90	
Senator Ted S. NELSON Member		✓	✓	
Senator Don PARKINSON Member				
<i>Franklin J. A. Quitugua</i> Senator Franklin J. A. QUITUGUA Member	✓			
<i>Martha C. Ruth</i> Senator Martha C. RUTH Member				
	✓			

COMMITTEE REPORT

BILL 257

AN ACT TO REPEAL TITLE LVII, CHAPTER I, SECTIONS 54000 TO 54019, AS AMENDED OF THE GOVERNMENT CODE OF GUAM AND TO ENACT NEW TITLE LVII, SECTIONS 5400 TO 54021 OF THE GOVERNMENT CODE OF GUAM ADOPTING A NEW PUBLIC ACCOUNTANCY ACT TO PROVIDE FOR THE ACCOUNTANTS AND THE ISSUANCE OF CERTIFICATES AS CERTIFIED PUBLIC ACCOUNTANTS AND THE ISSUANCE OF PERMITS TO PRACTICE PUBLIC ACCOUNTANCY; TO REGULATE THE PRACTICE OF PUBLIC ACCOUNTANCY IN THE PUBLIC INTEREST; AND TO ESTABLISH A BOARD OF ACCOUNTANCY AND PRESCRIBE ITS POWERS AND DUTIES.

The Committee on Ways & Means held a public hearing on November 6, 1989 at 9am at the Legislative Session Hall to gather testimony on Bill 257. Committee Vice-Chairperson Herminia D. Dierking conducted the hearing, being joined by Senator Ted Nelson.

BACKGROUND

Bill 257, if repealed and reenacted, would update the current law (P. L.). The major changes brought about in Bill 257 follow. (a) The current law requires that a CPA be a Guam resident, have a current business in Guam or be an employee who is regularly in Guam and that a CPA be a U. S. citizen. Bill 257, if passed, would *lift the residency and citizenship requirement thus creating wider opportunity for licensing on Guam*. The second major change is the two-tier licensing. (b) The current law provides for one license to practice in conjunction with a CPA certificate, provided all the educational, examination and experience requirements are met. Bill 257, if passed, would *provide for two types of licenses - a CPA certificate and a permit to practice. The CPA certificate may be obtained by completing the educational and examination requirements. The permit to practice (annually renewable) requires experience and continuing professional education*. This two-tier system enables non-practicing CPA's to maintain their certificates without public accounting experience or continuing education, while placing restrictions on practicing CPA's by requiring continuing professional education. (c) Currently there is no requirement for continuing professional education (CPE) to maintain a license to practice. The current law requires that a CPA be a Guam resident, have a current business in Guam or be an employee who is regularly in Guam and that a CPA be a

U. S. citizen. Bill 257, if passed, would require 120 hours of CPE over a three year period to maintain a permit to practice. This requirement parallels the requirement of most other licensing jurisdiction as well as the requirements for membership in the American Institute of CPA's (effective 1990). It also mandates that practicing CPA's stay current with technical issues.

TESTIMONY

Written and oral testimony was presented by Todd Smith who was representing himself and Touche Ross, Judith K. Borja representing herself, Pickens, Borja & Filush and the Territorial Board of Accountancy, Carlos L. Taitano representing himself and Daniel S. Fitzgerald representing the Guam Society of Certified Public Accountants (GSCPA). The following is a brief summary of each testimony.

1. Todd Smith

Mr. Smith testified in favor of Bill 257. He stated that the bill is sorely needed to modernize the current out-dated law and elevate the professional requirements to a level equivalent to other 53 licensing jurisdictions, which will enhance reciprocity among jurisdictions.

2. Judith K. Borja

Ms. Borja testified in favor of Bill 257. She submitted a list of corrections that she found in reviewing the bill as introduced (see attached testimony). Also submitted were two suggested provisions. However, if including them would delay the passage and enactment of the bill, Ms. Borja suggested that maybe a separate bill could be introduced containing the two provisions. One of her provisions, Suits for Negligent Performance of Accounting Services, states: *'...governs any action based on negligence brought against any accountants registered, licensed or practicing in this territory or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant.'* The second provision, Requirement of Privity, states: *'...No action covered by this chapter may be brought in any court in this Territory unless: (a) The plaintiff (1) is the issuer (or a successor of the issuer) of the financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant and (2) engaged the defendant accountant to examine, compile, review, certify, audit or otherwise report or render an opinion on such financial statements; or (b) The defendant accountant: (1) was aware at the time the engagement was undertaken that the financial statements were to be made available for use in connection with a specified transaction by the plaintiff who was specifically identified to the defendant accountant, (2) was aware that the plaintiff intended to rely upon such financial statements in connection with such specified transaction, and (3) had direct contact and communication with the plaintiff and expressed by words or conduct the defendant accountant's understanding of the plaintiff's reliance on such financial statements or other information.'* Ms. Borja

states one crucial limitation on the reach of this statute in that it is limited to actions predicated on negligence as opposed to fraud.

3. Carlos Lujan Taitano

Mr. Taitano testified in favor of Bill 257. He stated his belief that the bill would exemplify the modern trend in the regulations of professional accountants in the United States and would contribute in improve the professionalism of career accountants on Guam. Mr. Taitano reiterated that the present statute does not provide a two-tier system and felt that the present statute was archaic and that some sections were embarrassingly of questionable constitutional validity (citizenship and residency provision).

4. Daniel S. Fitzgerald

Mr. Fitzgerald, a partner with Touche Ross, offered oral testimony in favor of Bill 257. He stated that GSCPA was vitally interested in bringing Guam's CPA standards on par with those of the majority of the U. S. He said that Guam was one of five states/territories which has not adopted the mechanisms contained in the Model Accountancy Bill and may therefore put Guam's CPAs at risk by not having parity with other states. Mr. Fitzgerald had solicited views of citizens of the FSM, Marshall Islands, Palau and Pohnpei (correspondence attached) and the overall support is for a Model Accountancy Bill. He stated that his points of interest were brought up earlier in previous testimonies.

COMMITTEE FINDINGS

All persons submitting written and oral testimony testified in favor of Bill 257.

RECOMMENDATION

The Committee on Ways and Means recommends that Bill No. 257 be passed by the Twentieth Guam Legislature as Amended.

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 257 (LS)
As Substituted By The
Committee on Ways & Means

Introduced by:

H.D. Dierking
C.T.C. Gutierrez
J.T. San Agustin

T.M. Namtusan
M.C. RUTH N

AN ACT TO REPEAL TITLE LVII, CHAPTER I, SECTIONS 54000 TO 54019, AS AMENDED OF THE GOVERNMENT CODE OF GUAM AND TO ENACT NEW TITLE LVII, SECTIONS 5400 TO 54021 OF THE GOVERNMENT CODE OF GUAM ADOPTING A NEW PUBLIC ACCOUNTANCY ACT TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES AS CERTIFIED PUBLIC ACCOUNTANTS AND THE ISSUANCE OF PERMITS TO PRACTICE PUBLIC ACCOUNTANCY; TO REGULATE THE PRACTICE OF PUBLIC ACCOUNTANCY IN THE PUBLIC INTEREST; AND TO ESTABLISH A BOARD OF ACCOUNTANCY AND PRESCRIBE ITS POWERS AND DUTIES.

- Section 1 ... Repeals Title LVII, Chapter 1, Sections 54000 to 54019, Government Code.
- Section 2 Enacts New Title LVII, Chapter 1, Sections 54000 to 54021, Government Code.
- 54000 ... Title.
 - 54001 ... Purpose.
 - 54002 ... Definitions.
 - 54003 ... Territorial Board of Accountancy.
 - 54004 ... Certified Public Accountants.
 - 54005 ... Permits to Practice-Individual.
 - 54006 ... Permits to Practice-Firms.
 - 54007 ... Public Accountants and Firms of Public Accountants.
 - 54008 ... Appointment of Director of Revenue & Taxation as Agent.
 - 54009 ... Enforcement Against Holders of Certificates and Permits.
 - 54010 ... Enforcement Procedures- Investigations.
 - 54011 ... Enforcement Procedures-Hearings by the Board.
 - 54012 ... Reinstatement.
 - 54013 ... Unlawful Acts.
 - 54014 ... Injunctions Against Unlawful Acts.

54015 ... Criminal Penalties.
54016 ... Single Act Evidence of Practice.
54017 ... Confidential Communications.

54018 ... Licensees' Working Papers;
 Clients' Records.
54019 ... Construction, Severability.
54020 ... Repeal of Prior Law.
54021 ... Effective Date.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Title LVII, Chapter 1, Sections 54000 to 54019 of
3 the Government Code of Guam are hereby repealed in their entirety.

4 Section 2. A new Title LVII, Chapter 1, Sections 54000 to
5 54019 is hereby enacted to read as follows:

6 Section 54000. Title.

7 This Act may be cited as the "Public Accountancy Act
8 of 19 ____."

9 Section 54001. Purpose.

10 It is the policy of this Territory, and the purpose
11 of this Act, to promote the reliability of information
12 that is used for guidance in financial transactions or
13 for accounting for or assessing the financial status or
14 performance of commercial, noncommercial, and governmental
15 enterprises. The public interest requires that persons
16 professing special competence in accountancy or offering
17 assurance as to the reliability or fairness of
18 presentation of such information shall have demonstrated
19 their qualifications to do so, and no persons who have not
20 demonstrated and maintained such qualifications be
21 permitted to hold themselves out as having such special

1 competence or to offer such assurance; that the
2 professional conduct of persons licensed as having special
3 competence in accountancy be regulated in all aspects of
4 the practice of public accountancy; that a public
5 authority competent to prescribe and assess the
6 qualifications and to regulate the professional conduct
7 of practitioners of public accountancy be established; and
8 that the use of titles relating to the practice of public
9 accountancy that are likely to mislead the public as to
10 the status or competence of the persons using such titles
11 be prohibited.

12 Section 54002. Definitions.

13 When used in this Act, the following terms have the
14 meanings indicated:

15 (a) "Board" means the Guam Board of
16 Accountancy established under Section 54003 of
17 this Act or its predecessor under prior law.

18 (b) "Certificate" means a certificate as
19 "certified public accountant" issued under
20 Section 54004 of this Act or corresponding
21 provisions of prior law, or a corresponding
22 certificate as certified public accountant
23 issued after examination under the law of any
24 other state.

25 (c) "Firm" means a sole proprietorship, a
26 corporation, or a partnership.

1 (d) "Licensee" means the holder of a
2 certificate issued under Section 54004 of this
3 Act, or of a permit issued under Sections 54005
4 or 54006; or in each case a certificate or
5 permit issued under corresponding provisions of
6 prior law.

7 (e) "Permit" means a permit to practice
8 public accountancy issued under Sections 54005
9 and 54006 of this Act or corresponding
10 provisions of prior law or under corresponding
11 provisions of the laws of other states.

12 (f) "Practice of (or practicing) public
13 accountancy" means the performance or the
14 offering to perform by a person or firm holding
15 itself out to the public as a licensee, for a
16 client or potential client, of one or more
17 kinds of services involving the use of
18 accounting or auditing skills, including the
19 issuance of reports on financial statements or
20 of one or more kinds of management advisory or
21 consulting service, or the preparation of tax
22 returns or the furnishing of advice on tax
23 matters.

24 (g) "Quality Review" means a study
25 appraisal, or review of one or more aspects of
26 the professional work of a person or firm in

1 the practice of public accountancy, by a person
2 or persons who hold certificates and/or permits
3 to practice in this jurisdiction or other
4 jurisdictions as deemed qualified by the Board
5 and who are not affiliated with the person or
6 firm being reviewed.

7 (h) "Report," when used with reference to
8 financial statements, means an opinion, report,
9 or other form of language that states or
10 implies assurance as to the reliability of any
11 financial statements and that also includes or
12 is accompanied by any statement or implication
13 that the person or firm issuing it has special
14 knowledge or competence in accounting or
15 auditing. Such a statement of implication of
16 special knowledge or competency may arise from
17 use by the issuer of the report of names or
18 titles indicating that he or it is an
19 accountant or auditor, or from the language of
20 the report itself. The term "report: includes
21 any form of language which disclaims an opinion
22 when such form of language is conventionally
23 understood to imply any positive assurance as
24 to the reliability of the financial statements
25 referred to and/or special competence on the
26 part of the person or firm issuing such

1 language; and it includes any other form of
2 language that is conventionally understood to
3 imply such assurance and/or such special
4 knowledge or competence.

5 (i) "Rule" means any rule, regulation, or
6 other written directive of general application
7 duly adopted by the Board.

8 (j) "State" means any state of the United
9 States, the District of Columbia, Puerto Rico,
10 the U.S. Virgin Islands, and Guam; except that
11 "this Territory" means the Territory of Guam.

12 Section 54003. Territorial Board of Accountancy.

13 (a) There is hereby created the Guam Board of
14 Accountancy, which shall have responsibility for the
15 administration and enforcement of this Act. The Board
16 shall consist of five members, appointed by the Governor,
17 all of whom shall be residents of this Territory and shall
18 be holders of certificates currently valid under Section
19 54004 of this Act. At least a majority plus one of such
20 members shall be holders of currently valid permits issued
21 under Section 54005 of this Act or corresponding
22 provisions of prior law. The term of each member of the
23 Board shall be four years. Vacancies occurring during a
24 term shall be filled by appointment by the Governor for
25 the unexpired term. Upon the expiration of his term of
26 office, a member shall continue to serve until his

1 successor shall have been appointed and taken office. Any
2 member of the Board whose permit under Section 54004 of
3 this Act is revoked or suspended shall automatically cease
4 to be a member of the Board, and the Governor may, after
5 a hearing pursuant to the Administration Adjudication Law,
6 Section 24000 et. seq. of the Government Code of Guam,
7 remove any member of the Board for neglect of duty or
8 other just cause.

9 (b) The Board shall elect annually from among its
10 members a chairman and such other officers as the Board
11 may determine to be appropriate. The Board shall meet at
12 such times and places as may be fixed by the Board.
13 Meetings of the Board shall be open to the public except
14 insofar as they are concerned with investigations under
15 Section 54010 of this Act and except as may be necessary
16 to protect information that is required to be kept
17 confidential by Board rules or by the laws of this
18 Territory. A majority of the Board members then in office
19 shall constitute a quorum at any meeting duly called. The
20 Board shall have a seal which shall be judicially noticed.
21 The Board shall retain or arrange for the retention of all
22 applications and all documents under oath that are filed
23 with the Board and also records of its proceedings, and
24 it shall maintain a registry of the names and addresses
25 of all licensees under this Act. In any proceeding in
26 court, civil or criminal, arising out of or founded upon

1 any provision of this Act, copies of any of said records
2 certified as true copies under the seal of the Board shall
3 be admissible in evidence as tending to prove the contents
4 of said records.

5 (c) Each member of the Board shall be paid an amount
6 established by law for each day or portion thereof spent
7 in the discharge of this official duties and shall be
8 reimbursed for his actual and necessary expenses incurred
9 in the discharge of his official duties.

10 (d) All monies collected by the Board from fees
11 authorized to be charged by this Act shall be received
12 and accounted for by the Board and shall be deposited with
13 the Treasurer of Guam to the credit of the Board. Such
14 monies shall be made available for the expenses of
15 administering the provisions of this Act, which may
16 include, but shall not be limited to, the costs of
17 conducting investigations and of taking testimony and
18 procuring the attendance of witnesses before the Board or
19 its committees; all legal proceedings taken under this Act
20 for the enforcement thereof; and educational programs for
21 the benefit of the public and licensees and their
22 employees.

23 (e) The Board shall file an annual report of its
24 activities with the Governor and the Legislature, which
25 report shall include a listing of all current licensees
26 under this Act. The Board shall mail a copy of the annual

1 report to any person requesting it and paying a reasonable
2 charge therefor.

3 (f) The Board may employ an executive director and
4 such other personnel as it deems necessary in its
5 administration and enforcement of this Act. It may
6 appoint such committees and persons, to advise or assist
7 it in such administration and enforcement, as it may see
8 fit. It may retain its own counsel to advise and assist
9 it in addition to such advice and assistance as is
10 provided by the Attorney General of this Territory.

11 (g) The Board shall have the power to take all
12 action that is necessary and proper to effectuate the
13 purposes of this Act, including the power to sue and be
14 sued in its official name as an agency of this Territory;
15 to issue subpoenas to compel the attendance of witnesses
16 and the production of documents; to administer oaths; to
17 take testimony and to receive evidence concerning all
18 matters within its jurisdiction. In case of disobedience
19 of a subpoena, the Board may invoke the aid of any court
20 of this Territory in requiring the attendance and
21 testimony of witnesses and the production of documentary
22 evidence. The Board, its members, and its agents shall
23 be immune from personal liability for actions taken in
24 good faith in the discharge of the Board's
25 responsibilities, and the Territory shall hold the Board,
26 its members, and its agents harmless from all costs,

1 damages, and attorneys' fees arising from claims and suits
2 against them with respect to matters to which such
3 immunity applies.

4 (h) The Board may adopt rules governing its
5 administration and enforcement of this Act and the conduct
6 of licensees, including but not limited to --

7 (1) Rules governing the Board's meetings
8 and the conduct of its business;

9 (2) Rules of procedure governing the
10 conduct of investigations and hearings by the
11 Board;

12 (3) Rules specifying the educational
13 qualifications required for the issuance of
14 certificates under Section 54004 of this Act
15 (the experience required for initial issuance
16 of permits under Section 54005(c)(z)) and the
17 continuing professional education required for
18 renewal of permits under Section 54005(e);

19 (4) Rules of professional conduct directed
20 to controlling the quality and probity of the
21 practice of public accountancy by permit
22 holders, and dealing among other things with
23 independence, integrity, and objectivity;
24 competence and technical standards;
25 responsibilities to the public; and
26 responsibilities to clients;

1 (5) Rules specifying actions and
2 circumstances that shall be deemed to
3 constitute holding oneself out as a licensee in
4 connection with the practice of public
5 accountancy within the meaning of Section
6 54002(g);

7 (6) Rules governing the manner and
8 circumstances of use by holders of certificates
9 who do not also hold permits under this Act of
10 the titles "certified public accountant" and
11 "CPA";

12 (7) Rules regarding quality reviews that
13 may be required to be performed under the
14 provisions of this Act; and

15 (8) Such other rules as the Board may deem
16 necessary or appropriate for implementing the
17 provisions and the purposes of this Act.

18 (i) All rules or amendments thereto as promulgated
19 under subsection (h) of this Section or under any other
20 provision of this Act shall be adopted pursuant to the
21 rule making procedures set forth in Sections 24200 et.
22 seq., as amended, of the Government Code of Guam.

23 Section 54004. Certified Public Accountants.

24 (a) The Board shall grant the certificate of
25 "certified public accountant" to any person who meets the
26 good character, education and examination requirements of,

1 and who pays the fees prescribed by, the following
2 subsections of this Section.

3 (b) Good character for purposes of this Section
4 means lack of a history of dishonest or felonious acts.
5 The Board may refuse to grant a certificate if the finding
6 by the Board of lack of good character is supported by
7 clear and convincing evidence. When an applicant is found
8 to be unqualified for a certificate because of lack of
9 good character, the Board shall furnish the applicant a
10 statement containing the findings of the Board, a complete
11 record of the evidence upon which the determination was
12 based, and a notice of the applicant's right of appeal.

13 (c) The education requirement for a certificate,
14 which must be met no later than 120 days after an
15 applicant sits for the examination prescribed in
16 subsection (d), shall be a baccalaureate degree or its
17 equivalent conferred by a college or university acceptable
18 to the Board, with an accounting concentration or
19 equivalent as determined by the Board by rule to be
20 appropriate.

21 (d) The examination required to be passed as a
22 condition for the granting of a certificate shall include
23 but not be limited to the Uniform Certified Public
24 Accountancy examination of AICPA (or other uniformly
25 adopted examination of every United States Accountancy
26 licensing jurisdiction), shall be in writing, shall be

1 held twice a year, and shall test the applicant's
2 knowledge of the subjects of accounting theory, accounting
3 practice, auditing and such other related subjects as the
4 Board may specify by rule. The time for holding such
5 examination shall be fixed by the Board and may be changed
6 from time to time. The Board shall prescribe by rule the
7 methods of applying for and conducting the examination,
8 including methods of grading papers and determining a
9 passing grade required of an applicant for certificate
10 provided, however, that the Board shall to the extent
11 possible see to it that the grading of the examination,
12 and the passing grades, are uniform with those applicable
13 in all other states. The Board may make such use of all
14 or any part of the Uniform Certified Public Accountant
15 Examination and Advisory Grading Service of the American
16 Institute of Certified Public Accountants and may contract
17 with third parties to perform such administrative services
18 with respect to the examination as it deems appropriate
19 to assist it in performing its duties hereunder.

20 (e) An applicant shall be required to pass all parts
21 of the examination provided for in subsection (d) in order
22 to qualify for a certificate. If at a given sitting of
23 the examination an applicant passes two or more but not
24 all parts (with the accounting practice part of the
25 examination being treated for this purpose as two parts),
26 then applicant shall be given credit for those parts that

1 he has passed and need not sit for reexamination in those
2 parts, provided that--

3 (1) the applicant wrote all parts of the
4 examination at that sitting;

5 (2) the applicant attained a minimum grade
6 of 50 on each part not passed at that sitting

7 (3) the applicant passes the remaining
8 parts of the examination within six consecutive
9 examinations given after the one at which the
10 first parts were passed;

11 (4) at each subsequent sitting at which
12 the applicant seeks to pass any additional
13 parts, the applicant writes all parts not yet
14 passed; and

15 (5) in order to receive credit for passing
16 additional parts in any such subsequent
17 sitting, the applicant attains a minimum grade
18 of 50 on parts written but not passed on such
19 sitting.

20 (f) An applicant shall be given credit for any and
21 all parts of an examination passed in another state if
22 such credit would have been given, under then applicable
23 requirements, if the applicant had taken the examination
24 in this Territory.

25 (g) the Board may in particular cases waive or defer
26 any of the requirements of subsections (e) and (f)

1 regarding the circumstances in which the various parts of
2 the examination must be passed, upon a showing that, by
3 reason of circumstances beyond the applicant's control,
4 he was unable to meet such requirement.

5 (h) the board may charge, or provide for a third
6 party administering the examination to charge, each
7 applicant a fee, in an amount prescribed by the Board by
8 rule, for each part of the examination or reexamination
9 taken by the applicant.

10 (i) Upon the effective date of this legislation,
11 any person holding a valid certificate issued under prior
12 Guam legislation shall be deemed to have met the
13 requirements for certification in this Section.

14 Section 54005. Permits to Practice--Individual.

15 (a) The Board shall grant or renew permits to
16 practice public accountancy to persons who make
17 application and demonstrate their qualifications therefor
18 in accordance with the following subsections of this
19 Section.

20 (b) Permits shall be initially issued, and renewed,
21 for a period of one year but in any event shall expire on
22 the last day of December of each year and may be renewed
23 annually for a period of one year by certificate holders
24 and registrants in good standing upon payment of an annual
25 renewal fee of not to exceed twenty-five dollars (\$25.00).
26 Applications for such permits shall be made in such form,

1 and in the case of applications for renewal, between such
2 dates, as the Board shall by rule specify, and the Board
3 shall grant or deny any such application no later than 60
4 days after the application is filed in proper form. In
5 any case where the applicant seeks the opportunity to show
6 that issuance or renewal of a permit was mistakenly
7 denied, or where the Board is not able to determine
8 whether it should be granted or denied, the Board may
9 issue to the applicant a provisional permit, which shall
10 expire ninety days after its issuance or when the Board
11 determines whether or not to issue or renew the permit for
12 which application was made, whichever shall first occur.

13 (c) An applicant for initial issuance of a permit
14 under this Section shall show--

15 (1) that he holds a valid certificate;

16 (2) that he has had two years of
17 experience in the practice of public
18 accountancy, meeting requirements prescribed by
19 the Board by rule; or, if the applicant's
20 educational qualifications comprise a
21 baccalaureate degree with an accounting
22 concentration or equivalent as determined by
23 the Board by rule to be appropriate under
24 Section 54004(c), and not less than thirty
25 semester hours of additional study, then that
26 he has had one year of experience in such

1 practice;

2 (3) if the applicant's certificate was
3 issued more than four years prior to his
4 application for issuance of an initial permit
5 under this Section, that he has fulfilled the
6 requirements of continuing professional
7 education that would have been applicable under
8 subsection (e) of this Section if he had
9 secured his initial permit within four years of
10 issuance of his certificate and was now
11 applying under subsection (e) for renewal of
12 such permit.

13 (d) The Board shall issue a permit to a holder of
14 a certificate issued by another state upon a showing that-

15 -
16 (1) The applicant passed the examination
17 required for issuance of his certificate with
18 grades that would have been passing grades at
19 the time in this Territory;

20 (2) The applicant--

21 (A) meets all current requirements
22 of this Territory for issuance of a
23 certificate at the time application is
24 made; or

25 (B) at the time of the issuance of
26 the applicant's certificate in the

1 other state, met all such requirements
2 then applicable in this Territory; or

3 (C) had four years of experience
4 in the practice of public accountancy
5 or equivalent meeting requirements
6 prescribed by the Board by rule, after
7 passing the examination upon which his
8 certificate was based and within the
9 ten years immediately preceding his
10 application; and

11 (3) The applicant meets the requirements
12 of subsection (c) (2) and (3).

13 (e) An applicant for renewal of a permit under this
14 Section must show:

15 (1) During the three year period
16 immediately following the effective date of
17 this Act, that he has fulfilled the
18 requirements of continuing professional
19 education which the Board may establish by
20 promulgation of regulations.

21 (2) After the expiration of the three year
22 period immediately following the effective date
23 of this Act, that he has fulfilled requirements
24 of continuing professional education consisting
25 of no less than twenty hours in each one year
26 renewal period and one hundred twenty hours in

1 any three year period that has elapsed since
2 the permit was last renewed, (or if never
3 renewed, first issued), of such general kinds
4 and in such subjects as shall have been
5 specified by the Board by rule.

6 (3) The Board may provide by rule that
7 fulfillment of continuing professional
8 education requirements of other states will be
9 accepted in lieu of the foregoing requirements.
10 The Board may also provide by rule for prorated
11 continuing professional education requirements
12 to be met by applicants whose initial permits
13 were issued substantially less than one year
14 prior to the renewal date, and it may prescribe
15 by rule special lesser requirements to be met
16 by applicants for permit renewal whose prior
17 permits lapsed substantially prior to their
18 applications for renewal, and regarding whom it
19 would in consequence be inequitable to require
20 a full compliance with all requirements of
21 continuing professional education that would
22 otherwise have been applicable to the period of
23 lapse.

24 (f) The Board shall charge a fee for each
25 application for initial issuance or renewal of
26 a permit under this Section in an amount

1 prescribed by the Board by rule.

2 (g) Applicants for initial issuance or
3 renewal of permits under this Section shall in
4 their applications list all states in which
5 they have applied for or hold certificates or
6 permits, and each holder of or applicant for a
7 permit under this Section shall notify the
8 Board in writing, within 30 days after its
9 occurrence, of any issuance, denial,
10 revocation, or suspension of a certificate or
11 permit by another state.

12 (h) Upon the effective date of this
13 legislation, any person holding a valid
14 certificate issued under prior Guam legislation
15 shall be automatically issued an initial permit
16 practice.

17 Section 54006. Permits to Practice--Firms.

18 (a) The Board shall grant or renew permits
19 to practice public accountancy to firms that
20 make application and demonstrate their
21 qualifications therefore in accordance with the
22 following subsections of this Section.

23 (b) Permits shall be initially issued and
24 renewed for periods of one year but in any
25 event expiring on December 31 of each year.
26 Applications for permits shall be made in such

1 form, and in the case of applications for
2 renewal, between such dates as the Board may by
3 rule specify, and the Board shall grant or deny
4 any such application no later than 30 days
5 after the application is filed in proper form.
6 In any case where the applicant seeks the
7 opportunity to show that issuance or renewal of
8 a permit was mistakenly denied or where the
9 Board is not able to determine whether it
10 should be granted or denied, the Board may
11 issue to the applicant a provisional permit,
12 which shall expire 90 days after its issuance
13 or when the Board determines whether or not to
14 issue or renew the permit for which application
15 was made, whichever shall first occur.

16 (c) An applicant for initial issuance or
17 renewal of a permit to practice under this
18 Section shall be required to show that each
19 partner, officer, or shareholder who regularly
20 works in this Territory, and each employee
21 holding a certificate who regularly works in
22 this Territory (except for employees who have
23 not yet accumulated sufficient experience to
24 qualify for a permit under Section
25 54005(c)(2)), holds a valid individual permit
26 to practice issued under Section 54005 of this

1 Act or the corresponding provision of prior law
2 and that each other partner, officer, or
3 shareholder holds a certificate and is licensed
4 to practice public accountancy in some other
5 state.

6 (d) An applicant for initial issuance or
7 renewal of a permit to practice under this
8 Section shall be required to register each
9 office of the firm within this Territory with
10 the Board and to show that each such office is
11 under the charge of a person holding a valid
12 permit to practice issued under Section 54005
13 of this Act or the corresponding provision of
14 prior law. If an applicant does not maintain
15 a permanent office in this Territory, he shall
16 be required to obtain a valid business license
17 prior to issuance of a permit to practice.

18 (e) The Board shall charge a fee for each
19 application for initial issuance or renewal of
20 a permit under this Section in an amount
21 prescribed by the Board by rule.

22 (f) Applicants for initial issuance or
23 renewal of permits under this Section shall in
24 their application list all states in which they
25 have applied for or hold permits to practice
26 public accountancy, and each holder of or

1 applicant for a permit under this Section shall
2 notify the Board in writing, within 30 days
3 after its occurrence, of any change in the
4 identities of partners, officers, or
5 shareholders who work regularly within this
6 Territory, any change in the number or location
7 of offices within this Territory, any change in
8 the identity of the persons in charge of such
9 office, and any issuance, denial, revocation,
10 or suspension of a permit by any other state.

11 (g) Upon the effective date of this
12 legislation, any firm holding a valid Guam
13 business license to practice public accounting
14 shall automatically be issued an initial permit
15 to practice.

16 Section 54007. Public Accountants and Firms of
17 Public Accountants.

18 Persons and firms who on the effective date of this
19 Act hold registration as public accountants and permits
20 to practice public accountancy issued under prior law of
21 this Territory shall be entitled to have their permits to
22 practice renewed under Sections 54005 and 54006 of this
23 Act, provided that they fulfill all requirements for
24 renewal under those provisions. So long as such licensees
25 hold valid permits to practice under Sections 54005 and
26 54006, they shall be entitled to engage in the practice

1 of public accountancy to the same extent as other holders
2 of such permits, and in addition they shall be entitled
3 to use the designations "public accountants" and "PA", but
4 no other designation, in connection with the practice of
5 public accountancy.

6 Section 54008. Appointment of Director of Revenue
7 & Taxation as Agent.

8 Application by a person or firm not a resident of
9 this Territory for a certificate under Section 54004 of
10 this Act or a permit to practice under Section 54004,
11 Section 54005 or Section 54006 shall constitute
12 appointment of the Director of Revenue and Taxation as
13 the applicant's agent upon whom process may be served in
14 any action or proceeding against the applicant arising
15 out of any transaction or operation connected with or
16 incidental to the practice of public accountancy by the
17 applicant within this Territory.

18 Section 54009. Enforcement Against Holders of
19 Certificates and Permits.

20 (a) After notice and hearing pursuant to Section
21 54011 of this Act, the Board may revoke any certificate
22 or permit issued under Sections 54004, 54005, or 54006 of
23 this Act or corresponding provisions of prior law; suspend
24 any such certificate or permit or refuse to renew any such
25 permit for a period of not more than five years;
26 reprimand, censure, or limit the scope of practice of any

1 licensee; impose an administrative fine not exceeding
2 \$1000, or place any licensee on probation, all with or
3 without terms, conditions, and limitations, for any one
4 or more of the following reasons:

5 (1) Fraud or deceit in obtaining a
6 certificate or permit;

7 (2) Cancellation, revocation, suspension
8 or refusal to renew authority to engage in the
9 practice of public accountancy in any other
10 state for any cause;

11 (3) Failure, on the part of a holder of a
12 permit under Sections 54005 or 54006, to
13 maintain compliance with the requirements for
14 issuance of renewal of such permit or to report
15 changes to the Board under Sections 54005(g) or
16 54006(f);

17 (4) Revocation or suspension of the right
18 to practice before any state or federal agency;

19 (5) Dishonesty, fraud, or gross negligence
20 in the practice of public accountancy or in the
21 filing or failure to file his own income tax
22 returns;

23 (6) Violation of any provision of this Act
24 or rule promulgated by the Board under this
25 Act;

26 (7) Violation of any rule of professional

1 conduct promulgated by the Board under Section
2 54003(h)(4) of this Act;

3 (8) Conviction of a felony, or of any
4 crime an element of which is dishonesty or
5 fraud, under the laws of the United States, of
6 this Territory, or of any other state if the
7 acts involved would have constituted a crime
8 under the laws of this Territory;

9 (9) Performance of any fraudulent act
10 while holding a certificate or permit issued
11 under this Act or prior law; and

12 (10) Any conduct reflecting adversely upon
13 the licensee's fitness to engage in the
14 practice of public accountancy.

15 (b) In lieu of or in addition to any remedy
16 specifically provided in subsection (a) of this Section,
17 the Board may require of a licensee--

18 (1) A quality review conducted in such
19 fashion as the Board may specify; and/or

20 (2) Satisfactory completion of such
21 continuing professional education programs as
22 the Board may specify.

23 (c) In any proceeding in which a remedy provided by
24 subsections (a) or (b) of this Section is imposed, the
25 Board may also require the respondent licensee to pay the
26 costs of the proceeding.

1 Section 54010. Enforcement Procedures--
2 Investigations.

3 (a) The Board may, upon receipt of a complaint or
4 other information suggesting violations of this Act or of
5 the rules of the Board, conduct investigations to
6 determine whether there is probable cause to institute
7 proceedings under Sections 54011, 54014 or 54015 of this
8 Act against any person or firm for such violation, but an
9 investigation under this Section shall not be a
10 prerequisite to such proceedings in the event that a
11 determination of probable cause can be made without
12 investigation. In aid of such investigations, the Board
13 or the chairman thereof may issue subpoenas to compel
14 witnesses to testify and/or to produce evidence.

15 (b) The Board may designate a member, or any other
16 person of appropriate competence, to serve as
17 investigating officer to conduct an investigation. Upon
18 completion of an investigation, the investigating officer
19 shall file a report with the Board. The Board shall find
20 probable cause or lack of probable cause upon the basis
21 of the report or shall return the report to the
22 investigating officer for further investigation. Unless
23 there has been a determination of probable cause, the
24 report of the investigating officer, the complaint, if
25 any, the testimony and documents submitted in support of
26 the complaint or gathered in the investigation, and the

1 fact of pendency of the investigation shall be treated as
2 confidential information and shall not be disclosed to any
3 person except law enforcement authorities and, to the
4 extent deemed necessary in order to conduct the
5 investigation, the subject of the investigation, persons
6 whose complaints are being investigated, and witnesses
7 questioned in the course of investigation.

8 (c) Upon a finding of probable cause, if the subject
9 of the investigation is a licensee, the Board shall direct
10 that a complaint be issued under Section 54011 of this
11 Act, and if the subject of the investigation is not a
12 licensee, the Board shall take appropriate action under
13 Sections 54014 and 54015 of this Act. Upon a finding of
14 no probable cause, the Board shall close the matter and
15 shall thereafter release information relating thereto only
16 with the consent of the person or firm under
17 investigation.

18 (d) The Board may review the publicly available
19 professional work of licensees on a general and random
20 basis, without any requirement of a formal complaint or
21 suspicion of impropriety on the part of any particular
22 licensee. In the event that as a result of such review
23 the Board discovers reasonable grounds for a more specific
24 investigation, the Board may proceed under subsections (a)
25 through (c) of this Section.

26 Section 54011. Enforcement Procedures--Hearings by

1 the Board.

2 (a) In any case where probable cause with respect
3 to a violation by a licensee has been determined by the
4 Board, whether following an investigation under Section
5 54010 of this Act, or upon receipt of a written complaint
6 furnishing grounds for a determination of such probable
7 cause, or upon receipt of notice of a decision by the
8 Board of Accountancy of another state furnishing such
9 grounds, the Board shall issue a complaint setting forth
10 appropriate charges and set a date for hearing before the
11 Board of such charges. The Board shall, not less than 30
12 days prior to the date of the hearing, serve a copy of the
13 complaint and notice of the time and place of the hearing
14 upon the licensee, together with a copy of the Board's
15 rules governing proceedings under this Section, either by
16 personal delivery or by mailing a copy thereof by
17 registered mail to the licensee at his address last known
18 to the Board.

19 (b) A licensee against whom a complaint has been
20 issued under this Section shall have the right, reasonably
21 in advance of the hearing, to examine and copy the report
22 of investigation, if any, and any documentary or
23 testimonial evidence and summaries of anticipated evidence
24 in the Board's possession relating to the subject matter
25 of the complaint. The Board's rules governing proceedings
26 under this Section shall specify the manner in which such

1 right may be exercised.

2 (c) In a hearing under this Section the respondent
3 licensee may appear in person (or, in the case of a firm,
4 through a partner, officer, director, or shareholder)
5 and/or by counsel, examine witnesses and evidence
6 presented in support of the complaint, and present
7 evidence and witnesses on his own behalf. The licensee
8 shall be entitled, on application to the Board, to the
9 issuance of subpoenas to compel the attendance of
10 witnesses and the production of documentary evidence.

11 (d) The evidence supporting the complaint shall be
12 presented by the investigating officer, by a Board member
13 designated for that purpose, or by counsel. A Board
14 member who presents the evidence, or who has conducted the
15 investigation of the matter under Section 54010 of this
16 Act, shall not participate in the Board's decision of the
17 matter.

18 (e) In a hearing under this Section the Board shall
19 be advised by counsel, who shall not be the same counsel
20 who presents or assists in presenting the evidence
21 supporting the complaint under subsection (d) of this
22 Section.

23 (f) In a hearing under this Section the Board shall
24 not be bound by technical rules of evidence.

25 (g) In a hearing under this Section a stenographic
26 or electronic record shall be made and filed with the

1 Board. A transcript need not be prepared unless review
2 is sought under subsection (j) of this Section or the
3 Board determines that there is other good cause for its
4 preparation.

5 (h) In a hearing under this Section a recorded vote
6 of a majority of all members of the Board then in office
7 (excluding members disqualified by reason of subsection
8 (d) of this Section) shall be required to sustain any
9 charge and to impose any penalty with respect thereto.

10 (i) If, after service of a complaint and notice of
11 hearing as provided in subsection (a) of this Section,
12 the respondent licensee fails to appear at the hearing,
13 the Board may proceed to hear evidence against the
14 licensee and may enter such order as it deems warranted
15 by the evidence, which order shall be final unless the
16 licensee petitions for review thereof under subsection
17 (j) of this Section, provided, however, that within thirty
18 days from the date of any such order, upon a showing of
19 good cause for the licensee's failure to appear and
20 defend, the Board may set aside the order and schedule a
21 new hearing on the complaint, to be conducted in
22 accordance with applicable subsections of this Section.

23 (j) Any person or firm adversely affected by any
24 order of the Board entered after a hearing under this
25 Section may obtain review thereof by filing a written
26 petition for review with the Superior Court within thirty

1 days after the entry of said order. The procedures for
2 review and the scope of the review shall be as specified
3 in the Administrative Adjudication Law, Guam Government
4 Code, Sections 24140 and 24141.

5 (k) In any case where the board renders a decision
6 imposing discipline against a licensee under this Section
7 and Section 54009 of this Act, the Board shall examine its
8 records to determine whether the licensee holds a
9 certificate or a permit to practice public accountancy in
10 any other state; and if so, the Board shall notify the
11 Board of Accountancy of such other state of its decision,
12 by mail, within forty-five days of rendering the decision.
13 The Board may also furnish information relating to
14 proceedings resulting in disciplinary action to other
15 public authorities and to private professional
16 organizations having a disciplinary interest in the
17 licensee.

18 Section 54012. Reinstatement.

19 (a) In any case where the Board has suspended or
20 revoked a certificate or a permit or refused to renew a
21 permit, the Board may, upon application in writing by the
22 person or firm affected and for good cause shown, modify the
23 suspension, or reissue the certificate or permit.

24 (b) The Board shall by rule specify the manner in
25 which such applications shall be made, the times within
26 which they shall be made, and the circumstances in which

1 hearings will be held thereon.

2 (c) Before reissuing, or terminating the suspension
3 of, a certificate or permit under this Section, and as a
4 condition thereto, the Board may require the applicant
5 therefor to show successful completion of specified
6 continuing professional education; and the Board may make
7 the reinstatement of a certificate or permit conditional
8 and subject to satisfactory completion of a quality review
9 conducted in such fashion as the Board may specify.

10 Section 54013. Unlawful Acts.

11 (a) No person or firm not holding a valid permit
12 issued under Sections 54005 and 54006 of this Act shall
13 issue a report on financial statements of any other
14 person, firm, organization, or governmental unit. This
15 prohibition does not apply to an officer, partner, or
16 employee of any firm or organization affixing his
17 signature to any statement or report in reference to the
18 financial affairs of such firm or organization with any
19 wording designating the position, title or office that he
20 holds therein; nor prohibit any act of a public official
21 or employee in the performance of his duties as such; nor
22 prohibit the performance by any persons of other services
23 involving the use of accounting skills, including the
24 preparation of tax returns, management advisory services,
25 and the preparation of financial statements without the
26 issuance of reports thereon.

1 (b) The prohibition contained in subsection (a) of
2 this Section is applicable to issuance by a person or firm
3 not holding a valid permit, of a report using any form of
4 language conventionally used by licensees respecting a
5 review of financial statements.

6 (c) The prohibition contained in subsection (a) of
7 this Section is applicable to issuance by a person or firm
8 not holding a valid permit of a report using any form of
9 language conventionally used by licensees with respect to
10 a compilation of financial statements.

11 (d) No person not holding a valid certificate shall
12 use or assume the title or designation "certified public
13 accountant," or the abbreviation "CPA" or any other title,
14 designation, words, letters, abbreviation, sign, card, or
15 device tending to indicate that such person is a certified
16 public accountant.

17 (e) No firm shall assume or use the title or
18 designation "certified public accountant," or the
19 abbreviation "CPA," or any other title, designation,
20 words, letters, abbreviation, sign, card, or device
21 tending to indicate that such firm is composed of
22 certified public accountants, unless (1) the firm holds
23 a valid permit issued under Section 54006 of this Act,
24 and (2) all partners, officers, and shareholders of the
25 firm hold certificates.

26 (f) No person shall assume or use the title or

1 designation "public accountant," or the abbreviation "PA,"
2 or any other title, designation, words, letters,
3 abbreviation, sign, card, or device tending to indicate
4 that such person is a public accountant unless he holds
5 a valid permit issued under Section 54005 of this Act.

6 (g) No firm not holding a valid permit issued under
7 Section 54006 of this Act shall assume or use the title
8 or designation "public accountant," the abbreviation "PA,"
9 or other title, designation, words, letters, abbreviation,
10 sign, card or device tending to indicate that such firm
11 is composed of public accountants.

12 (h) No person or firm not holding a valid permit
13 issued under Section 54005 or 54006 of this Act shall
14 assume or use the title or designation "certified
15 accountant," "chartered accountant," "enrolled
16 accountant," "licensed accountant," "registered
17 accountant," "accredited accountant," or any other title
18 or designation likely to be confused with the titles
19 "certified public accountant" or "public accountant," or
20 use any of the abbreviations "CA," "EA," "LA," "RA," "AA,"
21 or similar abbreviation likely to be confused with the
22 abbreviations "CPA" or "PA," provided, however, that a
23 holder of a certificate who does not also hold a permit
24 may use the titles pertaining to such certificate in any
25 manner not prohibited by rules promulgated by the Board
26 under Section 54003 (h) (6) of this Act.

1 (i) No person or firm not holding a valid permit
2 issued under Sections 54005 and 54006 of this Act shall
3 assume or use any title or designation that includes the
4 words "accountant," "auditor," or "accounting," in
5 connection with any other language (including the language
6 of a report) that implies that such person or firm holds
7 such a permit or has special competence as an accountant
8 or auditor, provided, however, that this subsection does
9 not prohibit any officer, partner, or employee of any firm
10 or organization from affixing his signature to any
11 statement in reference to the financial affairs of such
12 firm or organization with any wording or designating the
13 position, title, or office that he holds therein nor
14 prohibit any act of a public official or employee in the
15 performance of his duties as such.

16 (j) No person holding a certificate shall engage in
17 the practice of public accountancy unless (1) he also
18 holds a valid permit issued under Section 54005 of this
19 Act, or (2) he is an employee (and not a partner, officer
20 or shareholder) of a firm holding such permit issued under
21 Section 54006 of this Act and has not been such an
22 employee long enough to meet the experience requirements
23 prescribed by Section 54005(c)(2) for an individual permit
24 to practice.

25 (k) No person or firm holding a permit under this
26 Act shall engage in the practice of public accountancy

1 using a professional or firm name or designation that is
2 misleading about the legal form of the firm, or about the
3 persons who are partners, officers, or shareholders of the
4 firm, or about any other matter, provided, however, that
5 names of one or more former partners or shareholders may
6 be included in the name of a firm or its successor.

7 (1) None of the foregoing provisions of this Section
8 shall have any application to a person or firm holding a
9 certification, designation, degree, or licensee granted
10 in a foreign country entitling the holder thereof to
11 engage in the practice of public accountancy or its
12 equivalent in such country, whose activities in this
13 Territory are limited to the provision of professional
14 services to persons or firms who are residents of,
15 governments of, or business entities of the country in
16 which he holds such entitlement, who issues no reports
17 with respect to the financial statements of any other
18 persons, firms or governmental units in this Territory,
19 and who does not use in this Territory any title or
20 designation other than the one under which he practices
21 in such country, followed by a translation of such title
22 or designation into the English language, if it is in a
23 different language, and by the name of such country.

24 (m) No firm shall practice public accountancy (as
25 defined in 54002(g) of this Act) in this Territory without
26 a valid permit to practice under 54006.

1 Section 54014. Injunctions Against Unlawful Acts.

2 Whenever, as a result of an investigation under
3 Section 54010 of this Act or otherwise, the Board believes
4 that any person or firm has engaged, or is about to
5 engage, in any acts or practices which constitute or will
6 constitute a violation of Section 54013 of this Act, the
7 Board may make application to the appropriate court for
8 an order enjoining such acts or practices, and upon a
9 showing by the Board that such person or firm has engaged,
10 or is about to engage, in any such acts or practices, an
11 injunction, restraining order, or other order as may be
12 appropriate shall be granted by such court.

13 Section 54015. Criminal Penalties.

14 (a) Whenever, by reason of an investigation under
15 Section 54010 of this Act or otherwise, the Board has
16 reason to believe that any person or firm has knowingly
17 engaged in acts or practices that constitute a violation
18 of Section 54013 of this Act, the Board may bring its
19 information to the attention of the Attorney General of
20 this Territory who may, in his discretion, cause
21 appropriate criminal proceedings to be brought thereon.

22 (b) Any person or firm who knowingly violates any
23 provision of Section 54013 of this Act shall be guilty of
24 a misdemeanor, and upon conviction thereof shall be
25 subject to a fine of not more than \$1,000 or to
26 imprisonment for not more than one year, or to both such

1 fine and imprisonment.

2 Section 54016. Single Act Evidence of Practice.

3 In any action brought under Sections 54011, 54014 or
4 54015 of this Act, evidence of the commission of a single
5 act prohibited by this Act shall be sufficient to justify
6 a penalty, injunction, restraining order, or conviction,
7 respectively, without evidence of a general course of
8 conduct.

9 Section 54017. Confidential Communications.

10 Except by permission of the client engaging a
11 licensee under this Act, or the heirs, successors, or
12 personal representatives of such client, a licensee or
13 any partner, officer, shareholders, or employee of a
14 licensee shall not voluntarily disclose information
15 communicated to him by the client relating to and in
16 connection with services rendered to the client by the
17 licensee in the practice of public accountancy. Such
18 information shall be deemed confidential, provided,
19 however, that nothing herein shall be construed as
20 prohibiting the disclosure of information required to be
21 disclosed by the standards of the public accounting
22 profession in reporting on the examination of financial
23 statements or as prohibiting disclosures in court
24 proceedings, in investigations or proceedings under
25 Sections 54010 or 54011 of this Act, in ethical
26 investigations conducted by private professional

1 organizations, or in the course of quality reviews.

2 Section 54018. Licensees' Working Papers; Clients'
3 Records.

4 (a) All statements, records, schedules, working
5 papers, and memoranda made by a licensee or a partner,
6 shareholder, officer, director, or employee of a licensee,
7 incident to, or in the course of, rendering services to
8 a client in the practice of public accountancy, except the
9 reports submitted by the licensee to the client and except
10 for records that are part of the client's records, shall
11 be and remain the property of the licensee in the absence
12 of an express agreement between the licensee and the
13 client to the contrary. No such statement, record,
14 schedule, working paper, or memorandum shall be sold,
15 transferred, or bequeathed, without the consent of the
16 client or his personal representative or assignee, to
17 anyone other than one or more surviving partners or
18 stockholders or new partners or stockholders of the
19 licensee, or any combined or merged firm or successor in
20 interest to the licensee.

21 (b) A licensee shall furnish to his client or former
22 client, upon request and reasonable notice--

23 (1) A copy of the licensee's working
24 papers, to the extent that such working papers
25 include records that would ordinarily
26 constitute part of the client's records and are

1 not otherwise available to the client; and

2 (2) Any accounting or other records
3 belonging to, or obtained from or on behalf of,
4 the client that the licensee removed from the
5 client's premises or received for the client's
6 account; the licensee may make and retain
7 copies of such documents of the client when
8 they form the basis for work done by him.

9 Section 54019. Construction; Severability.

10 If any provision of this Act or the application
11 thereof to any person or entity or in any circumstances
12 is held invalid, the remainder of the Act and the
13 application of such provision to others or in other
14 circumstances shall not be affected thereby.

15 Section 54020. Repeal of Prior Law.

16 Guam Government Code, Title LVII, Sections 54000 to
17 54019, as amended, and all other acts or parts of acts in
18 conflict herewith are hereby repealed, provided, however,
19 that nothing contained in this Act shall invalidate or
20 affect any action taken or any proceeding instituted under
21 any law in effect prior to the effective date hereof.

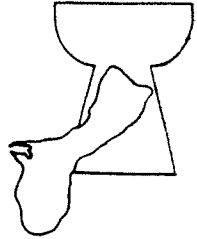
22 Section 54021. Effective Date.

23 This Act shall take effect upon enactment.



SENATOR

HERMINIA D. DIERKING
TWENTIETH GUAM LEGISLATURE



June 1, 1989

COMMITTEES:

CHAIRPERSON
Rules

VICE-CHAIRPERSON
Ways & Means
Energy, Utilities &
Consumer Protection

MEMBER:

Economic Development

Federal, Foreign &
Legal Affairs

Health, Welfare &
Ecology

Judiciary & Criminal
Justice

Education

Tourism & Transportation

Youth, Senior Citizens,
Cultural Affairs &
Human Resources

General Governmental
Operations

The Honorable John R. Haglelgam
President
Federated States of Micronesia
Kolonias, Pohnpei

Dear President Haglelgam:

Thank you for your letter of May 9th concerning my sponsorship of a Model Accountancy Act for the Territory of Guam. I have enclosed a copy of the Bill which I introduced for your information.

The Bill has been referred to the Committee on Ways and Means. Although the Committee is currently engaged in reviewing the government's Fiscal Year 1990 budget, I assure you that, as the Vice Chairperson for the Committee, I will urge the Committee to act on the Bill as early as possible.

As the Vice-President of the Association of Pacific Island Legislatures, I am most interested in addressing our common regional concerns. Please do not hesitate to call on me if I can be of assistance to the people of the Federated States of Micronesia.

Sincerely,

HERMINIA D. DIERKING

Enclosure



TERRITORIAL BOARD OF PUBLIC ACCOUNTANCY

Territory of Guam
P. O. Box P
Agana, Guam 96910

November 7, 1989

Senator Herminia D. Dierking
Twentieth Guam Legislature
P.O. Box 163
Chalan Santo Papa
Agana, Guam 96910

Dear Senator Dierking:

It was a pleasure testifying before the Committee on Ways & Means yesterday in favor of Bill 257. Again, I apologize for not submitting written testimony but as I mentioned, I returned on Saturday from the American Institute of Certified Public Accountants (AICPA) and National Association of States Boards of Accountancy (NASBA) joint meeting on state legislative issues.

As Chairman of the Guam Territorial Board of Public Accountancy (Board), I strongly recommend enactment of Bill 257. In 1986, the Board and the Guam Society of Certified Public Accountants (GSCPA) worked together to modify the model bill proposed by AICPA and NASBA in coordination with counsel provided by the Department of Revenue and Taxation. We appreciate your introducing this revised "model bill" as Bill 257. The revisions will bring Guam's statutes in line with those in the other 53 licensing jurisdictions thus facilitating reciprocity.

In reviewing Bill 257, several minor typing errors were noted which should be corrected by deleting the (*italicized*) words or (**inserting the bold words**) as noted below:

Page 5, Line 17:

accountant or auditor, or ~~from~~ the language of the

Page 7, Line 7

(b) The Board shall elect annually ~~from~~ among its members

Page 12, Line 26

knowledge of the subjects of **accounting theory, accounting practice, auditing and such other related subjects** as the

Page 15, Line 25

dates, as the Board shall by rule **specify, and the Board shall grant or deny** any such

Page 18, Line 24

any three year period **that has elapsed** since the permit

Page 20, Line 6

occurrence, (*or*) of any issuance, denial,

Senator Herminia D. Dierking
Twentieth Guam Legislature
November 7, 1989
Page 2

- Page 21, Line 24
Act *(of)* or the corresponding provision *(if)* of prior law
- Page 22, Line 16
application for initial issuance or renewal of a
- Page 24, Line 1
(not) **no** other designation, in connection with the practice of
- Page 25, Line 9
permit under *(Section)* **Sections 54005** *(and)* or 54006, to
- Page 25, Line 12
changes to the Board under *(Section)* **Sections 54005** (g) or
- Page 27, Line 10
or the chairman *(therefore)* **thereof** may issue subpoenas to compel
- Page 27, Line 17
probable cause or **lack of probable cause** upon the basis of the
- Page 28, Line 10
(Section) **Sections 54014 and 54015** of this Act. Upon a finding of
- Page 28, Line 11
no probable cause, **the** Board shall close the matter and shall
- Page 29, Line 11
(rules) **rules** governing proceedings under this Section, either by
- Page 32, Line 21
which such *(application)* **applications** shall be made, the times within
- Page 33, Line 24
this Section is applicable to issuance(,) by a person or
- Page 33, Line 25
firm not holding a valid permit, *(or)* of a report using any
- Page 36, Line 6
or organization *(from affixing his signature to any)*

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November 7, 1989
Page 3

Page 36, Line 7

(*statement in reference to the organization*) from affixing

Page 37, Line 15

persons, firms or governmental units **in this Territory, and who does not use** in this Territory any

Page 39, Line 18

disclosed by the standards of the public (*accountancy*) **accounting**

Page 40, Line 2

papers, and (*memorandums*) **memoranda** made by a licensee or a partner,

Page 40, Line 15

stockholders or **new partners or stockholders** of the licensee, or any combined or merged

Page 41, Lines 13 and 14

54019, as amended, and all other (*act*) **acts** or parts of acts in conflict (*wherewith*) **herewith** are hereby repealed, provided, however,

Subsequent to promulgation of the Model Accountancy Act, the American Institute of Certified Public Accountants (AICPA) has recommended the adoption of a model statute providing for a privity requirement in suits for negligent performance of accounting services. We believe these provisions are important. While we would like them to be included in Bill 257, if you think it may delay passage then we would request you enact Bill 257 and then introduce a new bill containing the following provisions. I am not sure how they should be numbered within Guam's statutes:

I. **Applicability of Chapter - Suits for Negligent Performance of Accounting Services**

(a) **This chapter applies to all causes of action of the type specified herein filed on or after the effective date.**

(b) **This chapter governs any action based on negligence brought against any accountant or firm of accountants registered, licensed or practicing in this territory or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant.**

II Requirement of Privity

No action covered by this chapter may be brought in any court in this Territory unless:

(a) The plaintiff (1) is the issuer (or a successor of the issuer) of the financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant and (2) engaged the defendant accountant to examine, compile, review, certify, audit or otherwise report or render an opinion on such financial statements; or

(b) The defendant accountant: (1) was aware at the time the engagement was undertaken that the financial statements were to be made available for use in connection with a specified transaction by the plaintiff who was specifically identified to the defendant accountant, (2) was aware that the plaintiff intended to rely upon such financial statements in connection with such specified transaction, and (3) had direct contact and communication with the plaintiff and expressed by words or conduct the defendant accountant's understanding of the plaintiff's reliance on such financial statements or other information.

The one crucial limitation on the reach of this statute is that it is limited to actions predicated on negligence as opposed to fraud. The AICPA and the Board do not regard the legal standards applicable to accountants' liability for fraud as overexpansive. We believe that, active and knowing wrongdoing by accountants should be judged by the established and stern standards that are currently applied, but that accountants' liability for negligence -- for unintentional mistakes and oversights -- should not be extended to impose liability on accountants for indeterminate losses incurred by potentially unlimited class of unknown users of financial statements.

The privity rule embodied in this statute is based on a carefully drawn policy calculus. The auditor's duty to render an audit opinion with due care runs by contract only to the audit client. The auditor may anticipate that others -- such as investors and creditors -- might read and rely on the opinion, but typically has no ability to limit their numbers or to control or influence the magnitude of the risk they may take in reliance. While it may arguably be socially beneficial to compensate these third parties for their "innocent" reliance on an erroneous opinion, this benefit is vastly outweighed by the consequences of allowing a professional to be held liable for the negligent (as opposed to fraudulent) rendering of such an opinion to an unlimited number of unknown users of financial statements. As Judge Cardozo stated over fifty years ago in *Ultramares v. Touche*, 255 N.Y. 170 (1931),

Senator Herminia D. Dierking
Twentieth Guam Legislature
November 7, 1989
Page 5


"If liability for negligence exists, a thoughtless slip or blunder the failure to detect a theft or forgery beneath the cover of deceptive entries, may expose accountants to a liability in an indeterminate amount for an indeterminate time to an indeterminate class. The hazards of a business conducted on these terms are so extreme as to kindle doubt whether a flaw may not exist in the implication of a duty that exposes to these consequences."

Although the privity requirement was abandoned long ago in personal injury suits, we believe there are good reasons to retain it in accounting malpractice cases. The liability exposure of auditors to investors and others injured by misleading financial statements stands on a different analytic footing from that of the product manufacturer or the doctor. The difference stems from the auditor's role of being a secondary, as opposed to a primary, participant in the circumstances giving rise to loss or injury. Unlike the manufacturer of a machine or appliance, the auditor does not have control over production or distribution of the defective article; that is the responsibility of the issuer of the financial statements. Unlike the doctor who wields a scalpel negligently or prescribes the wrong drug, the auditor, even if negligent, is often himself a victim of the primary wrongdoer's conduct; and, unlike the manufacturer, whose income is directly related to the size of the transaction or the frequency of sales, the auditor's compensation is customarily based on the time devoted to rendering a service and does not reflect the size of the transaction or the growth of the client's business.

Senator, speaking both on behalf of the Board and as a practicing CPA, I wish to thank you for your efforts to support the accounting profession on Guam by introducing Bill 257 and ask your continued support in pushing for its enactment.

Very truly yours,

Territorial Board of Public Accountancy



Judith K. Borja, Chairman

JKB:LP

cc: Director of Revenue & Taxation
Todd Smith
N. Oscar Miyashita
Robert Gaskins
Robert Steffy

November 6, 1989

Senator Carl Gutierrez
Chairman, Committee on Ways and Means
163 Chalan Santo Papa St.
Agana, Guam 96910

Dear Senator Gutierrez:

My name is Todd S. Smith. I am Managing Partner for Touche Ross & Co. - Guam and Micronesia and a fifteen year resident of Guam. I am a past President of the Guam Society of CPA's, served on the Council of the American Institute of CPA's for ten years and am currently a member of the Territorial Board of Accountancy. I am testifying in favor of Bill 257.

Bill 257 serves to modernize the current accountancy act which was enacted over 20 years ago. The revisions in the act will parallel the accountancy licensing requirements in most of the other 53 licensing jurisdictions, which will enhance reciprocity among jurisdictions. The three major changes in the act are as follows:

- Residency and citizenship - The current law requires that a CPA be a Guam resident, have a business in Guam or be an employee who is regularly in Guam; and that a CPA be a U.S. citizen or has declared intention to be a U.S. citizen. The new act would lift the residency and citizenship requirement thus creating wider opportunity for licensing on Guam.
- Two-tier licensing - The current law provides for one license to practice in conjunction with a CPA certificate, provided all the educational, examination and experience requirements are met. The new act provides for two types of licenses - a CPA certificate and a permit to practice. The CPA certificate may be obtained by completing the educational and examination requirements. The permit to practice which is renewable annually requires experience and continuing professional education. This two-tier system enables non-practicing CPA's to maintain their certificates without public accounting experience or continuing education, while placing restrictions on practicing CPA's by requiring continuing professional education.

Senator Carl Gutierrez
Chairman, Committee on Ways and Means

Page 2

- Continuing professional education - Currently there is no requirement for continuing professional education (CPE) to maintain a license to practice. The new law would require 120 hours of CPE over a three year period to maintain a permit to practice. This requirement parallels the requirements of most other licensing jurisdictions as well as the requirements for membership in the American Institute of CPA's (effective 1990). It also mandates that practicing CPA's stay current with technical issues.

I believe this act is sorely needed to modernize our current out-dated law and elevate the professional requirements to a level equivalent to other jurisdictions.

Very truly yours,



Todd S. Smith
Managing Partner
Guam/Micronesia

RECEIVED
COMMITTEE ON RULES
DATE: 12-21-89
TIME: 3:15 pm
BY: Valentina J. Castro

CARLOS LUJAN TAITANO

P.O. Box 11936
Tamuning, Guam 96911
Phone: (W) 477-7857
(H) 653-5404

November 6, 1989

HAND DELIVERY

Senator Carl T.C. Gutierrez
Chairman, Committee on Ways and Means
Twentieth Guam Legislature
163 Chalan Santo Papa St.
Agana, Guam 96910

Attn: Senator Herminia D. Dierking
Acting Chairperson

Re: Bill No. 257 (LS)
The Public Accountancy Act of 1989
Reference your letter dated October 31, 1989

Dear Senator Dierking:

I would like to take this opportunity to thank the Committee on Ways and Means for inviting me to submit my written testimony concerning Bill No. 257, "The Public Accountancy Act of 1989." Before I begin my testimony pertaining to a particular substantive matter of the Bill, specifically the proposed provisions concerning the "two-tier system," I would like to provide the Committee with background information on myself.

I am Carlos Lujan Taitano, a 31 year-old Chamorro, a resident of Guam and a citizen and military veteran of the United States of America. I hold a Juris Doctor degree from the University of Puget Sound School of Law and a Bachelor of Arts degree in Economics from the University of

Senator Carl T.C. Gutierrez
Chairman, Committee on Ways and Means
Attn: Senator Herminia D. Dierking
Acting Chairperson

November 6, 1989

2

Washington. I also hold Certified Public Accountant Certificate No. 11539 from the State of Washington, have recently passed the New York State Bar Examination and am a Captain of the Adjutant General Corps in the U.S. Army Reserve. Moreover, I am a member of the American Institute of Certified Public Accountants, the Washington Society of Certified Public Accountants and the Reserve Officers Association of the United States. Although I am presently employed as law clerk with Klemm, Blair, Sterling & Johnson, P.C., I submit this testimony solely on my behalf as a concerned citizen and professional, and, furthermore, do not represent any particular person or organization in regard to the Bill.

Although we could engage in a section-by-section analysis of the present law as compared with Bill No. 257, it is my understanding that my colleagues will provide detailed analyses in their separate testimonies of the present law and Bill No. 257, and I, therefore, will only address the "two-tier" feature of the Bill.

I support Bill No. 257. I believe it exemplifies the modern trend in the regulation of professional accountants in the United States and will contribute in improving the professionalism of career accountants on our island. Furthermore, this Bill provides a two-tier system of recognizing the professional stature of an accountant, specifically under the certification and permit provisions of the Bill.

Presently, the Public Accountancy Act of 1967 does not provide a two-tier system of recognizing professional accountants. Under present law, a highly trained and skilled professional accountant who has no intention of providing auditing services as a career and who probably has not accumulated the requisite years of auditing experience is denied professional recognition as a certified public accountant. This is the effect of the present law on those highly experienced professional accountants who specialize in taxation and management consulting, two very important and integral fields of public accounting. Under the two-tier system, these tax specialists and management

Senator Carl T.C. Gutierrez
Chairman, Committee on Ways and Means
Attn: Senator Herminia D. Dierking
Acting Chairperson

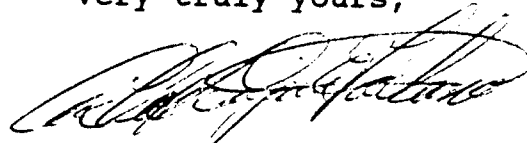
November 6, 1989 3

consultants, as well as other professionals including those in industry and government, would be recognized as certified public accountants provided that they pass the uniform Certified Public Accountant examination (an extremely formidable hurdle), and satisfy the educational and moral character requirements of the proposed Act. For those professional accountants who wish to issue audit reports or audit opinions pertaining to financial statements, a license or permit (not merely a certificate) is required under the proposed Act.

The present statute governing professional accountants on our island is archaic and some sections are embarrassingly of questionable constitutional validity (citizenship and residency provisions). At the very least, enacting Bill No. 257 would replace an outdated piece of legislation.

Thank you very much for your cordial invitation and special attention in this very important matter. If you have any questions, please call on me anytime. Si Yuus maase!

Very truly yours,



CARLOS LUJAN TAITANO

T22/D(020)

Guam Society Of Certified Public Accountants

P.O. Box #
Agana, Guam 96910

April 14, 1989

Senator Herminia Dierking
Chairperson on Committee
on Rules
Twentieth Guam Legislature
Agana, Guam 96910

RECEIVED
COMMITTEE ON RULES
DATE: 4-26-89
TIME: 8:45 A.M.
BY: Amb

*Respond
ref. bill-
J*

PLS. respond

Dear Senator Dierking:

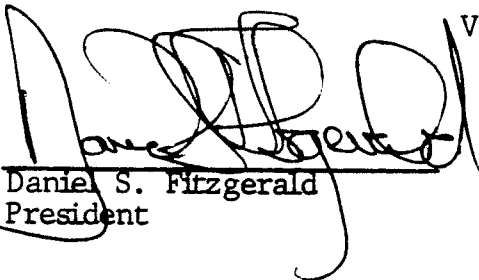
The Guam Society of Certified Public Accountants is vitally interested in bringing Guam's CPA standards on par with those of the majority of U.S. States. Currently, Guam is only one of five States and Territories which has not adopted the mechanisms contained in the Model Accountancy Bill. Guam CPA's may be at risk of not having parity with other States as a result. This is of great concern to us.

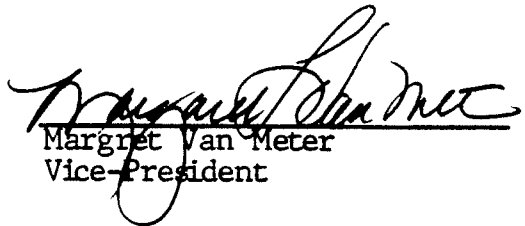
We have also solicited views of citizens of the FSM, Marshall Islands and Palau. Currently, they are not able to take the Uniform CPA exam in Guam nor are they able to become U.S. CPA's. Those individuals who are pursuing accounting careers are understandably concerned about this problem.

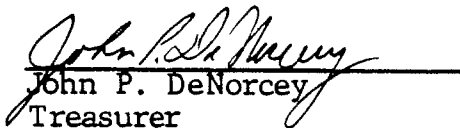
The Guam Society is writing you to ask for your assistance. We understand that members of the Guam Territorial Board of Public Accountancy met with you last year concerning a draft law which addresses and meets our concerns, the concerns of the Territorial Board and the concerns of the citizens of the Micronesian Islands. We would very much appreciate it if you could act as a sponsor for this measure.

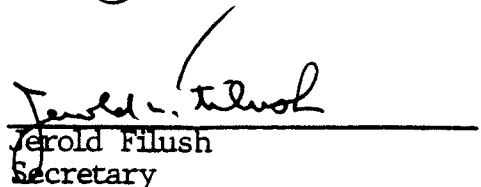
The Guam Society and the Territorial Board would be pleased to discuss this matter with you at your convenience. If you desire any further information, please contact the undersigned at your convenience.

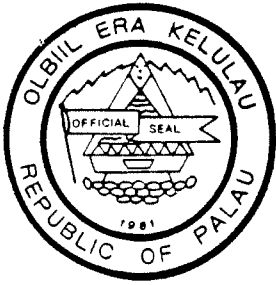
Very truly yours,


Daniel S. Fitzgerald
President


Margaret Van Meter
Vice-President


John P. DeNorcey
Treasurer


Jerold Filush
Secretary



The Senate
Third Olbiil Era Kelulau

(PALAU NATIONAL CONGRESS)

P.O. BOX 8, KOROR
REPUBLIC OF PALAU
96940

PHONE: 465/621/522
TELEX: 8941 SENOEK PW
FAX: 633

THE SENATE

JOSHUA KOSHIBA
PRESIDENT

ISIDORO RUDIMCH
VICE PRESIDENT

PETER SUGIYAMA
FLOOR LEADER

April 25, 1989
PO: 1548

RECEIVED
COMMITTEE ON RULES
DATE: 5/1/89
TIME: 1:00
BY: [Signature]

Honorable Herminia Dierking
Chairperson
Committee on Rules
Guam Legislature
Agana, Guam 96910

CPA Bill

MEMBERS

MASAYUKI ADELBAI

SEIT ANDRES

TOMMY E. REMENGESAU, JR.
1ST SENATORIAL DISTRICT
KAYANGEL, NGARCHELONG
NGARAARD, NGIWA, MELEKEOK,
NGCHESAR, AIRAI

ISIDORO RUDIMCH

MINORU F. UEKI

SAM "YOYO" MASANG
2ND SENATORIAL DISTRICT
NGEREMID, NGERKESOAL,
NGERCHEMAI, IEBUKL

HARRY R. FRITZ

ITELBANG LUII

JOSHUA KOSHIBA
3RD SENATORIAL DISTRICT
IDID, MEKETII, IKELAU
NGERBECHED

DAIZIRO NAKAMURA

PETER E. SADANG

PETER SUGIYAMA
4TH SENATORIAL DISTRICT
ONGERONGER, MEDALAI,
MEYUNS

LUCIUS "LAKIUS" MALSOL
5TH SENATORIAL DISTRICT
NGARMAU, NGEREMLENGUL,
NGATPANG, AIMELIK

HARUO H. ESANG
6TH SENATORIAL DISTRICT
PELELIU, ANGAUR,
SONSOROL, TOBI

Dear Senator Dierking:

It is my understanding that the Guam Society of CPA's has approached you concerning sponsorship of a Model Accountancy Act for the Territory of Guam. I would like to go on record as supporting the intent of that Act as it is of vital interest to citizens of the Republic of Palau who are pursuing careers in accounting. Currently, our citizens are precluded from sitting for the CPA exam in Guam and are almost precluded from becoming certified in Guam or the U.S. We understand that the Model Accountancy Act will assist by changing the current status to allow our citizens access to the title of CPA.

We hope that you will consider assisting us by favorably considering sponsorship of this Act.

Sincerely,

[Signature]

Joshua Koshiba
President, Senate
Third Olbiil Era Kelulau
Republic of Palau



REPUBLIC of PALAU
Office of the Vice President

Kuniwo Nakamura
Vice President

P.O. Box 100, Koror, Republic of Palau 96940
Phone: 702/893/1310

April 25, 1989
Serial: VP88-89

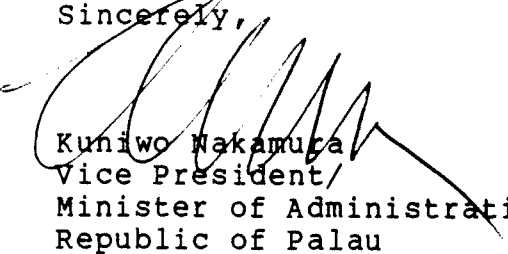
Honorable Herminia Dierking
Chairperson
Committee on Rules
Guam Legislature
Agana, Guam 96910

Dear Senator Dierking:

It is my understanding that the Guam Society of CPA's has approached you concerning sponsorship of a Model Accountancy Act for the Territory of Guam. I would like to go on record as supporting the intent of that Act as it is of vital interest to citizens of the Republic of Palau who are pursuing careers in accounting. Currently, our citizens are precluded from sitting for the CPA exam in Guam and are almost precluded from becoming certified in Guam or the U.S. We understand that the Model Accountancy Act will assist by changing the current status to allow our citizens access to the title of CPA.

We hope that you will consider assisting us by favorably considering sponsorship of this Act.

Sincerely,


Kuniwo Nakamura
Vice President/
Minister of Administration
Republic of Palau

RECEIVED
COMMITTEE ON RULES
DATE: 5-4-89
TIME: 8:30 AM
BY: amb



The President

Kelecia Pohnpei

Federated States of Micronesia

May 9, 1989

for Public Hearing
P

W + M

Bill 257

The Honorable Herminia Dierking
Chairperson
Committee of Rules
Guam Legislature
Agana, Guam 96910

Dear Senator Dierking:

It is my understanding that the Guam Society of CPA's has approached you concerning sponsorship of a Model Accountancy Act for the Territory of Guam. I would like to go on record as supporting the intent of that Act as it is of vital interest to citizens of the Federated States of Micronesia who are pursuing careers in accounting. Currently, our citizens are precluded from sitting for the CPA exam in Guam and are almost precluded from becoming certified in Guam or the United States. We understand that the Model Accountancy Act will assist by changing the current status to allow our citizens access to the title of CPA.

We hope that you will consider assisting us by favorably considering sponsorship of this Act.

Very truly yours,

John R. Haglegam
John R. Haglegam
President

mp

[Handwritten mark]

RECEIVED
COMMITTEE ON RULES
DATE: 5/24/89
TIME: 10:20 AM
BY: [Signature]



C: WP50\105A31

TERRITORIAL BOARD OF PUBLIC ACCOUNTANCY

Territory of Guam
P. O. Box P
Agana, Guam 96910

November 7, 1989

Senator Herminia D. Dierking
Twentieth Guam Legislature
P.O. Box 163
Chalan Santo Papa
Agana, Guam 96910

Dear Senator Dierking:

It was a pleasure testifying before the Committee on Ways & Means yesterday in favor of Bill 257. Again, I apologize for not submitting written testimony but as I mentioned, I returned on Saturday from the American Institute of Certified Public Accountants (AICPA) and National Association of States Boards of Accountancy (NASBA) joint meeting on state legislative issues.

As Chairman of the Guam Territorial Board of Public Accountancy (Board), I strongly recommend enactment of Bill 257. In 1986, the Board and the Guam Society of Certified Public Accountants (GSCPA) worked together to modify the model bill proposed by AICPA and NASBA in coordination with counsel provided by the Department of Revenue and Taxation. We appreciate your introducing this revised "model bill" as Bill 257. The revisions will bring Guam's statutes in line with those in the other 53 licensing jurisdictions thus facilitating reciprocity.

In reviewing Bill 257, several minor typing errors were noted which should be corrected by deleting the (*italicized*) words or (**inserting the bold words**) as noted below:

Page 5, Line 17:

accountant or auditor, or from the language of the

Page 7, Line 7

(b) The Board shall elect annually from among its members

Page 12, Line 26

knowledge of the subjects of **accounting theory, accounting practice, auditing and such other related subjects** as the

Page 15, Line 25

dates, as the Board shall by rule specify, and the Board shall grant or deny any such

Page 18, Line 24

any three year period **that** has elapsed since the permit

Page 20, Line 6

occurrence, (*or*) of any issuance, denial,

- Page 21, Line 24
Act *(of)* or the corresponding provision *(if)* of prior law
- Page 22, Line 16
application for initial issuance or renewal of a
- Page 24, Line 1
(not) no other designation, in connection with the practice of
- Page 25, Line 9
permit under *(Section)* Sections 54005 *(and)* or 54006, to
- Page 25, Line 12
changes to the Board under *(Section)* Sections 54005 (g) or
- Page 27, Line 10
or the chairman *(therefore)* thereof may issue subpoenas to compel
- Page 27, Line 17
probable cause or lack of probable cause upon the basis of the
- Page 28, Line 10
(Section) Sections 54014 and 54015 of this Act. Upon a finding of
- Page 28, Line 11
no probable cause, the Board shall close the matter and shall
- Page 29, Line 11
(rules) rules governing proceedings under this Section, either by
- Page 32, Line 21
which such *(application)* applications shall be made, the times within
- Page 33, Line 24
this Section is applicable to issuance(,) by a person or
- Page 33, Line 25
firm not holding a valid permit, *(or)* of a report using any
- Page 36, Line 6
or organization *(from affixing his signature to any)*

Page 36, Line 7

(statement in reference to the organization) from affixing

Page 37, Line 15

persons, firms or governmental units in this Territory, and who does not use in this Territory any

Page 39, Line 18

disclosed by the standards of the public (accountancy) accounting

Page 40, Line 2

papers, and (memorandums) memoranda made by a licensee or a partner,

Page 40, Line 15

stockholders or new partners or stockholders of the licensee, or any combined or merged

Page 41, Lines 13 and 14

54019, as amended, and all other (act) acts or parts of acts in conflict (wherewith) herewith are hereby repealed, provided, however,

Subsequent to promulgation of the Model Accountancy Act, the American Institute of Certified Public Accountants (AICPA) has recommended the adoption of a model statute providing for a privity requirement in suits for negligent performance of accounting services. We believe these provisions are important. While we would like them to be included in Bill 257, if you think it may delay passage then we would request you enact Bill 257 and then introduce a new bill containing the following provisions. I am not sure how they should be numbered within Guam's statutes:

I. Applicability of Chapter - Suits for Negligent Performance of Accounting Services

(a) This chapter applies to all causes of action of the type specified herein filed on or after the effective date.

(b) This chapter governs any action based on negligence brought against any accountant or firm of accountants registered, licensed or practicing in this territory or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant.

Senator Herminia D. Dierking
Twentieth Guam Legislature
November 7, 1989
Page 5

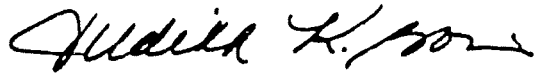
"If liability for negligence exists, a thoughtless slip or blunder the failure to detect a theft or forgery beneath the cover of deceptive entries, may expose accountants to a liability in an indeterminate amount for an indeterminate time to an indeterminate class. The hazards of a business conducted on these terms are so extreme as to kindle doubt whether a flaw may not exist in the implication of a duty that exposes to these consequences."

Although the privity requirement was abandoned long ago in personal injury suits, we believe there are good reasons to retain it in accounting malpractice cases. The liability exposure of auditors to investors and others injured by misleading financial statements stands on a different analytic footing from that of the product manufacturer or the doctor. The difference stems from the auditor's role of being a secondary, as opposed to a primary, participant in the circumstances giving rise to loss or injury. Unlike the manufacturer of a machine or appliance, the auditor does not have control over production or distribution of the defective article; that is the responsibility of the issuer of the financial statements. Unlike the doctor who wields a scalpel negligently or prescribes the wrong drug, the auditor, even if negligent, is often himself a victim of the primary wrongdoer's conduct; and, unlike the manufacturer, whose income is directly related to the size of the transaction or the frequency of sales, the auditor's compensation is customarily based on the time devoted to rendering a service and does not reflect the size of the transaction or the growth of the client's business.

Senator, speaking both on behalf of the Board and as a practicing CPA, I wish to thank you for your efforts to support the accounting profession on Guam by introducing Bill 257 and ask your continued support in pushing for its enactment.

Very truly yours,

Territorial Board of Public Accountancy



Judith K. Borja, Chairman

JKB:LP

cc: Director of Revenue & Taxation
Todd Smith
N. Oscar Miyashita
Robert Gaskins
Robert Steffy

II Requirement of Privity

No action covered by this chapter may be brought in any court in this Territory unless:

(a) The plaintiff (1) is the issuer (or a successor of the issuer) of the financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant and (2) engaged the defendant accountant to examine, compile, review, certify, audit or otherwise report or render an opinion on such financial statements; or

(b) The defendant accountant: (1) was aware at the time the engagement was undertaken that the financial statements were to be made available for use in connection with a specified transaction by the plaintiff who was specifically identified to the defendant accountant, (2) was aware that the plaintiff intended to rely upon such financial statements in connection with such specified transaction, and (3) had direct contact and communication with the plaintiff and expressed by words or conduct the defendant accountant's understanding of the plaintiff's reliance on such financial statements or other information.

The one crucial limitation on the reach of this statute is that it is limited to actions predicated on negligence as opposed to fraud. The AICPA and the Board do not regard the legal standards applicable to accountants' liability for fraud as overexpansive. We believe that, active and knowing wrongdoing by accountants should be judged by the established and stern standards that are currently applied, but that accountants' liability for negligence -- for unintentional mistakes and oversights -- should not be extended to impose liability on accountants for indeterminate losses incurred by potentially unlimited class of unknown users of financial statements.

The privity rule embodied in this statute is based on a carefully drawn policy calculus. The auditor's duty to render an audit opinion with due care runs by contract only to the audit client. The auditor may anticipate that others -- such as investors and creditors -- might read and rely on the opinion, but typically has no ability to limit their numbers or to control or influence the magnitude of the risk they may take in reliance. While it may arguably be socially beneficial to compensate these third parties for their "innocent" reliance on an erroneous opinion, this benefit is vastly outweighed by the consequences of allowing a professional to be held liable for the negligent (as opposed to fraudulent) rendering of such an opinion to an unlimited number of unknown users of financial statements. As Judge Cardozo stated over fifty years ago in *Ultramares v. Touche*, 255 N.Y. 170 (1931),

Bill No. 257(45)

Introduced by:

H.D. DIERKING
[Signature]

AN ACT TO REPEAL TITLE LVII, CHAPTER I, SECTIONS 54000 TO 54019, AS AMENDED OF THE GOVERNMENT CODE OF GUAM AND TO ENACT NEW TITLE LVII, SECTIONS 5400 TO 54021 OF THE GOVERNMENT CODE OF GUAM ADOPTING A NEW PUBLIC ACCOUNTANCY ACT TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES AS CERTIFIED PUBLIC ACCOUNTANTS AND THE ISSUANCE OF PERMITS TO PRACTICE PUBLIC ACCOUNTANCY; TO REGULATE THE PRACTICE OF PUBLIC ACCOUNTANCY IN THE PUBLIC INTEREST; AND TO ESTABLISH A BOARD OF ACCOUNTANCY AND PRESCRIBE ITS POWERS AND DUTIES.

Section 1 ...Repeals Title LVII, Chapter 1, Sections 54000 to 54019, Government Code.

Section 2 Enacts New Title LVII, Chapter 1, Sections 54000 to 54021, Government Code.

- 54000 ... Title.
- 54001 ... Purpose.
- 54002 ... Definitions.
- 54003 ... Territorial Board of Accountancy.
- 54004 ... Certified Public Accountants.
- 54005 ... Permits to Practice-Individual.
- 54006 ... Permits to Practice-Firms.
- 54007 ... Public Accountants and Firms of Public Accountants.
- 54008 ... Appointment of Director of Revenue & Taxation as Agent.
- 54009 ... Enforcement Against Holders of Certificates and Permits.
- 54010 ... Enforcement Procedures- Investigations.
- 54011 ... Enforcement Procedures-Hearings by the Board.
- 54012 ... Reinstatement.
- 54013 ... Unlawful Acts.
- 54014 ... Injunctions Against Unlawful Acts.
- 54015 ... Criminal Penalties.
- 54016 ... Single Act Evidence of Practice.
- 54017 ... Confidential Communications.

54018 ... Licensees' Working Papers;
 Clients' Records.
54019 ... Construction, Severability.
54020 ... Repeal of Prior Law.
54021 ... Effective Date.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Title LVII, Chapter 1, Sections 54000 to 54019 of
3 the Government Code of Guam are hereby repealed in their entirety.

4 Section 2. A new Title LVII, Chapter 1, Sections 54000 to
5 54019 is hereby enacted to read as follows:

6 Section 54000. Title.

7 This Act may be cited as the "Public Accountancy Act
8 of 19 ____."

9 Section 54001. Purpose.

10 It is the policy of this Territory, and the purpose
11 of this Act, to promote the reliability of information
12 that is used for guidance in financial transactions or
13 for accounting for or assessing the financial status or
14 performance of commercial, noncommercial, and governmental
15 enterprises. The public interest requires that persons
16 professing special competence in accountancy or offering
17 assurance as to the reliability or fairness of
18 presentation of such information shall have demonstrated
19 their qualifications to do so, and no persons who have not
20 demonstrated and maintained such qualifications be
21 permitted to hold themselves out as having such special
22 competence or to offer such assurance; that the
23 professional conduct of persons licensed as having special

1 competence in accountancy be regulated in all aspects of
2 the practice of public accountancy; that a public
3 authority competent to prescribe and assess the
4 qualifications and to regulate the professional conduct
5 of practitioners of public accountancy be established; and
6 that the use of titles relating to the practice of public
7 accountancy that are likely to mislead the public as to
8 the status or competence of the persons using such titles
9 be prohibited.

10 Section 54002. Definitions.

11 When used in this Act, the following terms have the
12 meanings indicated:

13 (a) "Board" means the Guam Board of
14 Accountancy established under Section 54003 of
15 this Act or its predecessor under prior law.

16 (b) "Certificate" means a certificate as
17 "certified public accountant" issued under
18 Section 54004 of this Act or corresponding
19 provisions of prior law, or a corresponding
20 certificate as certified public accountant
21 issued after examination under the law of any
22 other state.

23 (c) "Firm" means a sole proprietorship, a
24 corporation, or a partnership.

25 (d) "Licensee" means the holder of a
26 certificate issued under Section 54004 of this

1 Act, or of a permit issued under Sections 54005
2 or 54006; or in each case a certificate or
3 permit issued under corresponding provisions of
4 prior law.

5 (e) "Permit" means a permit to practice
6 public accountancy issued under Sections 54005
7 and 54006 of this Act or corresponding
8 provisions of prior law or under corresponding
9 provisions of the laws of other states.

10 (f) "Practice of (or practicing) public
11 accountancy" means the performance or the
12 offering to perform by a person or firm holding
13 itself out to the public as a licensee, for a
14 client or potential client, of one or more
15 kinds of services involving the use of
16 accounting or auditing skills, including the
17 issuance of reports on financial statements or
18 of one or more kinds of management advisory or
19 consulting service, or the preparation of tax
20 returns or the furnishing of advice on tax
21 matters.

22 (g) "Quality Review" means a study
23 appraisal, or review of one or more aspects of
24 the professional work of a person or firm in
25 the practice of public accountancy, by a person
26 or persons who hold certificates and/or permits

1 to practice in this jurisdiction or other
2 jurisdictions as deemed qualified by the Board
3 and who are not affiliated with the person or
4 firm being reviewed.

5 (h) "Report," when used with reference to
6 financial statements, means an opinion, report,
7 or other form of language that states or
8 implies assurance as to the reliability of any
9 financial statements and that also includes or
10 is accompanied by any statement or implication
11 that the person or firm issuing it has special
12 knowledge or competence in accounting or
13 auditing. Such a statement of implication of
14 special knowledge or competency may arise from
15 use by the issuer of the report of names or
16 titles indicating that he or it is an
17 accountant or auditor, or the language of the
18 report itself. The term "report: includes any
19 form of language which disclaims an opinion
20 when such form of language is conventionally
21 understood to imply any positive assurance as
22 to the reliability of the financial statements
23 referred to and/or special competence on the
24 part of the person or firm issuing such
25 language; and it includes any other form of
26 language that is conventionally understood to

1 imply such assurance and/or such special
2 knowledge or competence.

3 (i) "Rule" means any rule, regulation, or
4 other written directive of general application
5 duly adopted by the Board.

6 (j) "State" means any state of the United
7 States, the District of Columbia, Puerto Rico,
8 the U.S. Virgin Islands, and Guam; except that
9 "this Territory" means the Territory of Guam.

10 Section 54003. Territorial Board of Accountancy.

11 (a) There is hereby created the Guam Board of
12 Accountancy, which shall have responsibility for the
13 administration and enforcement of this Act. The Board
14 shall consist of five members, appointed by the Governor,
15 all of whom shall be residents of this Territory and shall
16 be holders of certificates currently valid under Section
17 54004 of this Act. At least a majority plus one of such
18 members shall be holders of currently valid permits issued
19 under Section 54005 of this Act or corresponding
20 provisions of prior law. The term of each member of the
21 Board shall be four years. Vacancies occurring during a
22 term shall be filled by appointment by the Governor for
23 the unexpired term. Upon the expiration of his term of
24 office, a member shall continue to serve until his
25 successor shall have been appointed and taken office. Any
26 member of the Board whose permit under Section 54004 of

1 this Act is revoked or suspended shall automatically cease
2 to be a member of the Board, and the Governor may, after
3 a hearing pursuant to the Administration Adjudication Law,
4 Section 24000 et. seq. of the Government Code of Guam,
5 remove any member of the Board for neglect of duty or
6 other just cause.

7 (b) The Board shall elect annually among its members
8 a chairman and such other officers as the Board may
9 determine to be appropriate. The Board shall meet at such
10 times and places as may be fixed by the Board. Meetings
11 of the Board shall be open to the public except insofar
12 as they are concerned with investigations under Section
13 54010 of this Act and except as may be necessary to
14 protect information that is required to be kept
15 confidential by Board rules or by the laws of this
16 Territory. A majority of the Board members then in office
17 shall constitute a quorum at any meeting duly called. The
18 Board shall have a seal which shall be judicially noticed.
19 The Board shall retain or arrange for the retention of all
20 applications and all documents under oath that are filed
21 with the Board and also records of its proceedings, and
22 it shall maintain a registry of the names and addresses
23 of all licensees under this Act. In any proceeding in
24 court, civil or criminal, arising out of or founded upon
25 any provision of this Act, copies of any of said records
26 certified as true copies under the seal of the Board shall

1 be admissible in evidence as tending to prove the contents
2 of said records.

3 (c) Each member of the Board shall be paid an amount
4 established by law for each day or portion thereof spent
5 in the discharge of this official duties and shall be
6 reimbursed for his actual and necessary expenses incurred
7 in the discharge of his official duties.

8 (d) All monies collected by the Board from fees
9 authorized to be charged by this Act shall be received
10 and accounted for by the Board and shall be deposited with
11 the Treasurer of Guam to the credit of the Board. Such
12 monies shall be made available for the expenses of
13 administering the provisions of this Act, which may
14 include, but shall not be limited to, the costs of
15 conducting investigations and of taking testimony and
16 procuring the attendance of witnesses before the Board or
17 its committees; all legal proceedings taken under this Act
18 for the enforcement thereof; and educational programs for
19 the benefit of the public and licensees and their
20 employees.

21 (e) The Board shall file an annual report of its
22 activities with the Governor and the Legislature, which
23 report shall include a listing of all current licensees
24 under this Act. The Board shall mail a copy of the annual
25 report to any person requesting it and paying a reasonable
26 charge therefor.

1 (f) The Board may employ an executive director and
2 such other personnel as it deems necessary in its
3 administration and enforcement of this Act. It may
4 appoint such committees and persons, to advise or assist
5 it in such administration and enforcement, as it may see
6 fit. It may retain its own counsel to advise and assist
7 it in addition to such advice and assistance as is
8 provided by the Attorney General of this Territory.

9 (g) The Board shall have the power to take all
10 action that is necessary and proper to effectuate the
11 purposes of this Act, including the power to sue and be
12 sued in its official name as an agency of this Territory;
13 to issue subpoenas to compel the attendance of witnesses
14 and the production of documents; to administer oaths; to
15 take testimony and to receive evidence concerning all
16 matters within its jurisdiction. In case of disobedience
17 of a subpoena, the Board may invoke the aid of any court
18 of this Territory in requiring the attendance and
19 testimony of witnesses and the production of documentary
20 evidence. The Board, its members, and its agents shall
21 be immune from personal liability for actions taken in
22 good faith in the discharge of the Board's
23 responsibilities, and the Territory shall hold the Board,
24 its members, and its agents harmless from all costs,
25 damages, and attorneys' fees arising from claims and suits
26 against them with respect to matters to which such

1 immunity applies.

2 (h) The Board may adopt rules governing its
3 administration and enforcement of this Act and the conduct
4 of licensees, including but not limited to --

5 (1) Rules governing the Board's meetings
6 and the conduct of its business;

7 (2) Rules of procedure governing the
8 conduct of investigations and hearings by the
9 Board;

10 (3) Rules specifying the educational
11 qualifications required for the issuance of
12 certificates under Section 54004 of this Act
13 (the experience required for initial issuance
14 of permits under Section 54005(c)(z)) and the
15 continuing professional education required for
16 renewal of permits under Section 54005(e);

17 (4) Rules of professional conduct directed
18 to controlling the quality and probity of the
19 practice of public accountancy by permit
20 holders, and dealing among other things with
21 independence, integrity, and objectivity;
22 competence and technical standards;
23 responsibilities to the public; and
24 responsibilities to clients;

25 (5) Rules specifying actions and
26 circumstances that shall be deemed to

1 constitute holding oneself out as a licensee in
2 connection with the practice of public
3 accountancy within the meaning of Section
4 54002(g);

5 (6) Rules governing the manner and
6 circumstances of use by holders of certificates
7 who do not also hold permits under this Act of
8 the titles "certified public accountant" and
9 "CPA";

10 (7) Rules regarding quality reviews that
11 may be required to be performed under the
12 provisions of this Act; and

13 (8) Such other rules as the Board may deem
14 necessary or appropriate for implementing the
15 provisions and the purposes of this Act.

16 (i) All rules or amendments thereto as promulgated
17 under subsection (h) of this Section or under any other
18 provision of this Act shall be adopted pursuant to the
19 rule making procedures set forth in Sections 24200 et.
20 seq., as amended, of the Government Code of Guam.

21 Section 54004. Certified Public Accountants.

22 (a) The Board shall grant the certificate of
23 "certified public accountant" to any person who meets the
24 good character, education and examination requirements of,
25 and who pays the fees prescribed by, the following
26 subsections of this Section.

1 (b) Good character for purposes of this Section
2 means lack of a history of dishonest or felonious acts.
3 The Board may refuse to grant a certificate if the finding
4 by the Board of lack of good character is supported by
5 clear and convincing evidence. When an applicant is found
6 to be unqualified for a certificate because of lack of
7 good character, the Board shall furnish the applicant a
8 statement containing the findings of the Board, a complete
9 record of the evidence upon which the determination was
10 based, and a notice of the applicant's right of appeal.

11 (c) The education requirement for a certificate,
12 which must be met no later than 120 days after an
13 applicant sits for the examination prescribed in
14 subsection (d), shall be a baccalaureate degree or its
15 equivalent conferred by a college or university acceptable
16 to the Board, with an accounting concentration or
17 equivalent as determined by the Board by rule to be
18 appropriate.

19 (d) The examination required to be passed as a
20 condition for the granting of a certificate shall include
21 but not be limited to the Uniform Certified Public
22 Accountancy examination of AICPA (or other uniformly
23 adopted examination of every United States Accountancy
24 licensing jurisdiction), shall be in writing, shall be
25 held twice a year, and shall test the applicant's
26 knowledge of the subjects as the Board may specify by

1 rule. The time for holding such examination shall be
2 fixed by the Board and may be changed from time to time.
3 The Board shall prescribe by rule the methods of applying
4 for and conducting the examination, including methods of
5 grading papers and determining a passing grade required
6 of an applicant for certificate provided, however, that
7 the Board shall to the extent possible see to it that the
8 grading of the examination, and the passing grades, are
9 uniform with those applicable in all other states. The
10 Board may make such use of all or any part of the Uniform
11 Certified Public Accountant Examination and Advisory
12 Grading Service of the American Institute of Certified
13 Public Accountants and may contract with third parties to
14 perform such administrative services with respect to the
15 examination as it deems appropriate to assist it in
16 performing its duties hereunder.

17 (e) An applicant shall be required to pass all parts
18 of the examination provided for in subsection (d) in order
19 to qualify for a certificate. If at a given sitting of
20 the examination an applicant passes two or more but not
21 all parts (with the accounting practice part of the
22 examination being treated for this purpose as two parts),
23 then applicant shall be given credit for those parts that
24 he has passed and need not sit for reexamination in those
25 parts, provided that--

26 (1) the applicant wrote all parts of the

1 examination at that sitting;

2 (2) the applicant attained a minimum grade
3 of 50 on each part not passed at that sitting

4 (3) the applicant passes the remaining
5 parts of the examination within six consecutive
6 examinations given after the one at which the
7 first parts were passed;

8 (4) at each subsequent sitting at which
9 the applicant seeks to pass any additional
10 parts, the applicant writes all parts not yet
11 passed; and

12 (5) in order to receive credit for passing
13 additional parts in any such subsequent
14 sitting, the applicant attains a minimum grade
15 of 50 on parts written but not passed on such
16 sitting.

17 (f) An applicant shall be given credit for any and
18 all parts of an examination passed in another state if
19 such credit would have been given, under then applicable
20 requirements, if the applicant had taken the examination
21 in this Territory.

22 (g) the Board may in particular cases waive or defer
23 any of the requirements of subsections (e) and (f)
24 regarding the circumstances in which the various parts of
25 the examination must be passed, upon a showing that, by
26 reason of circumstances beyond the applicant's control,

1 he was unable to meet such requirement.

2 (h) the board may charge, or provide for a third
3 party administering the examination to charge, each
4 applicant a fee, in an amount prescribed by the Board by
5 rule, for each part of the examination or reexamination
6 taken by the applicant.

7 (i) Upon the effective date of this legislation,
8 any person holding a valid certificate issued under prior
9 Guam legislation shall be deemed to have met the
10 requirements for certification in this Section.

11 Section 54005. Permits to Practice--Individual.

12 (a) The Board shall grant or renew permits to
13 practice public accountancy to persons who make
14 application and demonstrate their qualifications therefor
15 in accordance with the following subsections of this
16 Section.

17 (b) Permits shall be initially issued, and renewed,
18 for a period of one year but in any event shall expire on
19 the last day of December of each year and may be renewed
20 annually for a period of one year by certificate holders
21 and registrants in good standing upon payment of an annual
22 renewal fee of not to exceed twenty-five dollars (\$25.00).
23 Applications for such permits shall be made in such form,
24 and in the case of applications for renewal, between such
25 dates, as the Board shall grant or deny any such
26 application no later than 60 days after the application

1 is filed in proper form. In any case where the applicant
2 seeks the opportunity to show that issuance or renewal of
3 a permit was mistakenly denied, or where the Board is not
4 able to determine whether it should be granted or denied,
5 the Board may issue to the applicant a provisional permit,
6 which shall expire ninety days after its issuance or when
7 the Board determines whether or not to issue or renew the
8 permit for which application was made, whichever shall
9 first occur.

10 (c) An applicant for initial issuance of a permit
11 under this Section shall show--

12 (1) that he holds a valid certificate;

13 (2) that he has had two years of
14 experience in the practice of public
15 accountancy, meeting requirements prescribed by
16 the Board by rule; or, if the applicant's
17 educational qualifications comprise a
18 baccalaureate degree with an accounting
19 concentration or equivalent as determined by
20 the Board by rule to be appropriate under
21 Section 54004(c), and not less than thirty
22 semester hours of additional study, then that
23 he has had one year of experience in such
24 practice;

25 (3) if the applicant's certificate was
26 issued more than four years prior to his

1 application for issuance of an initial permit
2 under this Section, that he has fulfilled the
3 requirements of continuing professional
4 education that would have been applicable under
5 subsection (e) of this Section if he had
6 secured his initial permit within four years of
7 issuance of his certificate and was now
8 applying under subsection (e) for renewal of
9 such permit.

10 (d) The Board shall issue a permit to a holder of
11 a certificate issued by another state upon a showing that-

12 -

13 (1) The applicant passed the examination
14 required for issuance of his certificate with
15 grades that would have been passing grades at
16 the time in this Territory;

17 (2) The applicant--

18 (A) meets all current requirements
19 of this Territory for issuance of a
20 certificate at the time application is
21 made; or

22 (B) at the time of the issuance of
23 the applicant's certificate in the
24 other state, met all such requirements
25 then applicable in this Territory; or

26 (C) had four years of experience

1 in the practice of public accountancy
2 or equivalent meeting requirements
3 prescribed by the Board by rule, after
4 passing the examination upon which his
5 certificate was based and within the
6 ten years immediately preceding his
7 application; and

8 (3) The applicant meets the requirements
9 of subsection (c) (2) and (3).

10 (e) An applicant for renewal of a permit under this
11 Section must show:

12 (1) During the three year period
13 immediately following the effective date of
14 this Act, that he has fulfilled the
15 requirements of continuing professional
16 education which the Board may establish by
17 promulgation of regulations.

18 (2) After the expiration of the three year
19 period immediately following the effective date
20 of this Act, that he has fulfilled requirements
21 of continuing professional education consisting
22 of no less than twenty hours in each one year
23 renewal period and one hundred twenty hours in
24 any three year period elapsed since the permit
25 was last renewed, (or if never renewed, first
26 issued), of such general kinds and in such

1 subjects as shall have been specified by the
2 Board by rule.

3 (3) The Board may provide by rule that
4 fulfillment of continuing professional
5 education requirements of other states will be
6 accepted in lieu of the foregoing requirements.
7 The Board may also provide by rule for prorated
8 continuing professional education requirements
9 to be met by applicants whose initial permits
10 were issued substantially less than one year
11 prior to the renewal date, and it may prescribe
12 by rule special lesser requirements to be met
13 by applicants for permit renewal whose prior
14 permits lapsed substantially prior to their
15 applications for renewal, and regarding whom it
16 would in consequence be inequitable to require
17 a full compliance with all requirements of
18 continuing professional education that would
19 otherwise have been applicable to the period of
20 lapse.

21 (f) The Board shall charge a fee for each
22 application for initial issuance or renewal of
23 a permit under this Section in an amount
24 prescribed by the Board by rule.

25 (g) Applicants for initial issuance or
26 renewal of permits under this Section shall in

1 their applications list all states in which
2 they have applied for or hold certificates or
3 permits, and each holder of or applicant for a
4 permit under this Section shall notify the
5 Board in writing, within 30 days after its
6 occurrence, or any issuance, denial,
7 revocation, or suspension of a certificate or
8 permit by another state.

9 (h) Upon the effective date of this
10 legislation, any person holding a valid
11 certificate issued under prior Guam legislation
12 shall be automatically issued an initial permit
13 practice.

14 Section 54006. Permits to Practice--Firms.

15 (a) The Board shall grant or renew permits
16 to practice public accountancy to firms that
17 make application and demonstrate their
18 qualifications therefore in accordance with the
19 following subsections of this Section.

20 (b) Permits shall be initially issued and
21 renewed for periods of one year but in any
22 event expiring on December 31 of each year.
23 Applications for permits shall be made in such
24 form, and in the case of applications for
25 renewal, between such dates as the Board may by
26 rule specify, and the Board shall grant or deny

1 any such application no later than 30 days
2 after the application is filed in proper form.
3 In any case where the applicant seeks the
4 opportunity to show that issuance or renewal of
5 a permit was mistakenly denied or where the
6 Board is not able to determine whether it
7 should be granted or denied, the Board may
8 issue to the applicant a provisional permit,
9 which shall expire 90 days after its issuance
10 or when the Board determines whether or not to
11 issue or renew the permit for which application
12 was made, whichever shall first occur.

13 (c) An applicant for initial issuance or
14 renewal of a permit to practice under this
15 Section shall be required to show that each
16 partner, officer, or shareholder who regularly
17 works in this Territory, and each employee
18 holding a certificate who regularly works in
19 this Territory (except for employees who have
20 not yet accumulated sufficient experience to
21 qualify for a permit under Section
22 54005(c)(2)), holds a valid individual permit
23 to practice issued under Section 54005 of this
24 Act of the corresponding provision if prior law
25 and that each other partner, officer, or
26 shareholder holds a certificate and is licensed

1 to practice public accountancy in some other
2 state.

3 (d) An applicant for initial issuance or
4 renewal of a permit to practice under this
5 Section shall be required to register each
6 office of the firm within this Territory with
7 the Board and to show that each such office is
8 under the charge of a person holding a valid
9 permit to practice issued under Section 54005
10 of this Act or the corresponding provision of
11 prior law. If an applicant does not maintain
12 a permanent office in this Territory, he shall
13 be required to obtain a valid business license
14 prior to issuance of a permit to practice.

15 (e) The Board shall charge a fee for each
16 application for initial issuance or renewal of
17 permit under this Section in an amount
18 prescribed by the Board by rule.

19 (f) Applicants for initial issuance or
20 renewal of permits under this Section shall in
21 their application list all states in which they
22 have applied for or hold permits to practice
23 public accountancy, and each holder of or
24 applicant for a permit under this Section shall
25 notify the Board in writing, within 30 days
26 after its occurrence, of any change in the

1 identities of partners, officers, or
2 shareholders who work regularly within this
3 Territory, any change in the number or location
4 of offices within this Territory, any change in
5 the identity of the persons in charge of such
6 office, and any issuance, denial, revocation,
7 or suspension of a permit by any other state.

8 (g) Upon the effective date of this
9 legislation, any firm holding a valid Guam
10 business license to practice public accounting
11 shall automatically be issued an initial permit
12 to practice.

13 Section 54007. Public Accountants and Firms of
14 Public Accountants.

15 Persons and firms who on the effective date of this
16 Act hold registration as public accountants and permits
17 to practice public accountancy issued under prior law of
18 this Territory shall be entitled to have their permits to
19 practice renewed under Sections 54005 and 54006 of this
20 Act, provided that they fulfill all requirements for
21 renewal under those provisions. So long as such licensees
22 hold valid permits to practice under Sections 54005 and
23 54006, they shall be entitled to engage in the practice
24 of public accountancy to the same extent as other holders
25 of such permits, and in addition they shall be entitled
26 to use the designations "public accountants" and "PA", but

1 not other designation, in connection with the practice of
2 public accountancy.

3 Section 54008. Appointment of Director of Revenue
4 & Taxation as Agent.

5 Application by a person or firm not a resident of
6 this Territory for a certificate under Section 54004 of
7 this Act or a permit to practice under Section 54004,
8 Section 54005 or Section 54006 shall constitute
9 appointment of the Director of Revenue and Taxation as
10 the applicant's agent upon whom process may be served in
11 any action or proceeding against the applicant arising
12 out of any transaction or operation connected with or
13 incidental to the practice of public accountancy by the
14 applicant within this Territory.

15 Section 54009. Enforcement Against Holders of
16 Certificates and Permits.

17 (a) After notice and hearing pursuant to Section
18 54011 of this Act, the Board may revoke any certificate
19 or permit issued under Sections 54004, 54005, or 54006 of
20 this Act or corresponding provisions of prior law; suspend
21 any such certificate or permit or refuse to renew any such
22 permit for a period of not more than five years;
23 reprimand, censure, or limit the scope of practice of any
24 licensee; impose an administrative fine not exceeding
25 \$1000, or place any licensee on probation, all with or
26 without terms, conditions, and limitations, for any one

1 or more of the following reasons:

2 (1) Fraud or deceit in obtaining a
3 certificate or permit;

4 (2) Cancellation, revocation, suspension
5 or refusal to renew authority to engage in the
6 practice of public accountancy in any other
7 state for any cause;

8 (3) Failure, on the part of a holder of a
9 permit under Section 54005 and 54006, to
10 maintain compliance with the requirements for
11 issuance of renewal of such permit or to report
12 changes to the Board under Section 54005(g) or
13 54006(f);

14 (4) Revocation or suspension of the right
15 to practice before any state or federal agency;

16 (5) Dishonesty, fraud, or gross negligence
17 in the practice of public accountancy or in the
18 filing or failure to file his own income tax
19 returns;

20 (6) Violation of any provision of this Act
21 or rule promulgated by the Board under this
22 Act;

23 (7) Violation of any rule of professional
24 conduct promulgated by the Board under Section
25 54003(h)(4) of this Act;

26 (8) Conviction of a felony, or of any

1 crime an element of which is dishonesty or
2 fraud, under the laws of the United States, of
3 this Territory, or of any other state if the
4 acts involved would have constituted a crime
5 under the laws of this Territory;

6 (9) Performance of any fraudulent act
7 while holding a certificate or permit issued
8 under this Act or prior law; and

9 (10) Any conduct reflecting adversely upon
10 the licensee's fitness to engage in the
11 practice of public accountancy.

12 (b) In lieu of or in addition to any remedy
13 specifically provided in subsection (a) of this Section,
14 the Board may require of a licensee--

15 (1) A quality review conducted in such
16 fashion as the Board may specify; and/or

17 (2) Satisfactory completion of such
18 continuing professional education programs as
19 the Board may specify.

20 (c) In any proceeding in which a remedy provided by
21 subsections (a) or (b) of this Section is imposed, the
22 Board may also require the respondent licensee to pay the
23 costs of the proceeding.

24 Section 54010. Enforcement Procedures--
25 Investigations.

26 (a) The Board may, upon receipt of a complaint or

1 other information suggesting violations of this Act or of
2 the rules of the Board, conduct investigations to
3 determine whether there is probable cause to institute
4 proceedings under Sections 54011, 54014 or 54015 of this
5 Act against any person or firm for such violation, but an
6 investigation under this Section shall not be a
7 prerequisite to such proceedings in the event that a
8 determination of probable cause can be made without
9 investigation. In aid of such investigations, the Board
10 or the chairman therefore may issue subpoenas to compel
11 witnesses to testify and/or to produce evidence.

12 (b) The Board may designate a member, or any other
13 person of appropriate competence, to serve as
14 investigating officer to conduct an investigation. Upon
15 completion of an investigation, the investigating officer
16 shall file a report with the Board. The Board shall find
17 probable cause upon the basis of the report or shall
18 return the report to the investigating officer for further
19 investigation. Unless there has been a determination of
20 probable cause, the report of the investigating officer,
21 the complaint, if any, the testimony and documents
22 submitted in support of the complaint or gathered in the
23 investigation, and the fact of pendency of the
24 investigation shall be treated as confidential information
25 and shall not be disclosed to any person except law
26 enforcement authorities and, to the extent deemed

1 necessary in order to conduct the investigation, the
2 subject of the investigation, persons whose complaints are
3 being investigated, and witnesses questioned in the course
4 of investigation.

5 (c) Upon a finding of probable cause, if the subject
6 of the investigation is a licensee, the Board shall direct
7 that a complaint be issued under Section 54011 of this
8 Act, and if the subject of the investigation is not a
9 licensee, the Board shall take appropriate action under
10 Section 54014 and 54015 of this Act. Upon a finding of
11 no probable cause, Board shall close the matter and shall
12 thereafter release information relating thereto only with
13 the consent of the person or firm under investigation.

14 (d) The Board may review the publicly available
15 professional work of licensees on a general and random
16 basis, without any requirement of a formal complaint or
17 suspicion of impropriety on the part of any particular
18 licensee. In the event that as a result of such review
19 the Board discovers reasonable grounds for a more specific
20 investigation, the Board may proceed under subsections (a)
21 through (c) of this Section.

22 Section 54011. Enforcement Procedures--Hearings by
23 the Board.

24 (a) In any case where probable cause with respect
25 to a violation by a licensee has been determined by the
26 Board, whether following an investigation under Section

1 54010 of this Act, or upon receipt of a written complaint
2 furnishing grounds for a determination of such probable
3 cause, or upon receipt of notice of a decision by the
4 Board of Accountancy of another state furnishing such
5 grounds, the Board shall issue a complaint setting forth
6 appropriate charges and set a date for hearing before the
7 Board of such charges. The Board shall, not less than 30
8 days prior to the date of the hearing, serve a copy of the
9 complaint and notice of the time and place of the hearing
10 upon the licensee, together with a copy of the Board's
11 rule governing proceedings under this Section, either by
12 personal delivery or by mailing a copy thereof by
13 registered mail to the licensee at his address last known
14 to the Board.

15 (b) A licensee against whom a complaint has been
16 issued under this Section shall have the right, reasonably
17 in advance of the hearing, to examine and copy the report
18 of investigation, if any, and any documentary or
19 testimonial evidence and summaries of anticipated evidence
20 in the Board's possession relating to the subject matter
21 of the complaint. The Board's rules governing proceedings
22 under this Section shall specify the manner in which such
23 right may be exercised.

24 (c) In a hearing under this Section the respondent
25 licensee may appear in person (or, in the case of a firm,
26 through a partner, officer, director, or shareholder)

1 and/or by counsel, examine witnesses and evidence
2 presented in support of the complaint, and present
3 evidence and witnesses on his own behalf. The licensee
4 shall be entitled, on application to the Board, to the
5 issuance of subpoenas to compel the attendance of
6 witnesses and the production of documentary evidence.

7 (d) The evidence supporting the complaint shall be
8 presented by the investigating officer, by a Board member
9 designated for that purpose, or by counsel. A Board
10 member who presents the evidence, or who has conducted the
11 investigation of the matter under Section 54010 of this
12 Act, shall not participate in the Board's decision of the
13 matter.

14 (e) In a hearing under this Section the Board shall
15 be advised by counsel, who shall not be the same counsel
16 who presents or assists in presenting the evidence
17 supporting the complaint under subsection (d) of this
18 Section.

19 (f) In a hearing under this Section the Board shall
20 not be bound by technical rules of evidence.

21 (g) In a hearing under this Section a stenographic
22 or electronic record shall be made and filed with the
23 Board. A transcript need not be prepared unless review
24 is sought under subsection (j) of this Section or the
25 Board determines that there is other good cause for its
26 preparation.

1 (h) In a hearing under this Section a recorded vote
2 of a majority of all members of the Board then in office
3 (excluding members disqualified by reason of subsection
4 (d) of this Section) shall be required to sustain any
5 charge and to impose any penalty with respect thereto.

6 (i) If, after service of a complaint and notice of
7 hearing as provided in subsection (a) of this Section,
8 the respondent licensee fails to appear at the hearing,
9 the Board may proceed to hear evidence against the
10 licensee and may enter such order as it deems warranted
11 by the evidence, which order shall be final unless the
12 licensee petitions for review thereof under subsection
13 (j) of this Section, provided, however, that within thirty
14 days from the date of any such order, upon a showing of
15 good cause for the licensee's failure to appear and
16 defend, the Board may set aside the order and schedule a
17 new hearing on the complaint, to be conducted in
18 accordance with applicable subsections of this Section.

19 (j) Any person or firm adversely affected by any
20 order of the Board entered after a hearing under this
21 Section may obtain review thereof by filing a written
22 petition for review with the Superior Court within thirty
23 days after the entry of said order. The procedures for
24 review and the scope of the review shall be as specified
25 in the Administrative Adjudication Law, Guam Government
26 Code, Sections 24140 and 24141.

1 (k) In any case where the board renders a decision
2 imposing discipline against a licensee under this Section
3 and Section 54009 of this Act, the Board shall examine its
4 records to determine whether the licensee holds a
5 certificate or a permit to practice public accountancy in
6 any other state; and if so, the Board shall notify the
7 Board of Accountancy of such other state of its decision,
8 by mail, within forty-five days of rendering the decision.
9 The Board may also furnish information relating to
10 proceedings resulting in disciplinary action to other
11 public authorities and to private professional
12 organizations having a disciplinary interest in the
13 licensee.

14 Section 54012. Reinstatement.

15 (a) In any case where the Board has suspended or
16 revoked a certificate or a permit or refused to renew a
17 permit, the Board may, upon application in writing by the
18 person or firm affected and for good cause shown, modify the
19 suspension, or reissue the certificate or permit.

20 (b) The Board shall by rule specify the manner in
21 which such application shall be made, the times within
22 which they shall be made, and the circumstances in which
23 hearings will be held thereon.

24 (c) Before reissuing, or terminating the suspension
25 of, a certificate or permit under this Section, and as a
26 condition thereto, the Board may require the applicant

1 therefor to show successful completion of specified
2 continuing professional education; and the Board may make
3 the reinstatement of a certificate or permit conditional
4 and subject to satisfactory completion of a quality review
5 conducted in such fashion as the Board may specify.

6 Section 54013. Unlawful Acts.

7 (a) No person or firm not holding a valid permit
8 issued under Sections 54005 and 54006 of this Act shall
9 issue a report on financial statements of any other
10 person, firm, organization, or governmental unit. This
11 prohibition does not apply to an officer, partner, or
12 employee of any firm or organization affixing his
13 signature to any statement or report in reference to the
14 financial affairs of such firm or organization with any
15 wording designating the position, title or office that he
16 holds therein; nor prohibit any act of a public official
17 or employee in the performance of his duties as such; nor
18 prohibit the performance by any persons of other services
19 involving the use of accounting skills, including the
20 preparation of tax returns, management advisory services,
21 and the preparation of financial statements without the
22 issuance of reports thereon.

23 (b) The prohibition contained in subsection (a) of
24 this Section is applicable to issuance, by a person or
25 firm not holding a valid permit, or a report using any
26 form of language conventionally used by licensees

1 respecting a review of financial statements.

2 (c) The prohibition contained in subsection (a) of
3 this Section is applicable to issuance by a person or firm
4 not holding a valid permit of a report using any form of
5 language conventionally used by licensees with respect to
6 a compilation of financial statements.

7 (d) No person not holding a valid certificate shall
8 use or assume the title or designation "certified public
9 accountant," or the abbreviation "CPA" or any other title,
10 designation, words, letters, abbreviation, sign, card, or
11 device tending to indicate that such person is a certified
12 public accountant.

13 (e) No firm shall assume or use the title or
14 designation "certified public accountant," or the
15 abbreviation "CPA," or any other title, designation,
16 words, letters, abbreviation, sign, card, or device
17 tending to indicate that such firm is composed of
18 certified public accountants, unless (1) the firm holds
19 a valid permit issued under Section 54006 of this Act,
20 and (2) all partners, officers, and shareholders of the
21 firm hold certificates.

22 (f) No person shall assume or use the title or
23 designation "public accountant," or the abbreviation "PA,"
24 or any other title, designation, words, letters,
25 abbreviation, sign, card, or device tending to indicate
26 that such person is a public accountant unless he holds

1 a valid permit issued under Section 54005 of this Act.

2 (g) No firm not holding a valid permit issued under
3 Section 54006 of this Act shall assume or use the title
4 or designation "public accountant," the abbreviation "PA,"
5 or other title, designation, words, letters, abbreviation,
6 sign, card or device tending to indicate that such firm
7 is composed of public accountants.

8 (h) No person or firm not holding a valid permit
9 issued under Section 54005 or 54006 of this Act shall
10 assume or use the title or designation "certified
11 accountant," "chartered accountant," "enrolled
12 accountant," "licensed accountant," "registered
13 accountant," "accredited accountant," or any other title
14 or designation likely to be confused with the titles
15 "certified public accountant" or "public accountant," or
16 use any of the abbreviations "CA," "EA," "LA," "RA," "AA,"
17 or similar abbreviation likely to be confused with the
18 abbreviations "CPA" or "PA," provided, however, that a
19 holder of a certificate who does not also hold a permit
20 may use the titles pertaining to such certificate in any
21 manner not prohibited by rules promulgated by the Board
22 under Section 54003 (h) (6) of this Act.

23 (i) No person or firm not holding a valid permit
24 issued under Sections 54005 and 54006 of this Act shall
25 assume or use any title or designation that includes the
26 words "accountant," "auditor," or "accounting," in

1 connection with any other language (including the language
2 of a report) that implies that such person or firm holds
3 such a permit or has special competence as an accountant
4 or auditor, provided, however, that this subsection does
5 not prohibit any officer, partner, or employee of any firm
6 or organization from affixing his signature to any
7 statement in reference to the organization from affixing
8 his signature to any statement in reference to the
9 financial affairs of such firm or organization with any
10 wording or designating the position, title, or office that
11 he holds therein nor prohibit any act of a public official
12 or employee in the performance of his duties as such.

13 (j) No person holding a certificate shall engage in
14 the practice of public accountancy unless (1) he also
15 holds a valid permit issued under Section 54005 of this
16 Act, or (2) he is an employee (and not a partner, officer
17 or shareholder) of a firm holding such permit issued under
18 Section 54006 of this Act and has not been such an
19 employee long enough to meet the experience requirements
20 prescribed by Section 54005(c)(2) for an individual permit
21 to practice.

22 (k) No person or firm holding a permit under this
23 Act shall engage in the practice of public accountancy
24 using a professional or firm name or designation that is
25 misleading about the legal form of the firm, or about the
26 persons who are partners, officers, or shareholders of the

1 firm, or about any other matter, provided, however, that
2 names of one or more former partners or shareholders may
3 be included in the name of a firm or its successor.

4 (1) None of the foregoing provisions of this Section
5 shall have any application to a person or firm holding a
6 certification, designation, degree, or licensee granted
7 in a foreign country entitling the holder thereof to
8 engage in the practice of public accountancy or its
9 equivalent in such country, whose activities in this
10 Territory are limited to the provision of professional
11 services to persons or firms who are residents of,
12 governments of, or business entities of the country in
13 which he holds such entitlement, who issues no reports
14 with respect to the financial statements of any other
15 persons, firms or governmental units in this Territory any
16 title or designation other than the one under which he
17 practices in such country, followed by a translation of
18 such title or designation into the English language, if
19 it is in a different language, and by the name of such
20 country.

21 (m) No firm shall practice public accountancy (as
22 defined in 54002(g) of this Act) in this Territory without
23 a valid permit to practice under 54006.

24 Section 54014. Injunctions Against Unlawful Acts.

25 Whenever, as a result of an investigation under
26 Section 54010 of this Act or otherwise, the Board believes

1 that any person or firm has engaged, or is about to
2 engage, in any acts or practices which constitute or will
3 constitute a violation of Section 54013 of this Act, the
4 Board may make application to the appropriate court for
5 an order enjoining such acts or practices, and upon a
6 showing by the Board that such person or firm has engaged,
7 or is about to engage, in any such acts or practices, an
8 injunction, restraining order, or other order as may be
9 appropriate shall be granted by such court.

10 Section 54015. Criminal Penalties.

11 (a) Whenever, by reason of an investigation under
12 Section 54010 of this Act or otherwise, the Board has
13 reason to believe that any person or firm has knowingly
14 engaged in acts or practices that constitute a violation
15 of Section 54013 of this Act, the Board may bring its
16 information to the attention of the Attorney General of
17 this Territory who may, in his discretion, cause
18 appropriate criminal proceedings to be brought thereon.

19 (b) Any person or firm who knowingly violates any
20 provision of Section 54013 of this Act shall be guilty of
21 a misdemeanor, and upon conviction thereof shall be
22 subject to a fine of not more than \$1,000 or to
23 imprisonment for not more than one year, or to both such
24 fine and imprisonment.

25 Section 54016. Single Act Evidence of Practice.

26 In any action brought under Sections 54011, 54014 or

1 54015 of this Act, evidence of the commission of a single
2 act prohibited by this Act shall be sufficient to justify
3 a penalty, injunction, restraining order, or conviction,
4 respectively, without evidence of a general course of
5 conduct.

6 Section 54017. Confidential Communications.

7 Except by permission of the client engaging a
8 licensee under this Act, or the heirs, successors, or
9 personal representatives of such client, a licensee or
10 any partner, officer, shareholders, or employee of a
11 licensee shall not voluntarily disclose information
12 communicated to him by the client relating to and in
13 connection with services rendered to the client by the
14 licensee in the practice of public accountancy. Such
15 information shall be deemed confidential, provided,
16 however, that nothing herein shall be construed as
17 prohibiting the disclosure of information required to be
18 disclosed by the standards of the public accountancy
19 profession in reporting on the examination of financial
20 statements or as prohibiting disclosures in court
21 proceedings, in investigations or proceedings under
22 Sections 54010 or 54011 of this Act, in ethical
23 investigations conducted by private professional
24 organizations, or in the course of quality reviews.

25 Section 54018. Licensees' Working Papers; Clients'
26 Records.

1 (a) All statements, records, schedules, working
2 papers, and memorandums made by a licensee or a partner,
3 shareholder, officer, director, or employee of a licensee,
4 incident to, or in the course of, rendering services to
5 a client in the practice of public accountancy, except the
6 reports submitted by the licensee to the client and except
7 for records that are part of the client's records, shall
8 be and remain the property of the licensee in the absence
9 of an express agreement between the licensee and the
10 client to the contrary. No such statement, record,
11 schedule, working paper, or memorandum shall be sold,
12 transferred, or bequeathed, without the consent of the
13 client or his personal representative or assignee, to
14 anyone other than one or more surviving partners or
15 stockholders of the licensee, or any combined or merged
16 firm or successor in interest to the licensee.

17 (b) A licensee shall furnish to his client or former
18 client, upon request and reasonable notice--

19 (1) A copy of the licensee's working
20 papers, to the extent that such working papers
21 include records that would ordinarily
22 constitute part of the client's records and are
23 not otherwise available to the client; and

24 (2) Any accounting or other records
25 belonging to, or obtained from or on behalf of,
26 the client that the licensee removed from the

1 client's premises or received for the client's
2 account; the licensee may make and retain
3 copies of such documents of the client when
4 they form the basis for work done by him.

5 Section 54019. Construction; Severability.

6 If any provision of this Act or the application
7 thereof to any person or entity or in any circumstances
8 is held invalid, the remainder of the Act and the
9 application of such provision to others or in other
10 circumstances shall not be affected thereby.

11 Section 54020. Repeal of Prior Law.

12 Guam Government Code, Title LVII, Sections 54000 to
13 54019, as amended, and all other acts or parts of act in
14 conflict wherewith are hereby repealed, provided, however,
15 that nothing contained in this Act shall invalidate or
16 affect any action taken or any proceeding instituted under
17 any law in effect prior to the effective date hereof.

18 Section 54021. Effective Date.

19 This Act shall take effect upon enactment.