

1-1 By: Chisum, et al. (Senate Sponsor - Nelson) H.B. No. 1218
1-2 (In the Senate - Received from the House April 25, 2003;
1-3 April 28, 2003, read first time and referred to Committee on
1-4 Government Organization; May 23, 2003, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 5,
1-6 Nays 0; May 23, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1218 By: Brimer

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Texas State Board
1-11 of Public Accountancy; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 901.006, Occupations Code, is amended to
1-14 read as follows:

1-15 Sec. 901.006. APPLICATION OF SUNSET ACT. The Texas State
1-16 Board of Public Accountancy is subject to Chapter 325, Government
1-17 Code (Texas Sunset Act). Unless continued in existence as provided
1-18 by that chapter, the board is abolished and this chapter expires
1-19 September 1, 2015 [~~2003~~].

1-20 SECTION 2. Section 901.053, Occupations Code, is amended to
1-21 read as follows:

1-22 Sec. 901.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
1-23 In this section, "Texas trade association" means a [~~nonprofit,~~
1-24 cooperative~~]~~ and voluntarily joined statewide association of
1-25 business or professional competitors in this state designed to
1-26 assist its members and its industry or profession in dealing with
1-27 mutual business or professional problems and in promoting their
1-28 common interest.

1-29 (b) A person may not be a member of the board and may not be a
1-30 board employee employed in a "bona fide executive, administrative,
1-31 or professional capacity," as that phrase is used for purposes of
1-32 establishing an exemption to the overtime provisions of the federal
1-33 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),
1-34 and its subsequent amendments, if:

1-35 (1) the person is acting in the capacity of an [An]
1-36 officer, executive board or executive committee member, employee,
1-37 or paid consultant of a Texas trade association in the field of
1-38 public accountancy; or

1-39 (2) the person's [may not be a member of the board and
1-40 may not be an employee of the board who is exempt from the state's
1-41 position classification plan or is compensated at or above the
1-42 amount prescribed by the General Appropriations Act for step 1,
1-43 salary group A17, of the position classification salary schedule.

1-44 [~~(c) A person who is the~~] spouse is acting in the capacity of
1-45 an officer, executive board or executive committee member, manager,
1-46 or paid consultant of a Texas trade association in the field of
1-47 public accountancy [may not be an employee of the board who is
1-48 exempt from the state's position classification plan or is
1-49 compensated at or above the amount prescribed by the General
1-50 Appropriations Act for step 1, salary group A17, of the position
1-51 classification salary schedule].

1-52 (c) [~~(d)~~] A person may not be [serve as] a member of the
1-53 board or act as the general counsel to the board if the person is
1-54 required to register as a lobbyist under Chapter 305, Government
1-55 Code, because of the person's activities for compensation on behalf
1-56 of a profession related to the operation of the board.

1-57 [~~(e) A member or employee of the board may not be related~~
1-58 ~~within the second degree by consanguinity or affinity, as~~
1-59 ~~determined under Chapter 573, Government Code, to a person who is an~~
1-60 ~~officer, employee, or paid consultant of a trade association of~~
1-61 ~~persons governed by this chapter.]~~

1-62 SECTION 3. Sections 901.056(a) and (c), Occupations Code,
1-63 are amended to read as follows:

- (a) It is a ground for removal from the board that a member:
- (1) does not have at the time of taking office [~~the appointment~~] the qualifications required by Section 901.051;
 - (2) does not maintain during service on the board the qualifications required by Section 901.051 [~~or 901.052~~];
 - (3) is ineligible for membership under [~~violates a prohibition established by~~] Section 901.052 or 901.053;
 - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
 - (5) is absent from more than half of the regularly scheduled board meetings [~~of the board and a committee of the board~~] that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal [~~of a board member~~] exists, the executive director shall notify the presiding officer [~~executive committee~~] of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 4. Subchapter B, Chapter 901, Occupations Code, is amended by adding Section 901.059 to read as follows:

Sec. 901.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) this chapter;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;

- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 5. Section 901.102, Occupations Code, is amended to read as follows:

Sec. 901.102. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policy-making [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 6. Section 901.105, Occupations Code, is amended to read as follows:

Sec. 901.105. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.
 (a) The executive director or the executive director's designee

3-1 shall prepare and maintain a written policy statement that
3-2 implements a program [to ensure implementation] of [an] equal
3-3 employment opportunity to ensure that [program under which] all
3-4 personnel decisions [transactions] are made without regard to race,
3-5 color, disability, sex, religion, age, or national origin.

3-6 (b) The policy statement must include:

3-7 (1) personnel policies, including policies relating
3-8 to recruitment, evaluation, selection, ~~[appointment,]~~ training,
3-9 and promotion of personnel, that show the intent of the board to
3-10 avoid the unlawful employment practices described by Chapter 21,
3-11 Labor Code; and

3-12 (2) an [a comprehensive] analysis of the extent to
3-13 which the composition of the board's personnel is in accordance
3-14 with [board workforce that meets] federal and state law and a
3-15 description of reasonable methods to achieve compliance with
3-16 federal and state law [guidelines;

3-17 ~~[(3) procedures by which a determination can be made~~
3-18 ~~of significant underuse in the board workforce of all persons for~~
3-19 ~~whom federal or state guidelines encourage a more equitable~~
3-20 ~~balance; and~~

3-21 ~~[(4) reasonable methods to appropriately address~~
3-22 ~~those areas of underuse].~~

3-23 (c) The ~~[(b) A]~~ policy statement ~~[prepared under Subsection~~
3-24 ~~(a)]~~ must:

3-25 (1) ~~[cover an annual period;~~
3-26 ~~[(2)]~~ be updated ~~[at least]~~ annually;
3-27 (2) ~~[and (3)]~~ be reviewed by the Commission on Human
3-28 Rights for compliance with Subsection (b)(1); and

3-29 (3) be filed with the governor's office ~~[governor.~~
3-30 ~~[(c) The governor shall deliver a biennial report to the~~
3-31 ~~legislature based on the information received under Subsection (b).~~
3-32 ~~The report may be made separately or as a part of other biennial~~
3-33 ~~reports made to the legislature].~~

3-34 SECTION 7. Subchapter C, Chapter 901, Occupations Code, is
3-35 amended by adding Section 901.106 to read as follows:

3-36 Sec. 901.106. INFORMATION ON STATE EMPLOYEE INCENTIVE
3-37 PROGRAM. The executive director or the executive director's
3-38 designee shall provide to board employees information and training
3-39 on the benefits and methods of participation in the state employee
3-40 incentive program under Subchapter B, Chapter 2108, Government
3-41 Code.

3-42 SECTION 8. Subchapter D, Chapter 901, Occupations Code, is
3-43 amended by adding Section 901.1525 to read as follows:

3-44 Sec. 901.1525. APPOINTMENT OF BOARD COMMITTEES. (a) The
3-45 board may appoint policy-making and working committees to assist
3-46 the board in performing its responsibilities under this chapter.
3-47 The board's policy-making committees shall assist the board in
3-48 establishing policies, drafting rules, setting budgets,
3-49 representing the board, and performing other oversight duties
3-50 necessary to administer this chapter. The board's working
3-51 committees shall assist the board in carrying out the board's
3-52 functions, including reviewing enforcement cases and other
3-53 licensing matters. In establishing committees, the board shall
3-54 maintain the distinction between the types of committees authorized
3-55 by this section.

3-56 (b) A person may not serve on a policy-making committee
3-57 unless the person is a board member. A working committee may
3-58 consist of members who are members of the board and members who are
3-59 not board members. A member of a working committee who is not a
3-60 board member may participate as a full voting member of the
3-61 committee.

3-62 (c) A person may not be a non-board member of a committee if:

3-63 (1) the person is acting in the capacity of an officer,
3-64 executive board or executive committee member, employee, or paid
3-65 consultant of a Texas trade association in the field of public
3-66 accountancy;

3-67 (2) the person's spouse is acting in the capacity of an
3-68 officer, executive board or executive committee member, manager, or
3-69 paid consultant of a Texas trade association in the field of public

4-1 accountancy; or

4-2 (3) the person is required to register as a lobbyist
 4-3 under Chapter 305, Government Code, because of the person's
 4-4 activities for compensation on behalf of a profession related to
 4-5 the operation of the board.

4-6 (d) For purposes of Subsection (c), "Texas trade
 4-7 association" has the meaning assigned by Section 901.053.

4-8 (e) A committee member who is not a member of the board is
 4-9 subject to the same financial disclosure requirements that apply to
 4-10 a member of the board, except that the financial disclosures shall
 4-11 be maintained by the executive director.

4-12 (f) A committee member who is not a member of the board may
 4-13 not serve on the committee if the member:

4-14 (1) violates Subsection (c);
 4-15 (2) cannot, because of illness or disability,
 4-16 discharge the member's duties for a substantial time;

4-17 (3) is absent from more than half of the regularly
 4-18 scheduled meetings of the committee that the member is eligible to
 4-19 attend during a calendar year unless the absence is excused by a
 4-20 majority vote of the committee; or

4-21 (4) does not comply with Subsection (e).

4-22 (g) The board shall adopt rules that provide that a
 4-23 committee member shall refrain from participating in the discussion
 4-24 of and may not vote on an issue before a committee in which the
 4-25 member has a personal or financial interest. A committee member who
 4-26 is not permitted to vote on a matter described by this subsection
 4-27 shall state at the time of the vote the reason why the member is not
 4-28 voting on the matter.

4-29 SECTION 9. Section 901.153, Occupations Code, is amended by
 4-30 amending Subsection (a) and adding Subsections (d) and (e) to read
 4-31 as follows:

4-32 (a) The board may appoint enforcement committees [~~from its~~
 4-33 membership]. An enforcement committee operates as a board working
 4-34 committee. The membership of each enforcement committee must
 4-35 include at least one public member of the board.

4-36 (d) In appointing the members of an enforcement committee,
 4-37 the board must determine whether a prospective committee member who
 4-38 is a license holder under this chapter has been the subject of any
 4-39 disciplinary action under this chapter. A license holder who has
 4-40 been found in violation of this chapter may not serve on an
 4-41 enforcement committee.

4-42 (e) A board member who serves on an enforcement committee
 4-43 that participates in the investigation of a specific complaint may
 4-44 not participate in any subsequent disciplinary proceeding of the
 4-45 board that pertains to the complaint and may not vote on the final
 4-46 disposition of the case. The board shall adopt rules necessary to
 4-47 implement the requirements of this subsection.

4-48 SECTION 10. Subchapter D, Chapter 901, Occupations Code, is
 4-49 amended by adding Section 901.1565 to read as follows:

4-50 Sec. 901.1565. RULES ON CONSEQUENCES OF CRIMINAL
 4-51 CONVICTION. (a) The board shall adopt rules necessary to comply
 4-52 with Chapter 53.

4-53 (b) In its rules under this section, the board shall list
 4-54 the specific misdemeanor offenses for which a conviction would
 4-55 constitute grounds for the board to take action under Section
 4-56 53.021. With regard to a misdemeanor conviction in another state,
 4-57 the board shall develop a process for determining whether the
 4-58 conviction is for an offense listed in the rules required by this
 4-59 subsection.

4-60 SECTION 11. Section 901.160, Occupations Code, is amended
 4-61 by adding Subsection (e) to read as follows:

4-62 (e) The board may disclose information that is confidential
 4-63 under this section to another governmental, regulatory, or law
 4-64 enforcement agency engaged in an enforcement action. The board by
 4-65 rule shall adopt guidelines to assist the board in exercising its
 4-66 authority to share information under this subsection. Subsections
 4-67 (a) and (c) do not apply to information disclosed under this
 4-68 subsection.

4-69 SECTION 12. Subchapter D, Chapter 901, Occupations Code, is

5-1 amended by adding Section 901.166 to read as follows:

5-2 Sec. 901.166. AUTHORITY TO ISSUE SUBPOENA, ADMINISTER OATH,
5-3 AND RECEIVE EVIDENCE. (a) The board may issue a subpoena to compel
5-4 the attendance of a relevant witness or the production, for
5-5 inspection and copying, of relevant documents, records, and other
5-6 evidence, maintained by electronic or other means, that is in this
5-7 state.

5-8 (b) The board may administer oaths and take testimony and
5-9 other evidence regarding any matter under the board's jurisdiction.

5-10 (c) If a person fails to comply with a subpoena, the board,
5-11 acting through the attorney general, may file suit to enforce the
5-12 subpoena in a district court in Travis County or in a county in
5-13 which a hearing conducted by the board may be held.

5-14 (d) On finding that good cause exists for issuing the
5-15 subpoena, the court shall order the person to comply with the
5-16 subpoena. The court may punish a person who fails to obey the court
5-17 order.

5-18 (e) The board shall pay a reasonable fee for photocopies
5-19 subpoenaed under this section in an amount not to exceed the amount
5-20 the board may charge for copies of its own records.

5-21 (f) The reimbursement of the expenses of a witness whose
5-22 attendance is compelled under this section is governed by Section
5-23 2001.103, Government Code.

5-24 SECTION 13. Subchapter D, Chapter 901, Occupations Code, is
5-25 amended by adding Section 901.167 to read as follows:

5-26 Sec. 901.167. NEGOTIATED RULEMAKING AND ALTERNATIVE
5-27 DISPUTE RESOLUTION POLICY. (a) The board shall develop and
5-28 implement a policy to encourage the use of:

5-29 (1) negotiated rulemaking procedures under Chapter
5-30 2008, Government Code, for the adoption of board rules; and

5-31 (2) appropriate alternative dispute resolution
5-32 procedures under Chapter 2009, Government Code, to assist in the
5-33 resolution of internal and external disputes under the board's
5-34 jurisdiction.

5-35 (b) The board's procedures relating to alternative dispute
5-36 resolution must conform, to the extent possible, to any model
5-37 guidelines issued by the State Office of Administrative Hearings
5-38 for the use of alternative dispute resolution by state agencies.

5-39 (c) The board shall designate a trained person to:

5-40 (1) coordinate the implementation of the policy
5-41 adopted under Subsection (a);

5-42 (2) serve as a resource for any training necessary for
5-43 implementation of the negotiated rulemaking or alternative dispute
5-44 resolution procedures; and

5-45 (3) collect data on the effectiveness of the
5-46 procedures implemented by the board.

5-47 SECTION 14. Subchapter D, Chapter 901, Occupations Code, is
5-48 amended by adding Section 901.168 to read as follows:

5-49 Sec. 901.168. TECHNOLOGY POLICY. The board shall develop
5-50 and implement a policy requiring the executive director and board
5-51 employees to research and propose appropriate technological
5-52 solutions to improve the board's ability to perform its functions.
5-53 The technological solutions must:

5-54 (1) ensure that the public is able to easily find
5-55 information about the board on the Internet;

5-56 (2) ensure that persons who want to use the board's
5-57 services are able to:

5-58 (A) interact with the board through the Internet;
5-59 and

5-60 (B) access any service that can be provided
5-61 effectively through the Internet; and

5-62 (3) be cost-effective and developed through the
5-63 board's planning processes.

5-64 SECTION 15. Section 901.203, Occupations Code, is amended
5-65 to read as follows:

5-66 Sec. 901.203. COMPLAINT INFORMATION. (a) The board shall
5-67 maintain a [an information] file on [about] each written complaint
5-68 filed with the board. The file must include:

5-69 (1) the name of the person who filed the complaint;

- 6-1 (2) the date the complaint is received by the board;
- 6-2 (3) the subject matter of the complaint;
- 6-3 (4) the name of each person contacted in relation to
- 6-4 the complaint;
- 6-5 (5) a summary of the results of the review or
- 6-6 investigation of the complaint; and
- 6-7 (6) an explanation of the reason the file was closed,
- 6-8 if the board closed the file without taking action other than to
- 6-9 investigate the complaint.

6-10 (b) The board shall provide to the person filing the
 6-11 complaint and to each person who is a subject of the complaint a
 6-12 copy of the board's policies and procedures relating to complaint
 6-13 investigation and resolution [board for a period not to exceed the
 6-14 10th anniversary of the date of the complaint's final disposition].

6-15 (c) The board, at least quarterly until final disposition of
 6-16 the [(b) If a written] complaint, shall notify [is filed with] the
 6-17 [board relating to a] person filing [regulated under this chapter,
 6-18 the board shall notify the parties to] the complaint and each person
 6-19 who is a subject of the complaint of [each change in] the status of
 6-20 the investigation [complaint, including the final disposition,]
 6-21 unless the notice would jeopardize an undercover investigation.

6-22 SECTION 16. Section 901.304(a), Occupations Code, as
 6-23 amended by Chapters 381 and 1497, Acts of the 77th Legislature,
 6-24 Regular Session, 2001, is reenacted and amended to read as follows:

6-25 (a) For each examination or reexamination, the board by rule
 6-26 shall apportion an amount of the total examination fee among the
 6-27 parts of the examination that an applicant is eligible to take on a
 6-28 particular examination date. For each examination or
 6-29 reexamination, the board shall set [collect] a fee [set] by board
 6-30 rule not to exceed the cost of administering the examination.
 6-31 Notwithstanding Section 2113.203, Government Code, the board may
 6-32 delegate the collection of an examination fee to the person who
 6-33 conducts the examination.

6-34 SECTION 17. Section 901.403, Occupations Code, is amended
 6-35 to read as follows:

6-36 Sec. 901.403. APPLICATION FOR AND RENEWAL OF LICENSE. (a)
 6-37 The board shall specify:

- 6-38 (1) the form of the application for a license;
- 6-39 (2) the term of a license; and
- 6-40 (3) the requirements for renewal of a license.

6-41 (b) The board by rule may adopt a system under which
 6-42 licenses expire on various dates during the year. For the year in
 6-43 which the license expiration date is changed, the board shall
 6-44 prorate license fees on a monthly basis so that each license holder
 6-45 pays only that portion of the license fee that is allocable to the
 6-46 number of months during which the license is valid. On renewal of
 6-47 the license on the new expiration date, the total license renewal
 6-48 fee is payable.

6-49 SECTION 18. Section 901.404(a), Occupations Code, is
 6-50 amended to read as follows:

6-51 (a) Not later than the 30th [31st] day before the expiration
 6-52 date of a person's license, the board shall send written notice of
 6-53 the impending license expiration to the person at the person's last
 6-54 known address according to the board's records.

6-55 SECTION 19. Section 901.405, Occupations Code, is amended
 6-56 to read as follows:

6-57 Sec. 901.405. PROCEDURE FOR RENEWAL. (a) A person who is
 6-58 otherwise eligible to renew a license may renew an unexpired
 6-59 license by paying the required renewal fee to the board before the
 6-60 expiration date of the license. A person whose license has expired
 6-61 may not engage in activities that require a license until the
 6-62 license has been renewed.

6-63 (b) A person whose license has been expired for 90 days or
 6-64 less may renew the license by paying to the board a [the required]
 6-65 renewal fee [and a late fee] that is equal to 1-1/2 times [half of]
 6-66 the normally required renewal [amount of the initial examination]
 6-67 fee [for the license].

6-68 (c) A person whose [If a person's] license has been expired
 6-69 for more than 90 days but less than one year [, the person] may renew

7-1 the license by paying to the board a [all unpaid] renewal [fees and
7-2 a late] fee that is equal to two times the normally required renewal
7-3 [the amount of the initial examination] fee [for the license].

7-4 (d) A person whose license has been expired for at least one
7-5 year but less than two years may renew the license by paying to the
7-6 board a renewal fee that is equal to three times the normally
7-7 required renewal fee.

7-8 (e) A person whose license has been expired for two years or
7-9 more may not renew the license. The person may obtain a new license
7-10 by complying with the requirements and procedures, including the
7-11 examination requirements, for obtaining an original license.

7-12 (f) A person who was licensed in this state, moved to
7-13 another state, and is currently licensed and has been in practice in
7-14 the other state for the two years preceding the date of application
7-15 may obtain a new license without reexamination. The person must pay
7-16 to the board a fee that is equal to two times the normally required
7-17 renewal fee for the license.

7-18 SECTION 20. Section 901.501(a), Occupations Code, is
7-19 amended to read as follows:

7-20 (a) On a determination that a ground for discipline exists
7-21 under Section 901.502, after notice and hearing as provided by
7-22 Section 901.509, the board may:

7-23 (1) revoke a certificate, firm license, or practice
7-24 privilege issued under this chapter;

7-25 (2) suspend under any terms a certificate, firm
7-26 license, practice privilege, or license issued under this chapter
7-27 for a period not to exceed five years;

7-28 (3) refuse to renew a license;

7-29 (4) place a license holder on probation;

7-30 (5) reprimand a license holder;

7-31 (6) limit the scope of a license holder's practice;

7-32 (7) require a license holder to complete a peer review
7-33 program conducted in the manner prescribed by the board;

7-34 (8) require a license holder to complete a continuing
7-35 education program specified by the board;

7-36 (9) impose on a license holder the direct
7-37 administrative costs incurred by the board in taking action under
7-38 Subdivisions (1) through (8); [~~or~~]

7-39 (10) require a license holder to pay restitution as
7-40 provided by Section 901.6015;

7-41 (11) impose an administrative penalty under
7-42 Subchapter L; or

7-43 (12) impose any combination of the sanctions provided
7-44 by this subsection.

7-45 SECTION 21. Section 901.503(c), Occupations Code, is
7-46 amended to read as follows:

7-47 (c) The board shall provide for the refund of the
7-48 examination fee paid [submitted] by a person whose application for
7-49 examination is denied under this section.

7-50 SECTION 22. Subchapter K, Chapter 901, Occupations Code, is
7-51 amended by adding Section 901.5045 to read as follows:

7-52 Sec. 901.5045. EMERGENCY SUSPENSION. (a) On determining
7-53 that a license holder is engaged in or about to engage in an act of
7-54 fraud or a violation of this chapter and that the license holder's
7-55 continued practice constitutes an immediate threat to the public
7-56 welfare, the board may issue an order suspending the license
7-57 holder's license without notice or a hearing. The board shall
7-58 immediately serve notice of the suspension on the license holder.

7-59 (b) The notice required by Subsection (a) must:

7-60 (1) be personally served on the license holder or be
7-61 sent by registered or certified mail, return receipt requested, to
7-62 the license holder's last known address according the board's
7-63 records;

7-64 (2) state the grounds for the suspension; and

7-65 (3) inform the license holder of the right to a hearing
7-66 on the suspension order.

7-67 (c) A license holder whose license is suspended under this
7-68 section is entitled to request a hearing on the suspension not later
7-69 than the 30th day after the date of receipt of notice of the

8-1 suspension. Not later than the fifth day after the date a hearing
8-2 is requested, the board shall issue a notice of hearing as provided
8-3 by Section 901.509.

8-4 (d) The hearing shall be held not later than the fifth day
8-5 after the date notice of hearing is issued, unless the parties agree
8-6 to a later date. A hearing on a suspension order under this section
8-7 is subject to Chapter 2001, Government Code. If the hearing is
8-8 before an administrative law judge, after the hearing, the
8-9 administrative law judge shall recommend to the board whether to
8-10 uphold, vacate, or modify the suspension order.

8-11 (e) A suspension order issued under this section remains in
8-12 effect until further action is taken by the board. If the
8-13 administrative law judge's recommendation under Subsection (d) is
8-14 to vacate the order, the board shall determine whether to vacate the
8-15 order not later than the second day after the date of the
8-16 recommendation.

8-17 SECTION 23. Section 901.552, Occupations Code, is amended
8-18 by amending Subsection (a) and adding Subsection (c) to read as
8-19 follows:

8-20 (a) The amount of an administrative penalty may not exceed
8-21 \$100,000 [~~\$1,000~~] for each violation.

8-22 (c) The board by rule shall adopt a schedule for purposes of
8-23 this subchapter that prescribes ranges in the amounts of
8-24 administrative penalties to be imposed for specified types of
8-25 conduct and circumstances.

8-26 SECTION 24. Section 901.601, Occupations Code, is amended
8-27 to read as follows:

8-28 Sec. 901.601. CEASE AND DESIST ORDER [~~INJUNCTION~~]. (a) If
8-29 it appears to the board that a person is [~~The board may bring an~~
8-30 ~~action to enjoin a person from:~~

8-31 [~~(1) using a title, designation, or abbreviation in~~
8-32 ~~violation of Subchapter J; or~~

8-33 [~~(2)~~] engaging in an act or practice that constitutes
8-34 the practice of public accountancy without a license [~~, unless the~~
8-35 ~~person is licensed]~~ under this chapter, the board, after notice and
8-36 an opportunity for a hearing, may issue a cease and desist order
8-37 prohibiting the person from engaging in that activity.

8-38 (b) A violation of an order under this section constitutes
8-39 grounds for imposition of an administrative penalty under
8-40 Subchapter L. Notwithstanding Section 901.552, the amount of an
8-41 administrative penalty for a violation of an order under this
8-42 section may not exceed \$25,000. [~~An action under Subsection (a)(1)~~
8-43 ~~must be brought in district court in:~~

8-44 [~~(1) Travis County, if the person is licensed under~~
8-45 ~~this chapter or is not a resident of this state; or~~

8-46 [~~(2) the county in which the person resides, if the~~
8-47 ~~person is a resident of this state but is not licensed under this~~
8-48 ~~chapter.]~~

8-49 (c) The board by rule shall adopt a schedule for purposes of
8-50 this section that prescribes ranges in the amounts of
8-51 administrative penalties to be imposed for specified types of
8-52 conduct and circumstances that violate an order under this section.
8-53 [~~An action under Subsection (a)(2) must be brought in district~~
8-54 ~~court in a county in which the person resides or has an office. The~~
8-55 ~~board is not required to post a bond as a condition to the issuance~~
8-56 ~~of the injunction.]~~

8-57 SECTION 25. Subchapter M, Chapter 901, Occupations Code, is
8-58 amended by adding Section 901.6015 to read as follows:

8-59 Sec. 901.6015. RESTITUTION. (a) The board may order a
8-60 license holder to pay restitution under Section 901.501(a)(10) to a
8-61 person harmed by the license holder's:

8-62 (1) violation of this chapter; and

8-63 (2) failure to fulfill the terms of a contract with the
8-64 person.

8-65 (b) The amount of restitution ordered under this section may
8-66 not exceed the actual amount paid by the person to the license
8-67 holder under the contract.

8-68 SECTION 26. Section 901.602(b), Occupations Code, is
8-69 amended to read as follows:

9-1 (b) Except as otherwise provided by this subsection, an [An]
9-2 offense under this section is a Class B misdemeanor. An offense
9-3 under this section that involves intentional fraud is punishable
9-4 as:

9-5 (1) a state jail felony if it is shown on the trial of
9-6 the offense that the violation resulted in a monetary loss of less
9-7 than \$10,000 or did not result in a monetary loss;

9-8 (2) a felony of the third degree if it is shown on the
9-9 trial of the offense that the violation resulted in a monetary loss
9-10 of at least \$10,000 but less than \$100,000; or

9-11 (3) a felony of the second degree if it is shown on the
9-12 trial of the offense that the violation resulted in a monetary loss
9-13 of at least \$100,000.

9-14 SECTION 27. Subchapter M, Chapter 901, Occupations Code, is
9-15 amended by adding Section 901.606 to read as follows:

9-16 Sec. 901.606. IMMUNITY FROM LIABILITY. (a) A person acting
9-17 in good faith who voluntarily reports or assists in the
9-18 investigation of a report of an alleged violation of this chapter or
9-19 who testifies or otherwise participates in an administrative or
9-20 judicial proceeding arising from a report or investigation of an
9-21 alleged violation of this chapter is immune from civil or criminal
9-22 liability that might otherwise be incurred or imposed.

9-23 (b) A person who reports the person's own violation of this
9-24 chapter or who acts in bad faith or with malicious purpose in
9-25 reporting an alleged violation of this chapter is not immune from
9-26 civil or criminal liability.

9-27 SECTION 28. Section 901.304(b), Occupations Code, is
9-28 repealed.

9-29 SECTION 29. The Texas State Board of Public Accountancy
9-30 shall report to the governor, the lieutenant governor, and the
9-31 speaker of the house of representatives, not later than December
9-32 31, 2004, regarding:

9-33 (1) the requirements of the federal Sarbanes-Oxley Act
9-34 (Pub. L. No. 107-204), including any restrictions on public
9-35 interest entities, and any legislation or other action needed to
9-36 conform state law to the requirements of that Act;

9-37 (2) the federal General Accounting Office study on
9-38 audit firm rotation and any legislation or other action needed to
9-39 conform state law to the findings of that study; and

9-40 (3) the rules adopted by the board that are intended to
9-41 comply with the federal standards described by Subdivisions (1) and
9-42 (2) of this section and the board's actions in implementing and
9-43 enforcing those rules.

9-44 SECTION 30. This Act takes effect September 1, 2003.

9-45 SECTION 31. (a) The Texas State Board of Public
9-46 Accountancy shall adopt rules as required by this Act not later than
9-47 March 1, 2004.

9-48 (b) The changes in law made by this Act by Section 901.053,
9-49 Occupations Code, as amended by this Act, and Section 901.059,
9-50 Occupations Code, as added by this Act, in the prohibitions on or
9-51 qualifications of members of the Texas State Board of Public
9-52 Accountancy do not affect the entitlement of a member serving on the
9-53 board immediately before September 1, 2003, to continue to serve
9-54 and function as a member of the board for the remainder of the
9-55 member's term. Those changes in law apply only to a member
9-56 appointed on or after September 1, 2003.

9-57 (c) The change in law made by this Act with respect to
9-58 conduct that is grounds for imposition of a disciplinary sanction,
9-59 including an administrative penalty, restitution, or a cease and
9-60 desist order, applies to conduct that occurs on or after the
9-61 effective date of this Act. Conduct that occurs before the
9-62 effective date of this Act is governed by the law in effect on the
9-63 date the conduct occurred, and the former law is continued in effect
9-64 for that purpose.

9-65 (d) The change in law made by this Act by the addition of
9-66 Section 901.606, Occupations Code, applies only to the immunity or
9-67 liability of a person who voluntarily reports or assists in the
9-68 investigation of a report of an alleged violation of Chapter 901,
9-69 Occupations Code, or who testifies or otherwise participates in an

10-1 administrative or judicial proceeding arising from a report or
10-2 investigation of an alleged violation of that chapter on or after
10-3 the effective date of this Act. The immunity or liability of a
10-4 person who makes a report, assists in an investigation, testifies,
10-5 or otherwise participates in a proceeding before the effective date
10-6 of this Act is governed by the law in effect at the time those
10-7 activities occurred, and the former law is continued in effect for
10-8 that purpose.

10-9 SECTION 32. (a) The change in law made by this Act to
10-10 Section 901.602, Occupations Code, applies only to an offense
10-11 committed on or after the effective date of this Act. For purposes
10-12 of this section, an offense is committed before the effective date
10-13 of this Act if any element of the offense occurs before that date.

10-14 (b) An offense committed before the effective date of this
10-15 Act is covered by the law in effect when the offense was committed,
10-16 and the former law is continued in effect for that purpose.

10-17 * * * * *