

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 566
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 566 relates to the regulation of the practice of public accountancy and amends the Public Accountancy Act (Chapter 901 (Accountants), Occupations Code).

This bill clarifies client confidentiality or what some refer to as accountant-client privilege. Section 901.457 (Accountant-Client Privilege), Occupations Code, outlines the requirements for certified public accountants (CPA) to maintain client information confidentiality.

The changes being proposed will make it clear that CPAs may disclose client information when required to do so by state or federal law or a court order signed by a judge. This change is needed to clear up what has been perceived by some to be a discrepancy between federal law and state law.

This bill improves enforcement against those who attempt to practice public accounting without a CPA license by allowing the Texas State Board of Public Accountancy (TSBPA) to issue cease and desist orders prior to a hearing and to seek injunctive relief against repeat offenders.

The bill allows TSBPA to waive fees and penalties in extenuating circumstances, such as severe illness or injury and removes certain provisions that relate to a paper and pencil CPA exam.

C.S.S.B. 566 amends current law relating to the regulation of the practice of public accountancy.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 901.457(b), Occupations Code, as follows:

(b) Provides that this section does not prohibit a license holder from disclosing information that is required to be disclosed:

(1) by the professional standards for reporting on the examination of a financial statement;

(2) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments, or The Securities Act (Article 581-1 et seq., V.T.C.S.);

(3) under a court order signed by a judge if the order, rather than the summons or order, is addressed to the license holder, mentions the client by name, and requests specific information concerning the client;

(4) in an investigation or proceeding conducted by the Texas State Board of Public Accountancy (TSBPA);

(5) in an ethical investigation conducted by a professional organization of certified public accountants; or

(6) in the course of a peer review under Section 901.159 (Peer Review) or in accordance with the requirements of the Public Company Accounting Oversight Board or its successor.

Makes nonsubstantive changes.

SECTION 2. Amends Section 901.601, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Authorizes TSBPA, if it appears to TSBPA that a person is engaging in an act or practice that constitutes the practice of public accountancy without a license under this chapter, after notice, rather than after notice and an opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in that activity.

(a-1) Authorizes a person who is issued a cease and desist order under this section to request a hearing before the State Office of Administrative Hearings (SOAH). Requires that the hearing be held not later than the 10th day after TSBPA receives the request for a hearing.

(b) Provides that a violation of an order under this section constitutes grounds for TSBPA to seek injunctive relief and to impose an administrative penalty under Subchapter L (Administrative Penalty). Prohibits the amount of administrative penalty for a violation of an order under this section from exceeding \$25,000, notwithstanding Section 901.552 (Amount of Penalty). Makes a nonsubstantive change.

SECTION 3. Repealer: Section 901.154(c) (relating to prohibiting the waiver of fees or penalties), Occupations Code.

Repealer: Section 901.308(d) (relating to a person who fails a paper examination being entitled to inspect the examination), Occupations Code.

Repealer: Section 901.308(e) (relating to a requirement to provide a person who fails an examination with an analysis of performance), Occupations Code.

SECTION 4. Makes application of Section 901.308 (Examination Results), Occupations Code, as amended by this Act, prospective.

SECTION 5. Effective date: September 1, 2011.