

# ACT NO. 7596

BILL NO. 30-0279

## THIRTIETH LEGISLATURE OF THE VIRGIN ISLANDS

### Regular Session

2014

An Act amending title 27 Virgin Islands Code adding chapter 5A pertaining to public accountancy and bringing Virgin Islands law into compliance with the provisions recommended by the National Association of State Boards of Accountancy in conjunction with the American Institute of Certified Public Accountants and the Virgin Islands Board of Public Accountancy and repealing title 27 Virgin Islands Code, chapter 5

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*Be it enacted by the Legislature of the Virgin Islands:*

**SECTION 1.** This Act may be cited as “The Public Accountancy Act of 2014”.

**SECTION 2.** The Legislature finds that it is the policy of this Territory, and the purpose of this Act, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications, not be permitted to represent themselves as having such special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

**SECTION 3.** Title 27 Virgin Islands Code is amended by adding chapter 5A, which reads as follows:

#### **“Chapter 5A Accountancy**

##### **§250 Definitions**

When used in this chapter, the following terms have the meanings indicated:

- (a) ‘AICPA’ means the American Institute of Certified Public Accountants.

(b) 'Attest' means providing the following services:

(1) any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(2) any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);

(3) any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE);

(4) any engagement to be performed in accordance with the standards of the PCAOB; or

(5) any examination, review, or agreed upon procedures engagement to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE), other than an examination described in subsection (b) (3).

The standards specified in this definition shall be adopted by reference by the Board pursuant to rulemaking and shall be those developed for general application by recognized national accountancy organizations, such as the AICPA and the PCAOB.

(c) 'Board' means the Virgin Islands Board of Accountancy established under section 250a of this chapter.

(d) 'Certificate' means a certificate as "certified public accountant" issued under section 250c of this chapter or corresponding provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.

(e) 'Client' means a person or entity that agrees with a licensee or licensee's employer to receive any professional service.

(f) 'Compilation' means providing a service to be performed in accordance with Statements on Standards for Accounting and Review Services (SSARS) that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(g) 'CPA Firm' means a sole proprietorship, a corporation, a partnership or any other form of organization issued a permit under section 250d of this chapter.

(h) 'Home office' means the location specified by the client as the address to which a service described in section 250q(a)(4) is directed.

(i) 'Manager' means a manager of a limited liability company.

- (j) 'Member' means a member of a limited liability company.
- (k) 'NASBA' means the National Association of State Boards of Accountancy.
- (l) 'PCAOB' means the Public Company Accounting Oversight Board.
- (m) 'Peer Review' means a study, appraisal, or review of one or more aspects of the professional work of a certificate holder or CPA firm that issues attest or compilation reports, by a person or persons who hold certificates and who are not affiliated with the certificate holder or CPA firm being reviewed.
- (n) 'Permit' means a certificate issued under Section 250c of this chapter, a permit to practice as a CPA firm issued under Section 250d; or in each case, a certificate or permit issued under corresponding provisions of prior law or the laws of other states.
- (o) 'Permittee' means the holder of a permit as defined in section 250 (n).
- (p) 'Principal place of business' means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.
- (q) 'Professional' means arising out of or related to the specialized knowledge or skills associated with CPAs.
- (r) 'Report,' when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and which also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term, "report", includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.
- (s) 'Rule' means any rule, regulation, or other written directive of general application duly adopted by the Board.
- (t) 'State' means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Guam; except that "this State" means the Territory of the Virgin Islands.
- (u) 'Substantial Equivalency' means a determination by the board of accountancy or its designee that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education,

examination and experience requirements contained in the Uniform Accountancy Act or that an individual CPA's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act, with Board's taking into account the qualifications without regard to the sequence in which experience, education, or examination requirements were attained.

- (v) 'Territory' means the Virgin Islands.

#### **§250a Virgin Islands Board of Accountancy**

(a) There is established the Virgin Islands Board of Public Accountancy within the Department of Licensing and Consumer Affairs. The Board consists of five members, all of whom must be residents of this Territory, appointed by the Governor, with the advice and consent of the Legislature. Two members shall reside on the island of St. Croix, two members shall reside on the island of St. Thomas and one member shall reside on the island of St. John. Members of the Board shall hold certified public accountant certificates issued under the laws of the Virgin Islands, must be in active practice as certified public accountants. However, whenever there are no certified public accountants in active practice available in the Virgin Islands in sufficient number to meet the foregoing requirements for constituting the Board, inactive certified public accountants who otherwise qualify may be appointed. Of the members first to be appointed to the Board, two shall hold office for one year, two for two years, and one for three years, from the effective date of this chapter. The Governor shall designate the term of each initial member. Their successors shall serve terms of three years. The Governor shall fill vacancies occurring during a term by appointment for the unexpired term. Upon the expiration of a member's term of office, the member shall continue to serve until the member's successor has been appointed and qualified. The Governor shall remove from the Board any member whose permit to practice has become void, revoked or suspended, and may, after hearing, remove any member of the Board for neglect of duty or other just cause.

(b) The Board shall elect annually, from among its members, a president, secretary, and treasurer. The Board may adopt, and amend from time to time, regulations for the orderly conduct of its affairs and for the administration of this chapter. A majority of the Board shall constitute a quorum for the transaction of business. The Board shall have a seal that must be judicially noticed. The Board shall keep records of its proceedings. In any proceeding in court, civil or criminal, arising out of or founded upon any provision of this chapter, copies of the records certified as correct under the seal of the Board are admissible in evidence as tending to prove the content of the records. The Board shall publish annually a register that must contain the names of all permittees to practice under this chapter, the names of the members of the Board and such other matters as may be considered proper by the Board. The Board may employ such personnel and arrange for such assistance as it may require for the performance of its duties.

(c) Members of the Board may be paid a stipend for the time spent in the discharge of official duties, and each member must be reimbursed for actual and necessary expenses incurred in the discharge of official duties.

(d) All fees and other monies received by the Board pursuant to this chapter other than fines collected under section 250g (a) must be kept in a separate fund in the Treasury of the Virgin Islands, and expended solely for the purposes of this chapter. No part of this special fund may revert to the general fund of the Government of the Virgin Islands. All expenses incurred under this chapter must be paid from this special fund. Expenses incurred under this chapter are not charges against the general fund of the Government of the Virgin Islands. The Board shall file an annual report of its activities with the Governor of the Virgin Islands, and such report must include a statement of all receipts and disbursements.

(e) The Board may contract with persons or agencies that are not employees or agencies of the Board to implement this chapter and to fulfill the responsibilities of the Board.

(f)(1) The Board may take any action that is necessary and proper to effectuate the purposes of this chapter. The Board may:

(A) issue subpoenas to compel the attendance of witnesses and the production of documents; to administer oaths; to take testimony;

(B) cooperate with the PCAOB and the appropriate territorial and federal regulatory authorities having jurisdiction over the professional conduct in question in investigation and enforcement concerning violations of this chapter and comparable acts of other states; to cooperate in enforcement with appropriate foreign regulatory authorities in instances which have or may result in criminal conviction, loss of license or suspension, admonishment or censure;

(C) receive evidence concerning all matters within the scope of this chapter;

(D) invoke the aid of any court or other appropriate regulatory authority in case of disobedience to a subpoena requiring the attendance and testimony of witnesses and the production of documentary evidence.

(2) For purposes of this subsection, 'appropriate foreign regulatory authorities' are those foreign authorities granting substantially equivalent foreign designations in accordance with section 250c (g) of this chapter.

(g) The Board, its members, and its agents are immune from personal liability for actions taken in good faith in the discharge of the Board's responsibilities, and the Territory shall hold the Board, its members, and its agents harmless from all costs, damages, and attorneys' fees arising from claims and suits against them with respect to matters to which such immunity applies.

(h) The Board may adopt rules governing its administration and enforcement of this chapter and the conduct of licensees, including but not limited to rules governing:

- (1) Board meetings and the conduct of its business;
- (2) Procedures for the conduct of investigations and hearings by the Board;
- (3) Educational and experience requirements and other qualifications required for the issuance of certificates under Section 250c of this chapter and the continuing professional education required for renewal of certificates under section 250c (d);
- (4) Professional conduct directed to controlling the quality and probity of services by licensees, and dealing among other things with independence, integrity, and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to clients;
- (5) The professional standards applicable to licensees;
- (6) The manner and circumstances of use of the titles “certified public accountant” and ‘CPA’;
- (7) Peer review that may be required to be performed under provisions of this chapter;
- (8) Rules on substantial equivalence to implement Section 250q; and
- (9) Such other matters the Board may consider necessary or appropriate for implementing the provisions and the purposes of this chapter.

(h) Promulgation of rules must be in accordance with 3 V.I.C. ch. 35.

(i) Records, papers, and other documents containing information collected or compiled by the Board, its members, employees, contractors or agents, including its legal counsel, as a result of a complaint, investigation, inquiry, or interview in connection with an application for examination, certification, or registration, or in connection with a permittee’s professional ethics and conduct, are not public records within the meaning of this Territory’s public records laws. Additionally, any record, paper, or other document received by the Board as a result of a self-reporting requirement are not public records within the meaning of this Territory’s public records laws. When any such record, paper, or other document is admitted into evidence in a hearing held by the Board, it then becomes a public record within the meaning of this Territory’s public records laws. However, upon a showing of good cause, the administrative law judge at such a hearing may order that confidential or privileged information be redacted or admitted under seal.

(1) Notwithstanding any other provision of this chapter, information protected by this confidentiality provision may not be disclosed to other authorities unless the

recipient confirms in writing that it shall assure preservation of confidentiality and the permittee has been given reasonable notice that the information will be provided to another entity.

(2) Notwithstanding any contrary provision in the Territory's public records law, disclosure of records is not considered public disclosure and does not deprive such records of their confidential status, when the disclosure is to:

(A) law enforcement and regulatory authorities and, **only** to the extent considered necessary to conduct an investigation;

(B) the subject of the investigation;

(C) persons whose complaints are being investigated; or

(D) witnesses questioned in the course of investigation, as provided in Section 250h (a),

(3) Nothing in this subsection may be construed as a waiver of any privilege, such as attorney-client privilege, which may also apply to any records covered by this subsection.

(4) Nothing in this subsection confers confidential status on any record collected under this subsection which was a public record when collected or thereafter becomes a public record through other lawful means.

#### **§250b QUALIFICATIONS FOR A CERTIFICATE AS A CERTIFIED PUBLIC ACCOUNTANT**

(a) The Board shall grant a certificate of "certified public accountant" to persons of good moral character who apply for a certificate pursuant to section 250c and meet the education, experience and examination requirements of this section and regulations adopted under this section

(b) "Good moral character" for purposes of this section means the propensity to provide professional services in a fair, honest, and open manner. The Board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the Board of lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the Board shall furnish the applicant a statement containing the findings of the Board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal.

(c) During the five-year period immediately following the effective date of this chapter, the education requirements for a certificate are as follows:

(1) a baccalaureate degree or its equivalent, including at least 120 semester hours of education conferred by a college or university acceptable to the Board, with an accounting concentration or equivalent as determined by Board rule to be appropriate; or

(2) graduation from a college or university recognized by the Board, but if the applicant has not completed the hours of study and subjects specified in Board's regulation, the applicant must have been engaged in the practice of public accounting or in the employ of a public accountant or certified public accountant, for three years preceding the date of application, or employed by the Government of the Virgin Islands or by the federal government as an auditor, or as an internal revenue agent, or in a position of supervisory responsibility over auditors or internal revenue agents for at least three years preceding the date of application.

(d) After the expiration of the five-year period immediately following the effective date of this chapter, the applicant must have completed at least 150 semester hours of college education, including a baccalaureate or higher degree conferred by a college or university acceptable to the Board, the total educational program to include an accounting concentration or equivalent as determined by Board rule to be appropriate. However, an individual who has completed a baccalaureate degree or its equivalent, including at least 120 semester hours of education acceptable to the Board, with an accounting concentration or equivalent as determined by Board rule to be appropriate may, sit for the examination required under subsection (e);

(e) The examination required to be passed as a condition for the granting of a certificate must be held regularly throughout the year, and must test the applicant's knowledge of the subjects of accounting and auditing, and such other related subjects as the Board may specify by regulations, including but not limited to business law and taxation. The Board shall prescribe by regulations the methods of applying for and conducting the examination, including methods for grading and determining a passing grade required of an applicant for a certificate. However, the Board shall to the extent possible ensure that the examination itself, grading of the examination, and the passing grades, are uniform with those applicable in all other states. The Board may make such use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants and may contract with third parties to perform such administrative services with respect to the examination as it considers appropriate to assist it in performing its duties under this section.

(f) The Board may charge, or provide for a third party administering the examination to charge, each applicant a fee in an amount prescribed by the Board by rule.

(g) An applicant for initial issuance of a certificate under this section shall show that the applicant has had one year of experience. This experience must include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills all of which were certified by a licensee, meeting requirements prescribed by the Board by rule. This experience is acceptable if it was gained through employment in government, industry, academia or public practice.

(h) Any person who holds an individual certificate or permit as of the effective date of this chapter issued pursuant to the laws of this Territory this title, Professions and Occupations, Chapter 5, Public Accounting, is not required to obtain additional permits pursuant to this chapter has same rights and privileges, but is subject to the provisions of this chapter for renewal of permits.

### **§250c ISSUANCE AND RENEWAL OF CERTIFICATES, AND MAINTENANCE OF COMPETENCY**

(a) The Board shall grant or renew certificates to persons who make application and demonstrate (i) that their qualifications, including where applicable the qualifications prescribed by Section 250b, are in accordance with this section or (ii) that they are eligible under the substantial equivalency standard set out in section 250q(a)(2) of this chapter which requires licensure for those CPAs that establish their principal place of business in another state. The holder of a certificate issued under this section may provide only attest services, as defined, in a CPA firm that holds a permit issued under Section 250d of this chapter.

(b) Certificates are initially issued and renewed annually, but in any event expire on a specified date following issuance or renewal. Applications for such certificates must be made in such form, and in the case of applications for renewal, between such dates, as the Board shall by rule specify.

(c)(1) With regard to applicants that do not qualify for reciprocity under the substantial equivalency standard set out in section 250q(a)(2) of this chapter, the Board shall issue a certificate to a holder of a certificate, license, or permit issued by another state upon a showing that:

(A) The applicant passed the uniform CPA examination;

(B) The applicant had four years of experience of the type described in Section 250b (f) or meets comparable requirements prescribed by the Board by rule, after passing the examination upon which the applicant's certificate was based and within the ten years immediately preceding the application; and

(C) If the applicant's certificate, license, or permit was issued more than four years prior to the application for issuance of an initial certificate under this section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable under subsection (d) of this section.

(2) As an alternative to the requirements of paragraph (1) of this subsection, a certificate holder licensed by another state who establishes his principal place of business in the Territory shall request the issuance of a certificate from the Board prior to establishing such principal place of business. The Board shall issue a certificate to such person who obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act.

(3) An application under this section may be made through the NASBA Qualification Appraisal Service.

(d) One year from the effective date of this chapter, for renewal of a certificate under this section each permittee shall participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the Board. The Board may by rule create an exception to this requirement for certificate holders who do not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Permittees granted such an exception by the Board must place the word "inactive" adjacent to their CPA title or PA title on any business card, letterhead or any other document or device, with the exception of their CPA certificate or PA registration, on which their CPA or PA title appears.

(e) The Board shall charge a fee for each application for initial issuance and renewal of a certificate under this Section in an amount prescribed by the Board by rule.

(f) Applicants for initial issuance or renewal of certificates under this section shall in their applications list all states in which they have applied for or hold certificates, licenses, or permits and list any past denial, revocation or suspension of a certificate, license or permit, and each holder of or applicant for a certificate under this section shall notify the Board in writing, within 30 days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate, license or permit by another state.

(g) The Board shall issue a certificate to a holder of a substantially equivalent foreign designation, provided that:

(1) The foreign authority that granted the designation makes similar provision to allow a person who holds a valid certificate issued by the Territory to obtain such foreign authority's comparable designation; and

(2) The foreign designation:

(A) was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(B) entitles the holder to issue reports upon financial statements; and

(C) was issued upon the basis of educational, examination, and experience requirements established by the foreign authority or by law; and

(3) The applicant:

(A) received the designation, based on educational and examination standards substantially equivalent to those in effect in this Territory, at the time the foreign designation was granted;

(B) completed an experience requirement, substantially equivalent to the requirement set out in Section 250b (f), in the jurisdiction which granted the foreign designation or has completed four years of professional experience in this Territory; or meets equivalent requirements prescribed by the Board by regulation within the ten years immediately preceding the application; and

(C) passed a uniform qualifying examination in national standards and a Territory specific examination as determined by Board rule.

(h) An applicant under subsection (g) of this section shall in the application list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy, and each holder of a certificate issued under this subsection shall notify the Board in writing, within thirty days after its occurrence, of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

(i) The Board has the sole authority to interpret the application of the provisions of subsections (g) and (h) of this section.

(j) The Board shall by rule require as a condition for renewal of a certificate under this section, by any certificate holder who issues compilation reports for the public other than through a CPA firm, that such individual undergo, no more frequently than once every three years, a peer review conducted in such manner as the Board shall by rule specify, and such review shall include verification that such individual has met the competency requirements set out in professional standards for such services.

**§250d FIRM PERMITS TO PRACTICE, ATTEST AND COMPILATION COMPETENCY AND PEER REVIEW**

(a) The Board shall grant or renew permits to practice as a CPA firm to applicants that demonstrate their qualifications therefore in accordance with this section.

(1) The following must hold a permit issued under this Section:

(A) Any firm with an office in the Territory performing attest services as defined in Section 250 (b) of this chapter;

(B) Any firm with an office in the Territory that uses the title "CPA" or "CPA firm;" or,

(C) Any firm that does not have an office in the Territory but performs attest services described in Section 250 (b)(1), (3) or (4) of this chapter for a client having its home office in the Territory.

(2) A firm that does not have an office in the Territory may perform services described in subsections 250 (b) (2) or (f) for a client having its home office in the Territory and may use the title "CPA" or "CPA firm" without a permit issued under this section only if:

(A) it has the qualifications described in subsections (c) and (h) of this section; and

(B) it performs such services through an individual with practice privileges under Section 250q of the chapter.

(3) A firm that is not subject to the requirements of subsection (a)(1)(C) or (a) (2) may perform other professional services while using the title "CPA" or "CPA firm" in this Territory without a permit issued under this Section only if:

(A) it performs such services through an individual with practice privileges under Section 250q of the chapter, and

(B) it may lawfully do so in the state where the individuals with practice privileges have their principal place of business.

(b) Permits are initially issued and renewed annually but in any event expire on a specified date following issuance or renewal. Applications for such certificates must be made in such form, and in the case of applications for renewal, between such dates, as the Board shall by rule specify.

(c) An applicant for initial issuance or renewal of a permit to practice under this section shall to show that:

(1) Notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state, and such partners, officers, shareholders, members or managers, whose principal place of business is in the Virgin Islands, and who perform professional services in this Territory hold a valid certificate issued under Section 250c of this chapter or the corresponding provision of prior law. Although firms may include non-permittee owners, the firm and its ownership must comply with rules promulgated by the Board. An individual who has practice privileges under Section 250q who performs services for which a firm permit is required under Section 250q (a)(4) is not required to obtain a certificate from the Virgin Islands pursuant to Section 250c of this chapter.

(2) Any CPA or PA firm, as defined in this chapter, may include non-permittee owners if:

(A) The firm designates a permittee of the Territory, or in the case of a firm that must have a permit pursuant to Section 250q (a) (4), a licensee of another state who meets the requirements set out in Section 250q (a) (1) or in Section 250q (a) (2), who is responsible for the proper registration of the firm and identifies that individual to the Board;

(B) All non-permittee owners are active individual participants in the CPA or affiliated entities; and

(C) The firm complies with such other requirements as the Board may impose by rule.

(3) Any individual permittee and any individual granted practice privileges under this chapter who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm, shall meet the competency requirements set out in the professional standards for such services.

(4) Any individual permittee and any individual granted practice privileges under this chapter who signs or authorizes someone to sign the accountants' report on the financial statements on behalf of the firm shall meet the competency requirement of the prior subsection.

(d) An applicant for initial issuance or renewal of a permit to practice under this section shall register each office of the firm within the Territory with the Board and to show that all attest and compilation services as defined herein rendered in the Territory are under the charge of a person holding a valid certificate issued under section 250c of this chapter or the corresponding provision of prior law or some other state.

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

(f) An applicant for initial issuance or renewal of permits under this section shall in the application list all states in which the applicant has applied for or hold permits as CPA firms and list any past denial, revocation or suspension of a permit by any other state. Each holder of or applicant for a permit under this section shall notify the Board in writing, within 30 days after its occurrence, of any change in the identities of partners, officers, shareholders, members or managers whose principal place of business is in this Territory, any change in the number or location of offices within this Territory, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any other state.

(g) Firms that fall out of compliance with the provisions of the section due to changes in firm ownership or personnel, after receiving or renewing a permit, shall take corrective action

to bring the firm back into compliance as quickly as possible. The Board may grant a reasonable period of time for a firm to take such corrective action. Failure to bring the firm back into compliance within a reasonable period as defined by the Board results in the suspension or revocation of the firm permit.

(h) One year from the effective date of this chapter, as a condition to renewal of permits under this section, applicants shall undergo, no more frequently than once every three years, peer reviews conducted in such manner as the Board shall prescribe by rule and such review must include a verification that individuals in the firm who are responsible for supervising attest and compilation services and sign or authorize someone to sign the accountant's report on the financial statements on behalf of the firm meet the competency requirements set out in the professional standards for such services, but any such rule must:

(1) be promulgated reasonably in advance of the time when it first becomes effective;

(2) include reasonable provision for compliance by an applicant showing that it has, within the preceding three years, undergone a peer review that is a satisfactory equivalent to peer review generally required pursuant to this subsection;

(3) require, with respect to any organization administering peer review programs contemplated by paragraph (2), that it be subject to evaluations by the Board or its designee, to periodically assess the effectiveness of the peer review program under its charge.

#### **§250e APPOINTMENT OF A RESIDENT AGENT**

A person or a firm not a resident of the Territory applying for a certificate under section 250c of this chapter or a permit to practice under section 250d shall appoint a resident agent as permitted by law or Board regulations. The applicant's agent must be a person upon whom process may be served in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to services performed by the applicant while a permittee within the Territory.

#### **§250f Hearings Before Board and judicial review; Commencement of proceedings**

(a) The Board may initiate proceedings under this chapter either on its own motion or on the complaint of any person.

(b) A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the Board or its designee on such charges must be served on the accused not less than 30 days prior to the date of the hearing either personally or by mailing a copy thereof by registered mail to the address of the accused last known to the Board.

(c) If, after having been served with the notice of hearing as provided for in subsection (b) of this section, the accused fails to appear at the hearing and defend, the Board or its designee may proceed to hear evidence against the accused and may enter such order as justified by the evidence. The order is final unless the accused petitions for a review thereof as provided in this section: However, within 30 days from the date of any order, upon a showing of good cause for failing to appear and defend, the Board or its designee may reopen the proceedings and may permit the accused to submit evidence on the accused's behalf.

(d) At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on the accused's own behalf, cross-examine witnesses and examine such evidence as may be produced against the accused. The accused is entitled, on application to the Board, to the issuance of subpoenas to compel the attendance of witnesses on the accused's behalf.

(e) The Board or its designee may issue subpoenas to compel the attendance of witnesses and the production of documents, and may administer oaths, take testimony, hear proofs and receive exhibits in evidence in connection with or upon hearing under this chapter. In case of disobedience to a subpoena the Board may invoke the aid of any court of the Virgin Islands in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(f) The Board is not bound by technical rules of evidence.

(g) A transcript of the hearing must be kept and filed with the Board.

(h) At all hearings the Attorney General for the Virgin Islands or the Attorney General's designee shall appear and represent the Board.

(i) The decision of the Board must be by the majority vote of the Board.

(j) Any person adversely affected by any order of the Board may obtain a review of the order by filing a written petition for review with the Superior Court within 30 days after the entry of the order. The petition must state the grounds upon which the review is asked and must pray that the order of the Board be modified or set aside in whole or in part. A copy of such petition must be forthwith served upon any member of the Board and thereupon the Board shall certify and file in the court a transcript of the record, upon which the order complained of was entered. The case must then be tried de novo on the record but the parties must be permitted to file briefs as in an ordinary case at law. The Court may affirm, modify or set aside the Board's order in whole or in part, or may remand the case to the Board for further evidence and may in its discretion stay the effect of the Board's order pending its determination of the case. The court's decision has the force of a decree in equity.

(k) In any case where the Board renders an order imposing discipline against a permittee or an individual granted privileges under Section 250q of this chapter, the Board shall examine its records to determine whether the individual or firm holds a license or practice privilege in any other state or is subject to the PCAOB's authority; and if so, the Board shall

notify the State Boards of Accountancy and any other regulatory authorities, including the PCAOB if applicable, of its decision immediately in the case of a consent order and in all other cases when the time for giving notice of an appeal from the Board's order has expired. The notice must indicate whether or not the subject order has been appealed and whether or not the subject order has been stayed. In the alternative, the Board may report such disciplinary actions to a multistate enforcement information network. Subject to Section 250a (i) of this chapter, the Board may also furnish investigative information and the hearing record relating to proceedings resulting in disciplinary action in such cases to such other regulatory authorities upon request.

### **§250g ENFORCEMENT-GROUNDS FOR DISCIPLINE**

(a) After notice and hearing pursuant to this chapter, the Board may revoke any permit issued under Sections 250c or 250d of this chapter or corresponding provisions of prior law or revoke or suspend any such permit, or refuse to renew any such permit for a period of not more than five years, reprimand, censure, or limit the scope of practice of any permittee; impose an administrative fine not exceeding \$10,000 per violation; limit or revoke the practice privileges, and impose an administrative fine not exceeding \$10,000 per violation of any individual under section 250q of this chapter, or place any permittee on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons:

- (1) Dishonesty, fraud or deceit in obtaining a permit;
- (2) Cancellation, revocation, suspension or refusal to renew a permit or privileges under Section 250q for disciplinary reasons in any other state for any cause;
- (3) Failure, on the part of a permittee under sections 250c or 250d, to maintain compliance with the requirements for issuance or renewal of such certificate or permit to report changes to the Board under sections 250c (f) or 250d (f);
- (4) Revocation or suspension of the right to practice by any state or federal regulatory authority or by the PCAOB;
- (5) Dishonesty, fraud, deceit or gross negligence in the performance of services as a permittee or individual granted privileges under section 250q or in the filing or failure to file one's own income tax returns;
- (6) Violation of any provision of this chapter or rule promulgated by the Board under this chapter or violation of professional standards;
- (7) Violation of any rule of professional conduct promulgated by the Board under Section 250a (g) of this chapter;
- (8) Conviction of a felony, or of any other crime an element of which is dishonesty, fraud or deceit, under the laws of the United States, of the Territory, or of any state, if the acts involved would have constituted a crime under the laws of the Virgin Islands;

(9) Performance of any fraudulent act while holding a permit or privilege issued under this chapter or prior law;

(10) Any conduct reflecting adversely upon the permittee's fitness to perform services while a permittee, or individual granted privileges under Section 250q; or

(11) Making any false or misleading statement or verification, in support of an application for a permit filed by another.

(b) Fines as assessed under subsection (a) must be deposited in the Consumer Protection Fund of the Department of Licensing & Consumer Affairs. Recovered costs as assessed under subsection (a) must be deposited in the Virgin Islands Board of Public Accountancy Fund.

(c) In lieu of or in addition to any remedy specifically provided in subsection (a) of this section, the Board may require of a permittee either or both of the following:

(1) A peer review conducted in such fashion as the Board may specify; and

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

(d) In any proceeding in which a remedy provided by subsections (a) or (c) of this section is imposed, the Board may also require the respondent permittee to pay the costs of the proceeding.

#### **§250h ENFORCEMENT—INVESTIGATIONS**

(a) The Board or its designee may, upon receipt of a complaint or other information suggesting violations of this chapter or of the rules of the Board, conduct investigations to determine whether there is probable cause to institute proceedings under Sections 250f, 250k, or 250l of this chapter against any person or firm for such violation, but an investigation under this section is not a prerequisite to such proceedings if a determination of probable cause can be made without investigation. In aid of such investigations, the Board or the chairperson, or a designee may issue subpoenas to compel witnesses to testify and produce evidence, or both testify and produce evidence.

(b) The Board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall file a report with the Board. The Board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation. Unless there has been a determination of probable cause, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of pendency of the investigation must be treated as confidential information and must not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary

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

(c) Upon a finding of probable cause, if the subject of the investigation is a permittee or an individual with privileges under Section 250q of this chapter, the Board shall direct that a complaint be issued under section 250f of this chapter, and if the subject of the investigation is not a permittee or an individual with privileges under Section 250q, the Board shall take appropriate action under sections 250k or 250l of this chapter. Upon a finding of no probable cause, the Board shall close the matter and shall thereafter release information relating thereto only with the consent of the person or firm under investigation.

(d) The Board may review the publicly available professional work of permittees or an individual with privileges under Section 250q of this chapter on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety. If as a result of such review the Board discovers reasonable grounds for a more specific investigation, the Board may proceed under subsections (a) through (c) of this section.

### **§250i REINSTATEMENT**

(a) In any case where the Board has suspended or revoked a certificate or a permit or revoked or limited privileges under Section 250q or refused to renew a certificate, permit, the Board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension, or reissue the certificate, permit, or registration or remove the limitation or revocation of privileges under Section 250q.

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

(c) Before reissuing, or terminating the suspension of, a certificate or permit under this section or of privileges under section 250q, and as a condition thereto, the Board may require the applicant therefor to show successful completion of specified continuing professional education; and the Board may make the reinstatement of a certificate, permit or registration or of privileges under section 250q conditional and subject to satisfactory completion of a peer review conducted in such fashion as the Board may specify.

### **§250j UNLAWFUL ACTS**

(a) Only permittees and individuals who have practice privileges under section 250q of this chapter may issue a report on financial statements of any person, firm, organization, or governmental unit or offer to render or render any attest or compilation service, as defined herein. This restriction does not prohibit any act of a public official or public employee in the performance of that person's duties as such; or prohibit the performance by any non-permittees of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. Non-permittees may prepare financial statements and issue non-attest

transmittals or information thereon which do not purport to be in compliance with the Statements on Standards for Accounting and Review Services (SSARS).

(b) Permittees and individuals who have practice privileges under Section 250q of this chapter performing attest or compilation services shall provide those services in accordance with applicable professional standards.

(c) A person who does not hold a valid certificate or a practice privilege pursuant to section 250q of this chapter may not use or assume the title 'certified public accountant', or the abbreviation 'CPA' or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

(d) No firm may provide attest services or assume or use the title 'certified public accountants', or the abbreviation 'CPAs', or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a CPA firm unless

(1) the firm holds a valid permit issued under Section 250d of this chapter, and

(2) ownership of the firm is in accord with this Act and rules promulgated by the Board.

(e) A person or firm that does not hold a valid certificate, permit or registration issued under Sections 250c or 250d of this chapter may not assume or use the title 'certified accountant', 'chartered accountant', 'enrolled accountant', 'licensed accountant', 'registered accountant', 'accredited accountant', or any other title or designation likely to be confused with the titles 'certified public accountant' or 'public accountant', or use any of the abbreviations 'CA', 'LA', 'RA', 'AA', or similar abbreviation likely to be confused with the abbreviations 'CPA' or 'PA.' The title 'Enrolled Agent' or 'EA' may be used only by individuals so designated by the Internal Revenue Service.

(f)(1) Non-permittees may not use language in any statement relating to the financial affairs of a person or entity that is conventionally used by permittees in reports on financial statements. In this regard, the Board shall issue safe harbor language non-permittees may use in connection with such financial information.

(2) A person or firm that does not hold a valid certificate or permit issued under sections 250c or 250d of this chapter may not assume or use any title or designation that includes the words 'accountant', 'auditor', or 'accounting', in connection with any other language, including the language of a report, which implies that such person or firm holds such a certificate or permit or has special competence as an accountant or auditor, provided. However, this subsection does not prohibit any officer, partner, member, manager or employee of any firm or organization from affixing that person's own signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds therein nor prohibit any act of a public official or employee in the performance of the person's duties as such.

(g) No person holding a certificate or firm holding a permit under this chapter may use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter. However, names of one or more former partners, members, managers or shareholders may be included in the name of a firm or its successor. A common brand name, including common initials, used by a CPA Firm in its name, is not misleading if the firm is a Network Firm, as defined in the AICPA Code of Professional Conduct ("Code") and, when offering or rendering services that require independence under AICPA standards, the firm must comply with the Code's applicable standards on independence.

(h) None of the foregoing provisions of this section has any application to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy or its equivalent in such country, whose activities in this Territory are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds such entitlement, who performs no attest or compilation services as defined and who issues no reports with respect to the financial statements of any other persons, firms, or governmental units in this Territory and who does not use in the Territory any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

(i) No holder of a certificate issued under section 250c of this chapter may perform attest services through any business form that does not hold a valid permit issued under section 250d of this chapter.

(j) No individual permittee may issue a report in standard form upon a compilation of financial information through any form of business that does not hold a valid permit issued under section 250d of this chapter unless the report discloses the name of the business through which the individual is issuing the report, and the individual:

(1) signs the compilation report identifying the individual as a CPA;

(2) meets the competency requirement provided in applicable standards; and

(3) undergoes no less frequently than once every three years, a peer review conducted in such manner as the Board shall by rule specify, and such review must include verification that such individual has met the competency requirements set out in professional standards for such services.

(k) Nothing herein prohibits a practicing attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney's professional work in the practice of law.

(l)(1) A permittee may not for a commission recommend or refer to a client any product

or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client:

(A) An audit or review of a financial statement; or

(B) A compilation of a financial statement when the permittee expects, or reasonably might expect, that a third party will use the financial statement and the permittee's compilation report does not disclose a lack of independence; or

(C) An examination of prospective financial information.

(2) This prohibition applies during the period in which the permittee is engaged to perform any of the services listed in paragraph (1), and the period covered by any historical financial statements involved in such listed services.

(3) A permittee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the permittee recommends or refers a product or service to which the commission relates.

(4) Any permittee who accepts a referral fee for recommending or referring any service of a permittee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

(m)(1) A permittee may not:

(A) perform for a contingent fee any professional services for, or receive such a fee from a client for whom the permittee or the permittee's firm performs:

(i) An audit or review of a financial statement;

(ii) A compilation of a financial statement when the permittee expects, or reasonably might expect, that a third party will use the financial statement and the permittee's compilation report does not disclose a lack of independence; or

(iii) An examination of prospective financial information; or

(B) Prepare an original or amended tax return or claim for a tax refund for contingent fee for any client.

(2) The prohibition in paragraph (1) above applies during the period in which the permittee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.

(3) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be

charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this section, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A permittee's fees may vary depending, on the complexity of services rendered.

(n) Notwithstanding provision to the contrary in this section, it is not a violation of this section for a firm that does not hold a valid permit under section 250d of this chapter and that does not have an office in the Territory to provide its professional services in the Territory so long as the firm complies with the requirements of section 250d (a) (2) or (3), whichever is applicable.

### **§250k INJUNCTIONS AGAINST UNLAWFUL ACTS**

Whenever, as a result of an investigation under section 250h of this chapter or otherwise, the Board believes that any person or firm has engaged, or is about to engage, in any acts or practices that constitute or will constitute a violation of section 250j of this chapter, the Board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the Board that such person or firm has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by such court.

### **§250l CRIMINAL PENALTIES**

Any person who violates any provision of this chapter, is guilty of a misdemeanor, and upon conviction thereof, is subject to a fine of not more than \$2,000, or to imprisonment for not more than one year, or to both such fine and imprisonment. Whenever the Board has reason to believe that any person is liable to punishment under this section, it may certify the facts to the Attorney General of the Virgin Islands, who may in his discretion, cause appropriate proceedings to be brought.

### **§250m SINGLE ACT EVIDENCE OF PRACTICE**

In any action brought under sections 250f, 250k or 250l of this chapter, evidence of the commission of a single act prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order, or conviction, respectively, without evidence of a general course of conduct.

### **§250n CONFIDENTIAL COMMUNICATIONS**

Except by permission of the client for whom a permittee performs services or the heirs, successors, or personal representatives of such client, a permittee under this chapter, may not voluntarily disclose information communicated to the permittee by the client relating to and in connection with services rendered to the client by the permittee. Such information is deemed confidential, but nothing herein may be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the

examination of financial statements or as prohibiting compliance with applicable laws, government regulations or PCAOB requirements, disclosures in court proceedings, in investigations or proceedings under sections 250f or 250h of this chapter, in ethical investigations conducted by private professional organizations, or in the course of peer reviews, or to other persons active in the organization performing services for that client on a need to know basis or to persons in the entity who need this information for the sole purpose of assuring quality control.

#### **§250o LICENSEES' WORKING PAPERS; CLIENTS' RECORDS**

All statements, records, schedules, working papers and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by such certified public accountant or public accountant, except reports submitted by a certified public accountant or public accountant to a client, are and remain the property of such certified public accountant or public accountant, in the absence of an express agreement between the certified public accountant or public accountant and the client to the contrary. No such statement, record, schedule, working paper or memorandum may be sold, transferred or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than one or more surviving partners or new partners of such accountant.

#### **§250p PRIVACY OF CONTRACT**

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

(b) This section governs any action based on negligence brought against any accountant or firm of accountants practicing in this State by any person 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 or in the course of an engagement to provide other services.

(c) No action covered by this section may be brought unless:

(1) The plaintiff:

(A) is issuer or 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; and

(B) engaged the defendant licensee to examine, compile, review, certify, audit or otherwise report or render an opinion on such financial statements or to provide other services; or

(2) The defendant permittee or firm:

(A) was aware at the time the engagement was undertaken that the financial statements or other information were to be made available for use in

connection with a specified transaction by the plaintiff who was specifically identified to the defendant accountant;

(B) was aware that the plaintiff intended to rely upon such financial statements or other information in connection with the specified transaction; and

(C) had direct contact and communication with the plaintiff and expressed by words or conduct the defendant accountant's understanding of the reliance on such financial statements or other information.

### §250q SUBSTANTIAL EQUIVALENCY

(a)(1) An individual whose principal place of business is not in this Territory and who holds a valid license as a Certified Public Accountant from any state that the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act is presumed to have qualifications substantially equivalent to this State's requirements and shall have all the privileges of permittees of this Territory without the need to obtain a permit under sections 250c or 250d. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this section must be granted practice privileges in this Territory, and no notice or other submission must be provided by any such individual. Such an individual is subject to the requirements in paragraph (3) of this subsection.

(2) An individual licensee of another state exercising the privilege afforded under this section and the firm that employs that licensee hereby simultaneously consents, as a condition of the grant of this privilege:

(A) to the personal and subject matter jurisdiction and disciplinary authority of the Board,

(B) to comply with this chapter and the Board's rules;

(C) to the condition that if the license from the state of the individual's principal place of business is no longer valid, the individual shall cease offering or rendering professional services in the Virgin Islands individually and on behalf of a firm; and

(D) to the appointment of the State Board that issued their license as their agent upon whom process may be served in any action or proceeding by this Board against the licensee.

(3) An individual who has been granted practice privileges under this section and who for any entity with its home office in the Territory, performs any of the services listed in subparagraphs (A) through (C) may practice only through a firm that has obtained a permit issued under section 250d of this chapter. Those services are:

(A) Any financial statement audit or other engagement to be performed in accordance with Statements on Auditing Standards;

(B) Any examination of prospective financial information to be performed in accordance with Statements on Standards for Attestation Engagements; or

(C) Any engagement to be performed in accordance with PCAOB auditing standards;

(b) A permittee of the Territory offering or rendering services or using its CPA title in another state is subject to disciplinary action in the Territory for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state. Notwithstanding section 250h (a), the Board shall investigate any complaint made by the board of accountancy of another state.

#### §250r CONSTRUCTION; SEVERABILITY

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

#### SECTION 4. REPEAL OF PRIOR LAWS

Title 27, Professions and Occupations, Chapter 5, Public Accounting, and all other acts or parts of acts in conflict with section 3 of this Act are repealed, but nothing contained in this Act invalidates or affects any action taken or any proceeding instituted under any law in effect prior to the effective date of this Act.

#### SECTION 5 EFFECTIVE DATE

This Act shall take effect one year after enactment.

Thus passed by the Legislature of the Virgin Islands on April 24, 2014.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 29<sup>th</sup> Day of April, A.D., 2014.



*Shawn-Michael Malone*

Shawn-Michael Malone  
President

*Janette Millin Young*

Janette Millin Young  
Legislative Secretary



Bill No. 30-0279 is hereby approved.

Witness my hand and the Seal of the  
Government of the United States  
Virgin Islands at Charlotte Amalie,  
St. Thomas, this 16<sup>th</sup> th day of May  
A.D., 2014.

  
John P. de Jongh, Jr.  
Governor