

2A:53A-25

LEGISLATIVE HISTORY CHECKLIST
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(Accountants--limit liability)

NJSA: 2A:53A-25

LAWS OF: 1995 **CHAPTER:** 49

BILL NO: S826

SPONSOR(S): Kyrillos

DATE INTRODUCED: March 10, 1994

COMMITTEE: **ASSEMBLY:** ---
SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** February 6, 1995
SENATE: December 15, 1994

DATE OF APPROVAL: March 17, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

[FIRST REPRINT]

SENATE, No. 826

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1994

By Senators KYRILLOS and CARDINALE

1 AN ACT concerning accountants' liability and supplementing
2 Title 2A of the New Jersey Statutes.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1.a. As used in this act:

7 (1) "Accountant" means a person who is registered as a
8 certified public accountant pursuant to the provisions of
9 P.L.1977, c.144 (C.45:2B-1 et seq.), or an accounting firm which
10 is organized for the practice of public accounting pursuant to the
11 provisions of P.L.1977, c.144 (C.45:2B-1 et seq.) and P.L.1969,
12 c.232 (C.14A:17-1 et seq.)^{1,1}

13 (2) ¹"Bank" means a State or federally chartered bank, savings
14 bank, savings and loan association, credit union, a group of such
15 institutions or its affiliates, subsidiaries, co-lenders, successors
16 or assigns.

17 (3)¹ "Client" means the party directly engaging an accountant
18 to perform a professional accounting service.

19 ¹[(3)] (4)¹ "Professional accounting service" includes, but is
20 not limited to, the compilation, review, certification, ¹[auditing]¹
21 or ¹[other reporting] audit of¹, or the expression of a professional
22 opinion ¹or other reporting on¹, ¹[concerning]¹ a financial
23 statement or other information ¹covering a specified period of
24 time¹.

25 ¹(5) "Specified transaction" means a particular transaction
26 between a client and a claimant.¹

27 b. Notwithstanding the provisions of any other law, no
28 accountant shall be liable for damages for negligence arising out
29 of and in the course of rendering any professional accounting
30 service unless:

31 (1) The ¹[plaintiff instituting the action] claimant¹ against the
32 accountant was the accountant's client; or

33 (2) The accountant:

34 (a) knew at the time of the engagement ¹by the client¹, or
35 agreed with the client after the time of the engagement, that
36 the professional accounting service rendered to the client would
37 be made available to the ¹[plaintiff] claimant¹, who was
38 specifically identified to the accountant in connection with a
39 specified transaction made by the ¹[plaintiff] claimant¹;

40 (b) ¹[was aware] knew¹ that the ¹[plaintiff] claimant¹ intended
41 to rely upon the professional accounting service in connection
42 with that specified transaction; and

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted October 13, 1994.

1 (c) directly expressed to the ¹[plaintiff] claimant¹, by words or
2 conduct, the accountant's understanding of the ¹[plaintiff's]
3 claimant's intended¹ reliance on the professional accounting
4 service ¹; or

5 (3) In the case of a bank claimant, the accountant
6 acknowledged the bank's intended reliance on the professional
7 accounting service and the client's knowledge of that reliance in
8 a written communication¹.

9 2. This act shall take effect immediately ¹and apply to
10 transactions entered into on or after the effective date of this
11 act¹.

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16 Limits accountants' liability to third parties.

P.L.1995, CHAPTER 49, approved March 17, 1995
1994 Senate No. 826 (First Reprint)

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2 Title 2A of the New Jersey Statutes.

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10 is organized for the practice of public accounting pursuant to the
11 provisions of P.L.1977, c.144 (C.45:2B-1 et seq.) and P.L.1969,
12 c.232 (C.14A:17-1 et seq.).¹

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18 to perform a professional accounting service.

19 ¹[(3)] ¹(4)¹ "Professional accounting service" includes, but is
20 not limited to, the compilation, review, certification, ¹[auditing]¹
21 or ¹[other reporting] audit of¹, or the expression of a professional
22 opinion ¹or other reporting on¹, ¹[concerning]¹ a financial
23 statement or other information ¹covering a specified period of
24 time¹.

25 ¹(5) "Specified transaction" means a particular transaction
26 between a client and a claimant.¹

27 b. Notwithstanding the provisions of any other law, no
28 accountant shall be liable for damages for negligence arising out
29 of and in the course of rendering any professional accounting
30 service unless:

31 (1) The ¹[plaintiff instituting the action] claimant¹ against the
32 accountant was the accountant's client; or

33 (2) The accountant:

34 (a) knew at the time of the engagement ¹by the client¹, or
35 agreed with the client after the time of the engagement, that
36 the professional accounting service rendered to the client would
37 be made available to the ¹[plaintiff] claimant¹, who was
38 specifically identified to the accountant in connection with a
39 specified transaction made by the ¹[plaintiff] claimant¹;

40 (b) ¹[was aware] knew¹ that the ¹[plaintiff] claimant¹ intended
41 to rely upon the professional accounting service in connection
42 with that specified transaction; and

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted October 13, 1994.

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2 conduct, the accountant's understanding of the ¹[plaintiff's]
3 claimant's intended¹ reliance on the professional accounting
4 service¹; or

5 (3) In the case of a bank claimant, the accountant
6 acknowledged the bank's intended reliance on the professional
7 accounting service and the client's knowledge of that reliance in
8 a written communication¹.

9 2. This act shall take effect immediately ¹and apply to
10 transactions entered into on or after the effective date of this
11 act¹.

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16 Limits accountants' liability to third parties.

SENATE, No. 826
STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1994

By Senators KYRILLOS and CARDINALE

1 AN ACT concerning accountants' liability and supplementing
2 Title 2A of the New Jersey Statutes.

3

4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1.a. As used in this act:

7 (1) "Accountant" means a person who is registered as a
8 certified public accountant pursuant to the provisions of
9 P.L.1977, c.144 (C.45:2B-1 et seq.), or an accounting firm which
10 is organized for the practice of public accounting pursuant to the
11 provisions of P.L.1977, c.144 (C.45:2B-1 et seq.) and P.L.1969,
12 c.232 (C.14A:17-1 et seq.)

13 (2) "Client" means the party directly engaging an accountant
14 to perform a professional accounting service.

15 (3) "Professional accounting service" includes, but is not
16 limited to, the compilation, review, certification, auditing or
17 other reporting, or the expression of a professional opinion,
18 concerning a financial statement or other information.

19 b. Notwithstanding the provisions of any other law, no
20 accountant shall be liable for damages for negligence arising out
21 of and in the course of rendering any professional accounting
22 service unless:

23 (1) The plaintiff instituting the action against the accountant
24 was the accountant's client; or

25 (2) The accountant:

26 (a) knew at the time of the engagement, or agreed with the
27 client after the time of the engagement, that the professional
28 accounting service rendered to the client would be made
29 available to the plaintiff, who was specifically identified to the
30 accountant in connection with a specified transaction made by
31 the plaintiff;

32 (b) was aware that the plaintiff intended to rely upon the
33 professional accounting service in connection with that specified
34 transaction; and

35 (c) directly expressed to the plaintiff, by words or conduct, the
36 accountant's understanding of the plaintiff's reliance on the
37 professional accounting service.

38 2. This act shall take effect immediately.

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SPONSOR STATEMENT

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43 This bill would limit accountants' liability to third parties for
44 the accountants' negligent acts. Although accountants' civil
45 liability has historically been limited by common law, which

1 required that there must be privity (a direct relationship)
2 between an accountant and any party bringing suit against him,
3 recent case law has weakened this concept. In Rosenblum, Inc. v.
4 Adler, 93 N.J. 324 (1983), the New Jersey Supreme Court
5 expanded the scope of accountants' liability to include all
6 "reasonably foreseeable" plaintiffs, such as stockholders and
7 potential investors.

8 Thus, an accountant providing professional services to a client
9 is vulnerable to lawsuits by virtually any member of the investing
10 public at large, regardless of whether the accountant had any
11 previous relationship with that person or any knowledge that the
12 person would rely on the services the accountant rendered.

13 The sponsor believes that this situation is particularly unjust in
14 light of the fact that an accountant is rarely the primary
15 wrongdoer in negligence cases. Instead, the accountant is sued
16 because he failed to detect the fraud of his client. In many
17 cases, an accounting firm is sued because it has "deep pockets,"
18 in contrast to its client, which may have become insolvent by the
19 time the investors realize they have been defrauded.

20 This bill would restore the concept of privity to accountants'
21 liability towards third parties. The bill provides that an
22 accountant will not be liable for damages for negligence to any
23 person unless:

24 (1) the person was the accountant's client, or

25 (2) the accountant knew that the person (who was specifically
26 identified to the accountant at the time the services were
27 rendered) intended to rely upon the accountant's services in
28 connection with a specified transaction, and the accountant
29 expressed his understanding of that reliance.

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34 Limits accountants' liability to third parties.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 826

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 13, 1994

The Senate Commerce Committee reports favorably and with committee amendments Senate, No. 826.

This bill, as amended by the committee, would limit accountants' liability to third parties for the accountants' negligent acts. The bill restores the concept of privity to accountants' liability towards third parties and provides that an accountant will not be liable for damages for negligence to any person unless:

- (1) the person was the accountant's client; or
- (2) the accountant knew that the person (who was specifically identified to the accountant by the client at the time of the engagement or was later agreed to with the client) intended to rely upon the accountant's professional accounting service in connection with a specified transaction, and the accountant expressed to the person his understanding of that reliance; or
- (3) in the case of a bank, the accountant acknowledged the bank's intended reliance on the professional accounting service and the client's knowledge of that reliance in a written communication.

The bill takes effect immediately and applies to transactions entered into on or after that effective date.

SENATE SCM COMMITTEE

AMENDMENTS

to

SENATE, No. 826

(Sponsored by Senators KYRILLOS and CARDINALE)

REPLACE SECTION 1 TO READ:

1.a. As used in this act:

(1) "Accountant" means a person who is registered as a certified public accountant pursuant to the provisions of P.L.1977, c.144 (C.45:2B-1 et seq.), or an accounting firm which is organized for the practice of public accounting pursuant to the provisions of P.L.1977, c.144 (C.45:2B-1 et seq.) and P.L.1969, c.232 (C.14A:17-1 et seq.)^{1,1}

(2) "Bank" means a state or federally chartered bank, savings bank, savings and loan association, credit union, a group of such institutions or its affiliates, subsidiaries, co-lenders, successors or assigns.

(3)¹ "Client" means the party directly engaging an accountant to perform a professional accounting service.

¹[(3)] ¹(4)¹ "Professional accounting service" includes, but is not limited to, the compilation, review, certification, ¹[auditing]¹ or ¹[other reporting] audit of¹, or the expression of a professional opinion ¹or other reporting on¹, ¹[concerning]¹ a financial statement or other information ¹covering a specified period of time¹.

¹(5) "Specified transaction" means a particular transaction between a client and a claimant.¹

b. Notwithstanding the provisions of any other law, no accountant shall be liable for damages for negligence arising out of and in the course of rendering any professional accounting service unless:

(1) The ¹[plaintiff instituting the action] claimant¹ against the accountant was the accountant's client; or

(2) The accountant:

(a) knew at the time of the engagement ¹by the client¹, or agreed with the client after the time of the engagement, that the professional accounting service rendered to the client would be made available to the ¹[plaintiff] claimant¹, who was specifically identified to the accountant in connection with a specified transaction made by the ¹[plaintiff] claimant¹;

(b) ¹[was aware] knew¹ that the ¹[plaintiff] claimant¹ intended to rely upon the professional accounting service in connection with that specified transaction; and

(c) directly expressed to the ¹[plaintiff] claimant¹, by words or conduct, the accountant's understanding of the ¹[plaintiff's] claimant's intended¹ reliance on the professional accounting service ¹; or

(3) In the case of a bank claimant, the accountant acknowledged the bank's intended reliance on the professional accounting service and the client's knowledge of that reliance in a written communication¹.

REPLACE SECTION 2 TO READ:

2. This act shall take effect immediately ¹and apply to transactions entered into on or after the effective date of this act¹.