



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 783 (as enacted)  
Sponsor: Senator Tonya Schuitmaker  
Senate Committee: Judiciary  
House Committee: Banking and Financial Services

**PUBLIC ACT 268 of 2012**

Date Completed: 8-28-12

**CONTENT**

**The bill amended the Revised Judicature Act to do the following with respect to a certified public accountant's (CPA's) professional liability:**

- **Exempt a CPA from liability for civil damages in certain situations in which the claimant is not the CPA's client.**
- **Revise the timing of a client's or CPA's notice regarding the person intended to benefit from or rely on the CPA's services.**

The bill took effect on July 3, 2012.

Liability Limitation

The Act provides that a CPA is liable for civil damages in connection with public accounting services her or she performed only in one of the following situations:

- A negligent act, omission, decision, or other conduct of the CPA if the claimant is the CPA's client.
- An act, omission, decision, or conduct of the CPA that constitutes fraud or an intentional misrepresentation.
- A negligent act, omission, decision, or other conduct of the CPA if the client informed the CPA (as described below) that the client intended the services to benefit the person bringing the action.

Under the bill, the provisions involving a negligent act, omission, decision, or other conduct are subject to the following.

The bill specifies that a CPA is not liable for civil damages in any of the following situations in which the claimant is not the CPA's client:

- The claimant asserts standing to sue based on an assignment of the claim from the client to the claimant (except in an action arising out of an annual report required by the Cemetery Regulation Act or the Prepaid Funeral and Cemetery Sales Act).
- The claimant asserts standing to sue based on a voluntary surrender of assets or acquisition of the claim by means of foreclosure or surrender under any type of security agreement between the claimant and the client.
- The claimant asserts standing to sue based on a written notice regarding the person intended to benefit from the services, that was not signed by the client himself or herself (if an individual) or by an officer, manager, or member of the client (if an entity).

Written Notice

As indicated above, a CPA is liable for a negligent act, omission, decision, or other conduct if the client informed the CPA in writing that a primary intent of the client was for the professional public accounting services to benefit or influence the person bringing the action for civil damages. For this purpose, the CPA must identify in writing to the client each person, generic group, or class description that the CPA intends to have rely on the services. The CPA may be held liable only to each

identified person, generic group, or class description. The CPA's written identification must include each person, generic group, or class description identified by the client as being benefited or influenced.

The bill requires the written notice and identifications to be made "directly" by the client to the CPA and by the CPA to the client, and before the engagement of the CPA begins. Previously, the notice and identifications had to be made at the time of engagement.

MCL 600.2962

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.