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# SENATE BILL No. 396

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 25-1-11-12; IC 25-2.1; IC 34-30-2-158; IC 34-46-2-17.

**Synopsis:** Peer review of accountants and accounting firms. Changes the phrase "quality review" to "peer review" for purposes of the laws governing public accountancy beginning July 1, 2012. Permits a peer review rating of fail to be used in disciplining a certified public accountant or public accounting firm after June 30, 2012. Indicates that a law requiring the state board of accountancy to initiate a complaint with the office of the attorney general to discipline a licensee does not prohibit the board from taking other actions permitted by law. Specifies that certain client records must be returned to a client within 45 days after a request for the records is made. Provides civil immunity to a person engaged in a quality review or peer review or administering a quality review or peer review program.

**Effective:** July 1, 2011.

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January 11, 2011, read first time and referred to Committee on Commerce & Economic Development.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 396



A BILL FOR AN ACT to amend the Indiana Code concerning professions and occupations.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 25-1-11-12, AS AMENDED BY P.L.177-2009,
- 2 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2011]: Sec. 12. (a) The board may impose any of the
- 4 following sanctions, singly or in combination, if the board finds that a
- 5 practitioner is subject to disciplinary sanctions under sections 5
- 6 through 9 of this chapter:
- 7 (1) Permanently revoke a practitioner's license.
- 8 (2) Suspend a practitioner's license.
- 9 (3) Censure a practitioner.
- 10 (4) Issue a letter of reprimand.
- 11 (5) Place a practitioner on probation status and require the
- 12 practitioner to:
- 13 (A) report regularly to the board upon the matters that are the
- 14 basis of probation;
- 15 (B) limit practice to those areas prescribed by the board;
- 16 (C) continue or renew professional education approved by the
- 17 board until a satisfactory degree of skill has been attained in



1 those areas that are the basis of the probation; ~~or~~

2 (D) perform or refrain from performing any acts, including  
3 community restitution or service without compensation, that  
4 the board considers appropriate to the public interest or to the  
5 rehabilitation or treatment of the practitioner; **or**

6 **(E) if the practitioner is a licensee (as defined in**  
7 **IC 25-2.1-1-8), satisfactorily complete a quality review**  
8 **(before July 1, 2012) or peer review (after June 30, 2012)**  
9 **specified by the board as a condition for termination of**  
10 **probationary status.**

11 (6) Assess a civil penalty against the practitioner for not more  
12 than one thousand dollars (\$1,000) for each violation listed in  
13 sections 5 through 9 of this chapter except for a finding of  
14 incompetency due to a physical or mental disability.

15 (7) Order a practitioner to pay consumer restitution to a person  
16 who suffered damages as a result of the conduct or omission that  
17 was the basis for the disciplinary sanctions under this chapter.

18 (b) When imposing a civil penalty under subsection (a)(6), the board  
19 shall consider a practitioner's ability to pay the amount assessed. If the  
20 practitioner fails to pay the civil penalty within the time specified by  
21 the board, the board may suspend the practitioner's license without  
22 additional proceedings. However, a suspension may not be imposed if  
23 the sole basis for the suspension is the practitioner's inability to pay a  
24 civil penalty.

25 (c) The board may withdraw or modify the probation under  
26 subsection (a)(5) if the board finds after a hearing that the deficiency  
27 that required disciplinary action has been remedied or that changed  
28 circumstances warrant a modification of the order.

29 SECTION 2. IC 25-2.1-1-8.7 IS ADDED TO THE INDIANA  
30 CODE AS A NEW SECTION TO READ AS FOLLOWS  
31 [EFFECTIVE JULY 1, 2011]: **Sec. 8.7. (a) "Peer review" means a**  
32 **study, an appraisal, or a review of at least one (1) aspect of the**  
33 **professional work of:**

34 **(1) an individual who; or**

35 **(2) a firm in the practice of accountancy that;**

36 **attests or issues compilation reports, by at least one (1) individual**  
37 **who holds a certificate from any state and possesses qualifications**  
38 **that meet the applicable substantial equivalency standards and**  
39 **who is independent of the individual or firm being reviewed. The**  
40 **term includes any part of a quality review conducted before July**  
41 **1, 2012, that becomes part of a peer review conducted or peer**  
42 **review report issued after June 30, 2012.**

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1 (b) After June 30, 2012, any reference in any law, rule, or other  
2 document to "quality review" as that term was applied under this  
3 article before July 1, 2012, shall be treated as a reference to peer  
4 review.

5 SECTION 3. IC 25-2.1-1-12, AS AMENDED BY P.L.197-2007,  
6 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2011]: Sec. 12. (a) "Quality review" means a study, an  
8 appraisal, or a review of at least one (1) aspect of the professional work  
9 of:

- 10 (1) an individual who; or
  - 11 (2) a firm in the practice of accountancy that;
- 12 attests or issues compilation reports, by at least one (1) individual who  
13 holds a certificate from any state and possesses qualifications that meet  
14 the applicable substantial equivalency standards and who is  
15 independent of the individual or firm being reviewed.

16 (b) This section expires July 1, 2012.

17 SECTION 4. IC 25-2.1-2-15, AS AMENDED BY P.L.190-2007,  
18 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2011]: Sec. 15. The board may adopt rules under IC 4-22-2  
20 governing the administration and enforcement of this article and the  
21 conduct of licensees, including the following:

- 22 (1) The board's meetings and conduct of business.
- 23 (2) The procedure of investigations and hearings.
- 24 (3) The educational and experience qualifications required for the  
25 issuance of certificates under this article and the continuing  
26 professional education required for renewal of certificates under  
27 IC 25-2.1-4.
- 28 (4) Rules of professional conduct directed to controlling the  
29 quality and probity of the practice of accountancy by licensees,  
30 including independence, integrity, and objectivity, competence  
31 and technical standards, and responsibilities to the public and  
32 clients.
- 33 (5) The actions and circumstances that constitute professing to be  
34 a licensee in connection with the practice of accountancy.
- 35 (6) The manner and circumstances of use of the title "certified  
36 public accountant" and the abbreviation "CPA".
- 37 (7) Quality reviews (before July 1, 2012) or peer reviews (after  
38 June 30, 2012) that may be required to be performed under this  
39 article.
- 40 (8) Methods of applying for and conducting the examinations,  
41 including methods for grading examinations and determining a  
42 passing grade required of an applicant for a certificate. However,

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1 the board shall to the extent possible provide that the  
2 examination, grading of the examination, and the passing grades  
3 are uniform with those applicable in other states.

4 (9) Substantial equivalency.

5 (10) Administration of the accountant investigative fund  
6 established by IC 25-2.1-8-4.

7 SECTION 5. IC 25-2.1-5-8, AS AMENDED BY P.L.190-2007,  
8 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 JULY 1, 2011]: Sec. 8. (a) The board shall adopt rules that require as  
10 a condition to renew a permit under this chapter, that an applicant  
11 undergo, not more than once every three (3) years, a quality review  
12 **(before July 1, 2012) or peer review (after June 30, 2012)** conducted  
13 in a manner the board specifies.

14 (b) The rules adopted under subsection (a) must:

15 (1) be adopted reasonably in advance of the time when a quality  
16 review **(before July 1, 2012) or peer review (after June 30,**  
17 **2012)** first becomes effective;

18 (2) include reasonable provision for compliance by an applicant  
19 showing that the applicant has in the preceding three (3) years  
20 undergone a quality review **(before July 1, 2012) or peer review**  
21 **(after June 30, 2012)** that is a satisfactory equivalent to the  
22 quality review **(before July 1, 2012) or peer review (after June**  
23 **30, 2012)** required under this section;

24 (3) require, with respect to quality reviews **(before July 1, 2012)**  
25 **or peer reviews (after June 30, 2012)** under subdivision (2), that  
26 the quality review **(before July 1, 2012) or peer review (after**  
27 **June 30, 2012)** be subject to review by an oversight body  
28 established or sanctioned by the board that shall:

29 (A) **comply with IC 25-2.1-9-4; and**

30 (B) periodically report to the board on the effectiveness of the  
31 review program and provide to the board a listing of firms that  
32 have participated in a quality review **(before July 1, 2012) or**  
33 **peer review (after June 30, 2012)** program; and

34 (4) **subject to section 9 of this chapter and IC 25-2.1-9-4,**  
35 require, with respect to quality reviews **(before July 1, 2012) or**  
36 **peer reviews (after June 30, 2012)** under subdivision (2), that:

37 (A) the proceedings, records, and work papers of a review  
38 committee are privileged and are not subject to discovery,  
39 subpoena, or other means of legal process or introduction into  
40 evidence in a civil action, arbitration, administrative  
41 proceeding, or Indiana board of accountancy proceeding; and

42 (B) a member of the review committee or individual who was

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1 involved in the quality review **(before July 1, 2012) or peer**  
2 **review (after June 30, 2012)** process is not permitted or  
3 required to testify in a civil action, arbitration, administrative  
4 proceeding, or ~~Indiana~~ board of ~~accountancy~~ proceeding to  
5 matters:

- 6 (i) produced, presented, disclosed or discussed during, or in  
7 connection with, the quality review **(before July 1, 2012) or**  
8 **peer review (after June 30, 2012)** process; or
- 9 (ii) that involve findings, recommendations, evaluations,  
10 opinions, or other actions of the committee or a committee  
11 member.

12 SECTION 6. IC 25-2.1-5-9 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. (a) Notwithstanding  
14 section ~~8(4)(B)~~ **8(b)(4)(B)** of this chapter, information, documents, or  
15 records that are publicly available are not immune from discovery or  
16 use in any civil action, arbitration, administrative proceeding, or  
17 ~~Indiana~~ board of ~~accountancy~~ proceeding merely because they were  
18 presented or considered in connection with the quality review **(before**  
19 **July 1, 2012) or peer review (after June 30, 2012)** process.

- 20 (b) Any:
  - 21 (1) materials prepared in connection with a particular engagement  
22 merely because they happen to subsequently be presented or  
23 considered as part of the quality review **(before July 1, 2012) or**  
24 **peer review (after June 30, 2012)** process; or
  - 25 (2) dispute between review committees and individuals or firms  
26 subject to a quality review **(before July 1, 2012) or peer review**  
27 **(after June 30, 2012)** arising from the performance of the quality  
28 review **(before July 1, 2012) or peer review (after June 30,**  
29 **2012)**;

30 are not privileged.  
31 SECTION 7. IC 25-2.1-8-1, AS AMENDED BY P.L.190-2007,  
32 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
33 JULY 1, 2011]: Sec. 1. (a) The board may impose sanctions for any of  
34 the following reasons:

- 35 (1) A violation of IC 25-1-11-5, **including:**
  - 36 **(A) a peer review rating of fail; or**
  - 37 **(B) an act or omission that is the basis of a peer review**  
38 **rating of fail;**
- 39 **on any peer review report issued under this article after June**  
40 **30, 2012.**
- 41 (2) Revocation or suspension of the right to practice before a state  
42 or federal agency.

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- 1 (3) Dishonesty, fraud, or gross negligence in the practice of
- 2 accountancy or in the filing of or failure to file the licensee's own
- 3 income tax returns.
- 4 (4) Any conduct reflecting adversely on the licensee's fitness to
- 5 engage in the practice of accountancy.
- 6 (5) Failure to complete continuing education requirements
- 7 satisfactorily.
- 8 (6) Failure to furnish evidence, when required, of satisfactory
- 9 completion of continuing education requirements.

10 (b) A holder of a CPA certificate issued under this article is subject  
 11 to disciplinary action in this state if the CPA certificate holder:

- 12 (1) offers or renders services or uses the CPA title in another
- 13 state; and
- 14 (2) commits an act in that other state for which the CPA
- 15 certificate holder would be subject to discipline in the other state
- 16 if the CPA certificate holder were licensed in the other state.

17 The board shall investigate a complaint made by a board of  
 18 accountancy or the equivalent of a board of accountancy in another  
 19 state.

20 SECTION 8. IC 25-2.1-8-2 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. In place of or in  
 22 addition to any remedy specifically provided in IC 25-1-11, the board  
 23 may require the following of a licensee:

- 24 (1) **To undergo a quality review ~~conducted~~ (before July 1,**
- 25 **2012) or a peer review (after June 30, 2012).**
- 26 (2) **Satisfactory completion of To satisfactorily complete**
- 27 **continuing professional education programs.**

28 SECTION 9. IC 25-2.1-9-3, AS AMENDED BY P.L.84-2010,  
 29 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2011]: Sec. 3. (a) If the board has reason to believe that the  
 31 subject of an investigation has committed a violation of this article or  
 32 IC 25-1-11:

- 33 (1) the board shall direct that a complaint be issued under
- 34 IC 25-1-7, if the subject of the investigation is a licensee; and
- 35 (2) the board shall take appropriate action under IC 25-1-7-14, if
- 36 the subject of the investigation is not a licensee.

37 **(b) Subsection (a) does not prohibit the board from taking an**  
 38 **action permitted under IC 25-2.1-8-2 or IC 25-1, including an**  
 39 **action under the following:**

- 40 (1) **IC 25-1-4-5 (conditional license and other actions related**
- 41 **to continuing education or lapsed license).**
- 42 (2) **IC 25-1-6-4 (refusal to issue a license or placement on**

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1           **probationary status).**

2           ~~(b)~~ **(c)** If the board does not proceed under subsection (a) **or (b)**, the  
3 board shall close the matter and may release the information only with  
4 the consent of the individual or firm that was under investigation.

5           SECTION 10. IC 25-2.1-9-4 IS ADDED TO THE INDIANA CODE  
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 2011]: **Sec. 4. (a) This section applies to a licensee that receives  
8 a peer review rating of fail on a peer review report issued after  
9 June 30, 2012, for a peer review conducted under IC 25-2.1-5-8.**

10           **(b) The following definitions apply throughout this section:**

11           **(1) "Administering entity" refers to the oversight body**  
12           **established or sanctioned by the board to conduct a peer**  
13           **review program.**

14           **(2) "Director" refers to the director of the division of**  
15           **consumer protection in the office of the attorney general.**

16           **(3) "Oversight committee" refers to a committee of licensees**  
17           **who are not board members that is designated by the board**  
18           **to receive a report.**

19           **(4) "Report" refers to a peer review report described in**  
20           **subsection (a), including any description of the deficiencies on**  
21           **which the peer review rating of fail is based.**

22           **(c) The board shall provide the director with the name and**  
23           **contact information for the administering entity.**

24           **(d) Not more than thirty (30) days after the issuance of a report,**  
25           **the administering entity shall make the report available to the**  
26           **oversight committee. The oversight committee may forward the**  
27           **report to the director. Receipt of the report shall be treated under**  
28           **IC 25-1-7-4, IC 25-1-7-5, and IC 25-1-7-6 as a complaint submitted**  
29           **by the board. If, after conducting an investigation, the director**  
30           **believes that a licensee should be subjected to disciplinary**  
31           **sanctions by the board, the director shall report the director's**  
32           **determination to the attorney general. Upon receiving the**  
33           **director's report, the attorney general may prosecute the matter,**  
34           **on behalf of the state of Indiana, before the board. IC 25-1-7-7(b)**  
35           **does not apply to a determination related to a complaint filed**  
36           **under this section.**

37           **(e) The administering entity and the peer review committee**  
38           **issuing a report shall cooperate with an investigation under**  
39           **IC 25-1-7 of a complaint filed under this section and with any**  
40           **resulting proceeding, including compliance with any request for**  
41           **access to or production of the proceedings, records, and work**  
42           **papers of the review committee by the director, the office of the**

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1 attorney general, or a party to any proceeding initiated as a result  
 2 of the filing of a complaint under this section. However, all  
 3 complaints and information pertaining to a complaint are  
 4 confidential until the attorney general files notice with the board  
 5 of the attorney general's intent to prosecute a licensee under  
 6 IC 25-1-7-7. Any meeting of the board, the oversight committee, or  
 7 a designee of the board or oversight committee that is required in  
 8 an investigation conducted before the attorney general files notice  
 9 of intent to prosecute shall be conducted as an executive session  
 10 under IC 5-14-1.5-6.1.

11 SECTION 11. IC 25-2.1-9-5 IS ADDED TO THE INDIANA CODE  
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 13 1, 2011]: Sec. 5. An:

- 14 (1) entity administering a quality review program before July
- 15 1, 2012, or a peer review program after June 30, 2012;
- 16 (2) officer, member, or employee of an entity administering a
- 17 quality review program before July 1, 2012, or a peer review
- 18 program after June 30, 2012;
- 19 (3) employee or member of a quality review committee before
- 20 July 1, 2012, or a peer review committee after June 30, 2012;
- 21 and
- 22 (4) entity in which or for which a member of a quality review
- 23 committee (before July 1, 2012) or peer review committee
- 24 (after June 30, 2012) is a sole proprietor, a partner, a
- 25 shareholder, a member, or an employee;

26 is immune from civil liability that would otherwise arise from  
 27 communications, supervision, findings, recommendations,  
 28 evaluations, reports, opinions, or other actions taken or omissions  
 29 occurring in good faith in the course and scope of the duties of a  
 30 quality review administering entity (before July 1, 2012) or peer  
 31 review administering entity (after June 30, 2012) or a quality  
 32 review committee (before July 1, 2012) or peer review committee  
 33 (after June 30, 2012) that arise under this article, including the  
 34 rules adopted by the board. The immunity granted under this  
 35 section includes immunity for an act or omission related to any  
 36 part of a quality review conducted under this article before July 1,  
 37 2012, that becomes part of a peer review conducted or peer review  
 38 report issued after June 30, 2012.

39 SECTION 12. IC 25-2.1-11-2 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. Before reinstating a  
 41 suspended certificate or permit under IC 25-1-11-14, the board may  
 42 require the applicant to show successful completion of specified

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1 continuing professional education, and the board may make the  
2 reinstatement of a certificate or permit conditional on satisfactory  
3 completion of a quality review **(before July 1, 2012) or peer review**  
4 **(after June 30, 2012)** specified by the board.

5 SECTION 13. IC 25-2.1-14-2 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. The information  
7 derived from or as the result of professional services is confidential and  
8 privileged. However, this section does not prohibit a certified public  
9 accountant, a public accountant, or an accounting practitioner from  
10 disclosing any data required to be disclosed by the standards of the  
11 profession:

- 12 (1) in rendering an opinion on the presentation of financial  
13 statements;
- 14 (2) in ethical investigations conducted by private professional  
15 organizations;
- 16 (3) in the course of quality reviews **(before July 1, 2012) or peer**  
17 **reviews (after June 30, 2012) or an investigation or**  
18 **proceeding related to a quality review (before July 1, 2012) or**  
19 **peer review (after June 30, 2012); or**
- 20 (4) in making disclosure where the financial statements or the  
21 professional services of an accountant are contested.

22 SECTION 14. IC 25-2.1-14-3 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. **(a) The following**  
24 **definitions apply throughout this section:**

- 25 (1) **"Client provided records" means accounting or other**  
26 **records belonging to the client that were provided to the**  
27 **licensee by or on behalf of the client.**
- 28 (2) **"Client records prepared by the licensee" means**  
29 **accounting or other records (for example, tax returns, general**  
30 **ledgers, subsidiary journals, and supporting schedules such as**  
31 **detailed employee payroll records and depreciation schedules)**  
32 **that the licensee was engaged to prepare for the client.**
- 33 (3) **"Supporting records" means information not reflected in**  
34 **the client's books and records that are otherwise not available**  
35 **to the client with the result that the client's financial**  
36 **information is incomplete.**
- 37 (4) **"Working papers" include, but are not limited to, audit**  
38 **programs, analytical review schedules, and statistical**  
39 **sampling results, analyses, and schedules prepared by the**  
40 **client at the request of the licensee.**

41 **(b) All statements, records, schedules, working papers, and**  
42 **memoranda made by a licensee or a partner, a member, a shareholder,**

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1 an officer, a director, or an employee of a licensee, including  
2 information prepared by the client for the work and services rendered  
3 to a client in the practice of accountancy, except the reports submitted  
4 by the licensee to the client and records that are part of the client's  
5 records, must remain the property of the licensee except in an express  
6 agreement between the licensee and the client to the contrary.

7 **(c) Upon a client's request, a licensee is required to provide the**  
8 **following to the client:**

9 **(1) Client provided records in the licensee's custody or**  
10 **control.**

11 **(2) Client records prepared by the licensee. However, client**  
12 **records prepared by the licensee may be withheld if the**  
13 **preparation of the records is not complete or there are fees**  
14 **due the licensee for the engagement to prepare those records.**

15 **(3) Supporting records related to a completed and issued**  
16 **work product of a licensee. However, supporting records**  
17 **prepared by the licensee may be withheld if there are fees due**  
18 **to the licensee for the specific work product.**

19 **(d) A licensee may make and retain a copy of any records**  
20 **returned to a client. Records may be provided in any format usable**  
21 **to the client. To the extent practicable, records shall be returned to**  
22 **a client not more than forty-five (45) days after a request is**  
23 **received.**

24 SECTION 15. IC 25-2.1-14-5 IS AMENDED TO READ AS  
25 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) This chapter does  
26 not prohibit a temporary transfer of work papers or other material  
27 necessary to carry out quality reviews **(before July 1, 2012) or peer**  
28 **reviews (after June 30, 2012), conduct an investigation or**  
29 **proceeding related to a quality review (before July 1, 2012) or peer**  
30 **review (after June 30, 2012), or to comply with the disclosure of**  
31 **information under this chapter.**

32 (b) A licensee is not required to keep any work paper beyond the  
33 period prescribed in any applicable statute.

34 SECTION 16. IC 34-30-2-158 IS ADDED TO THE INDIANA  
35 CODE AS A NEW SECTION TO READ AS FOLLOWS  
36 [EFFECTIVE JULY 1, 2011]: **Sec. 158. IC 25-2.1-9-5 (Concerning**  
37 **immunity of an entity administering a quality review (before July**  
38 **1, 2012) or peer review (after June 30, 2012) program and**  
39 **members of a quality review committee (before July 1, 2012) or**  
40 **peer review committee (after June 30, 2012)).**

41 SECTION 17. IC 34-46-2-17 IS AMENDED TO READ AS  
42 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17. IC 25-2.1-5-8

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1 (Concerning proceedings, records, and work papers of a quality review  
2 committee that conducts a quality review of an accounting firm **before**  
3 **July 1, 2012, or a peer review committee that conducts a peer**  
4 **review of an accounting firm after June 30, 2012).**

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