

By: Senator(s) Woodfield, Kirby, Hewes

To: Business and
Financial
InstitutionsCOMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2363

1 AN ACT TO AMEND SECTION 73-33-1, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE STATUS OF A RETIRED CERTIFIED PUBLIC ACCOUNTANT; TO
3 REQUIRE THAT A CERTIFIED PUBLIC ACCOUNTANT WHO IS PRACTICING
4 PUBLIC ACCOUNTING BE ASSOCIATED AND REGISTERED WITH A CPA FIRM AND
5 TO ESTABLISH MINIMUM QUALIFICATIONS FOR SUCH CPA FIRM; TO CODIFY
6 SECTION 73-33-2, MISSISSIPPI CODE OF 1972, TO PROVIDE DEFINITIONS
7 OF CERTIFIED PUBLIC ACCOUNTANT (CPA), CPA FIRM, CAPS PRACTICING
8 PUBLIC ACCOUNTING, AND OTHER TERMS; AND TO DELETE THE REQUIREMENT
9 THAT A CERTIFIED PUBLIC ACCOUNTANT HOLD A SEPARATE LICENSE TO
10 PRACTICE PUBLIC ACCOUNTING; TO AMEND SECTION 73-33-5, MISSISSIPPI
11 CODE OF 1972, TO AUTHORIZE THE STATE BOARD OF PUBLIC ACCOUNTANCY
12 TO ISSUE PERMITS TO CERTIFIED PUBLIC ACCOUNTANT FIRMS; TO AMEND
13 SECTION 73-33-7, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE
14 BOARD OF PUBLIC ACCOUNTANCY TO CHARGE ANNUAL CERTIFICATE, LICENSE
15 AND PERMIT FEES; TO AMEND SECTION 73-33-9, MISSISSIPPI CODE OF
16 1972, TO REQUIRE THAT A HOLDER OF A RECIPROCAL LICENSE BE
17 ASSOCIATED WITH A FIRM THAT HAS A PERMIT ISSUED BY THE BOARD; TO
18 AMEND SECTION 73-33-11, MISSISSIPPI CODE OF 1972, TO REVISE THE
19 PROCEDURE BY WHICH THE STATE BOARD OF PUBLIC ACCOUNTANCY MAY
20 REVOKE, CANCEL OR SUSPEND CERTIFICATES, LICENSES AND PERMITS OR
21 TAKE OTHER DISCIPLINARY ACTION AGAINST A REGISTRANT; TO AMEND
22 SECTION 73-33-13, MISSISSIPPI CODE OF 1972, TO MAKE IT A
23 MISDEMEANOR TO REPRESENT THAT A CERTIFIED PUBLIC ACCOUNTANT FIRM
24 WITHOUT A CURRENT PERMIT IS LICENSED TO PRACTICE PUBLIC
25 ACCOUNTING; TO AMEND SECTION 73-33-15, MISSISSIPPI CODE OF 1972,
26 TO REQUIRE THAT A CERTIFIED PUBLIC ACCOUNTANT BE ASSOCIATED WITH A
27 REGISTERED FIRM TO PRACTICE PUBLIC ACCOUNTING; TO CREATE A NEW
28 CODE SECTION TO BE CODIFIED AS SECTION 73-33-19, MISSISSIPPI CODE
29 OF 1972, TO PROVIDE THAT ANY PERSON HOLDING A CERTIFICATE WITHOUT
30 A LICENSE ON JULY 1, 1999, SHALL AUTOMATICALLY RECEIVE A CERTIFIED
31 PUBLIC ACCOUNTANT'S LICENSE; AND FOR RELATED PURPOSES.

32 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

33 SECTION 1. Section 73-33-1, Mississippi Code of 1972, is
34 amended as follows:

35 73-33-1. Any person residing or having a place for the
36 regular transaction of business in the State of Mississippi being
37 of good moral character, and who shall have received from the
38 State Board of Public Accountancy a license certifying his
39 qualifications as a certified public accountant as hereinafter
40 provided, shall be styled or known as a certified public
41 accountant, and it shall be unlawful for any other person or

42 persons to assume such title or use any letters, abbreviations or
43 words to indicate that such person using same is a certified
44 public accountant, unless, at the discretion of the board, such
45 person has been granted use of the title of "certified public
46 accountant retired" by the Mississippi State Board of Public
47 Accountancy or has received a reciprocal certified public
48 accountant license from the State Board of Public Accountancy.

49 A certified public accountant practicing public accounting
50 must be associated and registered with a certified public
51 accountant firm. A firm permit to practice public accounting
52 shall not be issued to any individual(s) who do not hold a
53 certified public accountant license or reciprocal certified public
54 accountant license issued by the board.

55 In order to obtain and maintain a firm permit, a certified
56 public accountant firm must meet the qualifications as set and
57 determined by the board.

58 No person or persons shall engage in the practice of public
59 accounting as defined herein as a sole proprietor, partnership,
60 joint venture or professional corporation or other business
61 organization allowed by law, unless and until each business
62 organization or office thereof has registered with and been issued
63 a firm permit by the State Board of Public Accountancy.

64 SECTION 2. The following shall be codified as Section
65 73-33-2, Mississippi Code of 1972:

66 73-33-2. For the purposes of this chapter, unless context
67 requires otherwise:

68 (a) "Certified public accountant," "CPA," or "licensee"
69 means an individual who holds a license issued by the Mississippi
70 State Board of Public Accountancy to practice public accounting,
71 and the term "license" is used synonymously for the terms
72 "certificate" or "certification."

73 (b) "Certified public accountant firm" or "CPA firm"
74 means any sole proprietorship, professional corporation,
75 partnership, joint venture, professional association or other
76 business organization or office thereof allowable under state law
77 and under the qualifications as set in the rules and regulations
78 of the board maintained for the purpose of performing or offering
79 to perform public accounting.

80 (c) "Practice of, or practicing, CPA public accounting
81 or CPA public accountancy" means the performance, the offering to
82 perform, or maintaining an office by a person, persons or firm
83 holding itself out to the public as certified public accountant(s)
84 or CPA firm, for a client or potential client, or certified public
85 accountant(s) or CPA firm performing one or more kinds of services
86 involving the use of accounting or auditing skills, including, but
87 not limited to, the issuance of reports on financial statements,
88 or of one or more kinds of management advisory, financial advisory
89 or consulting services, or the preparation of tax returns or the
90 furnishing of advice on tax matters.

91 (d) "Firm permit to practice public accounting" means a
92 permit issued by the Mississippi State Board of Public Accountancy
93 permitting a certified public accountant firm to practice CPA
94 public accounting, and "permit holder" means a certified public
95 accountant firm holding such permit.

96 SECTION 3. Section 73-33-5, Mississippi Code of 1972, is
97 amended as follows:

98 73-33-5. The Mississippi State Board of Public Accountancy
99 is hereby authorized with the following powers and duties:

- 100 (a) To adopt a seal;
- 101 (b) To govern its proceedings;
- 102 (c) To set the fees and to regulate the time, manner
103 and place of conducting examinations to be held under this
104 chapter. Beginning February 1, 1995, a total of one hundred fifty
105 (150) collegiate-level semester hours of education including a
106 baccalaureate degree or its equivalent at a college or university
107 acceptable to the board shall be required in order to sit for the
108 examination by candidates who have not previously sat for the
109 examination. The * * * education program shall include an
110 accounting concentration or the equivalent as determined by the
111 board to be appropriate by rules and regulations. The examination
112 shall cover * * * branches of knowledge pertaining to accountancy
113 as the board may deem proper;

114 (d) To initiate investigations of certified public
115 accountant and certified public accountant firm practices;

116 (e) To notify applicants who have failed an
117 examination * * * of such failure and in what branch or branches
118 deficiency was found;

119 (f) To adopt and enforce such rules and regulations
120 concerning certified public accountant examinee and licensee
121 qualifications and practices and certified public accountant firm
122 permits and practices as the board considers necessary to maintain
123 the highest standard of proficiency in the profession of certified
124 public accounting and for the protection of the public interest.
125 The standards of practice by certified public accountants and
126 certified public accountant firms shall include generally accepted
127 auditing and accounting standards as recognized by the Mississippi
128 State Board of Public Accountancy;

129 (g) To issue certified public accountant licenses under
130 the signature and the official seal of the board as provided in
131 this chapter; and to issue permits to practice public accounting
132 to certified public accountant firms pursuant to such rules and
133 regulations as may be promulgated by the board;

134 * * *

135 (h) To employ personnel;

136 (i) To contract for services and rent; and

137 (j) To adopt and enforce all such rules and regulations
138 as shall be necessary for the administration of this chapter;
139 provided, however, no adoption or modification of any rules or
140 regulations of the board shall become effective unless any final
141 action of the board approving such adoption or modification shall
142 occur at a time and place which is open to the public and for
143 which notice by mail of such time and place and the rules
144 and * * * regulations proposed to be adopted or modified has been
145 given at least thirty (30) days prior thereto to every person who
146 is licensed and registered with the board.

147 Each application or filing made under this section shall

148 include the Social Security number(s) of the applicant in
149 accordance with Section 93-11-64, Mississippi Code of 1972.

150 SECTION 4. Section 73-33-7, Mississippi Code of 1972, is
151 amended as follows:

152 73-33-7. The Mississippi State Board of Public Accountancy
153 is authorized to charge each applicant a fee for a certified
154 public accountant license. However, a firm permit to practice
155 public accounting shall be issued without the assessment of a fee
156 by the board. All fees shall be in such amounts as to be
157 determined by the board and paid when the application is filed.

158 On or before January 1 of each year * * *, each holder of a
159 certified public accountant license issued by the Mississippi
160 State Board of Public Accountancy shall register and pay a
161 reasonable annual registration fee in such amount as to be
162 determined by the board. If any certified public accountant fails
163 to register and pay the annual registration fee on or before
164 January 1, notice of such default shall be sent to the certified
165 public accountant by certified mail to the delinquent registrant's
166 last known address as shown by the records of the board. The
167 license of any certified public accountant who fails to register
168 and pay the annual registration fee within ten (10) days after
169 notice is given * * * shall be automatically cancelled, and the
170 board shall enter the cancellation on its records.

171 On or before January 1 of each year, each certified public
172 accountant firm holding a permit to practice public accounting
173 shall register with the board without the assessment of a
174 registration fee. If any firm fails to register on or before
175 January 1, notice of such default shall be sent to the firm by
176 certified mail to the firm's last known address as shown by the
177 records of the board. The permit to practice of any firm who
178 fails to register within ten (10) days after notice is given shall
179 be automatically cancelled, and the board shall enter the
180 cancellation on its records.

181 Any person who has lost a certified public accountant license

182 or a firm which has lost a permit to practice in this state by
183 failure to register or failure to pay the annual registration fee
184 if so required under this section, or who voluntarily cancels or
185 surrenders such license or permit, may be again * * * licensed or
186 have a firm permit reinstated by the board without reexamination,
187 provided such person or firm shall again comply with the
188 requirements of this chapter and the rules and regulations of the
189 board; file application for registration; and, if required to pay
190 a fee under this section, pay all fees in arrears, late fees and a
191 reinstatement fee as set by the board * * *.

192 Out of the funds collected under this chapter shall be paid
193 the expenses of the members of the board, including mileage, hotel
194 expenses and per diem compensation as provided in Section 25-3-69,
195 for the time expended in carrying out the duties of the office;
196 provided, however, no expense incurred by the board shall ever be
197 charged against the funds of the state in excess of amounts
198 collected under this section.

199 SECTION 5. Section 73-33-9, Mississippi Code of 1972, is
200 amended as follows:

201 73-33-9. The Mississippi State Board of Public Accountancy
202 may, in its discretion, issue a reciprocal certified public
203 accountant license to practice to any holder of any certified
204 public accountant's certificate or license issued under the law of
205 another state, which shall entitle the holder to use the
206 abbreviation, "CPA," in this state provided that the state issuing
207 the original certificate or license grants similar privileges to
208 the certified public accountants of this state. The fee for
209 license and permit registration shall be in such amount as to be
210 determined by the board. Such license shall not allow the holder
211 thereof to engage in the practice of public accounting as a
212 certified public accountant unless the holder is associated with
213 and registered with a firm and meets the requirements of the
214 Mississippi State Board of Public Accountancy.

215 SECTION 6. Section 73-33-11, Mississippi Code of 1972, is

216 amended as follows:

217 73-33-11. The Mississippi State Board of Public Accountancy
218 may revoke, suspend or take other appropriate action with respect
219 to any * * * license or permit issued pursuant to this
220 chapter * * * for any unprofessional conduct * * *, or for other
221 sufficient cause, by the licensee or permit holder. No
222 disciplinary action may be taken against a licensee or permit
223 holder until the accused has been furnished both a statement of
224 the charges against him and notice of the time and place for the
225 hearing thereon. The board shall provide written notice to the
226 accused at least twenty (20) days prior to hearing on any action
227 by the board. Notice may be achieved by certified mail (with the
228 addressee's receipt required) or by personal service to the
229 licensee or permit holder. The notice shall contain a statement
230 of the charges and set a day and place for a hearing before the
231 board.

232 The members of the board are hereby empowered to sit as a
233 trial board; to administer oaths (or affirmations); to summon any
234 witness and to compel his attendance and/or his testimony, under
235 oath (or affirmation) before the board; to compel the production
236 before it, of any book, paper or document by the owner or
237 custodian thereof; and/or to compel any officer to produce, at
238 such hearing a copy of any public record (not privileged from
239 public inspection by law) in his official custody, certified to,
240 by him. The board shall elect one (1) of its members to serve as
241 clerk, to issue summons and other processes, and to certify copies
242 of its records or, the board may delegate such duties to the
243 executive director.

244 * * *

245 The accused * * * may appear in person and/or by counsel or,
246 in the instance of a firm permit holder through its manager and/or
247 counsel to defend such charges. If the accused does not appear or
248 answer, judgment may be entered by default, provided the board
249 finds that proper service was made on the accused.

250 The minutes of the board shall be recorded in an appropriate
251 minute book permanently maintained by the board at its office.

252 In a proceeding conducted under this section by the board for
253 disciplinary action against a licensee or permit holder, those
254 reasonable costs that are expended by the board in the
255 investigation and conduct of a proceeding for discipline
256 including, but not limited to, the cost of service of process,
257 court reporters, expert witnesses, investigators and legal fees
258 may be imposed by the board on the accused, the charging party or
259 both.

260 Such costs shall be paid to the board upon the expiration of
261 the period allowed for appeal of such penalties under this
262 section, or may be paid sooner if the guilty party elects. Money
263 collected by the board under this section shall be deposited to
264 the credit of the board's special fund in the State Treasury.
265 When payment of a monetary penalty assessed by the board under
266 this section is not paid when due, the board shall have the power
267 to institute and maintain proceedings in its name for enforcement
268 of payment in the Chancery Court of the First Judicial District of
269 Hinds County, Mississippi, or in the Chancery Court of the county
270 where the respondent resides.

271 In case of a decision adverse to the accused, appeal shall be
272 made within thirty (30) days from the day on which decision is
273 made * * * to the circuit court of the First Judicial District of
274 Hinds County, Mississippi, or in the circuit court of the county
275 in which the accused resides. In the case of a nonresident
276 licensee, the appeal shall be made to the First Judicial District
277 of Hinds County, Mississippi. The order of the board shall not
278 take effect until the expiration of said thirty (30) days.

279 In case of an appeal, * * * bond for costs in the circuit
280 court shall be given as in other cases; and the order of the board
281 shall not take effect until such appeal has been finally disposed
282 of by the court or courts.

283 The board may, at any time, reinstate a license or permit if

284 it finds that such reinstatement is justified.

285 In addition to the reasons specified in the first paragraph
286 of this section, the board shall be authorized to suspend the
287 license of any licensee for being out of compliance with an order
288 for support, as defined in Section 93-11-153. The procedure for
289 suspension of a license for being out of compliance with an order
290 for support, and the procedure for the reissuance or reinstatement
291 of a license suspended for that purpose, and the payment of any
292 fees for the reissuance or reinstatement of a license suspended
293 for that purpose, shall be governed by Section 93-11-157 or
294 93-11-163, as the case may be. Actions taken by the board in
295 suspending a license when required by Section 93-11-157 or
296 93-11-163 are not actions from which an appeal may be taken under
297 this section. Any appeal of a license suspension that is required
298 by Section 93-11-157 or 93-11-163 shall be taken in accordance
299 with the appeal procedure specified in Section 93-11-157 or
300 93-11-163, as the case may be, rather than the procedure specified
301 in this section. If there is any conflict between any provision
302 of Section 93-11-157 or 93-11-163 and any provision of this
303 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
304 case may be, shall control.

305 SECTION 7. Section 73-33-13, Mississippi Code of 1972, is
306 amended as follows:

307 73-33-13. If any person shall: (a) falsely represent
308 himself to the public as having received a certified public
309 accountant license or falsely represent a firm in which he has an
310 ownership interest to the public as having received a firm permit
311 as provided in this chapter; or (b) falsely assume to practice as
312 a certified public accountant; or (c) falsely use the
313 abbreviation, "C.P.A.," or any similar words or word, letters or
314 letter to indicate that the person using the same is a certified
315 public accountant, without having received a certified public
316 accountant license * * * as provided in this chapter; or (d) if
317 any person having received a certified public accountant license

318 and having lost such license by cancellation, revocation or
319 suspension as provided by this chapter, shall continue to use the
320 "CPA" abbreviation, use the words certified public accountant, or
321 practice public accounting after losing his license; or (e) if any
322 person shall represent that a CPA firm with a suspended or revoked
323 permit in which he has an ownership interest is entitled to
324 perform such practice--he shall be deemed guilty of a misdemeanor
325 and upon conviction thereof shall be punished by a criminal fine
326 of not less than Five Hundred Dollars (\$500.00) or of not more
327 than Five Thousand Dollars (\$5,000.00), or by imprisonment in the
328 county jail for not longer than six (6) months, or by both such
329 fine and imprisonment, in the discretion of the court for each
330 such an offense.

331 SECTION 8. Section 73-33-15, Mississippi Code of 1972, is
332 amended as follows:

333 73-33-15. (1) It shall be unlawful for any person, except a
334 registered public accountant, who is associated and registered
335 with a firm permit holder and/or for any firm, except for a
336 certified public accountant firm that holds a valid CPA firm
337 permit to practice public accounting issued pursuant to this
338 chapter to:

339 (a) Issue, sign or permit his name or firm name to be
340 associated with any report, transmittal letter or other written
341 communication issued as a result of an examination of financial
342 statements or financial information which contains either an
343 expression of opinion or other attestation as to the fairness,
344 accuracy or reliability of such financial statements;

345 (b) Offer to perform, or perform, for the public,
346 public accounting, tax consulting or other accounting-related
347 services while holding himself out as a certified public
348 accountant or as a firm of certified public accountants or
349 certified public accountant firm; or

350 (c) Maintain an office or other facility for the
351 transaction of business as a certified public accountant or

352 certified public accountant firm.

353 (2) Any person or firm violating subsection (1) of this
354 section shall be guilty of a misdemeanor, and may, upon conviction
355 therefor, be punished by a criminal fine of not less than Five
356 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
357 (\$5,000.00), or by imprisonment in the county jail for not less
358 than ten (10) days nor more than six (6) months, or by both such
359 fine and imprisonment in the discretion of the court.

360 (3) The provisions of paragraph (a) of subsection (1) of
361 this section shall not be construed to apply to an attorney
362 licensed to practice law in this state; to a person for making
363 statements as to his own business; to an officer or salaried
364 employee of a firm, partnership or corporation for making an
365 internal audit, statement or tax return for the same; to a
366 bookkeeper for making an internal audit, statement or tax return
367 for his employer, whose books he regularly keeps for a salary; to
368 a receiver, a trustee or fiduciary as to any statement or tax
369 return with reference to the business or property entrusted to him
370 as such; to any federal, state, county, district or municipal
371 officer as to any audit, statement, or tax return made by him in
372 the discharge of the duties of such office.

373 SECTION 9. The following section shall be codified as
374 Section 73-33-19, Mississippi Code of 1972:

375 73-33-19. Any person holding on July 1, 1999, a certificate
376 without a license registered with the Mississippi State Board of
377 Public Accountancy shall automatically receive a certified public
378 accountant's license. After July 1, 1999, the board shall not
379 issue certificates without licenses and shall issue licenses only
380 as provided under the provisions of this chapter.

381 SECTION 10. This act shall take effect and be in force from
382 and after July 1, 1999.