

By: Representative Brown

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1486

1 AN ACT TO AMEND SECTION 73-33-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THE MINIMUM OWNERSHIP REQUIREMENTS FOR CERTIFIED PUBLIC
3 ACCOUNTANT FIRMS; TO AMEND SECTION 73-33-3, MISSISSIPPI CODE OF
4 1972, TO PROVIDE THAT APPOINTMENTS TO THE MISSISSIPPI STATE BOARD
5 OF PUBLIC ACCOUNTANCY BE MADE FROM THE FOUR CONGRESSIONAL
6 DISTRICTS ON A PHASED-IN BASIS; TO AMEND SECTIONS 73-33-11 AND
7 73-33-15, MISSISSIPPI CODE OF 1972, TO REVISE THE SUBPOENA POWER
8 OF THE MISSISSIPPI STATE BOARD OF PUBLIC ACCOUNTANCY, TO AUTHORIZE
9 THE BOARD TO IMPOSE A CIVIL PENALTY AGAINST PERSONS ADJUDGED TO
10 HAVE VIOLATED CERTAIN PUBLIC ACCOUNTING REGULATORY LAWS; AND FOR
11 RELATED PURPOSES.

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

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

15 73-33-1. (1) Any person residing or having a place for the
16 regular transaction of business in the State of Mississippi being
17 of good moral character, and who shall have received from the
18 State Board of Public Accountancy a license certifying his
19 qualifications as a certified public accountant as hereinafter
20 provided, shall be styled or known as a certified public
21 accountant, and it shall be unlawful for any other person or
22 persons to assume such title or use any letters, abbreviations or
23 words to indicate that such person using same is a certified
24 public accountant, unless, at the discretion of the board, such
25 person has been granted use of the title of "certified public
26 accountant retired" by the Mississippi State Board of Public
27 Accountancy or has received a reciprocal certified public
28 accountant license from the State Board of Public Accountancy.

29 (2) A certified public accountant practicing public
30 accounting must be associated and registered with a certified
31 public accountant firm, except a certified public accountant who

32 is practicing as a sole proprietor not acting as a practice
33 unit. * * *

34 (3) In order to obtain and maintain a firm permit, a
35 certified public accountant firm must meet the qualifications as
36 set and determined by the board and shall be required to show the
37 following:

38 (a) It is wholly owned by natural persons and not owned
39 in whole or in part by business entities;

40 (b) A simple majority of the ownership of the firm in
41 terms of financial interests and/or voting rights hold Mississippi
42 certified public accountant licenses; and

43 (c) The certified public accountant members of the firm
44 are registered and in good standing with the board.

45 (4) In order to obtain and maintain a firm permit, a
46 certified public accountant firm or office thereof having its
47 principal place of business located outside of the State of
48 Mississippi that offer to perform or practices public accounting
49 for a client or a potential client who is a Mississippi resident,
50 has a principal place of business or is domiciled in Mississippi
51 shall be required to show the following:

52 (a) It is wholly owned by natural persons and not owned
53 in whole or in part by business entities;

54 (b) A simple majority of the ownership of the firm in
55 terms of financial interests and/or voting rights hold certified
56 public accountant licenses from a statutorily authorized licensing
57 jurisdiction; and

58 (c) The certified public accountant members of the firm
59 offering to perform work for a Mississippi client are registered
60 and in good standing with the board.

61 (5) Any certified public accountant firm may include
62 nonlicensee owners, provided that:

63 (a) The firm designates a licensee of this state, who
64 is responsible for the proper registration of the firm and
65 identifies that individual to the board;

66 (b) All nonlicensees owners are active individual
67 participants in the certified public accountants firm or
68 affiliated entities; and

69 (c) The firm complies with such other requirements as
70 the board may impose by rule.

71 (6) No person or persons shall engage in the practice of
72 public accounting as defined herein as a partnership, joint
73 venture or professional corporation, sole proprietor acting as a
74 practice unit, or other business organization allowed by law,
75 unless and until each business organization or office thereof has
76 registered with and been issued a firm permit by the State Board
77 of Public Accountancy.

78 **SECTION 2.** Section 73-33-3, Mississippi Code of 1972, is
79 amended as follows:

80 73-33-3. (1) There shall be a board of public accountancy,
81 consisting of seven (7) members, who are qualified electors of
82 this state; their duties, powers and qualifications are herein
83 prescribed by this chapter. The members of the Mississippi State
84 Board of Public Accountancy shall be appointed from holders of
85 certificates issued under and by virtue of this chapter.

86 (2) The present members of the Mississippi State Board of
87 Public Accountancy shall continue to serve until January 1, 1984.
88 After January 1, 1984, the appointments to the board shall be as
89 hereinafter provided.

90 The Governor shall appoint five (5) members from the
91 congressional districts as they are presently constituted, as
92 follows: The initial member from the First Congressional District
93 shall be appointed for a term of one (1) year; the initial member
94 from the Second Congressional District shall be for a term of two
95 (2) years; the initial member from the Third Congressional

96 District shall be appointed for a term of three (3) years; the
97 initial member from the Fourth Congressional District shall be
98 appointed for a term of four (4) years; the initial member from
99 the Fifth Congressional District shall be appointed for a term of
100 five (5) years.

101 The members of the board as constituted on July 1, 2007, who
102 are appointed from Congressional Districts and whose terms have
103 not expired shall serve the balance of their terms, after which
104 time the membership of the board shall be appointed as follows:
105 There shall be appointed one (1) member of the board from each of
106 the four (4) Mississippi Congressional Districts as they currently
107 exist. In addition, the Governor shall appoint three (3) members
108 from the state at large * * *. * * * Terms for all members shall
109 be for five (5) years. There shall be no more than two (2)
110 members of the board from any one (1) congressional district.

111 All terms shall begin on January 1 of the appropriate year.
112 No member of the board shall hold any elected office. Appointments
113 made to fill a vacancy of a term shall be made by the appointing
114 officer within sixty (60) days after the vacancy occurs. Any
115 person appointed to fill an unexpired term shall hold office only
116 for and during the unexpired term of the member he succeeds.

117 (3) Each member of the board shall take the oath prescribed
118 by Section 268 of the Mississippi Constitution. The board shall
119 elect from among its membership, to serve one (1) year terms, a
120 chairman who shall preside over meetings and a vice chairman who
121 shall preside in the absence of the chairman or when the chairman
122 shall be excused. A majority of the membership of the board shall
123 constitute a quorum for the transaction of any business. Any
124 board member who shall not attend three (3) consecutive regular
125 meetings of the board for reasons other than illness of said
126 member shall be subject to removal by a majority vote of the board
127 members.

128 (4) The board shall hold regular meetings and special
129 meetings as may be necessary for the purposes of conducting such
130 business as may be required. The board shall adopt rules and
131 regulations governing times and places for meetings, and governing
132 the manner of conducting its business. All meetings of the board
133 shall be open to the public.

134 **SECTION 3.** Section 73-33-11, Mississippi Code of 1972, is
135 amended as follows:

136 73-33-11. The Mississippi State Board of Public Accountancy
137 may revoke, suspend, impose a civil penalty or take other
138 appropriate action with respect to any license or permit issued
139 pursuant to this chapter for any unprofessional conduct by the
140 licensee or permit holder, or for other sufficient cause, provided
141 written notice shall have been sent by certified mail (with the
142 addressee's receipt required) to the holder thereof, twenty (20)
143 days before any hearing thereon, stating the cause for such
144 contemplated action and appointing a day and a place for a full
145 hearing thereon by the board, provided further, no certificate or
146 license be cancelled or revoked until a hearing shall have been
147 given to the holder thereof according to law. But, after such
148 hearing, the board may, in its discretion, suspend the certified
149 public accountant from practice as a certified public accountant
150 in this state. When payment of a civil penalty is assessed and
151 levied by the board in accordance with this section, such civil
152 penalty shall not exceed Five Thousand Dollars (\$5,000.00) for
153 each violation and shall be deposited into the special fund to the
154 credit of the board.

155 The members of the board are hereby empowered to sit as a
156 trial board; to administer oaths (or affirmations); to summon any
157 witness and to compel his attendance and/or his testimony, under
158 oath (or affirmation) before the board or for purposes of
159 deposition during any board authorized investigation; to compel
160 the production * * * of any book, paper or document by the owner

161 or custodian thereof to a hearing or for purpose of investigation;
162 and/or to compel any officer to produce, during investigation or
163 at the hearing a copy of any public record (not privileged from
164 public inspection by law) in his official custody, certified to,
165 by him. The board shall elect one (1) of its members to serve as
166 clerk, to issue summons and other processes, and to certify copies
167 of its records or, the board may delegate such duties to the
168 executive director.

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

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

176 In a proceeding conducted under this section by the board for
177 disciplinary action against a licensee or permit holder, those
178 reasonable costs that are expended by the board in the
179 investigation and conduct of a proceeding for discipline
180 including, but not limited to, the cost of service of process,
181 court reporters, expert witnesses, investigators and legal fees
182 may be imposed by the board on the accused, the charging party or
183 both.

184 Such costs shall be paid to the board upon the expiration of
185 the period allowed for appeal of such penalties under this
186 section, or may be paid sooner if the guilty party elects. Money
187 collected by the board under this section shall be deposited to
188 the credit of the board's special fund in the State Treasury.
189 When payment of a monetary penalty assessed by the board under
190 this section is not paid when due, the board shall have the power
191 to institute and maintain proceedings in its name for enforcement
192 of payment in the Chancery Court of the First Judicial District of

193 Hinds County, Mississippi, or in the Chancery Court of the county
194 where the respondent resides.

195 In case of a decision adverse to the accused, appeal shall be
196 made within thirty (30) days from the day on which decision is
197 made to the circuit court of the First Judicial District of Hinds
198 County, Mississippi, or in the circuit court of the county in
199 which the accused resides. In the case of a nonresident licensee,
200 the appeal shall be made to the First Judicial District of Hinds
201 County, Mississippi. The order of the board shall not take effect
202 until the expiration of said thirty (30) days.

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

207 The board may, at any time, reinstate a license or permit if
208 it finds that such reinstatement is justified.

209 In addition to the reasons specified in the first paragraph
210 of this section, the board shall be authorized to suspend the
211 license of any licensee for being out of compliance with an order
212 for support, as defined in Section 93-11-153. The procedure for
213 suspension of a license for being out of compliance with an order
214 for support, and the procedure for the reissuance or reinstatement
215 of a license suspended for that purpose, and the payment of any
216 fees for the reissuance or reinstatement of a license suspended
217 for that purpose, shall be governed by Section 93-11-157 or
218 93-11-163, as the case may be. Actions taken by the board in
219 suspending a license when required by Section 93-11-157 or
220 93-11-163 are not actions from which an appeal may be taken under
221 this section. Any appeal of a license suspension that is required
222 by Section 93-11-157 or 93-11-163 shall be taken in accordance
223 with the appeal procedure specified in Section 93-11-157 or
224 93-11-163, as the case may be, rather than the procedure specified
225 in this section. If there is any conflict between any provision

226 of Section 93-11-157 or 93-11-163 and any provision of this
227 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
228 case may be, shall control.

229 **SECTION 4.** Section 73-33-15, Mississippi Code of 1972, is
230 amended as follows:

231 73-33-15. (1) It shall be unlawful for any person, except a
232 registered public accountant, who is associated and registered
233 with a firm permit holder and/or for any firm, except for a
234 certified public accountant firm that holds a valid CPA firm
235 permit to practice public accounting issued pursuant to this
236 chapter to:

237 (a) Issue, sign or permit his name or firm name to be
238 associated with any report, transmittal letter or other written
239 communication issued as a result of an examination of financial
240 statements or financial information which contains either an
241 expression of opinion or other attestation as to the fairness,
242 accuracy or reliability of such financial statements;

243 (b) Offer to perform, or perform, for the public,
244 public accounting, tax consulting or other accounting-related
245 services while holding himself out as a certified public
246 accountant or as a firm of certified public accountants or
247 certified public accountant firm; or

248 (c) Maintain an office or other facility for the
249 transaction of business as a certified public accountant or
250 certified public accountant firm.

251 (2) Any person or firm violating subsection (1) of this
252 section shall be guilty of a misdemeanor, and may, upon conviction
253 therefor, be punished by a criminal fine of not less than Five
254 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
255 (\$5,000.00), or by imprisonment in the county jail for not less
256 than ten (10) days nor more than six (6) months, or by both such
257 fine and imprisonment in the discretion of the court.

258 (3) In addition to any other penalty which may be
259 applicable, the board may impose a civil penalty against any
260 person adjudged by the board to be in violation of subsection (1)
261 of this section. The civil penalty shall not exceed Five Thousand
262 Dollars (\$5,000.00) per violation and shall be deposited into the
263 special fund to the credit of the board.

264 (4) The provisions of paragraph (a) of subsection (1) of
265 this section shall not be construed to apply to an attorney
266 licensed to practice law in this state; to a person for making
267 statements as to his own business; to an officer or salaried
268 employee of a firm, partnership or corporation for making an
269 internal audit, statement or tax return for the same; to a
270 bookkeeper for making an internal audit, statement or tax return
271 for his employer, whose books he regularly keeps for a salary; to
272 a receiver, a trustee or fiduciary as to any statement or tax
273 return with reference to the business or property entrusted to him
274 as such; to any federal, state, county, district or municipal
275 officer as to any audit, statement, or tax return made by him in
276 the discharge of the duties of such office.

277 (5) Nothing in this section shall require a sole proprietor
278 not acting as a practice unit to associate and register with a
279 certified public accounting firm before engaging in the practice
280 of public accounting.

281 **SECTION 5.** This act shall take effect and be in force from
282 and after July 1, 2007.