

By: Representative Brown

To: Judiciary B

## 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 principle 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 identifies  
65 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.

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

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

127 (4) The board shall hold regular meetings and special  
128 meetings as may be necessary for the purposes of conducting such

129 business as may be required. The board shall adopt rules and  
130 regulations governing times and places for meetings, and governing  
131 the manner of conducting its business. All meetings of the board  
132 shall be open to the public.

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

135 73-33-11. The Mississippi State Board of Public Accountancy  
136 may revoke, suspend, impose a civil penalty or take other  
137 appropriate action with respect to any license or permit issued  
138 pursuant to this chapter for any unprofessional conduct by the  
139 licensee or permit holder, or for other sufficient cause, provided  
140 written notice shall have been sent by certified mail (with the  
141 addressee's receipt required) to the holder thereof, twenty (20)  
142 days before any hearing thereon, stating the cause for such  
143 contemplated action and appointing a day and a place for a full  
144 hearing thereon by the board, provided further, no certificate or  
145 license be cancelled or revoked until a hearing shall have been  
146 given to the holder thereof according to law. But, after such  
147 hearing, the board may, in its discretion, suspend the certified  
148 public accountant from practice as a certified public accountant  
149 in this state. When payment of a civil penalty is assessed and  
150 levied by the board in accordance with this section, such civil  
151 penalty shall not exceed Five Thousand Dollars (\$5,000.00) for  
152 each violation and shall be deposited into the special fund to the  
153 credit of the board.

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

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

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

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

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

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

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

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

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

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

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

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

230 73-33-15. (1) It shall be unlawful for any person, except a  
231 registered public accountant, who is associated and registered  
232 with a firm permit holder and/or for any firm, except for a  
233 certified public accountant firm that holds a valid CPA firm  
234 permit to practice public accounting issued pursuant to this  
235 chapter to:

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

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

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

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

257 (3) In addition to any other penalty which may be  
258 applicable, the board may impose a civil penalty against any



259 person adjudged by the board to be in violation of subsection (1)  
260 of this section. The civil penalty shall not exceed Five Thousand  
261 Dollars (\$5,000.00) per violation and shall be deposited into the  
262 special fund to the credit of the board.

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

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

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