

By: Senator(s) Clarke

To: Business and Financial
Institutions; Judiciary,
Division B

SENATE BILL NO. 2746

1 AN ACT TO AMEND SECTION 73-33-1, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE MINIMUM OWNERSHIP REQUIREMENTS FOR CPA FIRMS; TO AMEND
3 SECTION 73-33-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
4 APPOINTMENTS TO THE BOARD OF PUBLIC ACCOUNTANCY SHALL BE MADE FROM
5 THE FOUR MISSISSIPPI CONGRESSIONAL DISTRICTS; TO AMEND SECTIONS
6 73-33-11 AND 73-33-15, MISSISSIPPI CODE OF 1972, TO REVISE THE
7 SUBPOENA POWER OF THE BOARD, TO AUTHORIZE THE BOARD TO IMPOSE A
8 CIVIL PENALTY AGAINST PERSONS ADJUDGED TO HAVE VIOLATED CERTAIN
9 PUBLIC ACCOUNTING REGULATORY LAWS, AND TO DELETE THE EXEMPTION
10 THAT ALLOWS ATTORNEYS TO SIGN CERTAIN AUDIT REPORTS; 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 shall meet the qualifications as
36 set and determined by the board and shall furnish proof that:

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

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

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

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

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

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

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

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

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

65 (b) All nonlicensee owners are active individual
66 participants in the certified public accountant firm or affiliated
67 entities; and

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

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

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

79 73-33-3. (1) There shall be a board of public accountancy,
80 consisting of seven (7) members, who are qualified electors of
81 this state; their duties, powers and qualifications are herein
82 prescribed by this chapter. The members of the Mississippi State
83 Board of Public Accountancy shall be appointed from holders of
84 certificates issued under and by virtue of this chapter.

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

89 (b) The Governor shall appoint five (5) members from
90 the congressional districts as they are presently constituted, as
91 follows: The initial member from the First Congressional District
92 shall be appointed for a term of one (1) year; the initial member
93 from the Second Congressional District shall be for a term of two
94 (2) years; the initial member from the Third Congressional
95 District shall be appointed for a term of three (3) years; the
96 initial member from the Fourth Congressional District shall be
97 appointed for a term of four (4) years; the initial member from

98 the Fifth Congressional District shall be appointed for a term of
99 five (5) years. The members of the board as constituted on July
100 1, 2007, who are appointed from congressional districts and whose
101 terms have not expired shall serve the balance of their terms,
102 after which time the membership of the board shall be appointed as
103 follows: There shall be appointed one (1) member of the board
104 from each of the four (4) Mississippi congressional districts as
105 they currently exist. In addition, the Governor shall appoint
106 three (3) members from the state at large. * * * Terms for all
107 members shall be for five (5) years.

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

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

126 (4) The board shall hold regular meetings and special
127 meetings as may be necessary for the purposes of conducting such
128 business as may be required. The board shall adopt rules and
129 regulations governing times and places for meetings, and governing

130 the manner of conducting its business. All meetings of the board
131 shall be open to the public.

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

134 73-33-11. (1) The Mississippi State Board of Public
135 Accountancy may revoke, suspend, impose a civil penalty or take
136 other appropriate action with respect to any license or permit
137 issued pursuant to this chapter for any unprofessional conduct by
138 the licensee or permit holder, or for other sufficient cause,
139 provided written notice shall have been sent by certified mail
140 (with the addressee's receipt required) to the holder thereof,
141 twenty (20) days before any hearing thereon, stating the cause for
142 such contemplated action and appointing a day and a place for a
143 full hearing thereon by the board, provided further, no
144 certificate or license be cancelled or revoked until a hearing
145 shall have been given to the holder thereof according to law.
146 But, after such hearing, the board may, in its discretion, suspend
147 the certified public accountant from practice as a certified
148 public accountant in this state. When payment of a civil penalty
149 is assessed and levied by the board in accordance with this
150 section, such civil penalty shall not exceed Five Thousand Dollars
151 (\$5,000.00) for each violation and shall be deposited into the
152 special fund to the credit of the board.

153 (2) The members of the board are hereby empowered to sit as
154 a trial board; to administer oaths (or affirmations); to summon
155 any witness and to compel his attendance and/or his testimony,
156 under oath (or affirmation) before the board or for purposes of
157 deposition during any board authorized investigation; to compel
158 the production * * * of any book, paper or document by the owner
159 or custodian thereof to a hearing or for purposes of
160 investigation; and/or to compel any officer to produce, during
161 investigation or at the hearing a copy of any public record (not
162 privileged from public inspection by law) in his official custody,

163 certified to, by him. The board shall elect one (1) of its
164 members to serve as clerk, to issue summons and other processes,
165 and to certify copies of its records or, the board may delegate
166 such duties to the executive director.

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

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

175 (5) In a proceeding conducted under this section by the
176 board for disciplinary action against a licensee or permit holder,
177 those 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 (6) Such costs shall be paid to the board upon the
184 expiration of the period allowed for appeal of such penalties
185 under this section, or may be paid sooner if the guilty party
186 elects. Money collected by the board under this section shall be
187 deposited to the credit of the board's special fund in the State
188 Treasury. When payment of a monetary penalty assessed by the
189 board under this section is not paid when due, the board shall
190 have the power to institute and maintain proceedings in its name
191 for enforcement of payment in the Chancery Court of the First
192 Judicial District of Hinds County, Mississippi, or in the Chancery
193 Court of the county where the respondent resides.

194 (7) In case of a decision adverse to the accused, appeal
195 shall be made within thirty (30) days from the day on which

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

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

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

209 (10) In addition to the reasons specified in the first
210 paragraph of this section, the board shall be authorized to
211 suspend the license of any licensee for being out of compliance
212 with an order for support, as defined in Section 93-11-153. The
213 procedure for suspension of a license for being out of compliance
214 with an order for support, and the procedure for the reissuance or
215 reinstatement of a license suspended for that purpose, and the
216 payment of any fees for the reissuance or reinstatement of a
217 license suspended for that purpose, shall be governed by Section
218 93-11-157 or 93-11-163, as the case may be. Actions taken by the
219 board in suspending a license when required by Section 93-11-157
220 or 93-11-163 are not actions from which an appeal may be taken
221 under this section. Any appeal of a license suspension that is
222 required by Section 93-11-157 or 93-11-163 shall be taken in
223 accordance with the appeal procedure specified in Section
224 93-11-157 or 93-11-163, as the case may be, rather than the
225 procedure specified in this section. If there is any conflict
226 between any provision of Section 93-11-157 or 93-11-163 and any
227 provision of this chapter, the provisions of Section 93-11-157 or
228 93-11-163, as the 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 a person for
266 making statements as to his own business; to an officer or
267 salaried employee of a firm, partnership or corporation for making
268 an 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.