

By: Senator(s) Clarke

To: Business and Financial
Institutions; Judiciary,
Division B

SENATE BILL NO. 2746
(As Sent to Governor)

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 be for
109 five (5) years. There shall be no more than two (2) of the three
110 (3) state-at-large members of the board from any one (1)
111 congressional district.

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

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

128 member shall be subject to removal by a majority vote of the board
129 members.

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

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

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

157 The members of the board are hereby empowered to sit as a
158 trial board; to administer oaths (or affirmations); to summon any
159 witness and to compel his attendance and/or his testimony, under
160 oath (or affirmation) before the board or for purposes of

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

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

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

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

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

194 of payment in the Chancery Court of the First Judicial District of
195 Hinds County, Mississippi, or in the Chancery Court of the county
196 where the respondent resides.

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

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

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

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

227 93-11-163, as the case may be, rather than the procedure specified
228 in this section. If there is any conflict between any provision
229 of Section 93-11-157 or 93-11-163 and any provision of this
230 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
231 case may be, shall control.

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

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

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

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

251 (c) Maintain an office or other facility for the
252 transaction of business as a certified public accountant or
253 certified public accountant firm.

254 (2) Any person or firm violating subsection (1) of this
255 section shall be guilty of a misdemeanor, and may, upon conviction
256 therefor, be punished by a criminal fine of not less than Five
257 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
258 (\$5,000.00), or by imprisonment in the county jail for not less

259 than ten (10) days nor more than six (6) months, or by both such
260 fine and imprisonment in the discretion of the court.

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

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

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

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