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Chapter No. 408

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SENATE BILL NO. 2128

Originated in Senate *Jennu Wynnes* Secretary

SENATE BILL NO. 2128

AN ACT TO AMEND SECTION 73-33-1, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CERTIFIED PUBLIC ACCOUNTANT PRACTICING UNDER A MISSISSIPPI LICENSE MUST BE ASSOCIATED AND REGISTERED WITH A CERTIFIED PUBLIC ACCOUNTANT FIRM; TO AMEND SECTION 73-33-2, MISSISSIPPI CODE OF 1972, TO CLARIFY THE DEFINITIONS OF CERTAIN TERMS AS USED IN THE PUBLIC ACCOUNTANCY LAW; TO AMEND SECTION 73-33-7, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE BOARD OF PUBLIC ACCOUNTANCY TO CHARGE EACH APPLICANT A FEE FOR A FIRM PERMIT, AND TO REQUIRE EACH CERTIFIED PUBLIC ACCOUNTANT FIRM HOLDING A PERMIT TO PAY A REASONABLE ANNUAL REGISTRATION FEE AS DETERMINED BY THE BOARD; TO AMEND SECTION 73-33-15, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS; TO AMEND SECTION 73-33-17, MISSISSIPPI CODE OF 1972, TO REVISE THE SUBSTANTIAL EQUIVALENCY QUALIFICATIONS FOR PRACTICING IN MISSISSIPPI BY PERSONS LICENSED AS A CPA IN ANOTHER STATE; AND FOR RELATED PURPOSES.

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

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

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

Public Accountancy or has received a reciprocal certified public accountant license from the State Board of Public Accountancy.

(2) A certified public accountant practicing public accounting under a Mississippi license must be associated and registered with a certified public accountant firm * * *.

(3) The State Board of Public Accountancy shall grant and renew permits to practice as a CPA firm to applicants that demonstrate their qualifications in accordance with this section.

(a) The following shall hold a permit issued under this section: any firm with an office in this state that practices public accountancy or that uses the title "CPA" or "CPA firm," * * * and any firm that does not have an office in this state but performs the services described in Section 73-33-17(4) for a client having its home office in this state.

(b) A firm that does not have an office in this state may perform a review of a financial statement to be performed in accordance with Statements on Standards for Accounting and Review Services, or a compilation as defined in Section 73-33-2(d), for a client having its home office in this state and may use the title "CPA" and "CPA firm" without a permit issued under this section only if such firm has the qualifications described in subsection (4), complies with the peer review requirements set forth * * * by board rule, and performs such services through an individual with practice privileges under Section 73-33-17.

(c) A firm that is not subject to the requirements of paragraph (a) or (b) of this subsection may perform other professional services within the practice of public accountancy while using the title "CPA" and "CPA firm" in this state without a permit issued under this section only if such firm performs such services through an individual with practice privileges under Section 73-33-17 and such firm can lawfully do so in the state where the individuals with practice privileges have their principal place of business.

(4) In order to obtain and maintain a firm permit, a certified public accountant firm shall be required to show the following:

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

(b) A simple majority of the ownership of the firm in terms of financial interests and/or voting rights hold * * * certified public accountant licenses in any state; * * * however, * * * the individuals whose principal place of business is in Mississippi and who perform professional services in this state shall hold a Mississippi certified public accountant license, and that individuals who qualify for practice privileges under Section 73-33-17 who perform services for which a firm permit is required under Section 73-33-17(4) shall not be required to obtain a certificate pursuant to Section 73-33-3 or 73-33-9; and

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

(a) The firm designates a licensee of this state who is responsible for the proper registration of the firm and identifies that individual to the board; or in the case of a firm without a Mississippi office which must have a permit pursuant to subsection (3) (a), the firm designates a licensee of another state who meets the requirements provided in Section 73-33-17;

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

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

(6) Unless exempt from the firm permit requirement under Section 73-33-1(3) * * *, no person or persons shall engage in the practice of public accounting as defined herein as a partnership, joint venture or professional corporation, sole proprietor * * *,

or other business organization allowed by law, unless and until each business organization or office thereof located inside the State of Mississippi has registered with and been issued a firm permit by the State Board of Public Accountancy.

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

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

(a) "Attest" means providing the following financial statement services: any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS); any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS); any examination of prospective financial information to be performed with the Statements on Standards for Attestation Engagements (SSAE); and any engagement to be performed in accordance with the Auditing Standards of the PCAOB.

(b) "Certified public accountant," "CPA," or "licensee" means an individual who holds a license issued by the Mississippi State Board of Public Accountancy to practice public accounting or qualifies for a practice privilege under Section 73-33-17. The term "license" is used synonymously for the terms "certificate" or "certification."

(c) "Certified public accountant firm" or "CPA firm" means any professional corporation, partnership, joint venture, professional association, sole proprietor * * *, or other business organization or office thereof allowable under state law and under the qualifications as set in the rules and regulations of the board maintained for the purpose of performing or offering to perform public accounting. * * *

(d) "Compilation" means a service to be performed in accordance with Statements on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial

statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

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

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

(g) "Substantial equivalency" means a determination by the Mississippi State Board of Public Accountancy or its designee that another jurisdiction's licensure requirements are comparable to or exceed those contained in Section 73-33-17(1), or that an individual who holds a valid license as a certified public accountant has education, examination and experience qualifications that are comparable to or exceed those contained in Section 73-33-17(1). In ascertaining substantial equivalency as used in this chapter, the board shall take into account the qualifications without regard to the sequence in which experience, education or examination qualifications were attained.

(h) "Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

(i) "Home office" is the location specified by the client as the address to which a service described in Section 73-33-17(4) is directed.

SECTION 3. Section 73-33-7, Mississippi Code of 1972, is amended as follows:

73-33-7. (1) The Mississippi State Board of Public Accountancy is authorized to charge each applicant a fee for a certified public accountant license, firm permit and other applicable fees. However, no fee shall be required from any individual who has been granted a practice privilege, nor shall any fee be required from any firm that is exempt and does not register a permit as allowed under Section 73-33-1(3)(b) or (c). All fees shall be in such amounts as to be determined by the board and paid when the application is filed.

(2) Except as provided in Section 33-1-39, on or before January 1 of each year, each holder of a certified public accountant license issued by the Mississippi State Board of Public Accountancy shall register and pay a reasonable annual registration fee in such amount as to be determined by the board. If any certified public accountant fails to register and pay the annual registration fee on or before January 1, notice of such default shall be sent to the certified public accountant by certified mail to the delinquent registrant's last known address as shown by the records of the board. The license of any certified public accountant who fails to register and pay the annual registration fee within ten (10) days after notice is given shall be automatically cancelled, and the board shall enter the cancellation on its records.

(3) On or before January 1 of each year, each certified public accountant firm holding a permit to practice public accounting under Section 73-33-1 shall register with the board and pay a reasonable annual registration fee as determined by the board. If any firm fails to register on or before January 1,

notice of such default shall be sent to the firm by certified mail to the firm's last known address as shown by the records of the board. The permit to practice of any firm who fails to register within ten (10) days after notice is given shall be automatically cancelled, and the board shall enter the cancellation on its records.

(4) Any person who has lost a certified public accountant license or a firm which has lost a permit to practice in this state by failure to register or failure to pay the annual registration fee if so required under this section, or who voluntarily cancels or surrenders such license or permit, may be again licensed or have a firm permit reinstated by the board without reexamination, provided such person or firm shall again comply with the requirements of this chapter and the rules and regulations of the board; file application for registration; and, if required to pay a fee under this section, pay all fees in arrears, late fees and a reinstatement fee as set by the board.

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

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

73-33-15. (1) It shall be unlawful for any person, except either a registered certified public accountant who is associated and registered with a firm permit holder or an individual qualifying for the practice privilege under Section 73-33-17, and/or for any firm, except for a certified public accountant firm that is in compliance with the applicable requirements of Section 73-33-1(3), to:

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

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

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

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

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

(4) The provisions of paragraph (a) of subsection (1) of this section shall not be construed to apply to an attorney licensed to practice law in this state; to a person for making statements as to his own business; to an officer or salaried employee of a firm, partnership or corporation for making an internal audit, statement or tax return for the same; to a

bookkeeper for making an internal audit, statement or tax return for his employer, whose books he regularly keeps for a salary; to a receiver, a trustee or fiduciary as to any statement or tax return with reference to the business or property entrusted to him as such; to any federal, state, county, district or municipal officer as to any audit, statement, or tax return made by him in the discharge of the duties of such office.

* * *

(5) Nothing in this section shall prohibit a firm which does not hold a valid permit under Section 73-33-1(3) and which does not have an office in this state from providing its professional services in this state so long as it complies with the requirements of * * * Section 73-33-1(3) * * *.

SECTION 5. Section 73-33-17, Mississippi Code of 1972, is amended as follows:

73-33-17. (1) An individual whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that requires, as a condition of licensure, that an individual:

(a) Has at least one hundred fifty (150) semester hours of college education including a baccalaureate or higher degree conferred by a college or university;

(b) Achieves a passing grade on the Uniform Certified Public Accountant Examination; and

(c) Possesses at least one (1) year of experience verified by a licensee, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, which may be obtained through government, industry, academic or public practice; shall be deemed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of licensees of this state without the need to obtain a license from the Mississippi State Board of

Public Accountancy. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, or by mail, telephone or electronic means, under this section shall be granted practice privileges in this state, and may use the title "CPA" or "Certified Public Accountant," and no notice, fee or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements of Section 73-33-17(3). In the implementation and application of Section 73-33-17(1)(a) through (c), the Mississippi State Board of Public Accountancy shall, for uniformity purposes with other states, consider how the majority of other states with similar provisions implement those provisions and shall be reasonably consistent with those states.

(2) An individual whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that does not meet the requirements of subsection (1) of this section, but the individual's certified public accounting qualifications are verified by the board's designee as substantially equivalent to those requirements, shall be deemed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of licensees of this state without the need to obtain a license from the Mississippi State Board of Public Accountancy * * *. Any individual who passed the Uniform CPA Examination and holds a valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in subsection (1) of this section for purposes of this subsection. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, or by mail, telephone or electronic means, under this section shall be granted practice privileges in this state, and may use the title "CPA" or "Certified Public Accountant," and no notice, fee or other submission shall be provided by any such individual. Such an

individual shall be subject to the requirements of Section 73-33-17(3).

(3) Any individual licensee of another state exercising the privilege afforded under this section and the firm which employs that licensee hereby simultaneously consent, as a condition of the grant of the privilege:

(a) To the personal and subject matter jurisdiction and disciplinary authority of the board;

(b) To comply with this act and the board's rules;

(c) That in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a firm; and

(d) To the appointment of the state board which issued their license as their agent upon whom process may be served in any action or proceeding by this board against the licensee.

(4) An individual who has been granted practice privileges under this section who, for any entity with its home office in this state, performs any of the following services:

(a) Any financial statement audit or other engagement to be performed in accordance with Statements on Auditing Standards;

(b) Any examination of prospective financial information to be performed in accordance with Statements on Standards for Attestation Engagements; or

(c) Any engagement to be performed in accordance with PCAOB Auditing Standards;

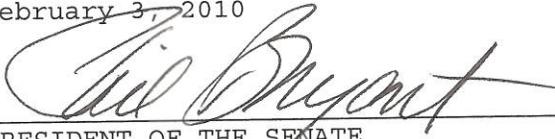
may only do so through a firm which has obtained a permit issued under Section 73-33-1(3) * * *.

(5) A licensee of this state offering or rendering services or using their CPA title in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an

act committed in the other state. The board shall be required to investigate any complaint made by the State Board of Public Accountancy of another state.

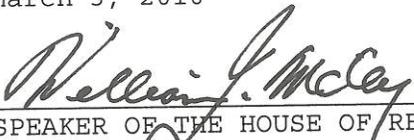
SECTION 6. This act shall take effect and be in force from and after July 1, 2010.

PASSED BY THE SENATE
February 3, 2010



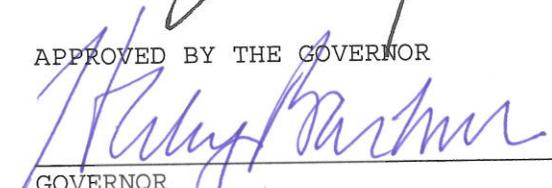
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 3, 2010



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

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