MISSISSIPPI LEGISLATURE REGULAR SESSION 2016

By: Representative Willis To: Judiciary A

HOUSE BILL NO. 1237

AN ACT TO AMEND SECTION 73-33-2, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM "ATTEST" AS USED IN THE LAWS REGULATING PUBLIC ACCOUNTANTS; TO AMEND SECTION 73-33-5, MISSISSIPPI CODE OF 1972, TO REVISE THE NUMBER OF COLLEGIATE-LEVEL SEMESTER HOURS OF EDUCATION REQUIRED TO SIT FOR EXAMINATION; TO AMEND SECTION 73-33-9, MISSISSIPPI CODE OF 1972, TO CORRECT A TYPOGRAPHICAL ERROR IN REFERENCE TO AN EXISTING CODE SECTION; TO AMEND SECTION 73-33-11, MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS OF THE BOARD OF ACCOUNTANCY WHEN TAKING DISCIPLINARY ACTIONS; TO AMEND SECTION 73-33-12, MISSISSIPPI CODE OF 1972, TO ALLOW THE USE OF PEER REVIEW RESULTS IN ADMINISTRATIVE ACTIONS BY THE BOARD; AND FOR RELATED PURPOSES.

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

SECTION 1. 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 *** * *** services:

(i) Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(ii) Any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);

(iii) Any examination of prospective financial information to be performed with the Statements on Standards for Attestation Engagements (SSAE); * * *

(iv) Any engagement to be performed in accordance with the Auditing Standards of the Public Company Accounting Oversight Board (PCAOB) * * *; and

(v) Any examination, review or agreed upon procedures engagement to be performed in accordance with the SSAE, other than an examination described in subparagraph (iii) of this paragraph.

The standard specified in this definition shall be adopted by reference by the board pursuant to rulemaking and shall be those developed for general application by recognized national accountancy organizations, such as the American Institute of Certified Public Accountants (AICPA) and the Public Company Accounting Oversight Board (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 2. Section 73-33-5, Mississippi Code of 1972, is amended as follows:

73-33-5. The Mississippi State Board of Public Accountancy is hereby authorized with the following powers and duties:

(a) To adopt a seal;

(b) To govern its proceedings;

(c) To set the fees and to regulate the time, manner and place of conducting examinations to be held under this chapter. * * * To be admitted to the examination, a candidate must have completed a baccalaureate degree of at least one hundred twenty (120) collegiate-level semester hours of education or its equivalent at a college or university acceptable to the board * * *. The education program shall include an accounting concentration or the equivalent as determined by the board to be appropriate * * * in its rules and regulations. The examination shall cover branches of knowledge pertaining to accountancy as the board may deem proper. A total of one hundred fifty (150) collegiate-level semester hours of education shall be required before the board shall accept an application for a certified public accountant license under this chapter;

(d) To initiate investigations of certified public accountant and certified public accountant firm practices;

(e) To notify applicants who have failed an examination of such failure and in what branch or branches deficiency was found;

(f) To adopt and enforce such rules and regulations concerning certified public accountant examinee and licensee

qualifications and practices and certified public accountant firm permits and practices as the board considers necessary to maintain the highest standard of proficiency in the profession of certified public accounting and for the protection of the public interest. The standards of practice by certified public accountants and certified public accountant firms shall include generally accepted auditing and accounting standards as recognized by the Mississippi State Board of Public Accountancy;

(g) To issue certified public accountant licenses under the signature and the official seal of the board as provided in this chapter; and to issue permits to practice public accounting to certified public accountant firms pursuant to such rules and regulations as may be promulgated by the board;

(h) To employ personnel;

(i) To contract for services and rent; and

(j) To adopt and enforce all such rules and regulations as shall be necessary for the administration of this chapter; provided, however, no adoption or modification of any rules or regulations of the board shall become effective unless any final action of the board approving such adoption or modification shall occur at a time and place which is open to the public and for which notice by mail <u>or electronic mail</u> of such time and place and the rules and regulations proposed to be adopted or modified has been given at least thirty (30) days prior thereto to every person who is licensed and registered with the board.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SECTION 3. Section 73-33-9, Mississippi Code of 1972, is amended as follows:

73-33-9. The Mississippi State Board of Public Accountancy may, in its discretion, issue a reciprocal certified public accountant license to practice to any holder of any certified public accountant's certificate or license issued under the law of another state, which shall entitle the holder to use the abbreviation, "CPA," in this state provided that the state issuing the original certificate or license grants similar privileges to the certified public accountants of this state. The fee for a license shall be in such reasonable amount as determined by the board. Such license shall not allow the holder thereof to engage in the practice of public accounting as a certified public accountant unless the holder meets the requirements of the Mississippi State Board of Public Accountancy. This section shall apply only to a person who wishes to obtain a license issued by the State of Mississippi and shall not apply to those persons practicing in this state under Section *** * *** 73-33-17. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SECTION 4. Section 73-33-11, Mississippi Code of 1972, is amended as follows:

73-33-11. (1) The Mississippi State Board of Public Accountancy may revoke, suspend, impose a civil penalty or take other appropriate action with respect to any license, practice privilege or permit issued pursuant to this chapter for any unprofessional conduct by the licensee or permit holder, or for other sufficient cause, provided written notice shall have been sent by certified mail * * * to the holder thereof at holder's mailing address of record with the board, twenty (20) days before any hearing thereon, stating the cause for such contemplated action and appointing a day and a place for a full hearing thereon by the board, provided further, no certificate or license be cancelled or revoked until a hearing shall have been given to the holder thereof according to law. But, after such hearing, the board may, in its discretion, * * * take action against any license, practice privilege or permit issued pursuant to this chapter. When payment of a civil penalty is assessed and levied by the board in accordance with this section, such civil penalty shall not exceed Five Thousand Dollars ($5,000.00) for each violation and shall be deposited into the special fund to the credit of the board.

(2) The members of the board are hereby empowered to sit as a trial board; to administer oaths (or affirmations); to summon any witness and to compel his attendance and/or his testimony,

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

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

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

(5) In a proceeding conducted under this section by the board for disciplinary action, those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for discipline, including, but not limited to, the cost of service of process, court reporters, expert witnesses,

investigators and legal fees may be imposed by the board on the accused, the charging party or both.

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

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

(8) In case of an appeal, bond for costs in the circuit court shall be given as in other cases; and the order of the board

shall not take effect until such appeal has been finally disposed of by the court or courts.

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

(10) In addition to the reasons specified in the first paragraph of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 5. Section 73-33-12, Mississippi Code of 1972, is amended as follows:

73-33-12. (1) The following words and phrases as used in this section shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Firm" means a sole proprietorship, a corporation or a partnership.

(b) "Quality review" means a study, appraisal or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, including a quality assurance or peer review, or any internal review or inspection that is required by professional standards relating to quality control policies and procedures; provided, however, such term does not include a positive enforcement program of a state accountancy board.

(c) "Review committee" means any person or persons carrying out, administering or overseeing quality review.

(2) (a) The proceedings, records and work papers of a review committee shall be privileged and shall not be subject to discovery, subpoena or other means of legal process or introduction into evidence in any civil action, arbitration, administrative proceeding or Mississippi State Board of Public Accountancy proceeding and no member of the review committee or person who was involved in the quality review process shall be permitted or required to testify in any such civil action,

arbitration, administrative proceeding or Mississippi State Board of Public Accountancy proceeding as to any matters produced, presented, disclosed or discussed during or in connection with the quality review process, or as to any findings, recommendations, evaluations, opinions or other actions of such committees, or any members thereof; provided, however, that information, documents or records that are publicly available are not to be construed as immune from discovery or use in any civil action, arbitration, administrative proceeding or Mississippi State Board of Public Accountancy proceeding merely because they were presented or considered in connection with the quality review process.

(b) Notwithstanding any provisions to the contrary in this chapter, the Mississippi State Board of Public Accountancy shall have access to reports of quality review results, including related letters of acceptance with recommendations and conditions, for use in a proceeding or trial board hearing involving the firm that is the subject of the quality or peer review.

(3) The privilege created by this section shall not apply to materials prepared in connection with a particular engagement merely because such materials happen to subsequently be presented or considered as part of the quality review process; nor does it apply to disputes between review committees and persons or firms subject to a quality review arising from the performance of the quality review.

SECTION 6. This act shall take effect and be in force from and after July 1, 2016.

ST: Public accountancy; revise laws regulating the practice of.