

1 HB103
2 135336-3
3 By Representative DeMarco
4 RFD: Commerce and Small Business
5 First Read: 07-FEB-12
6 PFD: 02/02/2012

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8 SYNOPSIS: Under existing law, the Alabama State Board
9 of Public Accountancy regulates the practice of
10 public accountancy.

11 This bill would further define the term
12 "attest" to include any engagement to be performed
13 in accordance with the Statements on Standards for
14 Attestation Engagements and would add new sections
15 to the Code of Alabama 1975, relating to privity,
16 statute of limitations, venue, and expert
17 witnesses.

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19 A BILL
20 TO BE ENTITLED
21 AN ACT
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23 To amend Section 34-1-2, Code of Alabama 1975,
24 relating to the practice of public accountancy; to further
25 define the term "attest" to include any engagement to be
26 performed in accordance with the Statements on Standards for
27 Attestation Engagements; and to add new sections to the Code

1 of Alabama 1975, relating to privity, statute of limitations,
2 venue, and expert witnesses.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 34-1-2, Code of Alabama 1975, is
5 amended to read as follows:

6 "§34-1-2.

7 "For purposes of this chapter, the following words
8 and phrases shall have the meanings respectively ascribed in
9 this section:

10 "(1) AICPA. The American Institute of Certified
11 Public Accountants.

12 "(2) ATTEST. Providing the following financial
13 statement services:

14 "a. Any audit or other engagement to be performed in
15 accordance with the Statements on Auditing Standards (SAS).

16 "b. Any review of a financial statement to be
17 performed in accordance with the Statements on Standards for
18 Accounting and Review Services (SSARS).

19 "c. Any ~~examination of prospective financial~~
20 ~~information~~ engagement to be performed in accordance with the
21 Statements on Standards for Attestation Engagements (SSAE).

22 "d. Any engagement to be performed in accordance
23 with the auditing standards of the Public Company Accounting
24 Oversight Board (PCAOB).

25 "e. The statements on standards specified in this
26 definition shall be adopted by reference by the board pursuant
27 to rule making and shall be those developed for general

1 application by recognized national accountancy organizations
2 such as the AICPA and PCAOB.

3 "(3) BOARD. The Alabama State Board of Public
4 Accountancy created by Section 34-1-3, except the special
5 meaning applicable only to Section 34-1-4.

6 "(4) CLIENT. A person or entity that agrees to
7 receive any professional service from a licensee or licensee's
8 employer. A licensee or licensee's employer shall acknowledge
9 an engagement with a client in writing or by other means
10 satisfactory to both the client and the licensee or licensee's
11 employer.

12 "~~(4)~~ (5) COMPILATION. Providing a service to be
13 performed in accordance with Statements on Standards for
14 Accounting and Review Services (SSARS) that is presenting in
15 the form of financial statements, information that is the
16 representation of management (owners) without undertaking to
17 express any assurance on the statements.

18 "~~(5)~~ (6) FIRM. A sole proprietorship, partnership,
19 professional corporation, professional association, limited
20 liability company, limited liability partnership, or any other
21 form of business entity now or hereafter recognized by Alabama
22 law.

23 "~~(6)~~ (7) LICENSE. A certificate issued pursuant to
24 Section 34-1-4, a permit issued pursuant to Section 34-1-11,
25 registration pursuant to Section 34-1-8; or, in each case, a
26 certificate or permit issued pursuant to corresponding

1 provisions of prior law, or the practice privilege provided
2 pursuant to Section 34-1-7.

3 "~~(7)~~(8) LICENSEE. The holder of a license.

4 "~~(8)~~(9) OWNER. Any person who holds an ownership
5 interest in a firm.

6 "~~(9)~~(10) PEER REVIEW. The study, appraisal, or
7 review of one or more aspects of the professional work of a
8 licensee or firm that performs attest or compilation services,
9 by a person or persons who hold licenses and who are not
10 affiliated with the licensee or firm being reviewed.

11 "~~(10)~~(11) STATE. Any state, territory, or insular
12 possession of the United States or the District of Columbia."

13 Section 2. Sections 34-1-23, 34-1-24, 34-1-25, and
14 34-1-26 are added to the Code of Alabama 1975, to read as
15 follows:

16 §34-1-23.

17 (a) This section applies to all causes of action of
18 the type specified in this section filed on or after the
19 effective date of this act.

20 (b) This section governs any action brought against
21 any licensee or firm practicing in this state by any person or
22 entity claiming to have been damaged as a result of financial
23 statements or other information examined, compiled, reviewed,
24 certified, audited, or otherwise reported or opined on by the
25 licensee or firm.

26 (c) No action covered by this section may be brought
27 unless:

1 (1) The claimant:

2 a. Is the client and issuer, or successor of the
3 issuer, of the financial statements or other information
4 examined, compiled, reviewed, certified, audited, or otherwise
5 reported or opined on by the licensee or firm.

6 b. Engaged the licensee or firm to examine, compile,
7 review, certify, audit, or otherwise report or render an
8 opinion on the financial statements or to provide other
9 services; or

10 (2) The licensee or firm was:

11 a. Aware at the time the engagement was undertaken
12 that the financial statements or other information were to be
13 made available for use in connection with a specified
14 transaction by the claimant who was specifically identified to
15 the licensee or firm.

16 b. Aware that the claimant intended to rely upon the
17 financial statements or other information in connection with
18 the specified transaction.

19 c. Provided express written consent acknowledging
20 the claimant's intention to rely on the financial statements
21 or other information.

22 (d) A licensee or firm shall not be liable for civil
23 damages in any of the following situations:

24 (1) The claimant is not the licensee or firm's
25 client, but asserts standing to sue based on an assignment of
26 the claim from the client to the claimant.

1 (2) The claimant is not the licensee or firm's
2 client, but asserts standing to sue based on a voluntary
3 surrender of assets or acquisition of the claim by means of
4 foreclosure or surrender under any type of security agreement
5 between the claimant and the client.

6 (3) Any claimant who is not a client or any claimant
7 without an express written consent from the licensee or firm
8 acknowledging the claimant's right to rely on such financial
9 statements or other information.

10 §34-1-24.

11 All actions against a licensee or firm must be
12 commenced within two years after the act or omission or
13 failure giving rise to the claim, and not afterwards;
14 provided, that if the cause of action is not discovered and
15 could not reasonably have been discovered within the period,
16 then the action may be commenced within six months from the
17 date of the discovery or the date of discovery of facts which
18 would reasonably lead to the discovery, whichever is earlier;
19 provided, further, that in no event may the action be
20 commenced more than four years after the act or omission or
21 failure.

22 §34-1-25.

23 Any action against a licensee or firm must be
24 brought (1) in the county wherein the licensee or firm
25 generates financial statements, reports, or other information
26 examined, compiled, reviewed, certified, audited, or otherwise
27 reported or opined on by the licensee or firm; (2) if the

1 claimant is an individual, in the county where the individual
2 resides at the time of the act or omission; (3) if the
3 claimant is other than the individual, in the county where the
4 claimant's principal office is located in this state at the
5 time of the act or omission.

6 §34-1-26.

7 (a) A licensee may testify as an expert witness in
8 any action against another licensee based on an alleged
9 negligence or breach of contract only if he or she is a
10 "similarly situated licensee." A "similarly situated licensee"
11 is one who meets all of the following requirements:

12 (1) Is licensed by the board or the appropriate
13 regulatory board or agency of another state.

14 (2) Is trained and experienced in the same field or
15 specialty as the licensee against whom the testimony is
16 offered.

17 (3) Has practiced in the same field or specialty as
18 the licensee against whom the testimony is offered during the
19 year preceding the date the alleged negligence or act or
20 omission occurred.

21 (b) Notwithstanding any provision of the Alabama
22 Rules of Evidence, no evidence shall be admitted or received,
23 whether of a substantive nature or for impeachment purposes,
24 concerning the professional liability insurance or
25 professional liability insurance carrier, or any interest in
26 an insurer that insures professional liability, of any witness

1 presenting testimony as a "similarly situated licensee" under
2 the provisions of this section or of any defendant.

3 (c) The limits of liability insurance coverage
4 available to a licensee shall not be discoverable in any
5 action whether in contract or tort against another licensee
6 based on an alleged negligence or breach of contract.

7 Section 3. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.