

1 SB93  
2 135336-3  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 07-FEB-12  
6 PFD: 01/24/2012

2  
3  
4  
5  
6  
7  
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.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
22

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

1 Attestation Engagements; and to add new sections to the Code  
2 of Alabama 1975, relating to privity, statute of limitations,  
3 venue, and expert witnesses.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§34-1-2.

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

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

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

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

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

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

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

1            "e. The statements on standards specified in this  
2 definition shall be adopted by reference by the board pursuant  
3 to rule making and shall be those developed for general  
4 application by recognized national accountancy organizations  
5 such as the AICPA and PCAOB.

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

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

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

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

1           "~~(6)~~(7) LICENSE. A certificate issued pursuant to  
2 Section 34-1-4, a permit issued pursuant to Section 34-1-11,  
3 registration pursuant to Section 34-1-8; or, in each case, a  
4 certificate or permit issued pursuant to corresponding  
5 provisions of prior law, or the practice privilege provided  
6 pursuant to Section 34-1-7.

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

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

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

15           "~~(10)~~(11) STATE. Any state, territory, or insular  
16 possession of the United States or the District of Columbia."

17           Section 2. Sections 34-1-23, 34-1-24, 34-1-25, and  
18 34-1-26 are added to the Code of Alabama 1975, to read as  
19 follows:

20           §34-1-23.

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

24           (b) This section governs any action brought against  
25 any licensee or firm practicing in this state by any person or  
26 entity claiming to have been damaged as a result of financial

1 statements or other information examined, compiled, reviewed,  
2 certified, audited, or otherwise reported or opined on by the  
3 licensee or firm.

4 (c) No action covered by this section may be brought  
5 unless:

6 (1) The claimant:

7 a. Is the client and issuer, or successor of the  
8 issuer, of the financial statements or other information  
9 examined, compiled, reviewed, certified, audited, or otherwise  
10 reported or opined on by the licensee or firm.

11 b. Engaged the licensee or firm to examine, compile,  
12 review, certify, audit, or otherwise report or render an  
13 opinion on the financial statements or to provide other  
14 services; or

15 (2) The licensee or firm was:

16 a. Aware at the time the engagement was undertaken  
17 that the financial statements or other information were to be  
18 made available for use in connection with a specified  
19 transaction by the claimant who was specifically identified to  
20 the licensee or firm.

21 b. Aware that the claimant intended to rely upon the  
22 financial statements or other information in connection with  
23 the specified transaction.

24 c. Provided express written consent acknowledging  
25 the claimant's intention to rely on the financial statements  
26 or other information.

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

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

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

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

15           §34-1-24.

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

1                   §34-1-25.

2                   Any action against a licensee or firm must be  
3 brought (1) in the county wherein the licensee or firm  
4 generates financial statements, reports, or other information  
5 examined, compiled, reviewed, certified, audited, or otherwise  
6 reported or opined on by the licensee or firm; (2) if the  
7 claimant is an individual, in the county where the individual  
8 resides at the time of the act or omission; (3) if the  
9 claimant is other than the individual, in the county where the  
10 claimant's principal office is located in this state at the  
11 time of the act or omission.

12                   §34-1-26.

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

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

20                   (2) Is trained and experienced in the same field or  
21 specialty as the licensee against whom the testimony is  
22 offered.

23                   (3) Has practiced in the same field or specialty as  
24 the licensee against whom the testimony is offered during the  
25 year preceding the date the alleged negligence or act or  
26 omission occurred.

1                   (b) Notwithstanding any provision of the Alabama  
2 Rules of Evidence, no evidence shall be admitted or received,  
3 whether of a substantive nature or for impeachment purposes,  
4 concerning the professional liability insurance or  
5 professional liability insurance carrier, or any interest in  
6 an insurer that insures professional liability, of any witness  
7 presenting testimony as a "similarly situated licensee" under  
8 the provisions of this section or of any defendant.

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

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