

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Bill No. 204, Page 1, Section A, Line 7, by
2 inserting after all of said section and line the following:

3
4 "143.980. 1. This section shall be known as the "Taxpayer Protection Act".

5 2. For the purposes of this section, the following terms shall mean:

6 (1) "Department", the Missouri department of revenue;

7 (2) "Paid tax return preparer", a person who prepares for compensation, or who employs one
8 or more persons to prepare for compensation, any income tax return or claim for refund required to
9 be filed under this chapter. The preparation of a substantial portion of a return or claim for refund
10 shall be treated as the preparation of such return or claim for refund. A paid tax return preparer
11 shall not include any certified public accountant who holds an active license issued by any state and
12 the employees of such certified public accountant or certified public accounting firm or an enrolled
13 agent enrolled to practice before the federal Internal Revenue Service pursuant to 31 C.F.R. Section
14 10.4;

15 (3) "Willful or reckless conduct", the same meaning as defined under 26 U.S.C. Section
16 6694;

17 3. For all tax years beginning on or after January 1, 2020, any income tax return or claim for
18 refund prepared by a paid tax return preparer shall be signed by the paid tax return preparer and
19 shall bear the paid tax return preparer's Internal Revenue Service preparer tax identification number.
20 Any person who is the paid tax return preparer with respect to any income tax return or claim for
21 refund and who fails to sign the return or claim for refund, or who fails to provide his or her
22 preparer tax identification number, shall pay a penalty of fifty dollars for each such failure, unless it
23 can be shown that the failure was due to reasonable cause and not willful or reckless conduct. The
24 aggregate penalty that may be imposed by the department on any paid tax return preparer with
25 respect to returns or claims for refund filed during any calendar year shall not exceed twenty-five
26 thousand dollars per paid tax return preparer.

27 4. (1) In a court of competent jurisdiction, the director of revenue may commence suit to
28 enjoin any paid tax return preparer from further engaging in any conduct described in subdivision
29 (2) of this subsection, or from further action as a paid tax return preparer.

30 (2) In any action under subdivision (1) of this subsection, if the court finds that injunctive
31 relief is appropriate to prevent the recurrence of willful or reckless conduct, the court may enjoin the

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1 paid tax return preparer from further engaging in any conduct specified in the action. The court may
 2 enjoin conduct when a paid tax return preparer has done any of the following:

3 (a) Prepared any income tax return or claim for refund that includes an understatement of a
 4 taxpayer's liability due to an unreasonable position. For purposes of this subdivision, the term
 5 "unreasonable position" shall have the same meaning as defined under 26 U.S.C. Section 6694;

6 (b) Prepared any income tax return or claim for refund that includes an understatement of a
 7 taxpayer's liability due to the paid tax return preparer's willful or reckless conduct;

8 (c) Where required, failed to sign an income tax return or claim for refund;

9 (d) Where required, failed to furnish his or her preparer tax identification number;

10 (e) Where required, failed to retain a copy of an income tax return;

11 (f) Where required by due diligence requirements imposed by department rules and
 12 regulations, failed to be diligent in determining a taxpayer's eligibility for tax benefits;

13 (g) Negotiated a check issued to a taxpayer by the department without the permission of the
 14 taxpayer;

15 (h) Engaged in any conduct subject to any criminal penalty provided under chapters 135 to
 16 155;

17 (i) Misrepresented to the department the paid tax return preparer's eligibility to practice or
 18 otherwise misrepresented the paid tax return preparer's experience or education;

19 (j) Guaranteed the payment of any income tax refund or the allowance of any income tax
 20 credit; or

21 (k) Engaged in any other fraudulent or deceptive conduct that substantially interferes with
 22 the proper administration of the laws of this state.

23 (3) (a) If the court finds that a paid tax return preparer has continually or repeatedly
 24 engaged in any conduct described in subdivision (2) of this subsection and that an injunction
 25 prohibiting the conduct would not be sufficient to prevent the paid tax return preparer's interference
 26 with the proper administration of the laws of this state, the court may enjoin the paid tax return
 27 preparer from acting as a paid tax return preparer in Missouri.

28 (b) Being enjoined from preparing tax returns or claims for refund for the United States or
 29 any other state in the five years preceding the petition for an injunction under this section shall
 30 establish a prima facie case for an injunction to be issued under this section. For purposes of this
 31 paragraph, the term "state" shall mean a state of the United States, the District of Columbia, Puerto
 32 Rico, United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
 33 the United States."; and

34
 35 Further amend said bill, Page 6, Section 324.035, Line 4, by inserting after all of said section and
 36 line the following;

37
 38 "326.289. 1. The board may grant or renew permits to practice as a certified public
 39 accounting firm to applicants that demonstrate their qualifications in accordance with this chapter.

40 (1) The following shall hold a permit issued under this chapter:

41 (a) Any firm with an office in this state, as defined by the board by rule, offering or

1 performing attest or compilation services; or

2 (b) Any firm with an office in this state that uses the title "CPA" or "CPA firm".

3 (2) Any firm that does not have an office in this state may offer or perform attest or
4 compilation services in this state without a valid permit only if it meets each of the following
5 requirements:

6 (a) It complies with the qualifications described in subdivision (1) of subsection 4 of this
7 section;

8 (b) It complies with the requirements of peer review as set forth in this chapter and the
9 board's promulgated regulations;

10 (c) It performs such services through an individual with practice privileges under section
11 326.283; and

12 (d) It can lawfully do so in the state where said individual with the privilege to practice has
13 his or her principal place of business.

14 (3) A firm which is not subject to the requirements of subdivisions (1) or (2) of this
15 subsection may perform other nonattest or noncompilation services while using the title "CPA" or
16 "CPA firm" in this state without a permit issued under this section only if it:

17 (a) Performs such services through an individual with the privilege to practice under section
18 326.283; and

19 (b) Can lawfully do so in the state where said individual with privilege to practice has his or
20 her principal place of business.

21 (4) (a) All firms practicing public accounting in this state shall register with the secretary of
22 state.

23 (b) Firms which may be exempt from this requirement include:

24 a. Sole proprietorships;

25 b. Trusts created pursuant to revocable trust agreements, of which the trustee is a natural
26 person who holds a license or privilege to practice as set forth in section 326.280, 326.283, or
27 326.286;

28 c. General partnerships not operating as a limited liability partnership; or

29 d. Foreign professional corporations which do not meet criteria of chapter 356 due to name
30 or ownership, shall obtain a certificate of authority as a general corporation. Notwithstanding the
31 provisions of chapter 356, the secretary of state may issue a certificate of authority to a foreign
32 professional corporation which does not meet the criteria of chapter 356 due to name or ownership,
33 if the corporation meets the requirements of this section and the rules of the board.

34 2. Permits shall be initially issued and renewed for periods of not more than three years or
35 for a specific period as prescribed by board rule following issuance or renewal.

36 3. The board shall determine by rule the form for application and renewal of permits and
37 shall annually determine the fees for permits and their renewals.

38 4. An applicant for initial issuance or renewal of a permit to practice under this section shall
39 be required to show that:

40 (1) A simple majority of the ownership of the firm, in terms of financial interests and voting
41 rights of all partners, officers, principals, shareholders, members or managers, belongs to licensees

1 who are licensed in some state, and the partners, officers, principals, shareholders, members or
2 managers, whose principal place of business is in this state and who perform professional services in
3 this state are licensees under section 326.280 or the corresponding provision of prior law. Although
4 firms may include nonlicensee owners, the firm and its ownership shall comply with rules
5 promulgated by the board;

6 (2) Any certified public accounting firm may include owners who are not licensees provided
7 that:

8 (a) The firm designates a licensee of this state, or in the case of a firm which must have a
9 permit under this section designates a licensee of another state who meets the requirements of
10 section 326.283, who is responsible for the proper registration of the firm and identifies that
11 individual to the board;

12 (b) All nonlicensee owners are active individual participants in the certified public
13 accounting firm or affiliated entities;

14 (c) All owners are of good moral character; and

15 (d) The firm complies with other requirements as the board may impose by rule;

16 (3) Any licensee who is responsible for supervising attest services, or signs or authorizes
17 someone to sign the licensee's report on the financial statements on behalf of the firm, shall meet
18 competency requirements as determined by the board by rule which shall include one year of
19 experience in addition to the experience required under subdivision (6) of subsection 1 of section
20 326.280 and shall be verified by a licensee. The additional experience required by this subsection
21 shall include experience in attest work supervised by a licensee.

22 5. An applicant for initial issuance or renewal of a permit to practice shall register each
23 office of the firm within this state with the board and show that all attest and compilation services
24 rendered in this state are under the charge of a licensee.

25 6. No licensee or firm holding a permit under this chapter shall use a professional or firm
26 name or designation that is misleading as to:

27 (1) The legal form of the firm;

28 (2) The persons who are partners, officers, members, managers or shareholders of the firm;
29 or

30 (3) Any other matter.

31 The names of one or more former partners, members or shareholders may be included in the name
32 of a firm or its successor unless the firm becomes a sole proprietorship because of the death or
33 withdrawal of all other partners, officers, members or shareholders. A firm may use a fictitious
34 name if the fictitious name is registered with the board and is not otherwise misleading. The name
35 of a firm shall not include the name or initials of an individual who is not a present or a past partner,
36 member or shareholder of the firm or its predecessor. The name of the firm shall not include the
37 name of an individual who is not a licensee.

38 7. Applicants for initial issuance or renewal of permits shall list in their application all states
39 in which they have applied for or hold permits as certified public accounting firms and list any past
40 denial, revocation, suspension or any discipline of a permit by any other state. Each holder of or
41 applicant for a permit under this section shall notify the board in writing within thirty days after its

1 occurrence of any change in the identities of partners, principals, officers, shareholders, members or
2 managers whose principal place of business is in this state; any change in the number or location of
3 offices within this state; any change in the identity of the persons in charge of such offices; and any
4 issuance, denial, revocation, suspension or any discipline of a permit by any other state.

5 8. Firms which fall out of compliance with the provisions of this section due to changes in
6 firm ownership or personnel after receiving or renewing a permit shall take corrective action to
7 bring the firm back into compliance as quickly as possible. The board may grant a reasonable
8 period of time for a firm to take such corrective action. Failure to bring the firm back into
9 compliance within a reasonable period as defined by the board may result in the suspension or
10 revocation of the firm permit.

11 9. The board shall require by rule, as a condition to the renewal of permits, that firms
12 undergo, no more frequently than once every three years, peer reviews conducted in a manner as the
13 board shall specify. The review shall include a verification that individuals in the firm who are
14 responsible for supervising attest and compilation services or sign or authorize someone to sign the
15 accountant's report on the financial statements on behalf of the firm meet the competency
16 requirements set out in the professional standards for such services, provided that any such rule:

17 (1) Shall include reasonable provision for compliance by a firm showing that it has within
18 the preceding three years undergone a peer review that is a satisfactory equivalent to peer review
19 generally required under this subsection;

20 (2) May require, with respect to peer reviews, that peer reviews be subject to oversight by
21 an oversight body established or sanctioned by board rule, which shall periodically report to the
22 board on the effectiveness of the review program under its charge and provide to the board a listing
23 of firms that have participated in a peer review program that is satisfactory to the board; and

24 (3) Shall require, with respect to peer reviews, that the peer review processes be operated
25 and documents maintained in a manner designed to preserve confidentiality, and that the board or
26 any third party other than the oversight body shall not have access to documents furnished or
27 generated in the course of the peer review of the firm except as provided in subdivision (2) of this
28 subsection.

29 10. The board may, by rule, charge a fee for oversight of peer reviews, provided that the fee
30 charged shall be substantially equivalent to the cost of oversight. Notwithstanding any other
31 provision in this section, the board may obtain the following information regarding peer review
32 from any approved American Institute for Certified Public Accountants peer review program:

33 (1) The firm's name and address;

34 (2) The firm's dates of enrollment in the program;

35 (3) The date of acceptance and the period covered by the firm's most recently accepted peer
36 review; and

37 (4) If applicable, whether the firm's enrollment in the program has been dropped or
38 terminated.

39 11. In connection with proceedings before the board or upon receipt of a complaint
40 involving the licensee performing peer reviews, the board shall not have access to any documents
41 furnished or generated in the course of the performance of the peer reviews except for peer review

1 reports, letters of comment and summary review memoranda. The documents shall be furnished to
2 the board only in a redacted manner that does not specifically identify any firm or licensee being
3 peer reviewed or any of their clients.

4 12. The peer review processes shall be operated and the documents generated thereby be
5 maintained in a manner designed to preserve their confidentiality. No third party, other than the
6 oversight body, the board, subject to the provisions of subsection 11 of this section, or the
7 organization performing peer review shall have access to documents furnished or generated in the
8 course of the review. All documents shall be privileged and closed records for all purposes and all
9 meetings at which the documents are discussed shall be considered closed meetings under
10 subdivision (1) of section 610.021. The proceedings, records and workpapers of the board and any
11 peer review subjected to the board process shall be privileged and shall not be subject to discovery,
12 subpoena or other means of legal process or introduction into evidence at any civil action,
13 arbitration, administrative proceeding or board proceeding. No member of the board or person who
14 is involved in the peer review process shall be permitted or required to testify in any civil action,
15 arbitration, administrative proceeding or board proceeding as to any matters produced, presented,
16 disclosed or discussed during or in connection with the peer review process or as to any findings,
17 recommendations, evaluations, opinions or other actions of such committees or any of its members;
18 provided, however, that information, documents or records that are publicly available shall not be
19 subject to discovery or use in any civil action, arbitration, administrative proceeding or board
20 proceeding merely because they were presented or considered in connection with the peer review
21 process."; and

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23 Further amend said bill by amending the title, enacting clause, and intersectional references
24 accordingly.