

House Bill 3076

Sponsored by COMMITTEE ON CONSUMER PROTECTION

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires facilitators of income tax refund anticipation loans to obtain license from Director of Department of Consumer and Business Services. Sets maximum fees for facilitating refund anticipation loans. Requires filing and posting of loan fees and interest. Prohibits certain activities. Punishes violations by maximum of one year's imprisonment, \$6,250 fine, or both. Provides for civil penalties and damages.

Becomes operative January 1, 2008.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to refund anticipation loans; creating new provisions; amending ORS 673.605, 673.700 and
3 673.730; repealing ORS 673.712 and 673.715; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 15 of this 2007 Act, unless the context requires**
6 **otherwise:**

7 (1) **"Applicant" means a person that applies for a license to conduct business as a**
8 **facilitator.**

9 (2) **"Debtor" means an individual that is approved for and receives a refund anticipation**
10 **loan.**

11 (3) **"Facilitator" means a person that:**

12 (a) **Processes, receives or accepts for delivery an application for a refund anticipation**
13 **loan, individually or in conjunction or cooperation with another person;**

14 (b) **Accepts from a debtor, in payment for a refund anticipation loan, a check that the**
15 **person delivers, or most of the proceeds of which the person delivers, to a lender; or**

16 (c) **Facilitates the making of a refund anticipation loan in a material capacity other than**
17 **as a lender.**

18 (4) **"Lender" means a person that makes a refund anticipation loan with the person's own**
19 **funds or a line of credit or other funding from a financial institution as defined in ORS**
20 **706.008. "Lender" does not include a federal bank as defined in ORS 706.008 or a federal credit**
21 **union.**

22 (5) **"Licensee" means a person that is licensed to conduct business as a facilitator under**
23 **section 3 of this 2007 Act.**

24 (6) **"Person" means an individual, a joint venture, a partnership, a cooperative, a limited**
25 **liability company, an association, a joint stock company, a corporation, a trust or an**
26 **unincorporated organization.**

27 (7) **"Refund anticipation loan" means:**

28 (a) **A loan that a lender grants under a contract or agreement that requires the debtor**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 to repay the loan from the proceeds of the debtor's federal or state income tax refund, or a
2 loan that the debtor expects to repay from the proceeds of the tax refund; or

3 (b) A loan that a lender grants under a contract or agreement that requires the debtor
4 to repay the loan from the proceeds of a subsequent loan of the type described in paragraph
5 (a) of this subsection, or a loan that the debtor expects to repay from the proceeds of a
6 subsequent loan of the type described in paragraph (a) of this subsection.

7 (8) "Refund anticipation loan fee" means a charge, fee or other consideration that the
8 lender or facilitator charges or imposes in connection with a refund anticipation loan. "Re-
9 fund anticipation loan fee" does not include any charge, fee or other consideration that the
10 facilitator usually charges or imposes in the ordinary course of business for services not
11 connected with a refund anticipation loan, including fees for preparing tax returns or filing
12 tax returns electronically.

13 (9) "Taxpayer" means an individual that, in return for a fee, charge or other consider-
14 ation, uses the services of a facilitator to prepare the individual's tax return, to file the tax
15 return electronically or to apply for a refund anticipation loan.

16 (10) "Unconscionable" means actions or conduct by which a lender or facilitator:

17 (a) Knowingly takes advantage of a debtor's or taxpayer's physical infirmity, lack of
18 knowledge, illiteracy or inability to understand the contracts, documents, charges or fees
19 related to a refund anticipation loan; or

20 (b) Charges fees or interest for refund anticipation loans in amounts or at rates that the
21 Director of the Department of Consumer and Business Services by rule determines to be
22 excessive.

23 **SECTION 2.** (1) A person may not act or conduct business as a facilitator in this state
24 without first obtaining a license from the Director of the Department of Consumer and
25 Business Services under section 3 of this 2007 Act.

26 (2) This section does not apply to a person or an employee of a person doing business as
27 a financial institution as defined in ORS 706.008 or as a savings association as defined in ORS
28 722.004.

29 (3) An employee or agent of a person licensed under section 3 of this 2007 Act need not
30 obtain a license in the employee's or agent's own name in order to conduct business on the
31 licensee's behalf.

32 **SECTION 3.** (1) Each applicant for a license to conduct business as a facilitator shall
33 apply to the Director of the Department of Consumer and Business Services in a form and
34 manner that the director prescribes by rule. An application for a license under this section
35 must contain:

36 (a) The applicant's name and assumed business name or other identity the applicant uses
37 in conducting business;

38 (b) The applicant's business address, mailing address, electronic mail address and the
39 Internet address of any website the applicant maintains for public access;

40 (c) The applicant's federal employer identification number or Internal Revenue Service
41 taxpayer identification number;

42 (d) The applicant's principal place of business inside or outside this state;

43 (e) The name and address of the applicant's agent for the service of process, notice or
44 demand, or a power of attorney that the applicant has executed and by which the applicant
45 appoints the director as the applicant's agent for the service of process, notice or demand;

1 (f) Names, trade names, service marks or other means by which the applicant identifies
 2 the refund anticipation loan products or services the applicant offers or that a debtor might
 3 receive;

4 (g) A statement in which the applicant agrees to submit to the personal jurisdiction of
 5 the courts of this state; and

6 (h) A statement that, for the applicant, the applicant's employees or agents and any in-
 7 dividual who has an ownership interest in or supervisory responsibility for the applicant or
 8 the applicant's activities, discloses:

9 (A) Any criminal conviction in the five-year period before the date of application;

10 (B) Any pending investigation into the applicant's business activities brought by a li-
 11 censing, regulatory or law enforcement authority in any jurisdiction; and

12 (C) Any litigation materially concerning the applicant or the applicant's business activ-
 13 ities in any jurisdiction in the five-year period before the date of application.

14 (2) The director may require other information from the applicant in order to carry out
 15 the provisions of sections 1 to 15 of this 2007 Act.

16 (3) As part of an applicant's initial application for a license under this section, the ap-
 17 plicant shall pay a fee to the director for each business location in which the applicant in-
 18 tends to conduct business in an amount the director sets by rule. The fee amount shall be
 19 sufficient, when aggregated with other application and renewal fees, to pay the expenses of
 20 administering and enforcing sections 1 to 15 of this 2007 Act.

21 (4) Upon receipt of a completed application for a license to conduct business as a
 22 facilitator, the director may investigate the applicant as necessary to verify the information
 23 contained in the application.

24 (5) The director may deny a license to an applicant if the director finds in writing that:

25 (a) The applicant has provided false, misleading, incomplete or inaccurate information in
 26 the application for the license;

27 (b) The applicant is not qualified to conduct business as a facilitator because the appli-
 28 cant is not financially solvent, does not have adequate experience or expertise, has engaged
 29 in dishonest, fraudulent or illegal practices or conduct in any business or profession or is
 30 otherwise unfit; or

31 (c) The applicant has been convicted of a crime in any jurisdiction, an essential element
 32 of which is fraud.

33 (6) If the director is satisfied that the information contained in the application is accu-
 34 rate and complete and that no reason exists under subsection (5) of this section to deny the
 35 applicant a license, the director shall issue a license to the applicant and may make or keep
 36 any records concerning the licensee that are necessary to carry out the provisions of
 37 sections 1 to 15 of this 2007 Act.

38 (7) A license issued under this section expires on December 31 following the date on
 39 which the license was issued, unless the licensee renews the license for the succeeding year
 40 by filing a renewal application with the director in the form and containing all information
 41 the director prescribes. The licensee, as part of the renewal application, shall pay a fee to
 42 the director for each location in which the licensee intends to conduct business in an amount
 43 the director sets by rule. The fee amount shall be sufficient, when aggregated with other
 44 application and renewal fees, to pay the expenses of administering and enforcing sections 1
 45 to 15 of this 2007 Act. The director shall renew the license if the director is satisfied that the

1 licensee meets the same criteria for licensing set forth in subsection (6) of this section.

2 (8) A licensee shall prominently display a license issued under this section in each place
3 of business in this state where the licensee conducts business as a facilitator.

4 (9) If the director denies an application for a license or license renewal under this sec-
5 tion, the director shall notify the licensee, stating the reasons for the denial. The applicant
6 or licensee may request a hearing under ORS 183.435 and, upon receiving the request, the
7 director shall grant the applicant or licensee a hearing under ORS 183.413 to 183.470.

8 **SECTION 4.** (1) Each licensee shall file with the Director of the Department of Consumer
9 and Business Services a surety bond or irrevocable letter of credit running to the State of
10 Oregon in the sum of \$25,000. The surety bond or irrevocable letter of credit shall be issued
11 by a surety company, or an insured institution as defined in ORS 706.008, authorized to do
12 business in this state.

13 (2) The liability of the surety company or insured institution that issued the surety bond
14 or irrevocable letter of credit shall continue until canceled. The surety company or insured
15 institution shall give the director at least 30 days' written notice before canceling or termi-
16 nating liability under the surety bond or irrevocable letter of credit. The licensee, in order
17 to comply with this section, shall ensure that the full amount of the surety bond or irrev-
18 ovable letter of credit required under this section is available at all times.

19 (3) The aggregate liability of the surety company or insured institution may not exceed
20 the principal sum of the surety bond or irrevocable letter of credit.

21 **SECTION 5.** (1) On or before January 2 of each year, a licensee shall file schedules with
22 the Director of the Department of Consumer and Business Services that disclose for the
23 succeeding year:

24 (a) The refund anticipation loan fees that the licensee will charge; and

25 (b) The interest rates that lenders for whom the licensee facilitates refund anticipation
26 loans will charge.

27 (2) If at any point after January 2 the licensee learns of a change to any of the rates or
28 charges disclosed under subsection (1) of this section, the licensee shall immediately file with
29 the director an amendment setting forth the change.

30 (3) In each location where the licensee conducts business as a facilitator, the licensee
31 shall prominently display:

32 (a) A schedule of the lender's current interest rates for refund anticipation loans;

33 (b) A schedule of the licensee's current refund anticipation loan fees;

34 (c) A schedule of the licensee's fees for filing tax forms electronically; and

35 (d) A statement to the effect that the licensee may not require the taxpayer to obtain a
36 refund anticipation loan as a condition of filing the taxpayer's tax return electronically and
37 that the fee for filing a tax return electronically does not depend on whether the taxpayer
38 has obtained a refund anticipation loan.

39 (4) The licensee may not conduct business as a facilitator unless the licensee displays the
40 schedules required to be displayed under subsection (3) of this section and unless:

41 (a) The licensee charges only the refund anticipation loan fee that is both displayed on
42 the licensee's schedule and disclosed to the taxpayer as provided in subsection (5) of this
43 section; and

44 (b) The licensee ensures that the lender charges and that the debtor pays only the in-
45 terest rate for a refund anticipation loan that is both displayed on the schedule and disclosed

1 to the debtor as provided in subsection (5) of this section.

2 (5) The licensee shall disclose to a taxpayer, at the time the taxpayer applies for a refund
3 anticipation loan and on a form separate from the application, all of the following items:

4 (a) A listing or table that shows examples of the amounts that the licensee and the lender
5 will charge in fees and in interest for refund anticipation loans of \$500, \$750, \$1,000, \$1,500,
6 \$2,000 and \$3,000. For each loan example, the table or listing shall disclose separately the
7 amount of each fee, the annual percentage rate for the loan and the total amount of money
8 a debtor would pay in fees and interest for the loan. In making this disclosure, the licensee
9 shall calculate the annual percentage rate as defined by the federal Truth In Lending Act,
10 15 U.S.C. 1601 et seq.

11 (b) The lender's fees, interest rate and annual percentage rate for the refund anticipation
12 loan the taxpayer will pay if approved. If a debtor, as a condition of obtaining the loan, must
13 establish or maintain a deposit account with the lender to receive the debtor's tax refund
14 and thereby to offset the amount owed on the loan, the maturity date of the loan for the
15 purpose of determining the annual percentage rate disclosure under this section, regardless
16 of the annual percentage rate disclosure that the federal Truth In Lending Act requires, is
17 the estimated date on which the tax refund will be deposited in the debtor's account.

18 (c) The licensee's refund anticipation loan fee, the fee for filing a tax return electron-
19 ically and the fees the licensee will charge the taxpayer if the taxpayer's application for a
20 refund anticipation loan is not approved.

21 (d) The time at which the taxpayer will receive the amount loaned if the lender approves
22 the loan.

23 (e) A statement to the effect that the refund anticipation loan is a loan and not the
24 taxpayer's actual tax refund.

25 (f) A statement in which the licensee discloses:

26 (A) The average amount of time in which a taxpayer that files a tax return electronically
27 in the current filing year can expect to receive a tax refund deposited directly into the tax-
28 payer's bank account, according to information provided by federal and state taxing author-
29 ities;

30 (B) The average amount of time in which a taxpayer that files a tax return electronically
31 in the current filing year can expect to receive a tax refund mailed to the taxpayer, accord-
32 ing to information provided by federal and state taxing authorities; and

33 (C) The difference, in days, between the time at which a taxpayer will receive the loan
34 amount from a refund anticipation loan, as disclosed in accordance with paragraph (d) of this
35 subsection, and the times by which, on average, a taxpayer that files a tax return electron-
36 ically will receive a refund from the tax authority mailed to the taxpayer or deposited di-
37 rectly to the taxpayer's deposit account, without applying for or receiving a refund
38 anticipation loan.

39 (g) A statement to the effect that the federal and state taxing authorities do not guar-
40 antee that the taxpayer will receive the full amount of an anticipated tax refund or that the
41 taxpayer will receive a refund on a specific date.

42 (h) A statement to the effect that the taxpayer is responsible for repaying the loan and
43 related fees from other money or assets the taxpayer may have should the taxpayer not re-
44 ceive a tax refund or the anticipated full amount of the tax refund.

45 (6) The director by rule may specify the form and content for the schedules and disclo-

1 sures required in subsections (3) and (5) of this section, except for information in the
 2 schedules or disclosures that the licensee must fill in or supply.

3 **SECTION 6.** (1) Except as provided in subsection (3) of this section, a licensee may not
 4 charge a taxpayer or debtor more than:

5 (a) \$20 as a fee to file the taxpayer's or debtor's state and federal tax returns electron-
 6 ically; or

7 (b) \$40 as a refund anticipation loan fee.

8 (2) Except as provided in subsection (3) of this section, a lender may not charge more
 9 than 36 percent per annum for a refund anticipation loan.

10 (3) The Director of the Department of Consumer and Business Services, by rule, may
 11 adjust the maximum fees or interest rates established under this section to an amount that
 12 the director determines is adequate compensation to the licensee or lender after considering:

13 (a) The cost of the services that the licensee or lender provides;

14 (b) A reasonable profit for the licensee or lender; and

15 (c) The effect that the fees or interest rates have on the market that the licensee or
 16 lender serves.

17 **SECTION 7.** A licensee may not:

18 (1) Misrepresent a condition of a refund anticipation loan or a material fact connected
 19 with the loan.

20 (2) Fail to arrange for a refund anticipation loan promptly after a taxpayer applies for
 21 the loan or fail to deliver a refund anticipation loan approved by the lender to the debtor
 22 within 48 hours of the time disclosed in accordance with section 5 (5)(d) of this 2007 Act.

23 (3) Require a taxpayer to obtain a refund anticipation loan in exchange for filing the
 24 taxpayer's tax return electronically or in exchange for a reduction or discount in any fee the
 25 licensee charges for preparing or filing the taxpayer's tax return.

26 (4) Engage in any fraudulent transaction, practice or course of business in connection
 27 with a refund anticipation loan.

28 (5) Facilitate a refund anticipation loan for which the licensee charges a greater fee or
 29 the lender charges greater interest than the fee or interest posted and filed with the Director
 30 of the Department of Consumer and Business Services.

31 (6) Facilitate a refund anticipation loan for which the licensee charges a fee or for which
 32 the lender charges a rate of interest in excess of the maximum fees and interest rates set
 33 forth under section 6 of this 2007 Act, or at rates that the director has determined are
 34 unconscionable.

35 (7) Direct, or arrange for the direction of, any portion of the amount that a debtor pays
 36 in refund anticipation loan fees, or toward a refund anticipation loan, into paying fees or
 37 charges for check cashing, credit insurance or any other goods or services unrelated to
 38 preparing and filing tax returns or facilitating the refund anticipation loan.

39 (8) Take, or arrange for another person to take, an interest in any property of the
 40 debtor's other than the proceeds of the debtor's tax refund as security for the payment of
 41 the refund anticipation loan.

42 (9) Engage in unconscionable activity.

43 (10) Violate any rule or order that the director adopts or issues under sections 1 to 15
 44 of this 2007 Act, or violate a consent agreement between the licensee and the director.

45 **SECTION 8.** The Director of the Department of Consumer and Business Services may

1 deny, suspend, revoke or impose conditions or restrictions on a licensee's license if the di-
 2 rector finds that the licensee has taken any of the following actions:

3 (1) Engaged in dishonest, fraudulent or illegal practices or conduct in any business or
 4 profession, or engaged in unfair or unethical practices or conduct in connection with con-
 5 ducting business as a facilitator, including taking unconscionable actions or charging
 6 unconscionable fees or interest.

7 (2) Intentionally concealed or misstated any information material to the licensee's appli-
 8 cation for a license or renewal of a license.

9 (3) Violated or failed to comply, willfully or repeatedly, with section 2, 3, 5, 6 or 7 of this
 10 2007 Act or with any condition or restriction the director imposed on the licensee's license
 11 or any rule or order the director adopted or issued under sections 1 to 15 of this 2007 Act.

12 (4)(a) Permitted or directed the licensee's employee or agent to violate section 2, 3, 5, 6
 13 or 7 of this 2007 Act, any condition or restriction the director imposed on the licensee's li-
 14 cense or any rule or order the director adopted or issued under sections 1 to 15 of this 2007
 15 Act; or

16 (b) Failed to supervise the licensee's employee or agent, as a consequence of which the
 17 employee or agent violated section 2, 3, 5, 6 or 7 of this 2007 Act, any condition or restriction
 18 the director imposed on the licensee's license or any rule or order the director adopted or
 19 issued under sections 1 to 15 of this 2007 Act.

20 (5) Failed to obtain or maintain at all times a surety bond or irrevocable letter of credit
 21 in the required amount as provided in section 4 of this 2007 Act.

22 (6) Was convicted of a felony or another crime of which an essential element is fraud.

23 **SECTION 9.** (1) The Director of the Department of Consumer and Business Services may
 24 issue an order to cease and desist from any activity that the director finds:

25 (a) Constitutes a violation or impending violation of section 2, 3, 5, 6 or 7 of this 2007 Act
 26 or any rule or order the director adopted or issued under sections 1 to 15 of this 2007 Act;
 27 or

28 (b) Constitutes an unfair or deceptive act or practice.

29 (2) If the director finds that a licensee has violated a cease and desist order, the director
 30 may temporarily suspend or revoke the licensee's license.

31 (3) If the director finds that a licensee has violated or is about to violate section 2, 3, 5,
 32 6 or 7 of this 2007 Act or any rule or order the director adopted or issued under sections 1
 33 to 15 of this 2007 Act, the director may bring suit in the name and on behalf of the State of
 34 Oregon in the circuit court for any county of this state to enjoin the violation or impending
 35 violation. The court may grant, upon a proper showing, a permanent or temporary injunction
 36 or a restraining order and may fine the defendant not more than \$7,500 for each violation,
 37 which shall be entered as a judgment and paid to the General Fund of the State Treasury.
 38 Each violation is a separate offense. In the case of a continuing violation, each day's con-
 39 tinuance is a separate violation, but the maximum penalty for any continuing violation may
 40 not exceed \$50,000.

41 (4) The court may award reasonable attorney fees to the director if the director prevails
 42 in a suit under this section. The court may award reasonable attorney fees to a defendant
 43 that prevails in a suit under this section if the court determines that the director had no
 44 objectively reasonable basis for asserting the claim or no reasonable basis for appealing an
 45 adverse decision of the court.

1 (5) The director may include in a suit authorized by this section one of the following
 2 claims:

3 (a) A claim for restitution or damages on behalf of a person injured by the act or practice
 4 that is the subject matter of the suit. The court has jurisdiction to award appropriate relief
 5 to the injured person if the court finds that a private civil suit to enforce the injured per-
 6 son's rights would so burden or cause such expense to the injured person as to be impracti-
 7 cal.

8 (b) A claim for disgorgement of illegal gains or profits derived from the act or practice
 9 that is the subject matter of the suit. Any recovery under this paragraph shall be paid to the
 10 General Fund of the State Treasury unless the court requires otherwise.

11 (6) The director may bring any suit authorized under this section against the surety bond
 12 or irrevocable letter of credit required under section 4 of this 2007 Act.

13 **SECTION 10.** (1) A taxpayer or debtor may sue in the circuit court in the county where
 14 the taxpayer or debtor resides or does business for injuries suffered as a consequence of a
 15 licensee's violation of section 6 or 7 of this 2007 Act, except as to section 7 (8) of this 2007
 16 Act.

17 (2) A plaintiff may recover three times the fee or amount of interest charged in violation
 18 of section 6 of this 2007 Act and three times the amount of the loan for a violation of section
 19 7 of this 2007 Act. The debtor is also entitled to interest on the amount of the judgment from
 20 the date of the violation at the rate of interest specified in ORS 82.010 for judgments and
 21 decrees for the payment of money.

22 (3) A suit may not be commenced under this section more than two years after the date
 23 of the violation.

24 (4) Any plaintiff that has a right of action against a licensee under this section has a
 25 right of action against the surety bond or irrevocable letter of credit required under section
 26 4 of this 2007 Act.

27 (5) The court may award reasonable attorney fees to the prevailing party in a suit under
 28 this section.

29 **SECTION 11.** The Director of the Department of Consumer and Business Services may
 30 adopt rules or issue orders to administer sections 1 to 15 of this 2007 Act, to provide for
 31 consumer protection related to refund anticipation loans and to assist licensees in inter-
 32 preting sections 1 to 15 of this 2007 Act.

33 **SECTION 12.** (1) The Director of the Department of Consumer and Business Services
 34 shall have general supervision and control over all facilitators, whether licensed or not, re-
 35 siding or doing business in this state with respect to any aspect of the facilitator's refund
 36 anticipation loan business. All facilitators described in this subsection and records connected
 37 with the activities of the facilitators are subject to examination by the director at any time.

38 (2) The director may make such investigations within or outside this state to determine
 39 whether a person has violated or is about to violate any provision of section 2, 3, 5, 6 or 7
 40 of this 2007 Act or any rule or order the director adopted or issued under sections 1 to 15
 41 of this 2007 Act.

42 (3) For the purpose of an investigation or proceeding under sections 1 to 15 of this 2007
 43 Act, the director may administer oaths and affirmations, subpoena witnesses, compel the
 44 attendance of witnesses, take evidence and require production of records that the director
 45 considers relevant or material to the inquiry. The records may be embodied in any form or

1 **media. Each witness who appears pursuant to a subpoena shall receive the fees and mileage**
 2 **provided for witnesses in ORS 44.415 (2). The director may also require or permit a person**
 3 **to file a statement in writing, under oath or otherwise, as to all the facts and circumstances**
 4 **concerning the matter under investigation.**

5 **(4) If a person fails to comply with a subpoena issued under this section or a party or**
 6 **witness refuses to testify on any matter, the judge of the Circuit Court for Marion County**
 7 **or the county where the person is located shall compel obedience by proceedings for con-**
 8 **tempt as in the case of disobedience of the requirements of a subpoena issued from the court**
 9 **or a refusal to testify therein.**

10 **(5) Each person examined or investigated under this section shall pay the actual cost of**
 11 **the examination or investigation to the director. The director may maintain an action for the**
 12 **recovery of the costs in any court of competent jurisdiction.**

13 **SECTION 13. Sections 1 to 15 of this 2007 Act do not apply to a person that does not deal**
 14 **directly with taxpayers or debtors but that acts solely as an intermediary between a**
 15 **facilitator and a lender or between a facilitator and a state or federal tax authority by pro-**
 16 **cessing or transmitting, electronically or otherwise, tax or credit information or by prepar-**
 17 **ing a refund anticipation loan check to be delivered by the facilitator to a debtor.**

18 **SECTION 14. Violation of any provision of section 2, 3, 5, 6 or 7 of this 2007 Act or a rule**
 19 **or order the Director of the Department of Consumer and Business Services has adopted or**
 20 **issued under sections 1 to 15 of this 2007 Act is a Class A misdemeanor.**

21 **SECTION 15. (1) In addition to all other penalties and enforcement provisions provided**
 22 **by law, the Director of the Department of Consumer and Business Services may impose a**
 23 **civil penalty as provided in ORS 183.745 in an amount not to exceed \$7,500 for each violation**
 24 **of section 2, 3, 5, 6 or 7 of this 2007 Act or of any rule or order the director adopted or issued**
 25 **under sections 1 to 15 of this 2007 Act.**

26 **(2) All penalties recovered under this section shall be paid into the State Treasury and**
 27 **credited to the General Fund.**

28 **(3) Every violation is a separate offense and, in the case of a continuing violation, each**
 29 **day's continuance is a separate violation, but the maximum violation may not exceed \$50,000.**

30 **SECTION 16. ORS 673.605 is amended to read:**

31 673.605. As used in ORS 673.605 to 673.740 unless the context requires otherwise:

32 (1) "Board" means the State Board of Tax Practitioners created by ORS 673.725.

33 [(2)(a)] **(2) "Facilitator" has the meaning given that term in section 1 of this 2007 Act.**
 34 *[means a person that individually or in conjunction or cooperation with another person processes, re-*
 35 *ceives or accepts for delivery an application for a refund anticipation loan or a check in payment of*
 36 *refund anticipation loan proceeds or in any other manner materially facilitates the making of a refund*
 37 *anticipation loan.]*

38 [(b)] *"Facilitator" does not mean a financial institution as defined in ORS 706.008, a person who*
 39 *has been issued a license under ORS chapter 725, an affiliate that is a servicer for a financial insti-*
 40 *tution or for a person issued a license under ORS chapter 725, a person issued a certificate as a cer-*
 41 *tified public accountant or licensed as a public accountant by the Oregon Board of Accountancy, or*
 42 *any person that acts solely as an intermediary and does not deal with a taxpayer in the making of a*
 43 *refund anticipation loan.]*

44 [(3)] *"Lender" means a person that makes a refund anticipation loan with the person's own funds*
 45 *or a line of credit or other funding from a financial institution as defined in ORS 706.008, but does*

1 *not include a financial institution as defined in ORS 706.008.]*

2 [(4)] (3) “Refund anticipation loan” **has the meaning given that term in section 1 of this 2007**
 3 **Act.** *[means a loan that the lender arranges to be repaid directly from the proceeds of the taxpayer’s*
 4 *federal or state personal income tax refund.]*

5 [(5)(a) “Refund anticipation loan fee” means the charges, fees or other consideration charged or
 6 imposed by the lender or facilitator for the making of a refund anticipation loan.]

7 [(b) “Refund anticipation loan fee” does not mean any charge, fee or other consideration usually
 8 charged or imposed by the facilitator in the ordinary course of business for nonloan services, including
 9 fees for tax return preparation and fees for electronic filing of tax returns.]

10 [(6)] (4) “Tax consultant” means a person who is licensed under ORS 673.605 to 673.740 to pre-
 11 pare or advise or assist in the preparation of personal income tax returns for another and for val-
 12 uable consideration.

13 [(7)] (5) “Taxpayer” means an individual who files a federal or Oregon personal income tax re-
 14 turn.

15 [(8)] (6) “Tax preparer” means any person who is licensed under ORS 673.605 to 673.740 as a tax
 16 preparer.

17 **SECTION 17.** ORS 673.700 is amended to read:

18 673.700. The State Board of Tax Practitioners may refuse to issue or renew a tax consultant or
 19 preparer’s license, or may suspend or revoke a tax consultant or preparer’s license, or may
 20 reprimand any person licensed as a tax consultant or tax preparer for:

21 (1) Violation of ORS 673.615[,] **or** 673.705[*or* 673.712].

22 (2) Failure to keep the records required by ORS 673.690.

23 (3) Negligence or incompetence in tax consultant or tax preparer practice or when acting in the
 24 capacity of a tax preparer or tax consultant in another state, or under an exempt status or in
 25 preparation of the personal income tax return for another state or the federal government.

26 (4)(a) Conduct resulting in a conviction of a felony under the laws of any state or of the United
 27 States. However, such conduct may be considered only to the extent permissible under the pro-
 28 visions of ORS 670.280; or

29 (b) Conviction of any crime, an essential element of which is dishonesty, fraud or deception,
 30 under the laws of any state or of the United States.

31 (5) Conviction of willful failure to pay any tax or estimated tax, file any tax return, keep records
 32 or supply information required under the tax laws of any state or of the United States, or conviction
 33 of the willful making, rendering, delivery, disclosure, signing or verifying of any false or fraudulent
 34 list, return, account, statement or other document, or of supplying any false or fraudulent informa-
 35 tion, required under the tax laws of any state or of the United States.

36 (6) Failure to comply with continuing education requirements under ORS 673.655 or under ORS
 37 673.667 unless such requirements have been waived by the board.

38 (7) Violation of the code of professional conduct prescribed by the board.

39 (8) Failure to pay any civil penalty incurred under ORS 673.735 within the time determined by
 40 the board.

41 (9) Cancellation, revocation or refusal to renew by any state or federal agency of, or entry of
 42 a consent order, stipulated agreement or judgment related to, the person’s authority to practice law,
 43 to practice as a certified public accountant or a public accountant or to practice under other reg-
 44 ulatory law in any state, or to practice as an enrolled agent, if the grounds for the cancellation,
 45 revocation, refusal to renew, consent order, stipulated agreement or judgment were related to in-

1 come tax preparation or if dishonesty, fraud or deception was involved.

2 (10) Cancellation, revocation or refusal to renew by any state or federal agency of, or entry of
3 a consent order, stipulated agreement or judgment related to, a business's authority to conduct op-
4 erations related to the practice of law, certified public accountancy, public accountancy or other
5 services provided under regulatory law in any state, or to provide enrolled agent services, if the
6 grounds for the cancellation, revocation, refusal to renew, consent order, stipulated agreement or
7 judgment involved the conduct or actions of the licensee or applicant and:

8 (a) Were related to income tax preparation; or

9 (b) Involved dishonesty, fraud or deception.

10 **SECTION 18.** ORS 673.730 is amended to read:

11 673.730. The State Board of Tax Practitioners shall have the following powers, in addition to the
12 powers otherwise granted by ORS 673.605 to 673.740, and shall have all powers necessary or proper
13 to carry the granted powers into effect:

14 (1) To determine qualifications of applicants for licensing as a tax consultant or a tax preparer
15 in this state; to cause examinations to be prepared, conducted and graded; and to issue licenses to
16 qualified applicants upon their compliance with ORS 673.605 to 673.740 and the rules of the board.

17 (2)(a) To restore the license of any tax consultant or preparer whose license has been suspended
18 or revoked.

19 (b) The power of the board to suspend any license under ORS 673.700 includes the power to
20 restore:

21 (A) At a time certain; or

22 (B) When the person subject to suspension fulfills conditions for reissuance set by the board.

23 (c) The power of the board to restore a license under paragraph (a) of this subsection specif-
24 ically includes the power to restore a license suspended or revoked for the reason that the person
25 has been convicted of a crime. In making a determination to restore a license, the board shall con-
26 sider the relationship of the facts which supported the conviction to the code of professional conduct
27 and all intervening circumstances in determining the fitness of the person to receive or hold a tax
28 consultant's or tax preparer's license.

29 (3) To prescribe fees, subject to ORS 673.685, and to collect fees.

30 (4) To investigate alleged violations of ORS 673.605 to 673.740, or any rule or order adopted
31 thereunder. The board may keep information gathered pursuant to an investigation by the board
32 confidential until there is a final order or determination by the board, unless disclosure is consid-
33 ered necessary by the board for the investigation or prosecution of an alleged violation of ORS
34 673.605 to 673.740, or any rule or order adopted thereunder. The board may keep personal financial
35 information gathered pursuant to an investigation by the board confidential after a final order or
36 determination by the board, unless disclosure is considered necessary by the board for the investi-
37 gation or prosecution of an alleged violation of ORS 673.605 to 673.740, or any rule or order adopted
38 thereunder. For purposes of this subsection, personal financial information includes but is not lim-
39 ited to tax returns.

40 (5) To enforce the provisions of ORS 673.605 to 673.740 and to exercise general supervision over
41 tax consultant and tax preparer practice.

42 (6) To issue an order directed to a person to cease and desist from any violation or threatened
43 violation of ORS 673.615, 673.643[,] **or** 673.705[*or* 673.712], or any rule or order adopted thereunder,
44 if the board has reason to believe that a person has been engaged, is engaging or is about to engage
45 in any violation of ORS 673.615, 673.643[,] **or** 673.705[*or* 673.712], or any rule or order adopted

1 thereunder.

2 (7) To assess civil penalties within a cease and desist order issued under subsection (6) of this
 3 section if the board has reason to believe that a person has been engaged or is engaging in any vi-
 4 olation of ORS 673.615, 673.643[,] **or** 673.705[*or* 673.712], or any rule or order adopted thereunder.
 5 The civil penalty may not exceed \$5,000 per violation.

6 (8) To formulate a code of professional conduct for tax consultants and tax preparers.

7 (9) To assess against the licensee or any other person found guilty of violating any provision
 8 of ORS 673.605 to 673.740, or any rule or order adopted thereunder, in addition to any other sanc-
 9 tions, the costs associated with the disciplinary or other action taken by the board.

10 (10) To order that any person who has engaged in or is engaging in any violation of ORS 673.605
 11 to 673.740, or any rule or order adopted thereunder, shall offer to rescind and pay restitution to
 12 anyone harmed by the violation who seeks rescission.

13 **SECTION 19. ORS 673.712 and 673.715 are repealed on January 1, 2008.**

14 **SECTION 20. Sections 1 to 15 of this 2007 Act, the amendments to ORS 673.605, 673.700
 15 and 673.730 by sections 16, 17 and 18 of this 2007 Act and the repeal of ORS 673.712 and 673.715
 16 by section 19 of this 2007 Act apply to the activities of all facilitators and lenders, as defined
 17 in section 1 of this 2007 Act, conducting business on or after the operative date of sections
 18 1 to 15 of this 2007 Act.**

19 **SECTION 21. (1) Sections 1 to 15 of this 2007 Act, the amendments to ORS 673.605, 673.700
 20 and 673.730 by sections 16, 17 and 18 of this 2007 Act and the repeal of ORS 673.712 and 673.715
 21 by section 19 of this 2007 Act become operative on January 1, 2008.**

22 **(2) The Director of the Department of Consumer and Business Services may adopt rules
 23 or take any action before the operative date of sections 1 to 15 of this 2007 Act that is nec-
 24 essary to enable the director to exercise, on and after the operative date of sections 1 to 15
 25 of this 2007 Act, all the duties, functions and powers conferred upon the director by sections
 26 1 to 15 of this 2007 Act.**

27 **SECTION 22. This 2007 Act being necessary for the immediate preservation of the public
 28 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
 29 on its passage.**

30 _____