

Senate Bill 172

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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**.

Expands regulation of individuals who prepare tax returns to include those who prepare corporate tax returns, partnership tax returns, S corporation tax returns and trust or estate tax returns. Applies to tax returns prepared on or after January 1, 2010.

A BILL FOR AN ACT

1
2 Relating to regulation of tax practitioners; creating new provisions; and amending ORS 673.605,
3 673.610, 673.615, 673.625, 673.637, 673.643, 673.655, 673.667, 673.690, 673.700, 673.705, 673.710,
4 673.712 and 673.725.

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

6 **SECTION 1.** ORS 673.605 is amended to read:

7 673.605. As used in ORS 673.605 to 673.740 unless the context requires otherwise:

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

9 (2)(a) "Facilitator" means a person that individually or in conjunction or cooperation with an-
10 other person processes, receives or accepts for delivery an application for a refund anticipation loan
11 or a check in payment of refund anticipation loan proceeds or in any other manner materially fa-
12 cilitates the making of a refund anticipation loan.

13 (b) "Facilitator" does not mean a financial institution as defined in ORS 706.008, a person who
14 has been issued a license under ORS chapter 725, an affiliate that is a servicer for a financial in-
15 stitution or for a person issued a license under ORS chapter 725, a person issued a certificate as a
16 certified public accountant or licensed as a public accountant by the Oregon Board of Accountancy,
17 or any person that acts solely as an intermediary and does not deal with a taxpayer in the making
18 of a refund anticipation loan.

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

22 (4) "Refund anticipation loan" means a loan that the lender arranges to be repaid directly from
23 the proceeds of the taxpayer's federal or state [*personal income*] tax refund.

24 (5)(a) "Refund anticipation loan fee" means the charges, fees or other consideration charged or
25 imposed by the lender or facilitator for the making of a refund anticipation loan.

26 (b) "Refund anticipation loan fee" does not mean any charge, fee or other consideration usually
27 charged or imposed by the facilitator in the ordinary course of business for nonloan services, in-
28 cluding fees for tax return preparation and fees for electronic filing of tax returns.

29 (6) "Tax consultant" means a person who is licensed under ORS 673.605 to 673.740 to prepare
30 or advise or assist in the preparation of [*personal income*] tax returns for another and for valuable

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 consideration.

2 (7) "Taxpayer" means [*an individual*] a **person** who files a federal or Oregon [*personal income*]
3 tax return.

4 (8) "Tax preparer" means any person who is licensed under ORS 673.605 to 673.740 as a tax
5 preparer.

6 (9) "**Tax return**" means any **personal income tax return, corporate tax return, partner-**
7 **ship tax return, S corporation tax return, or trust or estate tax return.**

8 **SECTION 2.** ORS 673.610 is amended to read:

9 673.610. ORS 673.605 to 673.740 do not apply to:

10 (1) Any full or part-time employee hired to fill a permanent position, who in connection with the
11 duties as an employee has the incidental duty of preparing [*income*] tax returns for the business of
12 the employer only.

13 (2) Any attorney at law rendering services in the performance of the duties of an attorney at
14 law.

15 (3) While acting as such, any fiduciary, or the regular employees thereof, acting on behalf of the
16 fiduciary estate, the testator, trustor, grantor, or beneficiaries thereof.

17 (4) A certified public accountant who holds an active permit issued by any state, a public ac-
18 countant holding a valid permit issued under ORS 673.100 or a public accounting firm registered in
19 any state.

20 (5) Any employee of a certified public accountant, public accountant or registered public ac-
21 counting firm described in subsection (4) of this section.

22 (6) Any person employed by a local, state or federal governmental agency but only in perform-
23 ance of official duties.

24 **SECTION 3.** ORS 673.615 is amended to read:

25 673.615. Except as otherwise provided in ORS 673.605 to 673.740:

26 (1) A person may not prepare or advise or assist in the preparation of [*personal income*] tax re-
27 turns for another and for valuable consideration or represent that the person is so engaged unless
28 the person is licensed as a tax consultant under ORS 673.605 to 673.740.

29 (2) A tax preparer may prepare or advise or assist in the preparation of tax returns only under
30 the supervision of a tax consultant, or a person described in ORS 673.610 (2) or (4), and subject to
31 such conditions and limitations as the State Board of Tax Practitioners by rule may impose.

32 (3) A person may not be a facilitator of a refund anticipation loan without first being issued a
33 license as a tax consultant or tax preparer under ORS 673.640.

34 **SECTION 4.** ORS 673.625 is amended to read:

35 673.625. (1) Every applicant for a license as a tax consultant and every applicant for licensing
36 as a tax preparer must:

37 (a) Be not less than 18 years of age;

38 (b) Possess a high school diploma or have passed an equivalency examination; and

39 (c) Present evidence satisfactory to the State Board of Tax Practitioners that the applicant has
40 successfully completed not less than 80 hours in basic [*personal income*] tax law, theory and practice
41 at a school training session or educational institution approved by the board.

42 (2) In addition to the requirements of subsection (1) of this section, every applicant for licensing
43 as a tax preparer must pass to the satisfaction of the board an examination. The examination shall
44 be constructed in a manner that in the judgment of the board measures the applicant's knowledge
45 of Oregon and federal [*personal income*] tax law, theory and practice.

1 (3) In addition to the requirements of subsection (1) of this section, every applicant for licensing
2 as a tax consultant must:

3 (a) Present evidence satisfactory to the board of active employment, as described in ORS 673.615
4 (2), as a tax preparer or employment in this or another state in a capacity that is, in the judgment
5 of the board equivalent to that of a tax preparer or tax consultant, for not less than a cumulative
6 total of 780 hours during at least two of the last five years. Certification by a tax consultant or
7 person described in ORS 673.610 (2) or (4) that the applicant was employed as a tax preparer under
8 supervision for the period indicated in the certificate shall be considered evidence satisfactory to
9 the board of the applicant's employment as a tax preparer for the period indicated. If an applicant
10 has worked less than a cumulative total of 780 hours in at least two of the last five years, the board
11 may consider the number of hours employed, the number of years employed, the number of tax re-
12 turns prepared and whether the work involved contributed directly to the professional competence
13 of the individual in determining if a tax preparer or tax consultant has met the work experience
14 requirement.

15 (b) Pass to the satisfaction of the board an examination that is constructed in a manner that in
16 the judgment of the board measures the applicant's knowledge of Oregon and federal [*personal in-*
17 *come*] tax law, theory and practice. The examination for a tax consultant's license shall differ from
18 the examination for a tax preparer's license in that it shall be of a more exacting nature and require
19 higher standards of knowledge of [*personal income*] tax law, theory and practice.

20 (4) If, in the judgment of the board, an applicant has, in combination, the education and experi-
21 ence to qualify for a tax consultant's or preparer's license, but does not meet or cannot present
22 evidence of strict compliance with the requirements of subsection (1)(c) or subsection (3)(a) of this
23 section, the board may allow some of the applicant's education or experience to substitute one for
24 the other. However, nothing in this subsection shall be construed to allow a waiver of, or substi-
25 tution for, any qualifications needed for a tax consultant's or preparer's license other than those
26 described in subsection (1)(c) or subsection (3)(a) of this section.

27 **SECTION 5.** ORS 673.637 is amended to read:

28 673.637. (1) The State Board of Tax Practitioners may issue a license to an applicant for a li-
29 cense as a tax consultant or as a tax preparer who:

30 (a) Presents evidence satisfactory to the board that the applicant is licensed as a tax consultant
31 or preparer in a state that has requirements for licensing substantially similar to the requirements
32 for licensing of this state; and

33 (b) Has passed to the satisfaction of the board an examination covering Oregon [*personal*
34 *income*] tax law, theory and practice; the provisions of ORS 673.605 to 673.740 and the code of pro-
35 fessional conduct prescribed by the board.

36 (2) Notwithstanding ORS 673.625 (1) and (3), but as otherwise provided in ORS 673.605 to
37 673.740, the board shall license as a tax consultant any person who is, on the date of the application
38 for a tax consultant's license, enrolled to practice before the Internal Revenue Service pursuant to
39 31 C.F.R. part 10 if the person has passed to the satisfaction of the board an examination covering
40 Oregon [*personal income*] tax law, theory and practice; the provisions of ORS 673.605 to 673.740 and
41 the code of professional conduct prescribed by the board.

42 (3) Except as otherwise provided in this section, no examination shall be required for licensing
43 under this section.

44 (4) Any person desiring to be licensed under this section shall make written application to the
45 board and shall pay to the board at the time required by the board the examination and license fees

1 provided under ORS 673.685.

2 **SECTION 6.** ORS 673.643 is amended to read:

3 673.643. (1) A sole proprietorship, partnership, corporation or other legal entity, through indi-
4 viduals who are authorized within this state to render those services, may engage in the prepara-
5 tion, or in advising or assisting in the preparation of [*personal income*] tax returns for another and
6 for valuable consideration and represent that it is so engaged if the entity:

7 (a) Registers annually with the State Board of Tax Practitioners in the manner prescribed by
8 the board;

9 (b) Designates and reports in the manner prescribed by the board the authorized individual or
10 individuals who are responsible for the tax return preparation activities and decisions of the entity;
11 and

12 (c) Complies with ORS 673.605 to 673.740 and the rules adopted by the board.

13 (2) A sole proprietorship, partnership, corporation or other legal entity shall not be relieved of
14 responsibility for the conduct or acts of its agents, employees or officers by reason of its compliance
15 with subsection (1) of this section, nor shall a licensed tax consultant be relieved of responsibility
16 for professional services performed by reason of employment by or relationship with such sole
17 proprietorship, partnership, corporation or other legal entity.

18 (3) A sole proprietorship, partnership, corporation or other legal entity shall not engage in tax
19 return preparation activities under subsection (1) of this section if the tax consultant, or the pro-
20 prietor, a partner, a principal, an officer, director or manager, or a shareholder of the entity, is:

21 (a) An individual whose license as a tax consultant or tax preparer under ORS 673.605 to 673.740
22 is permanently revoked.

23 (b) An individual to whom the board has refused to issue or renew a license on the basis of
24 dishonest conduct or conduct involving tax preparation.

25 (c) An individual whose occupational license, permit or registration has been revoked or refused
26 by another state regulatory agency or the Internal Revenue Service for dishonest conduct or con-
27 duct involving tax preparation.

28 (d) A sole proprietorship, partnership, corporation or other legal entity prohibited from engaging
29 in tax return preparation activities under subsection (1) of this section by reason of this subsection.

30 (4) The shareholders referred to in subsection (3) of this section are:

31 (a) If the corporation is publicly traded, a shareholder that owns more than 10 percent in value
32 of the outstanding stock of the corporation.

33 (b) If the corporation is not publicly traded, any shareholder.

34 (5) For purposes of subsections (3) and (4) of this section, "publicly traded" means traded on an
35 established securities market.

36 (6) If a sole proprietorship, partnership, corporation or other legal entity must sever a re-
37 lationship in order that it may engage or may continue to engage in tax preparation activities in
38 compliance with this section, the entity shall be allowed a reasonable time to sever the relationship.
39 Except as provided under subsection (7) of this section, the time allowed to sever a relationship shall
40 not exceed 180 days after the board gives notice that the severance is required. The notice shall
41 include a statement affording an opportunity for hearing on the issue of severance. The notice and
42 all proceedings conducted under this section shall be in accordance with ORS chapter 183.

43 (7) If a hearing is requested under subsection (6) of this section, or if an appeal is taken of the
44 board's order following hearing, the board or court may allow additional time for the affected parties
45 to comply with any order requiring severance.

1 **SECTION 7.** ORS 673.655 is amended to read:

2 673.655. (1) Except as provided in subsection (2) of this section, upon annual renewal of a tax
3 preparer's or tax consultant's license, each person licensed as a tax consultant or tax preparer un-
4 der ORS 673.605 to 673.740 shall submit evidence satisfactory to the State Board of Tax Practition-
5 ers that the person has completed at least 30 hours of instruction or seminar in subjects related to
6 [*income*] tax preparation since the preceding license renewal date. If the board does not receive ev-
7 idence that the continuing education requirement has been completed by the applicant, the board
8 shall not renew the applicant's active license.

9 (2) The board may exempt a tax consultant or tax preparer from the continuing education re-
10 quired by this section upon application showing evidence satisfactory to the board of inability to
11 comply because of unusual or extenuating circumstances.

12 **SECTION 8.** ORS 673.667 is amended to read:

13 673.667. (1) Whenever a tax consultant or tax preparer ceases to engage in the preparation or
14 in advising or assisting in the preparation of [*personal income*] tax returns, the consultant or
15 preparer may apply to the State Board of Tax Practitioners for inactive status. A license that is
16 granted inactive status may be renewed upon payment of the license fee as provided under ORS
17 673.685. No proof that the continuing education required by ORS 673.655 has been fulfilled need be
18 presented to the board for renewal of an inactive license.

19 (2) A license in inactive status may be reactivated upon payment of a reactivation fee, that shall
20 be provided under ORS 673.685, and upon proof of compliance with such continuing education re-
21 quirements as may be adopted by the board by rule.

22 (3) A license in inactive status may be revoked or suspended by the board when conditions exist
23 under which the board would have been authorized to revoke or suspend the license if it were ac-
24 tive.

25 (4) No person whose license is inactive shall act as a tax consultant or as a tax preparer.

26 **SECTION 9.** ORS 673.690 is amended to read:

27 673.690. (1) Except as provided in this section, every person licensed as a tax consultant shall
28 keep records of all [*personal income*] tax returns prepared by the person, or in the preparation of
29 which advice or assistance of the person has been given. The records of the returns shall be kept
30 for a period of not less than four years after the date of the preparation, advice or assistance.

31 (2) If a tax consultant is employed by another tax consultant, the records shall be kept by the
32 employing tax consultant.

33 (3) If a tax consultant who has been designated as responsible for the tax return preparation
34 activities and decisions of a partnership, corporation or other legal entity ceases to be connected
35 with the partnership, corporation or other legal entity, the records shall be retained by the part-
36 nership, corporation or other legal entity.

37 **SECTION 10.** ORS 673.700 is amended to read:

38 673.700. The State Board of Tax Practitioners may refuse to issue or renew a tax consultant or
39 preparer's license, or may suspend or revoke a tax consultant or preparer's license, or may
40 reprimand any person licensed as a tax consultant or tax preparer for:

41 (1) Violation of ORS 673.615, 673.705 or 673.712.

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

43 (3) Negligence or incompetence in tax consultant or tax preparer practice or when acting in the
44 capacity of a tax preparer or tax consultant in another state, or under an exempt status or in
45 preparation of the [*personal income*] tax return for another state or the federal government.

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

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

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

11 (6) Failure to comply with continuing education requirements under ORS 673.655 or under ORS
 12 673.667 unless such requirements have been waived by the board.

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

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

16 (9) Cancellation, revocation or refusal to renew by any state or federal agency of, or entry of
 17 a consent order, stipulated agreement or judgment related to, the person's authority to practice law,
 18 to practice as a certified public accountant or a public accountant or to practice under other reg-
 19 ulatory law in any state, or to practice as an enrolled agent, if the grounds for the cancellation,
 20 revocation, refusal to renew, consent order, stipulated agreement or judgment were related to [*in-*
 21 *come*] tax preparation or if dishonesty, fraud or deception was involved.

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

28 (a) Were related to [*income*] tax preparation; or

29 (b) Involved dishonesty, fraud or deception.

30 **SECTION 11.** ORS 673.705 is amended to read:

31 673.705. It is unlawful for any person to:

32 (1) Obtain or attempt to obtain a license as a tax consultant or a tax preparer by any fraudulent
 33 representation.

34 (2) Represent that the person is licensed as a tax consultant or a tax preparer if the person is
 35 not so licensed.

36 (3) Present or attempt to use the license of another person.

37 (4) Attempt to use a suspended, lapsed or revoked license.

38 (5) Falsely impersonate a licensee under ORS 673.605 to 673.740.

39 (6) Engage in dishonesty, fraud or deception relating to the preparation of [*personal income*] tax
 40 returns.

41 (7) Violate a position of trust, including a position of trust outside the licensee's professional
 42 practice.

43 **SECTION 12.** ORS 673.710 is amended to read:

44 673.710. (1) If a [*personal income*] tax return is prepared by someone other than the taxpayer,
 45 the Department of Revenue may furnish to the State Board of Tax Practitioners a copy of that

1 portion of the return that shows:

2 (a) The name, business name and address of the preparer;

3 (b) The date of preparation; and

4 (c) The signature of the preparer.

5 (2) In instances where the department or the board has reasonable grounds to believe the person
6 preparing the return prepared it in violation of ORS 673.605 to 673.740, the department may furnish
7 the following additional information:

8 (a) The name and address of the taxpayer;

9 (b) The identifying number used on any form, report or schedule filed as part of the return; and

10 (c) The tax year reported on the return, or any portion of the return.

11 (3) The board, its members, officers and employees, shall use the names and addresses furnished
12 under this section solely in the enforcement of ORS 673.605 to 673.740 and shall not otherwise
13 divulge or make known such information. Any person who violates this prohibition against disclo-
14 sure, upon conviction, is punishable as provided in ORS 314.991 (2).

15 **SECTION 13.** ORS 673.712 is amended to read:

16 673.712. (1) Prior to a taxpayer's completion of an application for a refund anticipation loan, the
17 facilitator shall clearly disclose in writing to the taxpayer on a form separate from the application:

18 (a) A listing or table of refund anticipation loan fees and the annual percentage rates, as defined
19 by the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., charged by the facilitator or lender for
20 three or more representative refund anticipation loan amounts. For each loan amount, the schedule
21 shall list separately the amount of each fee and the amount of interest charged by the facilitator
22 or lender and the total amount of fees and interest charged.

23 (b) That the refund anticipation loan is a loan and not the taxpayer's actual [*personal income*]
24 tax refund.

25 (c) That electronic filing of the taxpayer's tax return is available without applying for a refund
26 anticipation loan.

27 (d) The average time announced by the appropriate taxing authority within which the taxpayer
28 can expect to receive a refund if the taxpayer does not obtain a refund anticipation loan and the
29 taxpayer's return is filed:

30 (A) Electronically and the refund is directly deposited in the taxpayer's bank account; or

31 (B) By mail and the refund is directly deposited in the taxpayer's bank account or mailed to the
32 taxpayer.

33 (e) That the Internal Revenue Service does not guarantee:

34 (A) That the full amount of the anticipated refund will be paid; or

35 (B) A specific date on which the taxpayer will receive the refund.

36 (f) That the taxpayer is responsible for repayment of the loan and related fees in the event the
37 tax refund is not paid or is not paid in full.

38 (g) The estimated time within which the proceeds of the loan will be paid to the taxpayer if the
39 loan is approved.

40 (h) The fees charged by the facilitator or lender if the refund anticipation loan is not approved.

41 (2) Prior to entering into a refund anticipation loan agreement, the facilitator shall clearly dis-
42 close to the taxpayer:

43 (a) The estimated total fees for the loan.

44 (b) The estimated annual percentage rate, as defined by the federal Truth in Lending Act, 15
45 U.S.C. 1601 et seq., for the loan.

1 **SECTION 14.** ORS 673.725 is amended to read:

2 673.725. (1) There is created a State Board of Tax Practitioners. The board [*shall consist*] **con-**
 3 **sists** of seven members [*who shall be*] appointed by the Governor.

4 (2) The term of office for each member [*shall be*] **is** three years and no member [*shall be*] **is** el-
 5 ible for appointment to more than three terms of office, but a member serves at the pleasure of
 6 the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor
 7 or reappoint the incumbent member if the incumbent member is eligible for reappointment. The
 8 Governor shall fill vacancies on the board as they [*may*] occur and a member appointed to fill a
 9 vacancy shall serve the unexpired term of the predecessor.

10 (3)[*(a)*] Of the members of the board:

11 (a) Six shall be licensed as tax consultants under ORS 673.605 to 673.740. Each of the six
 12 [*shall*] **must** have been engaged in the preparation of [*personal income*] tax returns for another and
 13 for a valuable consideration for no less than five years.

14 (b) One [*member of the board*] shall be a member of the general public.

15 (4) All appointments of members of the board by the Governor are subject to confirmation by
 16 the Senate pursuant to section 4, Article III, Oregon Constitution.

17 **SECTION 15.** The amendments to ORS 673.605, 673.610, 673.615, 673.625, 673.637, 673.643,
 18 673.655, 673.667, 673.690, 673.700, 673.705, 673.710, 673.712 and 673.725 by sections 1 to 14 of this
 19 2009 Act apply to tax returns prepared on or after January 1, 2010.

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