

Enrolled
House Bill 2067

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Oregon Board of Accountancy)

CHAPTER

AN ACT

Relating to the Oregon Board of Accountancy; creating new provisions; amending ORS 673.170 and 673.400; and declaring an emergency.

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

SECTION 1. ORS 673.170 is amended to read:

673.170. (1) The Oregon Board of Accountancy may take any of the following disciplinary actions:

- (a) Revoke, suspend or refuse to issue any certificate issued under ORS 673.040 to 673.075.
- (b) Revoke, suspend or refuse to issue any public accountant's license issued under ORS 673.100.
- (c) Revoke, suspend, refuse to renew or refuse to issue any permit described in ORS 673.150.
- (d) Censure a person authorized to practice public accountancy in this state under ORS 673.153.
- (e) Censure the holder of any permit described in ORS 673.150 or authorization described in ORS 673.153.
- (f) Revoke, suspend, refuse to renew or refuse to issue any registration issued under ORS 673.160.
- (g) Censure the holder of any registration issued under ORS 673.160.
- (h) Censure a business organization providing accounting services in this state that is exempt from registering under ORS 673.160 (3).

(2) The board may take any of the actions described in subsection (1) of this section for any one or any combination of the following causes:

- (a) Fraud or deceit in obtaining or applying for:
 - (A) A certificate under ORS 673.040 to 673.075;
 - (B) A public accountant's license under ORS 673.100;
 - (C) A registration under ORS 58.345 or 673.160;
 - (D) A permit under ORS 673.150;
 - (E) Authorization to practice public accountancy in this state under ORS 673.153; or
 - (F) Admission to the roster of authorized accountants referred to in ORS 297.670.
- (b) Dishonesty, fraud or gross negligence in the practice of public accountancy.
- (c) Incompetence in the practice of public accountancy. A holder of a license issued under ORS 673.100, certificate, permit or registration or a person authorized to practice public accountancy in this state under ORS 673.153 is incompetent in the practice of public accountancy if the holder:
 - (A) Engages or has engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed to a client or the general public; or

(B) Engages or has engaged in conduct that evidences a lack of knowledge or ability to apply principles or skills of the practice of public accountancy, as adopted by the board.

(d) Violation of any of the provisions of ORS 673.010 to 673.457.

(e) Violation of any of the provisions of ORS 297.405 to 297.555.

(f) Violation of any provision of the Code of Professional Conduct or accounting standards adopted by the board under ORS 673.445 or rules adopted by the board under ORS 670.310.

(g) Conduct resulting in a conviction of a felony under the laws of any state, of any foreign jurisdiction or of the United States. However, such conduct may be considered only to the extent permissible under the provisions of ORS 670.280.

(h) Conviction of any crime, an essential element of which is dishonesty, fraud or misrepresentation, under the laws of any state, of any foreign jurisdiction or of the United States.

(i) Conviction of willful failure to pay any tax, file any tax return, keep records or supply information required under the tax laws of any state, of any foreign jurisdiction or of the United States, or conviction of the willful making, rendering, delivery, disclosure, signing or verifying of any false or fraudulent list, return, account, statement or other document, or of supplying any false or fraudulent information, required under the tax laws of any state, of any foreign jurisdiction or of the United States.

(j) Cancellation, revocation or suspension of, or refusal to renew, authority to practice as a certified public accountant or a public accountant in any state or foreign jurisdiction.

(k) Cancellation, suspension, revocation or refusal to renew by any state, any foreign jurisdiction or any federal agency of the right to practice law, to practice as an enrolled agent before the Internal Revenue Service pursuant to 31 C.F.R. part 10, or to practice under other regulatory law if the cancellation, suspension, revocation or refusal to renew was related to the practice of public accountancy or if dishonesty, fraud or deception was involved.

(L) Failure to comply with the continuing education requirements under ORS 673.165 unless such requirements have been waived by the board.

(m) Failure to pay a civil penalty imposed by the board after the period for requesting a hearing on the civil penalty terminates if the person or business organization against whom the penalty is imposed has not requested a hearing, or after the period for seeking judicial review of the order assessing the civil penalty has passed.

(n) Failure to comply with the terms of a consent agreement described in subsection [(3)] (4) of this section.

(o) Failure to comply with any reporting or other requirement established by the board by rule.

(p) Issuance of a cease and desist order against the person under subsection [(8)] (9) of this section.

(3)(a) The board may investigate any alleged violation that may subject a person to discipline under this section.

(b) Investigatory information developed or obtained by the board is confidential and not subject to disclosure by the board unless a notice is issued for a contested case hearing or the matter investigated is finally resolved by board action or a consent order.

(c) Notwithstanding paragraph (b) of this subsection:

(A) The board may disclose to the public that an investigation is being conducted and describe the general nature of the matter being investigated; and

(B) The board shall notify the person being investigated of the investigation.

[(3)] (4) In lieu of disciplinary actions under subsection (1) of this section, the board may enter into a consent agreement with the holder of any certificate described in ORS 673.040 to 673.075, the holder of any public accountant's license, the holder of any registration described in ORS 673.160, the holder of any permit described in ORS 673.150 or the holder of any authorization described in ORS 673.153, under which the holder agrees to comply with conditions prescribed by the board.

[(4)] (5) In addition to the causes in subsection (2) of this section, the board may take any of the actions described in subsection (1) of this section for dishonesty, fraud or misrepresentation not in the practice of public accountancy.

[(5)] (6) In lieu of or in addition to any action described in subsection (1) of this section, the board may take any of the following actions:

(a) Require a holder of a permit under ORS 673.150 that provides compilation services or a business organization registered under ORS 673.160 to undergo a peer review conducted as the board may specify; or

(b) Require a holder of a permit under ORS 673.150 to complete any continuing professional education programs the board may specify.

[(6)(a)] (7)(a) A licensee offering or providing professional services in another state or using the title "certified public accountant" or any abbreviation for that term in another state is subject to disciplinary action in this state for actions taken by the licensee in the other state that constitute a cause for disciplinary action under this section.

(b) The board shall investigate any complaint made by a board of accountancy of another state.

[(7)] (8) In the case of a registered business organization, the board may take any of the actions described in subsection (1) of this section for any of the following additional causes:

(a) The cancellation, revocation or suspension of, or refusal to renew, the authority to provide professional services, in this state or any other jurisdiction, of any partner, officer, shareholder, member, manager or owner of the business organization; or

(b) The cancellation, revocation or suspension of, or refusal to renew, the authority of the business organization to practice public accountancy or provide other professional services in any other state or foreign jurisdiction.

[(8)] (9) If the board has reasonable cause to believe that any person has engaged, is engaging or is about to engage in any violation of any provision of ORS 673.010 to 673.457 or any rule or order adopted under ORS 673.010 to 673.457, the board may issue an order, subject to ORS 673.173, directed to the person, and to any other person directly or indirectly controlling the person, to cease and desist from the violation or threatened violation.

[(9)] (10) Notwithstanding any protective order issued under ORCP 36 C, upon motion of the board, the court shall order disclosure of materials or information subject to a protective order under ORCP 36 C. The board may use the material or information to take disciplinary action under this section.

[(10)] (11) If the board takes disciplinary action under this section, the board may assess against the person disciplined costs associated with the disciplinary action. An assessment under this subsection is in addition to, and not in lieu of, any other action taken by the board. Moneys collected under this subsection shall be deposited in the Oregon Board of Accountancy Account established in the General Fund pursuant to ORS 670.335.

SECTION 2. ORS 673.400 is amended to read:

673.400. (1) Any person who violates any provision of ORS 673.010 to 673.457, any rule adopted thereunder or any order of the Oregon Board of Accountancy shall forfeit and pay a civil penalty into the General Fund to be credited to the Oregon Board of Accountancy for its use in carrying out the provisions of this section. The civil penalty shall be in an amount determined by the board of not more than \$5,000 for each offense.

(2) The board may impose a civil penalty as part of a cease and desist order issued under ORS 673.170 [(8)] (9). The civil penalty may not exceed \$5,000 per violation.

(3) The civil penalty may be recovered by the Attorney General in an action brought in the name of the State of Oregon in any court of appropriate jurisdiction or may be imposed as provided in ORS 183.745.

(4) The provisions of this section are in addition to and not in lieu of any other penalty provided by law.

SECTION 3. The amendments to ORS 673.170 by section 1 of this 2011 Act apply to investigations commenced on or after the effective date of this 2011 Act.

SECTION 4. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House February 16, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 5, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State