

# House Bill 2067

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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**.

Provides that information developed or obtained by Oregon Board of Accountancy as part of investigation of violation is confidential until notice is issued for contested case hearing or matter investigated is finally resolved by board action or consent order.

Allows board to disclose general information about investigation to public and requires board to notify person being investigated of investigation.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the Oregon Board of Accountancy; creating new provisions; amending ORS 673.170 and  
3 673.400; and declaring an emergency.

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

5 **SECTION 1.** ORS 673.170 is amended to read:

6 673.170. (1) The Oregon Board of Accountancy may take any of the following disciplinary  
7 actions:

8 (a) Revoke, suspend or refuse to issue any certificate issued under ORS 673.040 to 673.075.

9 (b) Revoke, suspend or refuse to issue any public accountant's license issued under ORS 673.100.

10 (c) Revoke, suspend, refuse to renew or refuse to issue any permit described in ORS 673.150.

11 (d) Censure a person authorized to practice public accountancy in this state under ORS 673.153.

12 (e) Censure the holder of any permit described in ORS 673.150 or authorization described in ORS  
13 673.153.

14 (f) Revoke, suspend, refuse to renew or refuse to issue any registration issued under ORS  
15 673.160.

16 (g) Censure the holder of any registration issued under ORS 673.160.

17 (h) Censure a business organization providing accounting services in this state that is exempt  
18 from registering under ORS 673.160 (3).

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

21 (a) Fraud or deceit in obtaining or applying for:

22 (A) A certificate under ORS 673.040 to 673.075;

23 (B) A public accountant's license under ORS 673.100;

24 (C) A registration under ORS 58.345 or 673.160;

25 (D) A permit under ORS 673.150;

26 (E) Authorization to practice public accountancy in this state under ORS 673.153; or

27 (F) Admission to the roster of authorized accountants referred to in ORS 297.670.

28 (b) Dishonesty, fraud or gross negligence in the practice of public accountancy.

**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 (c) Incompetence in the practice of public accountancy. A holder of a license issued under ORS  
2 673.100, certificate, permit or registration or a person authorized to practice public accountancy in  
3 this state under ORS 673.153 is incompetent in the practice of public accountancy if the holder:

4 (A) Engages or has engaged in conduct that evidences a lack of ability or fitness to discharge  
5 the duty owed to a client or the general public; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 **(3)(a) The board may investigate any alleged violation that may subject a person to dis-**  
42 **cipline under this section.**

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

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

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

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

5       [(3)] **(4)** In lieu of disciplinary actions under subsection (1) of this section, the board may enter  
6 into a consent agreement with the holder of any certificate described in ORS 673.040 to 673.075, the  
7 holder of any public accountant's license, the holder of any registration described in ORS 673.160,  
8 the holder of any permit described in ORS 673.150 or the holder of any authorization described in  
9 ORS 673.153, under which the holder agrees to comply with conditions prescribed by the board.

10       [(4)] **(5)** In addition to the causes in subsection (2) of this section, the board may take any of the  
11 actions described in subsection (1) of this section for dishonesty, fraud or misrepresentation not in  
12 the practice of public accountancy.

13       [(5)] **(6)** In lieu of or in addition to any action described in subsection (1) of this section, the  
14 board may take any of the following actions:

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

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

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

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

25       [(7)] **(8)** In the case of a registered business organization, the board may take any of the actions  
26 described in subsection (1) of this section for any of the following additional causes:

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

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

33       [(8)] **(9)** If the board has reasonable cause to believe that any person has engaged, is engaging  
34 or is about to engage in any violation of any provision of ORS 673.010 to 673.457 or any rule or  
35 order adopted under ORS 673.010 to 673.457, the board may issue an order, subject to ORS 673.173,  
36 directed to the person, and to any other person directly or indirectly controlling the person, to cease  
37 and desist from the violation or threatened violation.

38       [(9)] **(10)** Notwithstanding any protective order issued under ORCP 36 C, upon motion of the  
39 board, the court shall order disclosure of materials or information subject to a protective order un-  
40 der ORCP 36 C. The board may use the material or information to take disciplinary action under  
41 this section.

42       [(10)] **(11)** If the board takes disciplinary action under this section, the board may assess against  
43 the person disciplined costs associated with the disciplinary action. An assessment under this sub-  
44 section is in addition to, and not in lieu of, any other action taken by the board. Moneys collected  
45 under this subsection shall be deposited in the Oregon Board of Accountancy Account established

1 in the General Fund pursuant to ORS 670.335.

2 **SECTION 2.** ORS 673.400 is amended to read:

3 673.400. (1) Any person who violates any provision of ORS 673.010 to 673.457, any rule adopted  
4 thereunder or any order of the Oregon Board of Accountancy shall forfeit and pay a civil penalty  
5 into the General Fund to be credited to the Oregon Board of Accountancy for its use in carrying  
6 out the provisions of this section. The civil penalty shall be in an amount determined by the board  
7 of not more than \$5,000 for each offense.

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

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

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

15 **SECTION 3.** The amendments to ORS 673.170 by section 1 of this 2011 Act apply to in-  
16 vestigations commenced on or after the effective date of this 2011 Act.

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