

House Bill 2467

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Consumer Protection and Government Accountability)

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 and refund anticipation payment instruments to obtain license from State Board of Tax Practitioners. Requires filing and posting certain disclosures. Prohibits certain activities. Makes violation unlawful practice subject to enforcement under Unlawful Trade Practices Act.

Becomes operative January 1, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to refund anticipation loans; creating new provisions; amending ORS 646.608, 673.605,
3 673.610, 673.615, 673.700, 673.730 and 673.990; repealing ORS 673.712; and declaring an emer-
4 gency.

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

6 **SECTION 1. Sections 2, 3, 4, 5, 6 and 7 of this 2011 Act are added to and made a part of**
7 **ORS 673.605 to 673.740.**

8 **SECTION 2. (1) A licensee shall file with the State Board of Tax Practitioners a corporate**
9 **surety bond or irrevocable letter of credit in the sum of \$25,000 that runs to the State of**
10 **Oregon. The corporate surety bond or irrevocable letter of credit must be issued by a cor-**
11 **porate surety or an insured institution, as defined in ORS 706.008, that is authorized to do**
12 **business in this state.**

13 **(2) The liability of the corporate surety or insured institution that issued the surety bond**
14 **or irrevocable letter of credit continues until two years after the licensee ceases to conduct**
15 **business in this state or until the bond or irrevocable letter of credit is canceled, whichever**
16 **is later. The corporate surety or insured institution shall give the board at least 30 days'**
17 **written notice before canceling or terminating liability under the surety bond or irrevocable**
18 **letter of credit. The licensee, in order to comply with this section, shall ensure that the full**
19 **amount of the surety bond or irrevocable letter of credit required under this section is**
20 **available at all times.**

21 **(3) The aggregate liability of the corporate surety or insured institution may not exceed**
22 **the principal sum of the surety bond or irrevocable letter of credit.**

23 **SECTION 3. (1) If at the time an applicant or a licensee applies for or applies to renew**
24 **a license under ORS 673.605 to 673.740 the licensee or applicant offers or intends to offer**
25 **refund anticipation loans to consumers, the applicant or licensee shall file with the State**
26 **Board of Tax Practitioners schedules that disclose for the succeeding year:**

27 **(a) The interest rates that lenders for which the applicant or licensee facilitates refund**
28 **anticipation loans will charge; and**

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 (b) The fees that the applicant or licensee will charge for preparing tax returns and for
 2 filing tax forms electronically.

3 (2) If at any point after the applicant obtains or the licensee renews a license under ORS
 4 673.605 to 673.740 the applicant or licensee learns of or makes a change to a rate, charge or
 5 percentage that the applicant or licensee disclosed under subsection (1) of this section, the
 6 applicant or licensee within 15 business days after learning of or making the change shall file
 7 with the board an amendment that sets forth the corrected rate, charge or percentage.

8 (3) In each location where the licensee conducts business as a facilitator, the licensee
 9 shall display in public view:

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

11 (b) A schedule of the licensee's fees for preparing tax returns and for filing tax forms
 12 electronically; and

13 (c) A notice in which the licensee states that the licensee may not require a taxpayer to
 14 obtain a refund anticipation loan or refund anticipation payment instrument as a condition
 15 of filing the taxpayer's tax return electronically and that the fee for filing a tax return
 16 electronically does not depend on whether the taxpayer has obtained a refund anticipation
 17 loan or refund anticipation payment instrument.

18 (4) The licensee may not conduct business as a facilitator unless the licensee displays in
 19 each location where the licensee conducts business as a facilitator the schedules and the
 20 notice described in subsection (3) of this section and unless the licensee ensures that the
 21 lender charges and that the consumer pays only the interest rate for a refund anticipation
 22 loan that the licensee both displays on the schedule and discloses to the consumer, as pro-
 23 vided in section 4 of this 2011 Act.

24 SECTION 4. (1)(a) A licensee shall disclose to a consumer, in the manner described in
 25 subsection (3) of this section and at the time the consumer applies for a refund anticipation
 26 loan or a refund anticipation payment instrument, all of the items set forth in subsection (2)
 27 of this section.

28 (b) In making a disclosure under this section, the licensee shall calculate the annual
 29 percentage rate as defined by the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., as in
 30 effect on the effective date of this 2011 Act, except that, notwithstanding the definition set
 31 forth for the annual percentage rate under the Act, the annual percentage rate that the
 32 licensee calculates and discloses under this section must include all fees that the lender
 33 charges in connection with the refund anticipation loan.

34 (2) The licensee must disclose:

35 (a) The fees that the licensee will charge for preparing a tax return or filing tax forms
 36 electronically.

37 (b) A list or table that shows examples of the amounts that the licensee and the lender
 38 will charge in fees and in interest for refund anticipation loans of \$500, \$750, \$1,000, \$1,500,
 39 \$2,000 and \$3,000. For each example, the list or table must disclose separately the amount
 40 of each lender's fee, the annual percentage rate for the loan and the total amount of money
 41 a consumer would pay in fees and in interest for the loan.

42 (c) The lender's fees, interest rate and annual percentage rate for the refund anticipation
 43 loan that the consumer will pay if approved. If a consumer, as a condition of obtaining the
 44 loan, must establish or maintain a deposit account with the lender to receive the consumer's
 45 tax refund and thereby to offset the amount the consumer owes on the loan, the maturity

1 date of the loan for the purpose of determining the annual percentage rate disclosure under
 2 this section, regardless of the annual percentage rate disclosure that the federal Truth in
 3 Lending Act requires, is the estimated date on which the tax refund will be deposited in the
 4 consumer's account.

5 (d) The time at which the consumer will receive the amount loaned if the lender approves
 6 the loan.

7 (e) A notice in which the licensee discloses:

8 (A) The average amount of time in which a person that files a tax return electronically
 9 in the current filing year can expect to receive a tax refund deposited directly into the
 10 person's bank account, according to information available from state and federal taxing au-
 11 thorities;

12 (B) The average amount of time in which a person that files a tax return electronically
 13 in the current filing year can expect to receive a tax refund mailed to the person, according
 14 to information provided by state and federal taxing authorities; and

15 (C) The difference, in days, between the time at which the consumer would receive the
 16 loan amount from a refund anticipation loan, as disclosed in accordance with paragraph (d)
 17 of this subsection, and the time by which, on average, a person that files a tax return elec-
 18 tronically will receive a refund from the taxing authority deposited directly to the person's
 19 deposit account, without applying for or receiving a refund anticipation loan.

20 (f) A notice in which the licensee states that:

21 (A) A refund anticipation payment instrument is not necessary if the consumer has an
 22 account in a depository institution;

23 (B) The state and federal taxing authorities do not guarantee that the consumer will re-
 24 ceive the full amount of an anticipated tax refund or that the consumer will receive a refund
 25 on a specific date;

26 (C) A refund anticipation loan is a loan and not the consumer's actual tax refund; and

27 (D) The consumer is responsible for repaying the loan and related fees and interest from
 28 other money or assets the consumer has if the consumer does not receive a tax refund or
 29 the anticipated full amount of the tax refund.

30 (3)(a) The facilitator must make the disclosures described in subsection (2) of this section
 31 orally and in writing on a form separate from the application form. If the facilitator solicits
 32 or conducts negotiations with the consumer concerning a refund anticipation loan or refund
 33 anticipation payment instrument in a language other than the English language, the
 34 facilitator shall make the disclosures described in this section in writing in the English lan-
 35 guage and orally and in writing in the language in which the facilitator solicited or conducted
 36 negotiations with the consumer concerning the refund anticipation loan or refund antic-
 37 ipation payment instrument.

38 (b) The licensee shall make a written disclosure required under subsection (2) of this
 39 section on a form that the State Board of Tax Practitioners specifies by rule.

40 **SECTION 5.** (1) The State Board of Tax Practitioners by rule shall specify the form and
 41 content for the schedules and disclosures required in sections 3 and 4 of this 2011 Act, except
 42 for information in the schedules or disclosures that the licensee must fill in or supply.

43 (2) The board shall make the forms for the schedules and disclosures described in sub-
 44 section (1) of this section available to licensees in the three languages other than the English
 45 language that are most commonly spoken in this state.

SECTION 6. A licensee, while acting as a facilitator, may not:

(1)(a) Charge a consumer a fee of any type in a transaction related to a refund anticipation loan or refund anticipation payment instrument. The licensee may charge a fee in a transaction related to a refund anticipation loan or refund anticipation payment instrument only if the fee is a fee that the lender imposes for originating or processing the refund anticipation loan or refund anticipation payment instrument. The licensee shall remit the amount of a lender's fee to the lender.

(b) This subsection does not preclude a facilitator from charging a fee or other consideration that the facilitator usually charges or imposes in the ordinary course of business for services that are not connected with a refund anticipation loan or refund anticipation payment instrument, such as a fee for preparing a tax return or filing a tax return electronically.

(2) Misrepresent a term, condition or material fact associated with an agreement for a refund anticipation loan or refund anticipation payment instrument.

(3) Fail to arrange for a refund anticipation loan promptly after a consumer applies for the loan or fail to deliver a refund anticipation loan approved by the lender to the consumer within 48 hours after the time disclosed in accordance with section 4 (2)(d) of this 2011 Act.

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

(5) Engage in a fraudulent transaction, practice or course of business in connection with a refund anticipation loan or refund anticipation payment instrument.

(6) Facilitate a refund anticipation loan for which the annual percentage rate, calculated and disclosed as provided in section 4 (1)(b) of this 2011 Act, exceeds 36 percent.

(7) Facilitate a refund anticipation loan for which the lender charges more interest than the licensee indicated in schedules filed with the board under section 3 of this 2011 Act.

(8) Facilitate a loan that a lender secures with or arranges to have repaid directly from the proceeds of a tax refund a consumer receives from the State Treasury.

(9) Collect or facilitate in collecting, alone or in conjunction with another person, an outstanding or delinquent refund anticipation loan for a lender or other creditor, or an assignee of the lender or creditor. For the purposes of this subsection, soliciting, processing, receiving or accepting an application for a refund anticipation loan or refund anticipation payment instrument in which a contract provision or other agreement permits the lender, creditor or assignee to receive payment for an outstanding or delinquent refund anticipation loan by offset or other means constitutes facilitating the collection of the outstanding or delinquent refund anticipation loan.

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

(11) Take, or arrange for another person to take, an interest in property of the consumer other than the proceeds of the consumer's tax refund as security for the payment of the refund anticipation loan.

(12) Engage in unconscionable activity.

1 (13) Violate a rule or order that the board adopts or issues under this section or section
 2 2, 3, 4 or 5 of this 2011 Act, or violate a consent agreement between the licensee and the
 3 board. In addition to any other penalty provided for a violation of this section or section 2,
 4 3 or 4 of this 2011 Act, a violation is an unlawful practice under ORS 646.608 that is en-
 5 forceable under ORS 646.638.

6 **SECTION 7.** Sections 2, 3, 4, 5 and 6 of this 2011 Act do not apply to a person that does
 7 not deal directly with taxpayers or consumers but that acts solely as an intermediary be-
 8 tween a facilitator and a lender or between a facilitator and a state or federal taxing au-
 9 thority by processing or transmitting, electronically or otherwise, tax or credit information
 10 or by preparing a payment instrument by means of which a facilitator delivers a refund an-
 11 ticipation loan to a consumer.

12 **SECTION 8.** ORS 673.605 is amended to read:

13 673.605. As used in ORS 673.605 to 673.740: *[unless the context requires otherwise:]*

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

15 [(2)(a) "Facilitator" means a person that individually or in conjunction or cooperation with another
 16 person processes, receives or accepts for delivery an application for a refund anticipation loan or a
 17 check in payment of refund anticipation loan proceeds or in any other manner materially facilitates the
 18 making of a refund anticipation loan.]

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

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

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

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

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

35 [(6) "Tax consultant" means a person who is licensed under ORS 673.605 to 673.740 to prepare or
 36 advise or assist in the preparation of personal income tax returns for another and for valuable con-
 37 sideration.]

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

39 [(8) "Tax preparer" means any person who is licensed under ORS 673.605 to 673.740 as a tax
 40 preparer.]

41 (1) "Consumer" means an individual who, alone or together with another individual:

42 (a) Receives a solicitation for a refund anticipation loan from a facilitator;

43 (b) Applies for a refund anticipation loan; or

44 (c) Receives from a facilitator or lender approval for or funds in connection with a refund
 45 anticipation loan or refund anticipation payment instrument.

1 (2) “Facilitator” means:

2 (a) A person that alone or in conjunction or cooperation with another person:

3 (A) Solicits or conducts negotiations in connection with an application for a refund an-
4 ticipation loan or refund anticipation payment instrument;

5 (B) Receives, accepts or processes an application for a refund anticipation loan or refund
6 anticipation payment instrument;

7 (C) Services or collects proceeds from a refund anticipation loan or refund anticipation
8 payment instrument on behalf of another person; or

9 (D) Facilitates a refund anticipation loan or refund anticipation payment instrument in
10 any other manner.

11 (b) A lender that, without the assistance or cooperation of another person, directly:

12 (A) Solicits or conducts negotiations in connection with an application for a refund an-
13 ticipation loan or refund anticipation payment instrument;

14 (B) Receives, accepts or processes an application for a refund anticipation loan or refund
15 anticipation payment instrument;

16 (C) Collects for the lender’s own benefit a fee, charge or other consideration, other than
17 interest due the lender from a refund anticipation loan, for services related to receiving,
18 accepting or processing an application for a refund anticipation loan or refund anticipation
19 payment instrument; or

20 (D) Services or collects proceeds from a refund anticipation loan or refund anticipation
21 payment instrument on behalf of another person.

22 (3)(a) “Lender” means a person that makes a refund anticipation loan with the person’s
23 own funds or a line of credit or other funding from a financial institution, as defined in ORS
24 706.008.

25 (b) “Lender” does not include a federal bank, as defined in ORS 706.008, or a federal credit
26 union.

27 (4) “Licensee” means a person that is licensed under ORS 673.605 to 673.740.

28 (5) “Person” means an individual, a joint venture, a partnership, a cooperative, a limited
29 liability company, an association, a joint stock company, a corporation, a trust or an
30 unincorporated organization.

31 (6) “Refund anticipation loan” means:

32 (a) A loan that a lender makes under a contract or agreement that requires a consumer
33 to repay the loan from the proceeds of the consumer’s federal or state income tax refund,
34 or a loan that a consumer expects to repay from the proceeds of the tax refund; or

35 (b) A loan that a lender makes under a contract or agreement that requires a consumer
36 to repay the loan from the proceeds of a subsequent loan of the type described in paragraph
37 (a) of this subsection, or a loan that a consumer expects to repay from the proceeds of a
38 subsequent loan of the type described in paragraph (a) of this subsection.

39 (7) “Refund anticipation payment instrument” means evidence of an arrangement under
40 which a lender, facilitator or affiliated person:

41 (a) Opens a temporary account to receive a consumer’s tax refund on the consumer’s
42 behalf;

43 (b) Issues the proceeds of the consumer’s tax refund to the consumer in the form of a
44 check, prefunded debit card, gift card or other record of a promise to pay an amount of
45 money or provide goods or services in an amount specified in the record when the record is

1 **presented to another person; and**

2 (c) **Charges and receives a fee or other compensation from the consumer for the ar-**
 3 **range ment.**

4 (8) **“Tax consultant” means a person that is licensed under ORS 673.605 to 673.740 to**
 5 **prepare or advise or assist in preparing personal income tax returns for a consumer in ex-**
 6 **change for valuable consideration.**

7 (9) **“Taxpayer” means an individual who:**

8 (a) **Files a federal or Oregon personal income tax return; or**

9 (b) **Pays a fee, charge or other consideration for the services of a licensee in preparing**
 10 **the individual’s tax return, filing the tax return electronically or applying for a refund an-**
 11 **ticipation loan or refund anticipation payment instrument.**

12 (10) **“Tax preparer” means a person that is licensed as a tax preparer under ORS 673.605**
 13 **to 673.740.**

14 (11) **“Unconscionable activity” means actions or conduct by which a facilitator knowingly**
 15 **takes advantage of a consumer’s or taxpayer’s physical infirmity, lack of knowledge,**
 16 **illiteracy or inability to understand the contracts, documents, charges or fees related to a**
 17 **refund anticipation loan or refund anticipation payment instrument.**

18 **SECTION 9.** ORS 673.610 is amended to read:

19 673.610. ORS 673.605 to 673.740 do not apply to:

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

23 (2) [Any] **An attorney at law [rendering] who renders services in [the performance of the] per-**
 24 **forming duties [of] as an attorney at law.**

25 (3) [While acting as such, any fiduciary, or the regular employees thereof, acting on behalf of the
 26 *fiduciary estate, the testator, trustor, grantor, or beneficiaries thereof.*] **A fiduciary or an employee**
 27 **of a fiduciary during the time the fiduciary acts on behalf of a fiduciary estate or a testator,**
 28 **trustor, grantor or beneficiary of the fiduciary estate.**

29 (4) **A certified public accountant who holds an active permit issued by [any] this or another**
 30 **state, a public accountant [holding] who holds a valid permit issued under ORS 673.100 or a public**
 31 **accounting firm that is registered in [any] this or another state.**

32 (5) [Any] **An employee of a certified public accountant, public accountant or registered public**
 33 **accounting firm described in subsection (4) of this section.**

34 (6) [Any] **A person employed by a local, state or federal governmental agency but only [in per-**
 35 **formance of] at the time the person is performing official duties.**

36 (7) **A financial institution, as defined in ORS 706.008, or an employee of a financial insti-**
 37 **tution.**

38 **SECTION 10.** ORS 673.615 is amended to read:

39 673.615. Except as otherwise provided in ORS 673.605 to 673.740:

40 (1) **A person may not prepare or advise or assist in [the preparation of] preparing personal in-**
 41 **come tax returns for [another and] a taxpayer in exchange for valuable consideration or represent**
 42 **that the person [is so engaged] prepares or advises or assists in preparing income tax returns**
 43 **in exchange for valuable consideration unless the person is licensed as a tax consultant under**
 44 **ORS 673.605 to 673.740.**

45 (2) **A tax preparer may prepare or advise or assist in [the preparation of] preparing tax returns**

1 only under the supervision of a tax consultant, or a person described in ORS 673.610 (2) or (4), and
 2 subject to *[such]* conditions and limitations *[as]* **that** the State Board of Tax Practitioners *[by rule*
 3 *may impose]* **imposes by rule.**

4 (3) A person may not *[be a facilitator of a refund anticipation loan without first being issued a*
 5 *license]* **act or conduct business as a facilitator in this state unless the person is licensed as**
 6 a tax consultant or tax preparer under ORS *[673.640]* **673.605 to 673.740.**

7 **SECTION 11.** ORS 673.700 is amended to read:

8 673.700. The State Board of Tax Practitioners may refuse to issue or renew a tax *[consultant]*
 9 **consultant's** or tax preparer's license, or may suspend or revoke a tax *[consultant]* **consultant's**
 10 or **tax** preparer's license, or may reprimand *[any]* **a** person licensed as a tax consultant or tax
 11 preparer for:

12 (1) *[Violation of]* **Violating** ORS 673.615*[,]* or 673.705 or *[673.712]* **section 2, 3, 4 or 6 of this**
 13 **2011 Act.**

14 (2) *[Failure]* **Failing** to keep the records required by ORS 673.690.

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

18 (4)(a) Conduct resulting in a **felony** conviction *[of a felony]* under the laws of *[any]* **this or an-**
 19 **other** state or of the United States. However, *[such conduct]* **the board** may *[be considered]* **consider**
 20 **a conviction** only to the extent permissible under the provisions of ORS 670.280; or

21 (b) Conviction of *[any]* **a** crime, an essential element of which is dishonesty, fraud or deception,
 22 under the laws of *[any]* **this or another** state or of the United States.

23 (5) Conviction of willful failure to pay *[any]* **a** tax or estimated tax, file *[any]* **a** tax return, keep
 24 records or supply information required under the tax laws of *[any]* **this or another** state or of the
 25 United States, or conviction of *[the willful]* **willfully** making, rendering, *[delivery, disclosure,]* **deliv-**
 26 **ering, disclosing,** signing or verifying *[of any]* **a** false or fraudulent list, return, account, statement
 27 or other document, or of supplying *[any]* false or fraudulent information, required under the tax laws
 28 of *[any]* **this or another** state or of the United States.

29 (6) *[Failure]* **Failing** to comply with continuing education requirements under ORS 673.655 or
 30 under ORS 673.667 unless *[such requirements have been waived by the board.]* **the board has waived**
 31 **the requirements.**

32 (7) *[Violation of]* **Violating** the code of professional conduct prescribed by the board.

33 (8) *[Failure]* **Failing** to pay *[any]* **a** civil penalty incurred under ORS 673.735 within the time
 34 determined by the board.

35 (9) Cancellation, revocation or refusal to renew by *[any]* **a** state or federal agency of, or entry
 36 of a consent order, stipulated agreement or judgment related to, the person's authority to practice
 37 law, to practice as a certified public accountant or a public accountant or to practice under other
 38 regulatory law in *[any]* **this or another** state, or to practice as an enrolled agent, if the grounds
 39 for the cancellation, revocation, refusal to renew, consent order, stipulated agreement or judgment
 40 were related to income tax preparation or if dishonesty, fraud or deception was involved.

41 (10) Cancellation, revocation or refusal to renew by *[any]* **a** state or federal agency of, or entry
 42 of a consent order, stipulated agreement or judgment related to, a business's authority to conduct
 43 operations related to the practice of law, certified public accountancy, public accountancy or other
 44 services provided under regulatory law in *[any]* **this or another** state, or to provide enrolled agent
 45 services, if the grounds for the cancellation, revocation, refusal to renew, consent order, stipulated

1 agreement or judgment involved the conduct or actions of the licensee or applicant and:

- 2 (a) Were related to income tax preparation; or
- 3 (b) Involved dishonesty, fraud or deception.

4 **SECTION 12.** ORS 673.730 is amended to read:

5 673.730. The State Board of Tax Practitioners *[shall have]* **has** the following powers, in addition
6 to the powers otherwise granted by ORS 673.605 to 673.740, and *[shall have]* **has** all powers neces-
7 sary or proper to carry the granted powers into effect:

8 (1)(a) To determine qualifications of applicants for licensing as a tax consultant or a tax
9 preparer in this state;

10 (b) To cause examinations to be prepared, conducted and graded; and

11 (c) To issue licenses to qualified applicants upon *[their]* **the applicants'** compliance with ORS
12 673.605 to 673.740 and the rules of the board.

13 (2)(a) To restore the license of *[any]* **a** tax consultant or **tax** preparer whose license has been
14 suspended or revoked. **The board's power to restore a license specifically includes the power**
15 **to restore a license that was suspended or revoked because a person was convicted of a**
16 **crime. In making a determination to restore a license, the board shall consider the re-**
17 **lationship of the facts that supported the conviction to the code of professional conduct and**
18 **shall consider intervening circumstances in evaluating the person's fitness to receive or hold**
19 **a tax consultant's or tax preparer's license.**

20 (b) *[The power of the board]* To suspend *[any]* **a** license under ORS 673.700, **which** includes the
21 power to restore **the license**:

22 (A) At a time certain; or

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

24 *[(c) The power of the board to restore a license under paragraph (a) of this subsection specifically*
25 *includes the power to restore a license suspended or revoked for the reason that the person has been*
26 *convicted of a crime. In making a determination to restore a license, the board shall consider the re-*
27 *lationship of the facts which supported the conviction to the code of professional conduct and all in-*
28 *tervening circumstances in determining the fitness of the person to receive or hold a tax consultant's*
29 *or tax preparer's license.]*

30 (3) To investigate alleged violations of ORS 673.605 to 673.740, or *[any]* **a** rule or order adopted
31 *[thereunder]* **or issued under ORS 673.605 to 673.740.** The board may keep information gathered
32 pursuant to an investigation by the board confidential until there is a final order or determination
33 by the board, unless **the board considers** disclosure *[is considered]* necessary *[by the board for the*
34 *investigation or prosecution of]* **to investigate or prosecute** an alleged violation of ORS 673.605 to
35 673.740, or *[any]* **a** rule or order **the board** adopted *[thereunder]* **or issued under ORS 673.605 to**
36 **673.740.** The board may keep personal financial information **the board** gathered pursuant to an in-
37 vestigation *[by the board]* confidential after **the board makes** a final order or determination *[by the*
38 *board]*, unless **the board considers** disclosure *[is considered]* necessary *[by the board for the inves-*
39 *tigation or prosecution of]* **to investigate or prosecute** an alleged violation of ORS 673.605 to
40 673.740, or *[any]* **a** rule or order **the board** adopted *[thereunder]* **or issued under ORS 673.605 to**
41 **673.740.** For purposes of this subsection, personal financial information includes but is not limited
42 to tax returns.

43 (4) To enforce the provisions of ORS 673.605 to 673.740 and to exercise general supervision over
44 tax consultant and tax preparer practice.

45 (5) To issue an order directed to a person to cease and desist from *[any]* **a** violation or threat-

ened violation of ORS 673.615, 673.643[,] or 673.705 or [673.712] **section 2, 3, 4 or 6 of this 2011 Act**, or [any] a rule or order **the board** adopted [thereunder] or issued under **ORS 673.615, 673.643 or 673.705 or section 2, 3, 4 or 6 of this 2011 Act**, if the board has reason to believe that a person has [been] engaged, is engaging or is about to engage in [any violation of] **violating** ORS 673.615, 673.643[,] or 673.705 or [673.712] **section 2, 3, 4 or 6 of this 2011 Act**, or [any] a rule or order **the board** adopted [thereunder] or issued under **ORS 673.615, 673.643 or 673.705 or section 2, 3, 4 or 6 of this 2011 Act**.

(6) To assess civil penalties within a cease and desist order issued under subsection (5) of this section if the board has reason to believe that a person has [been] engaged or is engaging in [any] a violation of ORS 673.615, 673.643[,] or 673.705 or [673.712] **section 2, 3, 4 or 6 of this 2011 Act**, or [any] a rule or order **the board** adopted [thereunder] or issued under **ORS 673.615, 673.643 or 673.705 or section 2, 3, 4 or 6 of this 2011 Act**. The civil penalty may not exceed \$5,000 per violation.

(7) To formulate a code of professional conduct for tax consultants and tax preparers. **As part of the code of professional conduct, the board shall state that a licensee acting as a facilitator violates the code of professional conduct if the licensee charges a fee for the licensee's benefit in connection with offering or facilitating a refund anticipation loan or refund anticipation payment instrument or if the licensee facilitates a loan for which the annual percentage rate, calculated and disclosed as provided in section 4 (1)(b) of this 2011 Act, exceeds 36 percent.**

(8) To assess against the licensee or any other person found guilty of violating [any] a provision of ORS 673.605 to 673.740, or [any] a rule or order **the board** adopted [thereunder] or issued under **ORS 673.605 to 673.740**, in addition to any other sanctions, the costs associated with the disciplinary or other action [taken by] the board **takes**.

(9) To order that [any person who has] **a person that** engaged in or is engaging in [any] a violation of ORS 673.605 to 673.740, or [any] a rule or order **the board** adopted [thereunder] or issued under **ORS 673.605 to 673.740**, shall offer to rescind and pay restitution to [anyone] **a person** harmed by the violation [who] **that** seeks rescission.

(10) To adopt rules pursuant to ORS chapter 183 necessary to carry out the provisions of ORS 673.605 to 673.740.

SECTION 13. ORS 673.990 is amended to read:

673.990. (1) Violation of any of the provisions of ORS 673.310, 673.320, 673.345 or 673.350 is a Class A misdemeanor. Whenever the Oregon Board of Accountancy has reason to believe that any person is liable to punishment under this subsection it may certify the facts to the Attorney General, who may, in the discretion of the Attorney General, cause appropriate proceedings to be brought.

(2) Violation of [any provision of ORS 673.605 to 673.740, or any rule adopted thereunder] **a provision of ORS 673.615 (1) or (2), 673.643, 673.660, 673.663, 673.690 or 673.705, or a rule or order adopted or issued by the State Board of Tax Practitioners under ORS 673.615 (1) or (2), 673.643, 673.660, 673.663, 673.690 or 673.705**, is a **Class A** misdemeanor.

SECTION 14. ORS 646.608 is amended to read:

646.608. (1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following:

(a) Passes off real estate, goods or services as those of another.

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

1 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
2 ciation with, or certification by, another.

3 (d) Uses deceptive representations or designations of geographic origin in connection with real
4 estate, goods or services.

5 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
6 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
7 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

8 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
9 reconditioned, reclaimed, used or secondhand.

10 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
11 or that real estate or goods are of a particular style or model, if they are of another.

12 (h) Disparages the real estate, goods, services, property or business of a customer or another
13 by false or misleading representations of fact.

14 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
15 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
16 a limitation of quantity.

17 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
18 or amounts of price reductions.

19 (k) Makes false or misleading representations concerning credit availability or the nature of the
20 transaction or obligation incurred.

21 (L) Makes false or misleading representations relating to commissions or other compensation to
22 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
23 stration purposes or in exchange for submitting names of potential customers.

24 (m) Performs service on or dismantles any goods or real estate when not authorized by the
25 owner or apparent owner thereof.

26 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
27 vides the information required under ORS 646.611.

28 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
29 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
30 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
31 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
32 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
33 tomer enters into the transaction.

34 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
35 cize a product, business or service.

36 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
37 not to deliver them as promised.

38 (r) Organizes or induces or attempts to induce membership in a pyramid club.

39 (s) Makes false or misleading representations of fact concerning the offering price of, or the
40 person's cost for real estate, goods or services.

41 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
42 known material defect or material nonconformity.

43 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

44 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
45 ORS 698.640, whether in a commercial or noncommercial situation.

- 1 (w) Manufactures mercury fever thermometers.
- 2 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
- 3 law, or is:
 - 4 (A) Prescribed by a person licensed under ORS chapter 677; and
 - 5 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 - 6 on the proper cleanup of mercury should breakage occur.
- 7 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
- 8 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
- 9 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
- 10 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
- 11 graph, "thermostat" means a device commonly used to sense and, through electrical communication
- 12 with heating, cooling or ventilation equipment, control room temperature.
- 13 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
- 14 mercury light switches.
 - 15 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
 - 16 (bb) Violates ORS 646A.070 (1).
 - 17 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
 - 18 (dd) Violates the provisions of ORS 128.801 to 128.898.
 - 19 (ee) Violates ORS 646.883 or 646.885.
 - 20 (ff) Violates ORS 646.569.
 - 21 (gg) Violates the provisions of ORS 646A.142.
 - 22 (hh) Violates ORS 646A.360.
 - 23 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
 - 24 (jj) Violates ORS 646.563.
 - 25 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
 - 26 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 - 27 thereto.
 - 28 (mm) Violates ORS 646A.210 or 646A.214.
 - 29 (nn) Violates any provision of ORS 646A.124 to 646A.134.
 - 30 (oo) Violates ORS 646A.095.
 - 31 (pp) Violates ORS 822.046.
 - 32 (qq) Violates ORS 128.001.
 - 33 (rr) Violates ORS 646.649 (2) to (4).
 - 34 (ss) Violates ORS 646A.090 (2) to (4).
 - 35 (tt) Violates ORS 87.686.
 - 36 (uu) Violates ORS 646.651.
 - 37 (vv) Violates ORS 646A.362.
 - 38 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 - 39 (xx) Violates ORS 180.440 (1) or 180.486 (1).
 - 40 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 - 41 (zz) Violates ORS 87.007 (2) or (3).
 - 42 (aaa) Violates ORS 92.405 (1), (2) or (3).
 - 43 (bbb) Engages in an unlawful practice under ORS 646.648.
 - 44 (ccc) Violates ORS 646A.365.
 - 45 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

1 (eee) Sells a gift card in violation of ORS 646A.276.

2 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.

3 (ggg) Violates ORS 646A.430 to 646A.450.

4 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.

5 (iii) Violates a provision of ORS 646A.702 to 646A.720.

6 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
7 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
8 subject of the violation.

9 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

10 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
11 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

12 (mmm) Violates a provision of ORS 646A.480 to 646A.495.

13 (nnn) Violates ORS 646A.082.

14 (ooo) Violates ORS 646.647.

15 (ppp) Violates ORS 646A.115.

16 (qqq) Violates a provision of ORS 646A.405.

17 **(rrr) Violates a provision of section 2, 3, 4 or 6 of this 2011 Act or a rule or order of the**
18 **State Board of Tax Practitioners adopted or issued under section 2, 3, 4 or 6 of this 2011 Act.**

19 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
20 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

21 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
22 need not prove competition between the parties or actual confusion or misunderstanding.

23 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
24 torney General has first established a rule in accordance with the provisions of ORS chapter 183
25 declaring the conduct to be unfair or deceptive in trade or commerce.

26 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
27 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
28 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

29 **SECTION 15. ORS 673.712 is repealed.**

30 **SECTION 16. Sections 2 to 7 of this 2011 Act, the amendments to ORS 646.608, 673.605,**
31 **673.610, 673.615, 673.700, 673.730 and 673.990 by sections 8 to 14 of this 2011 Act and the repeal**
32 **of ORS 673.712 by section 15 of this 2011 Act apply to the activities of facilitators and lenders,**
33 **as defined in ORS 673.605, that conduct business on or after the operative date set forth in**
34 **section 17 (1) of this 2011 Act.**

35 **SECTION 17. (1) Sections 2 to 7 of this 2011 Act, the amendments to ORS 646.608, 673.605,**
36 **673.610, 673.615, 673.700, 673.730 and 673.990 by sections 8 to 14 of this 2011 Act and the repeal**
37 **of ORS 673.712 by section 15 of this 2011 Act become operative on January 1, 2012.**

38 **(2) The State Board of Tax Practitioners may adopt rules or take any action before the**
39 **operative date set forth in subsection (1) of this section that is necessary to enable the board**
40 **to exercise, on and after the operative date set forth in subsection (1) of this section, all the**
41 **duties, functions and powers conferred upon the board by sections 2 to 7 of this 2011 Act and**
42 **the amendments to ORS 646.608, 673.605, 673.610, 673.615, 673.700, 673.730 and 673.990 by**
43 **sections 8 to 14 of this 2011 Act.**

44 **SECTION 18. This 2011 Act being necessary for the immediate preservation of the public**
45 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**

1 **on its passage.**

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