

House Bill 2813

Sponsored by Representative THATCHER (at the request of Bill Litherland) (Pre-session filed.)

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**.

Abolishes State Board of Tax Practitioners on July 1, 2015. Directs Department of Revenue to wind up affairs of board.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the State Board of Tax Practitioners; creating new provisions; amending ORS 305.230,
3 314.840, 670.304, 670.306 and 673.990; repealing ORS 673.605, 673.610, 673.615, 673.625, 673.630,
4 673.635, 673.637, 673.640, 673.643, 673.645, 673.655, 673.660, 673.663, 673.667, 673.685, 673.690,
5 673.695, 673.697, 673.700, 673.705, 673.710, 673.712, 673.715, 673.725, 673.730, 673.732, 673.735 and
6 673.740; and declaring an emergency.

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

8 **SECTION 1. The State Board of Tax Practitioners is abolished. On the operative date**
9 **of this section, the tenure of office of the members of the board ceases.**

10 **SECTION 2. ORS 673.605, 673.610, 673.615, 673.625, 673.630, 673.635, 673.637, 673.640, 673.643,**
11 **673.645, 673.655, 673.660, 673.663, 673.667, 673.685, 673.690, 673.695, 673.697, 673.700, 673.705,**
12 **673.710, 673.712, 673.715, 673.725, 673.730, 673.732, 673.735 and 673.740 are repealed.**

13 **SECTION 3. (1) The State Board of Tax Practitioners shall deliver to the Department of**
14 **Revenue all records and property of the board.**

15 **(2) The department shall take possession of the records and property.**

16 **SECTION 4. The abolishment of the State Board of Tax Practitioners by section 1 of this**
17 **2011 Act does not affect any action, proceeding or prosecution involving or with respect to**
18 **the duties, functions and powers of the board begun before and pending at the time of the**
19 **abolishment, except that the Department of Revenue is substituted for the board in the**
20 **action, proceeding or prosecution.**

21 **SECTION 5. (1) Nothing in section 1 of this 2011 Act relieves a person of a liability, duty**
22 **or obligation accruing under or with respect to the duties, functions and powers of the State**
23 **Board of Tax Practitioners that accrues before the operative date of section 1 of this 2011**
24 **Act. The Department of Revenue may undertake the collection or enforcement of any such**
25 **liability, duty or obligation.**

26 **(2) The rights and obligations of the board legally incurred under contracts, leases and**
27 **business transactions executed, entered into or begun before the operative date of section 1**
28 **of this 2011 Act accruing under or with respect to the duties, functions and powers of the**
29 **board are transferred to the department. For the purpose of succession to these rights and**
30 **obligations, the department is a continuation of the board and not a new authority.**

31 **SECTION 6. ORS 305.230, as amended by section 11, chapter 82, Oregon Laws 2010, is amended**

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

1 to read:

2 305.230. (1) Notwithstanding ORS 9.320:

3 (a) Any person who is qualified to practice law or public accountancy in this state, any person
 4 who has been granted active enrollment to practice before the Internal Revenue Service and who
 5 is qualified to prepare tax returns in this state or any person who is the authorized employee of a
 6 taxpayer and is regularly employed by the taxpayer in tax matters may represent the taxpayer be-
 7 fore a tax court magistrate or the Department of Revenue in any conference or proceeding with
 8 respect to the administration of any tax.

9 *[(b) Any person who is licensed by the State Board of Tax Practitioners or who is exempt from*
 10 *such licensing requirement as provided for and limited by ORS 673.610 may represent a taxpayer be-*
 11 *fore a tax court magistrate or the department in any conference or proceeding with respect to the ad-*
 12 *ministration of any tax on or measured by net income.]*

13 *[(c) (b) Any shareholder of an S corporation, as defined in section 1361 of the Internal Revenue*
 14 *Code, as amended and in effect on December 31, 2009, may represent the corporation in any pro-*
 15 *ceeding before a tax court magistrate or the department in the same manner as if the shareholder*
 16 *were a partner and the S corporation were a partnership. The S corporation must designate in*
 17 *writing a tax matters shareholder authorized to represent the S corporation.*

18 *[(d) (c) An individual who is licensed as a real estate broker or principal real estate broker*
 19 *under ORS 696.022 or is a state certified appraiser or state licensed appraiser under ORS 674.310*
 20 *or is a registered appraiser under ORS 308.010 may represent a taxpayer before a tax court*
 21 *magistrate or the department in any conference or proceeding with respect to the administration*
 22 *of any ad valorem property tax.*

23 *[(e) (d) A general partner who has been designated by members of a partnership as their tax*
 24 *matters partner under ORS 305.242 may represent those partners in any conference or proceeding*
 25 *with respect to the administration of any tax on or measured by net income.*

26 *[(f) (e) Any person authorized under rules adopted by the department may represent a taxpayer*
 27 *before the department in any conference or proceeding with respect to any tax. Rules adopted under*
 28 *this paragraph, to the extent feasible, shall be consistent with federal law that governs represen-*
 29 *tation before the Internal Revenue Service, as federal law is amended and in effect on December 31,*
 30 *2009.*

31 *[(g) (f) Any person authorized under rules adopted by the tax court may represent a taxpayer*
 32 *in a proceeding before a tax court magistrate.*

33 (2) A person may not be recognized as representing a taxpayer pursuant to this section unless
 34 there is first filed with the magistrate or department a written authorization, or unless it appears
 35 to the satisfaction of the magistrate or department that the representative does in fact have au-
 36 thority to represent the taxpayer. A person recognized as an authorized representative under rules
 37 or procedures adopted by the tax court shall be considered an authorized representative by the de-
 38 partment.

39 (3) A taxpayer represented by someone other than an attorney is bound by all things done by
 40 the authorized representative, and may not thereafter claim any proceeding was legally defective
 41 because the taxpayer was not represented by an attorney.

42 (4) Prior to the holding of a conference or proceeding before the tax court magistrate or de-
 43 partment, written notice shall be given by the magistrate or department to the taxpayer of the
 44 provisions of subsection (3) of this section.

45 **SECTION 7.** ORS 314.840 is amended to read:

1 314.840. (1) The Department of Revenue may:

2 (a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230
 3 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, represen-
 4 tative or designee, with a copy of the taxpayer's income tax return filed with the department for
 5 any year, or with a copy of any report filed by the taxpayer in connection with the return, or with
 6 any other information the department considers necessary.

7 (b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

8 (c) Publish statistics so classified as to prevent the identification of income or any particulars
 9 contained in any report or return.

10 (d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social
 11 Security number, employer identification number or other taxpayer identification number to the ex-
 12 tent necessary in connection with collection activities or the processing and mailing of correspond-
 13 ence or of forms for any report, return or claim required in the administration of ORS 310.630 to
 14 310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net in-
 15 come.

16 (2) The department also may disclose and give access to information described in ORS 314.835
 17 to:

18 (a) The Governor of the State of Oregon or the authorized representative of the Governor:

19 (A) With respect to an individual who is designated as being under consideration for appoint-
 20 ment or reappointment to an office or for employment in the office of the Governor. The information
 21 disclosed shall be confined to whether the individual:

22 (i) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more
 23 than the three immediately preceding years for which the individual was required to file an Oregon
 24 individual income tax return.

25 (ii) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or
 26 otherwise respond to a deficiency notice within 30 days of its mailing.

27 (iii) Has been assessed any penalty under the Oregon personal income tax laws and the nature
 28 of the penalty.

29 (iv) Has been or is under investigation for possible criminal offenses under the Oregon personal
 30 income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose
 31 of making the appointment, reappointment or decision to employ or not to employ the individual in
 32 the office of the Governor.

33 (B) For use by an officer or employee of the Oregon Department of Administrative Services duly
 34 authorized or employed to prepare revenue estimates, or a person contracting with the Oregon De-
 35 partment of Administrative Services to prepare revenue estimates, in the preparation of revenue
 36 estimates required for the Governor's budget under ORS 291.201 to 291.226, or required for sub-
 37 mission to the Emergency Board, or if the Legislative Assembly is in session, to the Joint Committee
 38 on Ways and Means, and to the Legislative Revenue Officer under ORS 291.342, 291.348 and 291.445.
 39 The Department of Revenue shall disclose and give access to the information described in ORS
 40 314.835 for the purposes of this subparagraph only if:

41 (i) The request for information is made in writing, specifies the purposes for which the request
 42 is made and is signed by an authorized representative of the Oregon Department of Administrative
 43 Services. The form for request for information shall be prescribed by the Oregon Department of
 44 Administrative Services and approved by the Director of the Department of Revenue.

45 (ii) The officer, employee or person receiving the information does not remove from the premises

1 of the Department of Revenue any materials that would reveal the identity of a personal or corpo-
2 rate taxpayer.

3 (b) The Commissioner of Internal Revenue or authorized representative, for tax administration
4 and compliance purposes only.

5 (c) For tax administration and compliance purposes, the proper officer or authorized represen-
6 tative of any of the following entities that has or is governed by a provision of law that meets the
7 requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

8 (A) A state;

9 (B) A city, county or other political subdivision of a state;

10 (C) The District of Columbia; or

11 (D) An association established exclusively to provide services to federal, state or local taxing
12 authorities.

13 (d) The Multistate Tax Commission or its authorized representatives, for tax administration and
14 compliance purposes only. The Multistate Tax Commission may make the information available to
15 the Commissioner of Internal Revenue or the proper officer or authorized representative of any
16 governmental entity described in and meeting the qualifications of paragraph (c) of this subsection.

17 (e) The Attorney General, assistants and employees in the Department of Justice, or other legal
18 representative of the State of Oregon, to the extent the department deems disclosure or access
19 necessary for the performance of the duties of advising or representing the department pursuant to
20 ORS 180.010 to 180.240 and the tax laws of this state.

21 (f) Employees of the State of Oregon, other than of the Department of Revenue or Department
22 of Justice, to the extent the department deems disclosure or access necessary for such employees
23 to perform their duties under contracts or agreements between the department and any other de-
24 partment, agency or subdivision of the State of Oregon, in the department's administration of the
25 tax laws.

26 (g) Other persons, partnerships, corporations and other legal entities, and their employees, to
27 the extent the department deems disclosure or access necessary for the performance of such others'
28 duties under contracts or agreements between the department and such legal entities, in the
29 department's administration of the tax laws.

30 (h) The Legislative Revenue Officer or authorized representatives upon compliance with ORS
31 173.850. Such officer or representative shall not remove from the premises of the department any
32 materials that would reveal the identity of any taxpayer or any other person.

33 (i) The Department of Consumer and Business Services, to the extent the department requires
34 such information to determine whether it is appropriate to adjust those workers' compensation
35 benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or
36 earned income received by an individual.

37 (j) Any agency of the State of Oregon, or any person, or any officer or employee of such agency
38 or person to whom disclosure or access is given by state law and not otherwise referred to in this
39 section, including but not limited to the Secretary of State as Auditor of Public Accounts under
40 section 2, Article VI of the Oregon Constitution; the Department of Human Services pursuant to
41 ORS 314.860 and 412.094; the Division of Child Support of the Department of Justice and district
42 attorney regarding cases for which they are providing support enforcement services under ORS
43 25.080; [*the State Board of Tax Practitioners, pursuant to ORS 673.710;*] and the Oregon Board of
44 Accountancy, pursuant to ORS 673.415.

45 (k) The Director of the Department of Consumer and Business Services to determine that a

1 person complies with ORS chapter 656 and the Director of the Employment Department to determine
 2 that a person complies with ORS chapter 657, the following employer information:

- 3 (A) Identification numbers.
- 4 (B) Names and addresses.
- 5 (C) Inception date as employer.
- 6 (D) Nature of business.
- 7 (E) Entity changes.
- 8 (F) Date of last payroll.

9 (L) The Director of Human Services to determine that a person has the ability to pay for care
 10 that includes services provided by the Eastern Oregon Training Center or the Department of Human
 11 Services to collect any unpaid cost of care as provided by ORS chapter 179.

12 (m) The Director of the Oregon Health Authority to determine that a person has the ability to
 13 pay for care that includes services provided by the Blue Mountain Recovery Center or the Oregon
 14 State Hospital or the Oregon Health Authority to collect any unpaid cost of care as provided by
 15 ORS chapter 179.

16 (n) Employees of the Employment Department to the extent the Department of Revenue deems
 17 disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary
 18 to performance of their duties in administering the tax imposed by ORS chapter 657.

19 (o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and
 20 powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and
 21 standard industrial classification, if available.

22 (p) Employees of the Department of State Lands for the purposes of identifying, locating and
 23 publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter
 24 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the
 25 refund amount.

26 (q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement
 27 agencies to assist in the investigation or prosecution of the following criminal activities:

28 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
 29 to the stolen document, the name, address and taxpayer identification number of the payee, the
 30 amount of the check and the date printed on the check.

31 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
 32 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
 33 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
 34 dress and taxpayer identification number of the payee, the amount of the check, the date printed
 35 on the check and the altered name and address.

36 (r) The United States Postal Inspection Service or a federal law enforcement agency, including
 37 but not limited to the United States Department of Justice, to assist in the investigation of the fol-
 38 lowing criminal activities:

39 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
 40 to the stolen document, the name, address and taxpayer identification number of the payee, the
 41 amount of the check and the date printed on the check.

42 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
 43 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
 44 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
 45 dress and taxpayer identification number of the payee, the amount of the check, the date printed

1 on the check and the altered name and address.

2 (s) The United States Financial Management Service, for purposes of facilitating the reciprocal
3 offsets described in ORS 305.612.

4 (t) A municipal corporation of this state for purposes of assisting the municipal corporation in
5 the administration of a tax of the municipal corporation that is imposed on or measured by income,
6 wages or net earnings from self-employment. Any disclosure under this paragraph may be made only
7 pursuant to a written agreement between the Department of Revenue and the municipal corporation
8 that ensures the confidentiality of the information disclosed.

9 (u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS
10 314.843.

11 (3)(a) Each officer or employee of the department and each person described or referred to in
12 subsection (2)(a), (e) to (k) or (n) to (q) of this section to whom disclosure or access to the tax in-
13 formation is given under subsection (2) of this section or any other provision of state law, prior to
14 beginning employment or the performance of duties involving such disclosure or access, shall be
15 advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the vio-
16 lation of ORS 314.835, and shall as a condition of employment or performance of duties execute a
17 certificate for the department, in a form prescribed by the department, stating in substance that the
18 person has read these provisions of law, that the person has had them explained and that the person
19 is aware of the penalties for the violation of ORS 314.835.

20 (b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a
21 written agreement has been entered into between the Department of Revenue and the person de-
22 scribed in subsection (2)(r) of this section to whom disclosure or access to the tax information is
23 given, providing that:

24 (A) Any information described in ORS 314.835 that is received by the person pursuant to sub-
25 section (2)(r) of this section is confidential information that may not be disclosed, except to the ex-
26 tent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of
27 this section;

28 (B) The information shall be protected as confidential under applicable federal and state laws;
29 and

30 (C) The United States Postal Inspection Service or the federal law enforcement agency shall
31 give notice to the Department of Revenue of any request received under the federal Freedom of In-
32 formation Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

33 (4) The Department of Revenue may recover the costs of furnishing the information described
34 in subsection (2)(k) to (m) and (o) to (q) of this section from the respective agencies.

35 **SECTION 8.** ORS 670.304 is amended to read:

36 670.304. Except as otherwise specifically provided, ORS 670.300 to 670.380 apply to the following
37 professional licensing and advisory boards:

- 38 (1) Professional licensing and advisory boards established in the Office of the Secretary of State.
- 39 (2) The Oregon Board of Maritime Pilots.
- 40 (3) The Board of Cosmetology, in the Oregon Health Licensing Agency.
- 41 (4) The State Board of Architect Examiners.
- 42 (5) The State Landscape Contractors Board.
- 43 (6) The State Board of Examiners for Engineering and Land Surveying.
- 44 (7) The State Landscape Architect Board.
- 45 (8) The State Board of Geologist Examiners.

1 *[(9) The State Board of Tax Practitioners.]*

2 *[(10)] (9) The Oregon Board of Accountancy.*

3 *[(11)] (10) The Construction Contractors Board.*

4 **SECTION 9.** ORS 670.306 is amended to read:

5 670.306. (1) Subsections (2) and (3) of this section shall apply only to the following professional
6 licensing boards:

7 (a) State Board of Architect Examiners.

8 (b) Construction Contractors Board.

9 (c) State Board of Examiners for Engineering and Land Surveying.

10 (d) State Landscape Architect Board.

11 (e) State Landscape Contractors Board.

12 (f) Oregon Board of Accountancy.

13 *[(g) State Board of Tax Practitioners.]*

14 (2) A board shall fix the qualifications of and appoint an administrative officer. The determi-
15 nation of qualifications and appointment of an administrative officer shall be made after consultation
16 with the Governor.

17 (3) An administrative officer of a board shall not be a member of that board.

18 (4) Subject to the applicable rules of the State Personnel Relations Law, the board shall fix the
19 compensation of its administrator, who shall be in the unclassified service.

20 (5) Subject to applicable rules of the State Personnel Relations Law, the administrative officer
21 shall appoint all subordinate employees, prescribe their duties and fix their compensation.

22 **SECTION 10.** ORS 673.990 is amended to read:

23 673.990. *[(1)]* Violation of any of the provisions of ORS 673.310, 673.320, 673.345 or 673.350 is a
24 Class A misdemeanor. Whenever the Oregon Board of Accountancy has reason to believe that any
25 person is liable to punishment under this subsection it may certify the facts to the Attorney General,
26 who may, in the discretion of the Attorney General, cause appropriate proceedings to be brought.

27 *[(2) Violation of any provision of ORS 673.605 to 673.740, or any rule adopted thereunder, is a*
28 *misdemeanor.]*

29 **SECTION 11.** (1) Sections 1 and 3 to 5 of this 2011 Act, the amendments to ORS 305.230,
30 314.840, 670.304, 670.306 and 673.990 by sections 6 to 10 of this 2011 Act and the repeal of ORS
31 673.605, 673.610, 673.615, 673.625, 673.630, 673.635, 673.637, 673.640, 673.643, 673.645, 673.655,
32 673.660, 673.663, 673.667, 673.685, 673.690, 673.695, 673.697, 673.700, 673.705, 673.710, 673.712,
33 673.715, 673.725, 673.730, 673.732, 673.735 and 673.740 by section 2 of this 2011 Act become op-
34 erative on July 1, 2015.

35 (2)(a) The State Board of Tax Practitioners shall cease issuing, reactivating and restoring
36 licenses on July 1, 2014.

37 (b) If the board renews a license after July 1, 2014, the renewed license expires on June
38 30, 2015. The board shall prorate the renewal fee accordingly.

39 (3) The board and the Department of Revenue may take any action before the operative
40 date specified in subsection (1) of this section to carry out the abolishment of the board un-
41 der section 1 of this 2011 Act, sections 3 to 5 of this 2011 Act, the amendments to ORS
42 305.230, 314.840, 670.304, 670.306 and 673.990 by sections 6 to 10 of this 2011 Act and the repeal
43 of ORS 673.605, 673.610, 673.615, 673.625, 673.630, 673.635, 673.637, 673.640, 673.643, 673.645,
44 673.655, 673.660, 673.663, 673.667, 673.685, 673.690, 673.695, 673.697, 673.700, 673.705, 673.710,
45 673.712, 673.715, 673.725, 673.730, 673.732, 673.735 and 673.740 by section 2 of this 2011 Act.

1 **SECTION 12.** This 2011 Act being necessary for the immediate preservation of the public
2 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
3 on its passage.

4
