

A-Engrossed
House Bill 3180

Ordered by the House April 26
Including House Amendments dated April 26

Sponsored by Representative SCHAUFLEER

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.

Re-creates Oregon Board of Accountancy as semi-independent state agency.
Transfers moneys from Oregon Board of Accountancy Account to depository account established by board.
Directs board to appoint budget committee to make recommendations on board's biennial budget.
Authorizes board to determine amount to charge for certain fees.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon Board of Accountancy; creating new provisions; amending ORS 182.454,
3 673.150, 673.160, 673.170, 673.220 and 673.410; and declaring an emergency.

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

5
6 **SEMI-INDEPENDENT STATE AGENCY**

7
8 **SECTION 1.** ORS 182.454 is amended to read:

9 182.454. The following semi-independent state agencies are subject to ORS 182.456 to 182.472:

- 10 (1) The Appraiser Certification and Licensure Board.
11 (2) The State Board of Architect Examiners.
12 (3) The State Board of Examiners for Engineering and Land Surveying.
13 (4) The State Board of Geologist Examiners.
14 (5) The State Landscape Architect Board.
15 (6) The Oregon Board of Optometry.
16 (7) The Oregon Patient Safety Commission.
17 (8) The Oregon Wine Board.
18 (9) The State Board of Massage Therapists.
19 (10) The Physical Therapist Licensing Board.
20 (11) The State Landscape Contractors Board.

21 **(12) The Oregon Board of Accountancy.**

22 **SECTION 2.** ORS 673.170 is amended to read:

23 673.170. (1) The Oregon Board of Accountancy may take any of the following disciplinary
24 actions:

- 25 (a) Revoke, suspend or refuse to issue any certificate issued under ORS 673.040 to 673.075.
26 (b) Revoke, suspend or refuse to issue any public accountant's license issued under ORS 673.100.

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) Revoke, suspend, refuse to renew or refuse to issue any permit described in ORS 673.150.
- 2 (d) Censure a person authorized to practice public accountancy in this state under ORS 673.153.
- 3 (e) Censure the holder of any permit described in ORS 673.150 or authorization described in ORS
4 673.153.
- 5 (f) Revoke, suspend, refuse to renew or refuse to issue any registration issued under ORS
6 673.160.
- 7 (g) Censure the holder of any registration issued under ORS 673.160.
- 8 (h) Censure a business organization providing accounting services in this state that is exempt
9 from registering under ORS 673.160 (3).
- 10 (2) The board may take any of the actions described in subsection (1) of this section for any one
11 or any combination of the following causes:
- 12 (a) Fraud or deceit in obtaining or applying for:
- 13 (A) A certificate under ORS 673.040 to 673.075;
- 14 (B) A public accountant's license under ORS 673.100;
- 15 (C) A registration under ORS 58.345 or 673.160;
- 16 (D) A permit under ORS 673.150;
- 17 (E) Authorization to practice public accountancy in this state under ORS 673.153; or
- 18 (F) Admission to the roster of authorized accountants referred to in ORS 297.670.
- 19 (b) Dishonesty, fraud or gross negligence in the practice of public accountancy.
- 20 (c) Incompetence in the practice of public accountancy. A holder of a license issued under ORS
21 673.100, certificate, permit or registration or a person authorized to practice public accountancy in
22 this state under ORS 673.153 is incompetent in the practice of public accountancy if the holder:
- 23 (A) Engages or has engaged in conduct that evidences a lack of ability or fitness to discharge
24 the duty owed to a client or the general public; or
- 25 (B) Engages or has engaged in conduct that evidences a lack of knowledge or ability to apply
26 principles or skills of the practice of public accountancy, as adopted by the board.
- 27 (d) Violation of any of the provisions of ORS 673.010 to 673.457.
- 28 (e) Violation of any of the provisions of ORS 297.405 to 297.555.
- 29 (f) Violation of any provision of the Code of Professional Conduct or accounting standards
30 adopted by the board under ORS 673.445 or rules adopted by the board under ORS 670.310.
- 31 (g) Conduct resulting in a conviction of a felony under the laws of any state, of any foreign ju-
32 risdiction or of the United States. However, such conduct may be considered only to the extent
33 permissible under the provisions of ORS 670.280.
- 34 (h) Conviction of any crime, an essential element of which is dishonesty, fraud or misrepresen-
35 tation, under the laws of any state, of any foreign jurisdiction or of the United States.
- 36 (i) Conviction of willful failure to pay any tax, file any tax return, keep records or supply in-
37 formation required under the tax laws of any state, of any foreign jurisdiction or of the United
38 States, or conviction of the willful making, rendering, delivery, disclosure, signing or verifying of
39 any false or fraudulent list, return, account, statement or other document, or of supplying any false
40 or fraudulent information, required under the tax laws of any state, of any foreign jurisdiction or
41 of the United States.
- 42 (j) Cancellation, revocation or suspension of, or refusal to renew, authority to practice as a
43 certified public accountant or a public accountant in any state or foreign jurisdiction.
- 44 (k) Cancellation, suspension, revocation or refusal to renew by any state, any foreign jurisdic-
45 tion or any federal agency of the right to practice law, to practice as an enrolled agent before the

1 Internal Revenue Service pursuant to 31 C.F.R. part 10, or to practice under other regulatory law
2 if the cancellation, suspension, revocation or refusal to renew was related to the practice of public
3 accountancy or if dishonesty, fraud or deception was involved.

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

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

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

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

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

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

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

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

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

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

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

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

34 (7) In the case of a registered business organization, the board may take any of the actions de-
35 scribed in subsection (1) of this section for any of the following additional causes:

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

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

42 (8) If the board has reasonable cause to believe that any person has engaged, is engaging or is
43 about to engage in any violation of any provision of ORS 673.010 to 673.457 or any rule or order
44 adopted under ORS 673.010 to 673.457, the board may issue an order, subject to ORS 673.173, di-
45 rected to the person, and to any other person directly or indirectly controlling the person, to cease

1 and desist from the violation or threatened violation.

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

6 (10) If the board takes disciplinary action under this section, the board may assess against the
7 person disciplined costs associated with the disciplinary action. An assessment under this subsection
8 is in addition to, and not in lieu of, any other action taken by the board. **Notwithstanding ORS**
9 **670.335**, moneys collected under this subsection shall be deposited in the [*Oregon Board of*
10 *Accountancy Account established in the General Fund pursuant to ORS 670.335*] **account established**
11 **by the board under ORS 182.470.**

12 **SECTION 3.** ORS 673.410 is amended to read:

13 673.410. (1) [*There is created an*] **The Oregon Board of Accountancy** [*consisting of seven*
14 *members.*] **is created as a semi-independent state agency subject to ORS 182.456 to 182.472.**

15 (2) Members of the board shall be appointed by the Governor for terms of three years, subject
16 to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.

17 (3) The board [*members shall be*] **consists of seven members**, as follows:

18 (a) Four must have a current permit as a certified public accountant under the laws of this state
19 in effect for at least five years, and be actively engaged in public accountancy practice.

20 (b) One must have a current permit as a certified public accountant under the laws of this state
21 in effect for at least five years, and be employed in private industry, education or government or
22 be actively engaged in public accountancy practice.

23 (c) One shall be a member of the general public.

24 (d) One must have a current license as a public accountant under the laws of this state in effect
25 for at least five years and be actively engaged in public accountancy practice.

26 (4) No person shall be eligible for reappointment after the person's third consecutive term until
27 a period at least equal to the appointed term has elapsed.

28 (5) The authority of the board to enforce the provisions of ORS 673.010 to 673.457 includes the
29 authority to regulate the practice of public accountancy by persons or business organizations hold-
30 ing certificates, licenses, permits or registrations issued under ORS 673.010 to 673.457.

31 **SECTION 4. The unexpended balances of amounts authorized to be expended by the**
32 **Oregon Board of Accountancy for the biennium beginning July 1, 2011, from revenues dedi-**
33 **cated, continuously appropriated, appropriated or otherwise made available for the purpose**
34 **of administering and enforcing the duties, functions and powers of the board, all moneys in**
35 **the Oregon Board of Accountancy Account established in the General Fund pursuant to ORS**
36 **670.335 on the operative date of this section and all moneys received by the board or placed**
37 **to the credit of the board and remaining unobligated and unexpended on the operative date**
38 **of this section shall be deposited in the account established by the board pursuant to ORS**
39 **182.470.**

40 **SECTION 5. The reestablishment of the Oregon Board of Accountancy as a semi-**
41 **independent state agency by the amendments to ORS 673.410 by section 3 of this 2011 Act**
42 **does not affect any action, proceeding or prosecution involving or with respect to the board**
43 **begun before and pending on the operative date specified in section 11 of this 2011 Act.**

44 **SECTION 6. Nothing in sections 4 to 8 of this 2011 Act or the amendments to ORS**
45 **182.454, 673.170 and 673.410 by sections 1 to 3 of this 2011 Act relieves a person of a liability,**

1 duty or obligation with respect to the Oregon Board of Accountancy.

2 **SECTION 7.** Notwithstanding the reestablishment of the Oregon Board of Accountancy
3 as a semi-independent state agency by the amendments to ORS 673.410 by section 3 of this
4 2011 Act, the rules of the board in effect on the operative date of this section continue in
5 effect until superseded or repealed by rules of the board.

6 **SECTION 8.** For the purpose of harmonizing and clarifying statutory law, the Legislative
7 Counsel may substitute for words designating the “Oregon Board of Accountancy Account,”
8 wherever they occur in statutory law, words designating the “account established by the
9 Oregon Board of Accountancy under ORS 182.470.”

10
11 **BUDGET COMMITTEE**
12

13 **SECTION 9.** Section 10 of this 2011 Act is added to and made a part of ORS 673.010 to
14 673.457.

15 **SECTION 10.** (1) The Oregon Board of Accountancy shall appoint six members to a
16 budget committee. The board may take into account the recommendations of a statewide
17 organization of accountants in making appointments to the committee.

18 (2) The committee shall make recommendations to the board on the biennial budget re-
19 quired by ORS 182.462, and the board shall take into account the recommendations of the
20 committee in preparing the biennial budget required by ORS 182.462.

21 (3) The term of each member of the committee is four years, but the members of the
22 committee serve at the pleasure of the board. A member of the committee shall serve until
23 a successor is appointed. If a vacancy occurs, the board shall make another appointment to
24 become immediately effective for the unexpired term.

25 (4) The committee may adopt rules necessary for the operation of the committee.

26 (5) Members of the committee are not entitled to compensation or reimbursement for
27 expenses and serve as volunteers on the committee.

28
29 **FEES**
30

31 **SECTION 11.** ORS 673.150 is amended to read:

32 673.150. (1) The Oregon Board of Accountancy shall issue biennially a permit to engage in the
33 practice of public accountancy in this state to an applicant who is:

34 (a) A holder of the certificate of certified public accountant issued under ORS 673.040 to 673.075;
35 or

36 (b) A public accountant licensed under ORS 673.100.

37 (2) The board by rule shall cause all permits issued under this section to be renewed biennially.

38 (3) Applications for permits or for renewals of permits may be submitted to the board on a form
39 prescribed by the board within such time periods as the board prescribes by rule. Applications for
40 permits or for renewals of permits must be accompanied by a fee in [*the amount of \$160*] **an amount**
41 **determined by the board by rule.**

42 (4) Applications for renewals of permits must be accompanied by evidence satisfactory to the
43 board that the applicant has complied with continuing education requirements under ORS 673.165
44 unless those requirements have been waived by the board.

45 (5) A permit that is not renewed by the close of the permit period may be restored upon payment

1 to the board of a delinquent renewal fee in an amount determined by the board by rule. A permit
2 that is not renewed within 60 days after the close of the permit period for which it was issued or
3 renewed lapses. The board may restore a lapsed permit upon payment of all past unpaid renewal fees
4 and the delinquent renewal fee. However, the board may restore a permit issued or renewed for a
5 permit period that ended more than five years prior to the date of the application for restoration
6 only upon demonstration satisfactory to the board that the applicant is qualified to engage in the
7 practice of public accountancy.

8 (6) Notwithstanding subsection (3) of this section, the board may by rule prescribe a reduced fee
9 for renewal of permits of those certified public accountants and public accountants who have
10 reached the age of 65 years.

11 **SECTION 12.** ORS 673.160 is amended to read:

12 673.160. (1) Business organizations of certified public accountants or of public accountants shall
13 register with the Oregon Board of Accountancy if the business organization:

14 (a) Has an office in this state and:

15 (A) Uses the terms “certified public accountants” or “public accountants” or abbreviations for
16 such terms in this state; or

17 (B) Performs attestation or compilation services in this state;

18 (b) Holds itself out to clients in this state or the public in this state as a business organization
19 engaged in the practice of public accountancy; or

20 (c) Does not have an office in this state and performs attestation services described in ORS
21 673.010 (1)(a), (c) or (d) for a client having an office in this state.

22 (2) This section does not require a holder of a permit under ORS 673.150 to register under this
23 section unless the permit holder:

24 (a) Holds the permit holder out to clients in this state or the public in this state as a business
25 organization composed of more than one licensee except as authorized by ORS 673.320 (12); or

26 (b) Performs attestation or compilation services in this state.

27 (3)(a) Notwithstanding subsection (1) of this section, a business organization of certified public
28 accountants that does not have an office in this state may perform attestation services described in
29 ORS 673.010 (1)(b) or compilation services for a client in this state and may use the terms “certified
30 public accountants” or “certified public accounting firm,” abbreviations of those terms or any simi-
31 lar title, designation, words or letters without obtaining a registration issued by the board under
32 this section if the business organization:

33 (A) Has the qualifications described in subsection (5) of this section; and

34 (B) Performs the services through a person authorized to practice public accountancy in this
35 state under ORS 673.153.

36 (b) A business organization of certified public accountants that is not a business organization
37 described in subsection (1) of this section or paragraph (a) of this subsection may perform profes-
38 sional services in this state, other than attestation or compilation services, using the terms “certi-
39 fied public accountants” or “certified public accounting firm” or abbreviations of those terms
40 without registering with the board under this section if the business organization:

41 (A) Performs the professional services through a person authorized to practice public
42 accountancy in this state under ORS 673.153; and

43 (B) May lawfully perform the professional services in the state where the principal place of
44 business of the person authorized to practice public accountancy in this state under ORS 673.153 is
45 located.

1 (4) Registrations shall be issued and renewed for periods of not more than two years. Applica-
2 tions for registration shall be made in a form prescribed by the board by rule. Applications for re-
3 newal shall be made between the dates prescribed by the board by rule.

4 (5) The following requirements must be satisfied before a registration may be issued or renewed
5 under this section:

6 (a)(A) Notwithstanding any other provision of law, a simple majority of the ownership of the
7 business organization, in terms of financial interests and voting rights of all partners, officers,
8 shareholders, members or managers, must belong to holders of permits or holders of certificates who
9 are licensed in any state, and the partners, officers, shareholders, members or managers of the
10 business organization whose principal place of business is in this state and who perform public
11 accountancy services in this state, must be holders of permits under ORS 673.150. If a majority of
12 the ownership of the business organization is held by holders of permits who are public accountants
13 holding licenses issued under ORS 673.100, the business organization may not use the name "C.P.A.
14 Firm" or any similar name indicating that a majority of the ownership of the firm holds certificates
15 issued under ORS 673.040.

16 (B) A business organization registered under this section that does not meet the ownership re-
17 quirement specified in subparagraph (A) of this paragraph may request an extension of time to
18 comply with the ownership requirement in accordance with the process for granting an extension
19 for compliance that the board shall adopt by rule.

20 (b) In the case of a business organization that includes owners who are not holders of permits
21 under ORS 673.150, a holder of a permit in this state shall be responsible for the management and
22 proper registration of the business organization.

23 (c) In the case of a business organization required to register under subsection (1) of this sec-
24 tion, a person who is authorized to practice public accountancy in this state under ORS 673.153 is
25 responsible for the management and proper registration of the business organization.

26 (d) All owners of the business organization who are not licensees must be active individual
27 participants in the business organization or affiliated entities.

28 (e) Any person who is responsible for supervising attestation or compilation services and who
29 signs or authorizes someone to sign the accountant's report on the financial statements on behalf
30 of the business organization in this state, must:

31 (A)(i) Hold a permit under ORS 673.150; or

32 (ii) Be authorized to practice public accountancy in this state under ORS 673.153; and

33 (B) Meet the competency requirements established in the professional standards adopted by the
34 board by rule under ORS 673.445.

35 (6) An application for registration or renewal of registration under this section shall:

36 (a) List all states in which the business organization has applied for or holds permits to practice
37 public accountancy; and

38 (b) Provide evidence that the requirements of subsection (5) of this section are satisfied.

39 (7) Each applicant for registration or renewal under this section and each registrant shall notify
40 the board in writing, within the time period specified by the board by rule, of:

41 (a) The identities of partners, officers, shareholders, members, managers or owners of the busi-
42 ness organization who work regularly in this state;

43 (b) The number or location of offices in this state;

44 (c) The identity of the persons in charge of the offices in this state;

45 (d) Any issuance, denial, revocation, lapse or suspension of authority to perform professional or

1 other services in any jurisdiction against a partner, officer, shareholder, member, manager or owner
2 of the applicant or registrant that seeks registration or is registered in this state; and

3 (e) The filing of a lawsuit relating to professional services of the business organization, the
4 commencement of any civil action an essential element of which involves fraud, dishonesty or mis-
5 representation, or of any criminal action against the applicant or registrant that seeks registration
6 or is registered in this state or against a partner, officer, shareholder, member, manager or owner
7 of the applicant or registrant that seeks registration or is registered in this state.

8 (8) The board shall charge a fee **in an amount determined by the board by rule** for each
9 application for issuance or renewal of registration under this section [*in the amount of \$175*]. A
10 registration under this section that is not renewed by the close of the registration period may be
11 restored upon payment to the board of a delinquent renewal fee in an amount determined by the
12 board by rule.

13 (9) Applicants for renewals of registrations under this section shall undergo a peer review as
14 provided under ORS 673.455, unless the registrant notifies the board that the registrant is exempt
15 from peer review requirements because the registrant does not perform attestation or compilation
16 services in this state.

17 **SECTION 13.** ORS 673.220 is amended to read:

18 673.220. (1) The Oregon Board of Accountancy may grant inactive status to a licensee who does
19 not represent to clients or the public that the licensee is a certified public accountant or a public
20 accountant and who does not engage in the practice of public accountancy, if the license is not
21 suspended or revoked.

22 (2) A licensee granted inactive status by the board:

23 (a) Must pay a fee **in an amount determined by the board by rule**:

24 (A) [*In the amount of \$50*] For becoming or remaining inactive; and

25 (B) [*In an amount determined by the board by rule*] For becoming active.

26 (b) May not represent to clients or the public that the licensee is a certified public accountant
27 or a public accountant or otherwise engage in the practice of public accountancy until restored to
28 active status.

29 (3) The board by rule shall adopt procedures and requirements for granting and renewing inac-
30 tive status and for restoring to active status any licensee on inactive status.

31 (4) The board may restore a lapsed permit to inactive status upon payment of all past unpaid
32 renewal fees and the delinquent renewal fee as provided in ORS 673.150 (5).

33 (5) The board shall maintain a current roster of all licensees granted inactive status.

34
35 **OPERATIVE DATE**

36
37 **SECTION 14.** (1) Sections 4 to 10 of this 2011 Act and the amendments to ORS 182.454,
38 673.150, 673.160, 673.170, 673.220 and 673.410 by sections 1 to 3 and 11 to 13 of this 2011 Act
39 become operative on January 1, 2012.

40 (2) The Oregon Board of Accountancy may take any action before the operative date
41 specified in subsection (1) of this section that is necessary to exercise, on and after the op-
42 erative date specified in subsection (1) of this section, all of the duties, functions and powers
43 conferred on the board by sections 4 to 10 of this 2011 Act and the amendments to ORS
44 182.454, 673.150, 673.160, 673.170, 673.220 and 673.410 by sections 1 to 3 and 11 to 13 of this 2011
45 Act.

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UNIT CAPTIONS

SECTION 15. The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

EMERGENCY CLAUSE

SECTION 16. 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.
