

# House Bill 3640

Sponsored by Representatives KOTEK, BREWER, Senators DINGFELDER, TELFER; Representatives BAILEY, BARNHART, BERGER, CANNON, DEMBROW, DOHERTY, FREDERICK, HOLVEY, HOYLE, KOMP, MATTHEWS, READ, J SMITH, Senators BONAMICI, ROSENBAUM

## 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.

Punishes violations of Act as unlawful practice under Unlawful Trade Practices Act.

Becomes operative January 1, 2012.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to methods for obtaining funds that are contingent on payments from personal tax refunds;  
3 creating new provisions; amending ORS 646.607, 673.605, 673.610, 673.615, 673.700, 673.730 and  
4 673.990; repealing ORS 673.712; and declaring an emergency.

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 that offers or intends to offer refund anticipation loans or**  
9 **refund anticipation payment instruments shall file with the State Board of Tax Practitioners**  
10 **a corporate surety bond or irrevocable letter of credit in the sum of \$25,000 that runs to the**  
11 **State of Oregon. The corporate surety bond or irrevocable letter of credit must be issued by**  
12 **a corporate surety or an insured institution, as defined in ORS 706.008, that is authorized to**  
13 **do business in this state.**

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

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

24 **SECTION 3. (1)(a) If an applicant or a licensee offers or intends to offer refund antic-**  
25 **ipation loans or refund anticipation payment instruments to consumers, the applicant or**  
26 **licensee shall file with the State Board of Tax Practitioners the schedules described in par-**  
27 **agraph (b) of this subsection not later than:**

28 **(A) The date on which the applicant applies for or applies to renew a license under ORS**

**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 **673.605 to 673.740, if the applicant or licensee already offers refund anticipation loans or re-**  
2 **fund anticipation payment instruments to consumers; or**

3 **(B) Seven business days before the applicant or licensee begins to offer refund antic-**  
4 **ipation loans or refund anticipation payment instruments to consumers, if the applicant or**  
5 **licensee intends to offer refund anticipation loans or refund anticipation payment instru-**  
6 **ments to consumers but has not yet done so.**

7 **(b) The schedules that the applicant or licensee must file with the board are:**

8 **(A) The interest rates that lenders for which the applicant or licensee facilitates refund**  
9 **anticipation loans will charge;**

10 **(B) The fees that each lender charges for originating or processing a refund anticipation**  
11 **loan or refund anticipation payment instrument and that the applicant or licensee charges**  
12 **to the consumer; and**

13 **(C) The fees that the applicant or licensee will charge for preparing tax returns and for**  
14 **filing tax forms electronically.**

15 **(2) If at any point after the applicant obtains or the licensee renews a license under ORS**  
16 **673.605 to 673.740 the applicant or licensee learns of or makes a change to a rate, charge or**  
17 **percentage that the applicant or licensee disclosed under subsection (1) of this section, the**  
18 **applicant or licensee within 15 business days after learning of or making the change shall file**  
19 **with the board an amendment that sets forth the corrected rate, charge or percentage.**

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

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

23 **(b) A schedule of the fees each lender charges for originating or processing a refund**  
24 **anticipation loan or refund anticipation payment instrument and that the applicant or**  
25 **licensee charges to the consumer;**

26 **(c) A schedule of the licensee's fees for preparing tax returns and for filing tax forms**  
27 **electronically; and**

28 **(d) A notice in which the licensee states that the licensee may not require a taxpayer to**  
29 **obtain a refund anticipation loan or refund anticipation payment instrument as a condition**  
30 **of filing the taxpayer's tax return electronically and that the fee for filing a tax return**  
31 **electronically does not depend on whether the taxpayer has obtained a refund anticipation**  
32 **loan or refund anticipation payment instrument.**

33 **(4) The licensee may not conduct business as a facilitator unless the licensee displays in**  
34 **each location where the licensee conducts business as a facilitator the schedules and the**  
35 **notice described in subsection (3) of this section and unless the licensee ensures that the**  
36 **lender charges and that the consumer pays only the interest rate and the fees for a refund**  
37 **anticipation loan that the licensee both displays on the schedule and discloses to the con-**  
38 **sumer, as provided in section 4 of this 2011 Act.**

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

43 **(b) In making a disclosure under this section, the licensee shall calculate the annual**  
44 **percentage rate as defined by the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., as in**  
45 **effect on the effective date of this 2011 Act, except that, notwithstanding the definition set**

1 forth for the annual percentage rate under the Act, the annual percentage rate that the  
2 licensee calculates and discloses under this section must include all fees that the lender  
3 charges in connection with the refund anticipation loan.

4 (2) The licensee must disclose:

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

7 (b) A list or table that shows examples of the amounts that the licensee and the lender  
8 will charge in fees and in interest for refund anticipation loans of \$500, \$750, \$1,000, \$1,500,  
9 \$2,000 and \$3,000. For each example, the list or table must disclose separately the amount  
10 of each lender's fee, the annual percentage rate for the loan and the total amount of money  
11 that a consumer would pay in fees and in interest for the loan and that the licensee will  
12 deduct from the consumer's tax refund.

13 (c) The lender's fees, interest rate and annual percentage rate for the refund anticipation  
14 loan that the consumer will pay if approved. If a consumer, as a condition of obtaining the  
15 loan, must establish or maintain a deposit account with the lender to receive the consumer's  
16 tax refund and thereby to offset the amount the consumer owes on the loan, the maturity  
17 date of the loan for the purpose of determining the annual percentage rate disclosure under  
18 this section, regardless of the annual percentage rate disclosure that the federal Truth in  
19 Lending Act requires, is the estimated date on which the tax refund will be deposited in the  
20 consumer's account.

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

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

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

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

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

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

37 (A) A refund anticipation payment instrument is not necessary to receive a tax refund;

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

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

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

45 (3)(a) The facilitator must make the disclosures described in subsection (2) of this section

1 orally and in writing on a form separate from the application form. If the facilitator solicits  
 2 or conducts negotiations with the consumer concerning a refund anticipation loan or refund  
 3 anticipation payment instrument in a language other than the English language, the  
 4 facilitator shall make the disclosures described in this section in writing in the English lan-  
 5 guage and orally and in writing in the language in which the facilitator solicited or conducted  
 6 negotiations with the consumer concerning the refund anticipation loan or refund antic-  
 7 ipation payment instrument.

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

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

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

16 **SECTION 6.** (1) A licensee, while acting as a facilitator, may not:

17 (a)(A) Charge a consumer a fee of any type in a transaction related to a refund antic-  
 18 ipation loan or refund anticipation payment instrument. The licensee may charge a fee in a  
 19 transaction related to a refund anticipation loan or refund anticipation payment instrument  
 20 only if the fee is a fee that the lender imposes for originating or processing the refund an-  
 21 ticipation loan or refund anticipation payment instrument. The licensee shall remit the  
 22 amount of a lender's fee to the lender.

23 (B) This paragraph does not preclude a facilitator from charging a fee or other consid-  
 24 eration that the facilitator usually charges or imposes in the ordinary course of business for  
 25 services that are not connected with a refund anticipation loan or refund anticipation pay-  
 26 ment instrument, such as a fee for preparing a tax return or filing a tax return electron-  
 27 ically.

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

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

33 (d) Require a taxpayer to obtain a refund anticipation loan or refund anticipation pay-  
 34 ment instrument in exchange for filing the taxpayer's tax return electronically or in ex-  
 35 change for a reduction or discount in any fee the licensee charges for preparing or filing the  
 36 taxpayer's tax return.

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

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

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

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

45 (i) Collect or facilitate in collecting, alone or in conjunction with another person, an

1 outstanding or delinquent refund anticipation loan for a lender or other creditor, or an  
 2 assignee of the lender or creditor. For the purposes of this paragraph, soliciting, processing,  
 3 receiving or accepting an application for a refund anticipation loan or refund anticipation  
 4 payment instrument in which a contract provision or other agreement permits the lender,  
 5 creditor or assignee to receive payment for an outstanding or delinquent refund anticipation  
 6 loan by offset or other means constitutes facilitating the collection of the outstanding or  
 7 delinquent refund anticipation loan.

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

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

15 (L) Engage in unconscionable activity.

16 (m) Violate a rule or order that the board adopts or issues under this section or section  
 17 2, 3, 4, 5 or 7 of this 2011 Act, or violate a consent agreement between the licensee and the  
 18 board.

19 (2) In addition to any other penalty provided for violating this section or section 2, 3 or  
 20 4 of this 2011 Act, violating this section or section 2, 3 or 4 of this 2011 Act is an unlawful  
 21 practice under ORS 646.607 that is subject to an investigative demand under ORS 646.618 and  
 22 to enforcement under ORS 646.632.

23 **SECTION 7.** Sections 2, 3, 4, 5 and 6 of this 2011 Act do not apply to:

24 (1) A person that does not deal directly with taxpayers or consumers but that acts solely  
 25 as an intermediary between a facilitator and a lender or between a facilitator and a state or  
 26 federal taxing authority by processing or transmitting, electronically or otherwise, tax or  
 27 credit information or by preparing a payment instrument by means of which a facilitator  
 28 delivers a refund anticipation loan to a consumer.

29 (2) A person that is required to obtain a license or certification under ORS 673.010 to  
 30 673.457 or that is required to register under ORS 673.160.

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

32 673.605. As used in ORS 673.605 to 673.740: [*unless the context requires otherwise:*]

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

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

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

44 [(3) "Lender" means a person that makes a refund anticipation loan with the person's own funds  
 45 or a line of credit or other funding from a financial institution as defined in ORS 706.008, but does

1 *not include a financial institution as defined in ORS 706.008.]*

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

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

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

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

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

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

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

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

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

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

20 (2) "Facilitator" means:

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

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

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

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

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

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

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

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

35 (C) Collects for the lender's own benefit a fee, charge or other consideration, other than  
36 interest due the lender from a refund anticipation loan, for services related to receiving,  
37 accepting or processing an application for a refund anticipation loan or refund anticipation  
38 payment instrument; or

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

41 (3) "Lender" means a person that makes a refund anticipation loan with the person's own  
42 funds or a line of credit or other funding from a financial institution, as defined in ORS  
43 706.008.

44 (4) "Licensee" means a person that is licensed under ORS 673.605 to 673.740.

45 (5) "Person" means an individual, a joint venture, a partnership, a cooperative, a limited

1 liability company, an association, a joint stock company, a corporation, a trust or an  
 2 unincorporated organization.

3 (6) “Refund anticipation loan” means:

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

7 (b) A loan that a lender makes under a contract or agreement that requires a consumer  
 8 to repay the loan from the proceeds of a subsequent loan of the type described in paragraph  
 9 (a) of this subsection, or a loan that a consumer expects to repay from the proceeds of a  
 10 subsequent loan of the type described in paragraph (a) of this subsection.

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

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

15 (b) Issues the proceeds of the consumer’s tax refund to the consumer in the form of a  
 16 check, prefunded debit card, gift card or other record of a promise to pay an amount of  
 17 money or provide goods or services in an amount specified in the record when the record is  
 18 presented to another person; and

19 (c) Charges and receives a fee or other compensation from the consumer for the ar-  
 20 rangement.

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

24 (9) “Taxpayer” means an individual who:

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

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

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

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

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

36 673.610. ORS 673.605 to 673.740 do not apply to:

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

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

42 (3) [While acting as such, any fiduciary, or the regular employees thereof, acting on behalf of the  
 43 fiduciary estate, the testator, trustor, grantor, or beneficiaries thereof.] A fiduciary or an employee  
 44 of a fiduciary during the time the fiduciary acts on behalf of a fiduciary estate or a testator,  
 45 trustor, grantor or beneficiary of the fiduciary estate.

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

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

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

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

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

11 673.615. Except as otherwise provided in ORS 673.605 to 673.740:

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

17 (2) A tax preparer may prepare or advise or assist in *[the preparation of]* **preparing** tax returns  
 18 only under the supervision of a tax consultant, or a person described in ORS 673.610 (2) or (4), and  
 19 subject to *[such]* conditions and limitations *[as]* **that** the State Board of Tax Practitioners *[by rule*  
 20 *may impose]* **imposes by rule.**

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

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

25 673.700. The State Board of Tax Practitioners may refuse to issue or renew a tax *[consultant]*  
 26 **consultant's** or tax preparer's license, or may suspend or revoke a tax *[consultant]* **consultant's**  
 27 or **tax** preparer's license, or may reprimand *[any]* **a** person licensed as a tax consultant or tax  
 28 preparer for:

29 (1) *[Violation of]* **Violating** ORS 673.615[,], **or** 673.705 or *[673.712]* **section 2, 3, 4 or 6 of this**  
 30 **2011 Act.**

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

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

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

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

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



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

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

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

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

13 (10) Cancellation, revocation or refusal to renew by *[any]* a state or federal agency of, or entry  
 14 of a consent order, stipulated agreement or judgment related to, a business's authority to conduct  
 15 operations related to the practice of law, certified public accountancy, public accountancy or other  
 16 services provided under regulatory law in *[any]* **this or another** state, or to provide enrolled agent  
 17 services, if the grounds for the cancellation, revocation, refusal to renew, consent order, stipulated  
 18 agreement or judgment involved the conduct or actions of the licensee or applicant and:

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

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

22 673.730. The State Board of Tax Practitioners *[shall have]* **has** the following powers, in addition  
 23 to the powers otherwise granted by ORS 673.605 to 673.740, and *[shall have]* **has** all powers neces-  
 24 sary or proper to carry the granted powers into effect:

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

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

28 (c) To issue licenses to qualified applicants upon *[their]* **the applicants'** compliance with ORS  
 29 673.605 to 673.740 and the rules of the board.

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

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

39 (A) At a time certain; or

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

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

1 *or tax preparer's license.]*

2 (3) To investigate alleged violations of ORS 673.605 to 673.740, or *[any]* a rule or order adopted  
 3 *[thereunder]* **or issued under ORS 673.605 to 673.740**. The board may keep information gathered  
 4 pursuant to an investigation by the board confidential until there is a final order or determination  
 5 by the board, unless **the board considers** disclosure *[is considered]* necessary *[by the board for the*  
 6 *investigation or prosecution of]* **to investigate or prosecute** an alleged violation of ORS 673.605 to  
 7 673.740, or *[any]* a rule or order **the board** adopted *[thereunder]* **or issued under ORS 673.605 to**  
 8 **673.740**. The board may keep personal financial information **the board** gathered pursuant to an in-  
 9 vestigation *[by the board]* confidential after **the board makes** a final order or determination *[by the*  
 10 *board]*, unless **the board considers** disclosure *[is considered]* necessary *[by the board for the inves-*  
 11 *tigation or prosecution of]* **to investigate or prosecute** an alleged violation of ORS 673.605 to  
 12 673.740, or *[any]* a rule or order **the board** adopted *[thereunder]* **or issued under ORS 673.605 to**  
 13 **673.740**. For purposes of this subsection, personal financial information includes but is not limited  
 14 to tax returns.

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

17 (5) To issue an order directed to a person to cease and desist from *[any]* a violation or threat-  
 18 ened violation of ORS 673.615, 673.643[,] **or 673.705 or [673.712] section 2, 3, 4 or 6 of this 2011**  
 19 **Act**, or *[any]* a rule or order **the board** adopted *[thereunder]* **or issued under ORS 673.615, 673.643**  
 20 **or 673.705 or section 2, 3, 4 or 6 of this 2011 Act**, if the board has reason to believe that a person  
 21 has *[been]* engaged, is engaging or is about to engage in *[any violation of]* **violating** ORS 673.615,  
 22 673.643[,] **or 673.705 or [673.712] section 2, 3, 4 or 6 of this 2011 Act**, or *[any]* a rule or order **the**  
 23 **board** adopted *[thereunder]* **or issued under ORS 673.615, 673.643 or 673.705 or section 2, 3, 4 or**  
 24 **6 of this 2011 Act**.

25 (6) To assess civil penalties within a cease and desist order issued under subsection (5) of this  
 26 section if the board has reason to believe that a person has *[been]* engaged or is engaging in *[any]*  
 27 a violation of ORS 673.615, 673.643[,] **or 673.705 or [673.712] section 2, 3, 4 or 6 of this 2011 Act**,  
 28 or *[any]* a rule or order **the board** adopted *[thereunder]* **or issued under ORS 673.615, 673.643 or**  
 29 **673.705 or section 2, 3, 4 or 6 of this 2011 Act**. The civil penalty may not exceed \$5,000 per vio-  
 30 lation.

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

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

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

1 (10) To adopt rules pursuant to ORS chapter 183 necessary to carry out the provisions of ORS  
2 673.605 to 673.740.

3 **SECTION 13.** ORS 673.990 is amended to read:

4 673.990. (1) Violation of any of the provisions of ORS 673.310, 673.320, 673.345 or 673.350 is a  
5 Class A misdemeanor. Whenever the Oregon Board of Accountancy has reason to believe that any  
6 person is liable to punishment under this subsection it may certify the facts to the Attorney General,  
7 who may, in the discretion of the Attorney General, cause appropriate proceedings to be brought.

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

12 **SECTION 14.** ORS 646.607 is amended to read:

13 646.607. A person engages in an unlawful practice *[when]* **if** in the course of the person's busi-  
14 ness, vocation or occupation the person:

15 (1) Employs *[any]* **an** unconscionable tactic in connection with *[the sale, rental or other disposi-*  
16 *tion of]* **selling, renting or disposing of** real estate, goods or services, or *[collection or enforcement*  
17 *of]* **collecting or enforcing** an obligation;

18 (2) Fails to deliver all or *[any]* **a** portion of real estate, goods or services as promised, and upon  
19 request of the customer, fails to refund *[any]* money that *[has been received]* **the person receives**  
20 from the customer *[that was for the purchase of]* **for purchasing** the undelivered real estate, goods  
21 or services and that *[is not retained by]* the seller **does not retain** pursuant to *[any]* **a** right, claim  
22 or defense asserted in good faith. This subsection does not create a warranty obligation and does  
23 not apply to a dispute over the quality of real estate, goods or services delivered to a customer;

24 (3) Violates ORS 401.965 (2);

25 (4) Violates a provision of ORS 646A.725 to 646A.750;

26 (5) Violates ORS 646A.530; *[or]*

27 (6) Employs a collection practice that is unlawful under ORS 646.639[.]; **or**

28 (7) **Violates ORS 673.615 (3) or a provision of section 2, 3, 4 or 6 of this 2011 Act.**

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

30 **SECTION 16.** Sections 2 to 7 of this 2011 Act, the amendments to ORS 646.607, 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 646.607, 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 646.607, 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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