

House Bill 3357

Sponsored by Representative DEMBROW; Representatives BARNHART, FREDERICK, GORSEK, HOLVEY, UNGER, Senators DINGFELDER, SHIELDS

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**.

Creates disclosure requirements related to use of refund anticipation payment instruments by tax consultants and tax preparers. Prohibits certain activities related to refund anticipation payment instruments.

Becomes operative on January 1, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to refund anticipation payment instruments; creating new provisions; amending ORS
3 646.607, 673.605, 673.700 and 673.730; and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS 673.605**
6 **to 673.740.**

7 **SECTION 2. (1)(a) If an applicant or a licensee offers or intends to offer refund antic-**
8 **ipation payment instruments to consumers, the applicant or licensee shall file with the State**
9 **Board of Tax Practitioners the schedules described in paragraph (b) of this subsection not**
10 **later than:**

11 (A) **The date on which the applicant applies for or the licensee renews a license under**
12 **ORS 673.605 to 673.740, if the applicant or licensee already offers refund anticipation payment**
13 **instruments to consumers; or**

14 (B) **Seven business days before the applicant or licensee begins to offer refund antic-**
15 **ipation payment instruments to consumers, if the applicant or licensee intends to offer re-**
16 **fund anticipation payment instruments to consumers but has not yet done so.**

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

18 (A) **The fees that a lender charges for originating or processing a refund anticipation**
19 **payment instrument and that the applicant or licensee charges to a consumer; and**

20 (B) **The fees that the applicant or licensee will charge for preparing tax returns and for**
21 **filing tax forms electronically.**

22 (2) **If, at any point after the applicant obtains or the licensee renews a license under ORS**
23 **673.605 to 673.740, the applicant or licensee learns of or makes a change to a fee that the**
24 **applicant or licensee filed under subsection (1) of this section, the applicant or licensee shall,**
25 **within 15 business days after learning of or making the change, file with the board an**
26 **amendment that sets forth the corrected fee.**

27 (3) **The applicant or licensee shall make a filing required under subsection (1) of this**
28 **section on a form that the board specifies by rule.**

29 **SECTION 3. (1) A licensee, while acting as a facilitator, may not:**

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 (a) Charge a consumer a fee of any type in a transaction related to a refund anticipation
 2 payment instrument. The licensee may charge a fee in a transaction related to a refund an-
 3 ticipation payment instrument only if the fee that the lender imposes is for originating or
 4 processing the refund anticipation payment instrument. The licensee shall remit the amount
 5 of a lender's fee to the lender. This paragraph does not preclude a facilitator from charging
 6 a fee or other consideration that the facilitator usually charges or imposes in the ordinary
 7 course of business for services that are not connected with a refund anticipation payment
 8 instrument, such as a fee for preparing a tax return or filing a tax return electronically.

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

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

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

16 (e) Violate a rule or order that the State Board of Tax Practitioners adopts or issues
 17 under this section or section 2 of this 2013 Act, or violate a consent agreement between the
 18 licensee and the board.

19 (2) In addition to any other penalty provided for violating this section or section 2 of this
 20 2013 Act, violating this section or section 2 of this 2013 Act is an unlawful practice under
 21 ORS 646.607 that is subject to an investigative demand under ORS 646.618 and to enforcement
 22 under ORS 646.632.

23 **SECTION 4.** Sections 2 and 3 of this 2013 Act do not apply to a person that is required
 24 to be licensed or certified under ORS 673.010 to 673.457 or that is required to register under
 25 ORS 673.160.

26 **SECTION 5.** ORS 673.605 is amended to read:

27 673.605. As used in ORS 673.605 to 673.740 unless the context requires otherwise:

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

29 (1) "Consumer" means an individual who, alone or together with another individual, re-
 30 ceives from a facilitator or lender funds in connection with a refund anticipation payment
 31 instrument.

32 (2)(a) "Facilitator" means a person that individually or in conjunction or cooperation with an-
 33 other person processes, receives or accepts for delivery an application for a refund anticipation loan
 34 or a check in payment of refund anticipation loan proceeds or in any other manner materially fa-
 35 cilitates the making of a refund anticipation loan.

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

42 (3) "Lender" means:

43 (a) A person that makes a refund anticipation loan with the person's own funds or a line of
 44 credit or other funding from a financial institution as defined in ORS 706.008, but does not include
 45 a financial institution as defined in ORS 706.008[.]; or

1 **(b) A person that imposes a charge for originating or processing a refund anticipation**
 2 **payment instrument.**

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

4 [(4)] **(5) “Refund anticipation loan” means a loan that the lender arranges to be repaid directly**
 5 **from the proceeds of the taxpayer’s federal or state personal income tax refund.**

6 [(5)(a)] **(6)(a) “Refund anticipation loan fee” means the charges, fees or other consideration**
 7 **charged or imposed by the lender or facilitator for the making of a refund anticipation loan.**

8 (b) “Refund anticipation loan fee” does not mean any charge, fee or other consideration usually
 9 charged or imposed by the facilitator in the ordinary course of business for nonloan services, in-
 10 cluding fees for tax return preparation and fees for electronic filing of tax returns.

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 [(6)] **(8) “Tax consultant” means a person who is licensed under ORS 673.605 to 673.740 to pre-**
 22 **pare or advise or assist in the preparation of personal income tax returns for another and for val-**
 23 **uable consideration.**

24 [(7)] **(9) “Taxpayer” means an individual who files a federal or Oregon personal income tax re-**
 25 **turn.**

26 [(8)] **(10) “Tax preparer” means any person who is licensed under ORS 673.605 to 673.740 as a**
 27 **tax preparer.**

28 **SECTION 6.** ORS 673.700 is amended to read:

29 673.700. The State Board of Tax Practitioners may refuse to issue or renew a tax consultant or
 30 preparer’s license, or may suspend or revoke a tax consultant or preparer’s license, or may
 31 reprimand any person licensed as a tax consultant or tax preparer for:

32 (1) Violation of ORS 673.615, 673.705 or 673.712 **or section 2 or 3 of this 2013 Act.**

33 (2) Failure to keep the records required by ORS 673.690.

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

37 (4)(a) Conduct resulting in a conviction of a felony under the laws of any state or of the United
 38 States. However, such conduct may be considered only to the extent permissible under the pro-
 39 visions of ORS 670.280; or

40 (b) Conviction of any crime, an essential element of which is dishonesty, fraud or deception,
 41 under the laws of any state or of the United States.

42 (5) Conviction of willful failure to pay any tax or estimated tax, file any tax return, keep records
 43 or supply information required under the tax laws of any state or of the United States, or conviction
 44 of the willful making, rendering, delivery, disclosure, signing or verifying of any false or fraudulent
 45 list, return, account, statement or other document, or of supplying any false or fraudulent informa-

1 tion, required under the tax laws of any state or of the United States.

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

4 (7) Violation of the code of professional conduct prescribed by the board.

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

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

13 (10) Cancellation, revocation or refusal to renew by any state or federal agency of, or entry of
14 a consent order, stipulated agreement or judgment related to, a business's authority to conduct op-
15 erations related to the practice of law, certified public accountancy, public accountancy or other
16 services provided under regulatory law in any state, or to provide enrolled agent services, if the
17 grounds for the cancellation, revocation, refusal to renew, consent order, stipulated agreement or
18 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 7.** ORS 673.730 is amended to read:

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

25 (1) To determine qualifications of applicants for licensing as a tax consultant or a tax preparer
26 in this state; to cause examinations to be prepared, conducted and graded; and to issue licenses to
27 qualified applicants upon their compliance with ORS 673.605 to 673.740 and the rules of the board.

28 (2)(a) To restore the license of any tax consultant or preparer whose license has been suspended
29 or revoked.

30 (b) The power of the board to suspend any license under ORS 673.700 includes the power to
31 restore:

32 (A) At a time certain; or

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

34 (c) The power of the board to restore a license under paragraph (a) of this subsection specif-
35 ically includes the power to restore a license suspended or revoked for the reason that the person
36 has been convicted of a crime. In making a determination to restore a license, the board shall con-
37 sider the relationship of the facts which supported the conviction to the code of professional conduct
38 and all intervening circumstances in determining the fitness of the person to receive or hold a tax
39 consultant's or tax preparer's license.

40 (3) To investigate alleged violations of ORS 673.605 to 673.740, or any rule or order adopted
41 thereunder. The board may keep information gathered pursuant to an investigation by the board
42 confidential until there is a final order or determination by the board, unless disclosure is consid-
43 ered necessary by the board for the investigation or prosecution of an alleged violation of ORS
44 673.605 to 673.740, or any rule or order adopted thereunder. The board may keep personal financial
45 information gathered pursuant to an investigation by the board confidential after a final order or

1 determination by the board, unless disclosure is considered necessary by the board for the investi-
 2 gation or prosecution of an alleged violation of ORS 673.605 to 673.740, or any rule or order adopted
 3 thereunder. For purposes of this subsection, personal financial information includes but is not lim-
 4 ited to tax returns.

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

7 (5) To issue an order directed to a person to cease and desist from any violation or threatened
 8 violation of ORS 673.615, 673.643, 673.705 or 673.712 **or section 2 or 3 of this 2013 Act**, or any rule
 9 or order adopted thereunder, if the board has reason to believe that a person has been engaged, is
 10 engaging or is about to engage in any violation of ORS 673.615, 673.643, 673.705 or 673.712 **or sec-**
 11 **tion 2 or 3 of this 2013 Act**, or any rule or order adopted thereunder.

12 (6) To assess civil penalties within a cease and desist order issued under subsection (5) of this
 13 section if the board has reason to believe that a person has been engaged or is engaging in any vi-
 14 olation of ORS 673.615, 673.643, 673.705 or 673.712 **or section 2 or 3 of this 2013 Act**, or any rule
 15 or order adopted thereunder. The civil penalty may not exceed \$5,000 per violation.

16 (7) To formulate a code of professional conduct for tax consultants and tax preparers.

17 (8) To assess against the licensee or any other person found guilty of violating any provision
 18 of ORS 673.605 to 673.740, or any rule or order adopted thereunder, in addition to any other sanc-
 19 tions, the costs associated with the disciplinary or other action taken by the board.

20 (9) To order that any person who has engaged in or is engaging in any violation of ORS 673.605
 21 to 673.740, or any rule or order adopted thereunder, shall offer to rescind and pay restitution to
 22 anyone harmed by the violation who seeks rescission.

23 (10) To adopt rules pursuant to ORS chapter 183 necessary to carry out the provisions of ORS
 24 673.605 to 673.740.

25 **SECTION 8.** ORS 646.607 is amended to read:

26 646.607. A person engages in an unlawful practice when in the course of the person's business,
 27 vocation or occupation the person:

28 (1) Employs any unconscionable tactic in connection with the sale, rental or other disposition
 29 of real estate, goods or services, or collection or enforcement of an obligation;

30 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and upon
 31 request of the customer, fails to refund any money that has been received from the customer that
 32 was for the purchase of the undelivered real estate, goods or services and that is not retained by
 33 the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not
 34 create a warranty obligation and does not apply to a dispute over the quality of real estate, goods
 35 or services delivered to a customer;

36 (3) Violates ORS 401.965 (2);

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

38 (5) Violates ORS 646A.530; or

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

40 (7) **Violates section 2 or 3 of this 2013 Act.**

41 **SECTION 9.** (1) **Sections 2 to 4 of this 2013 Act and the amendments to ORS 646.607,**
 42 **673.605, 673.700 and 673.730 by sections 5 to 8 of this 2013 become operative on January 1,**
 43 **2014.**

44 (2) **The State Board of Tax Practitioners may adopt rules or take any action before the**
 45 **operative date set forth in subsection (1) of this section that is necessary to enable the board**

1 to exercise, on and after the operative date set forth in subsection (1) of this section, all the
2 duties, functions and powers conferred upon the board by sections 2 to 4 of this 2013 Act and
3 the amendments to ORS 646.607, 673.605, 673.700 and 673.730 by sections 5 to 8 of this 2013
4 Act.

5 SECTION 10. This 2013 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
7 on its passage.

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