

Chapter 673

2013 EDITION

Accountants; Other Tax Professionals

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ACCOUNTANTS
(Generally)

673.010 Definitions for ORS 673.010 to 673.457; rules. As used in ORS 673.010 to 673.457:

(1) "Attestation services" means the following professional services required to be performed under rules adopted by the Oregon Board of Accountancy pursuant to ORS 673.445 as follows:

(a) An audit or other engagement for which performance standards are included in the Statements on Auditing Standards (SAS);

(b) Review of a financial statement for which performance standards are included in the Statements on Standards for Accounting and Review Services (SSARS);

(c) Examination of prospective financial information for which performance standards are included in the Statements on Standards for Attestation Engagements (SSAE); and

(d) Engagements for which performance standards are included in the Auditing Standards of the Public Company Accounting Oversight Board.

(2) "Business organization" means any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(3) "Certificate" means a certificate of certified public accountant issued under ORS 673.040.

(4) "Client" means a person who agrees with a licensee to receive any professional service from the licensee.

(5) "Commission" means money or other consideration recognized as a commission under rules adopted by the board pursuant to ORS 673.012.

(6) "Compilation services" means professional services required to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS) under rules adopted by the Oregon Board of Accountancy pursuant to ORS 673.445 in which the person performing the services presents a financial statement that:

(a) Is based on the representation of the owner or management of the company for which the statement is presented; and

(b) Does not include assurances by the person that the representations in the financial statement conform to generally accepted accounting principles.

(7) "Contingent fee" means a fee established for the performance of any professional service and directly or indirectly paid

to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(8) "License" means:

(a) A certificate, permit or registration, or a license issued under ORS 673.100, enabling the holder thereof to practice public accountancy in this state; or

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(9) "Licensee" means the holder of a license as defined in subsection (8)(a) of this section.

(10) "Manager" means a manager of a limited liability company.

(11) "Member" means a member of a limited liability company.

(12) "Peer review" means a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a permit under ORS 673.150, or of a registered business organization that performs attestation or compilation services, that is conducted by:

(a) A certified public accountant who holds an active permit issued under ORS 673.150 or an active license issued by the licensing authority for the practice of public accountancy in another state and who is independent of the permit holder or registered business organization being reviewed; or

(b) A public accountant who holds an active permit issued under ORS 673.150 and who is independent of the permit holder or registered business organization being reviewed.

(13) "Permit" means a permit to practice public accountancy issued under ORS 673.150.

(14) "Principal place of business" means the office location designated by a person for purposes of substantial equivalency and reciprocity.

(15) "Professional" means arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(16) "Public accountant" means a public accountant licensed under ORS 673.100.

(17) "Referral fee" means a fee recognized as a referral fee under rules adopted by the board pursuant to ORS 673.012.

(18) "Registration" means the authority issued under ORS 673.160 by the Oregon Board of Accountancy to a business organization to practice public accountancy in this state.

(19)(a) "Report," when used with reference to financial statements, means an opinion or other form of written language that states or implies assurance as to the reliability of the financial statement and that includes or is accompanied by a statement or implication that the person issuing the report has special knowledge or competence in public accountancy. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the issuer is a public accountancy professional or organization or may arise from the language of the report itself.

(b) "Report" includes any form of written language that:

(A) Disclaims an opinion when the form of language implies any positive assurance as to the reliability of the financial statements referred to or special knowledge or competence on the part of the person issuing the language;

(B) Implies any positive assurance as to the reliability of the financial statements referred to or special knowledge or competence on the part of the person issuing the language; or

(C) Relates to the financial affairs of a person and that is conventionally used by licensees in reports or financial statements.

(c) "Report" does not include:

(A) The following statement signed by a person who does not hold a certificate, license or permit under ORS 673.010 to 673.457 as long as the statement is not accompanied by any wording indicating the person is an accountant or auditor or any other language prohibited by ORS 673.310 or 673.320:

The accompanying balance sheet (or _____) of XYZ Company as of (date), and the related statements of income (or retained earnings or cash flow) for the year then ended have been prepared by me (us).

The information presented in these financial statements is the representation of management (owners).

(B) Any other financial statements or reports that are not and do not purport to be

in compliance with national standards, including but not limited to Statements on Standards for Accounting and Review Services (SSARS) and Statements on Standards for Attestation Engagements (SSAE) adopted by the board by rule, when the statements or reports are issued by persons not otherwise subject to regulation by the board under ORS 673.010 to 673.457.

(20) "State" means any state, territory or insular possession of the United States, and the District of Columbia.

(21) "Substantial equivalency" means that:

(a) An individual holds a valid license as a certified public accountant from another state that requires an individual, as a condition of licensure as a certified public accountant, to:

(A) Complete at least 150 semester hours of college education and obtain a baccalaureate or higher degree conferred by a college or university;

(B) Achieve a passing grade on the Uniform Certified Public Accountant Examination; and

(C) Possess at least one year of experience, verified by a licensee, providing any type of service or advice involving the use of accounting, attestation, compilation, management advisory, financial advisory, tax or related consulting skills, obtained through public practice or government, industry or academic work; or

(b) An individual has the qualifications specified in paragraph (a) of this subsection and holds a valid license as a certified public accountant from another state that does not require an individual to have the qualifications specified in paragraph (a) of this subsection as a condition of licensure as a certified public accountant. [Amended by 1981 c.89 §2; 1993 c.431 §1; 1999 c.322 §2; 2001 c.313 §1; 2001 c.638 §1a; 2005 c.30 §1; 2007 c.112 §1; 2009 c.531 §1]

673.012 Rules defining certain terms. Consistent with the definitions in ORS 657.010:

(1) The Oregon Board of Accountancy shall adopt rules further defining the terms "commission" and "referral fee" for purposes of ORS 673.010 to 673.457.

(2) The board may adopt rules further defining "contingent fee" for purposes of ORS 673.010 to 673.457. [2001 c.313 §4; 2009 c.531 §2]

673.015 Statement of public interest in regulating practice of accountancy. The public interest requires:

(1) The promotion of reliable information used for guidance in financial transactions and accounting for, or assessing the financial

status or performance of, commercial, non-commercial and governmental enterprises;

(2) That persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information demonstrate their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications, including public accountancy professionals not in public practice, not be permitted to hold themselves out as having special competence or to offer such assurance; and

(3) That the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work and that the use of titles relating to the practice of public accountancy that have the capacity or tendency to mislead or deceive the public as to the status or competence of the persons using the titles be prohibited. [1999 c.322 §1]

673.020 [Amended by 1975 c.440 §3; 1985 c.605 §1; 1993 c.431 §2; repealed by 1999 c.322 §44]

673.030 [Amended by 1975 c.440 §4; 1981 c.89 §3; 1985 c.605 §2; 1993 c.431 §3; repealed by 1999 c.322 §44]

(Authority to Practice Public Accountancy)

673.040 Eligibility for certificate of certified public accountant; experience requirement; issuance of certificate to licensee from other state or country; fee; rules. (1) A certificate of certified public accountant shall be issued to any applicant who meets the requirements of this section and ORS 673.050 and 673.060 and who passes an examination on the code of professional ethics adopted by the Oregon Board of Accountancy.

(2) An applicant for a certificate shall show that after meeting the eligibility requirements for the examination required by ORS 673.050, the applicant has had one year of experience, meeting requirements prescribed by the board by rule, under the direct supervision of a public accountant, certified public accountant or chartered accountant who:

(a) Is licensed and in good standing in this state or another jurisdiction; and

(b) Has been licensed for a minimum period of time set by the board by rule.

(3) The board may issue a certificate to a holder in good standing of a license of certified public accountant issued by another state or of a chartered accountant certificate issued by a foreign country recognized by the board upon a showing that the holder meets requirements that are substantially equivalent to the education, experience and other requirements that must be satisfied for the

issuance of a certificate of certified public accountant under ORS 673.010 to 673.457.

(4) The board shall charge a fee for each application for issuance of a certificate under this section in an amount prescribed by the board by rule.

(5) The board by rule may prescribe:

(a) Information required of applicants regarding the practice of public accountancy outside this state;

(b) Information required of licensees regarding changes in the ability or authority of the licensee to practice public accountancy; and

(c) A period of time within which applicants must satisfy the requirements of this section and ORS 673.050 and 673.060.

(6) Any certified public accountant may also be known as a "public accountant." [Amended by 1999 c.322 §3; 2001 c.638 §4; 2003 c.209 §1; 2007 c.112 §2]

673.050 General qualifications for candidates for C.P.A. examination; rules. (1) Except as provided in subsection (2) of this section, a candidate for admission to the examination for a certified public accountant certificate shall present satisfactory evidence of graduation with a baccalaureate or higher degree from a college or university that is accredited by one of the six regional accrediting associations or by another accrediting body that is recognized by the Oregon Board of Accountancy, and shall have completed 150 or more semester hours or 225 or more quarter hours or the equivalent thereof, including courses in the study of accounting, business, economics, finance, written and oral communications and other subjects as determined by the board as appropriate for the accountancy profession.

(2) A person may apply to take the examination for the certificate of certified public accountant for the purpose of obtaining a license as a public accountant under ORS 673.100 if the person presents satisfactory evidence of graduation from a high school with a four-year course or of having acquired an equivalent education, and has completed two years of public accountancy experience or the equivalent that meets the experience requirements established by the board by rule. [Amended by 1973 c.827 §66; 1979 c.84 §1; 1981 c.89 §4; 1997 c.640 §1; 1999 c.322 §§5,6; 2001 c.735 §2; 2007 c.112 §3]

673.060 C.P.A. and public accountant examination; scope; conduct; fee. (1) A person must pass an examination as a condition of the issuance of a certificate of certified public accountant under ORS 673.040 or of a license as a public accountant under ORS 673.100 by the Oregon Board of Accountancy. The examination shall test the

person's knowledge of the subjects of accounting and auditing and other related subjects as the board may determine by rule. The board may contract with a testing service to administer the examination and may contract with any organization, governmental or private, for examination material and services.

(2) A person must pass all sections of the examination in order to qualify for a certificate of certified public accountant and must pass the sections of the examination described in ORS 673.100 (1)(c) to qualify for a license as a public accountant.

(3) The board shall charge each person who applies to take the examination a non-refundable application fee in an amount determined by the board. The person shall pay the application fee at the time of the application.

(4) If the board contracts with a testing service to administer the examination described in subsection (1) of this section, the testing service shall collect from each person taking the examination all fees that the testing service charges for administering the examination. [Amended by 1967 c.62 §1; 1971 c.217 §2; 1975 c.440 §6; 1983 c.255 §1; 1989 c.771 §1; 1991 c.187 §1; 1993 c.300 §1; 1997 c.95 §1; 1999 c.322 §8; 2003 c.5 §1; 2007 c.112 §4]

673.070 [Repealed by 1979 c.84 §5]

673.075 Credit for examination sections taken in other states. (1) The Oregon Board of Accountancy may, in accordance with its rules, grant credit to an applicant for one or more sections of an examination for which the applicant received passing grades from the licensing authority in any other state.

(2) Any examination for which credit is granted an applicant under subsection (1) of this section shall be substantially equivalent to examination requirements described in ORS 673.060. [1967 c.62 §§3,4; 1975 c.440 §7; 1993 c.300 §2; 1999 c.310 §2; 1999 c.322 §42; 2001 c.638 §5; 2007 c.112 §5]

673.080 [Amended by 1971 c.217 §3; 1975 c.440 §8; 1981 c.89 §5; 1983 c.247 §1; 1991 c.187 §2; repealed by 1999 c.322 §44]

673.090 [Amended by 1975 c.440 §9; 1985 c.605 §3; 1991 c.187 §3; repealed by 1999 c.322 §44]

673.095 [1985 c.605 §6; 1991 c.187 §4; 1993 c.193 §2; repealed by 1999 c.322 §44]

673.100 License as public accountant; application; rules; fee. (1) The Oregon Board of Accountancy shall issue a license as a public accountant to a person who applies for the license and who:

(a) Passes an examination on the code of professional ethics adopted by the board;

(b) Meets the requirements of ORS 673.050 for admission to the examination for the certificate of certified public accountant;

(c) Takes the examination for the certificate of certified public accountant pursuant to ORS 673.060 and receives a passing grade in those sections of the examination that the board may require by rule; and

(d) Has at least one year of public accountancy experience or the equivalent satisfactory to the board.

(2) An applicant for a license as a public accountant must make application on a form provided by the board. The board shall charge each applicant a fee for application in an amount determined by the board by rule. [Amended by 1975 c.440 §10; 1981 c.89 §6; 1983 c.255 §2; 1991 c.187 §5; 1993 c.300 §3; 1999 c.310 §3; 1999 c.322 §9; 2001 c.735 §1; 2007 c.112 §6]

673.103 Public accountant audits prohibited; exception. (1) Except as provided in subsection (2) of this section, a public accountant licensed under ORS 673.100 may not perform audits.

(2) Subsection (1) of this section does not apply to a public accountant licensed under ORS 673.100 who first qualified for and applied to take the examination described in ORS 673.060 before January 1, 2002. [2001 c.735 §5; 2003 c.241 §1]

673.110 [Repealed by 1981 c.89 §21]

673.120 [Amended by 1981 c.89 §6a; repealed by 1985 c.605 §21]

673.130 [Amended by 1975 c.440 §11; 1981 c.89 §7; 1985 c.605 §4; 1991 c.187 §6; repealed by 1999 c.322 §44]

673.132 [1993 c.431 §14; repealed by 1999 c.322 §44]

673.134 [1993 c.431 §15; repealed by 1999 c.322 §44]

673.136 [1993 c.431 §16; repealed by 1999 c.322 §44]

673.138 Liability of persons operating in certain registered business organization. Notwithstanding any other law, the liability and limitations on liability of a shareholder, owner, member or comparable person in a registered business organization that is not a proprietorship or partnership for negligent or wrongful acts, omissions or misconduct in the rendering of professional accountancy services on behalf of the registered business organization, shall be as set forth in ORS chapter 58, regarding the liability of a shareholder of a professional corporation for such negligence or wrongful acts, omissions or misconduct. [1993 c.431 §17; 1999 c.322 §10]

673.140 [Amended by 1981 c.89 §8; repealed by 1999 c.322 §44]

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

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

(b) A public accountant licensed under ORS 673.100.

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

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

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

(5)(a) A permit that is not renewed by the close of the permit period may be restored upon payment to the board of a delinquent renewal fee in an amount determined by the board by rule. A permit that is not renewed within 60 days after the close of the permit period for which it was issued or renewed lapses.

(b) The board may restore a lapsed permit upon payment of all past unpaid renewal fees and the delinquent renewal fee.

(c) A permit expires if it is not renewed for six years after the close of the permit period. If a permit expires, the licensee's certificate of certified public accountant issued under ORS 673.040 to 673.075 and license as a public accountant issued under ORS 673.100 also expire.

(d) The board may restore an expired permit if the board determines that it has just cause to restore the permit.

(6) Notwithstanding subsection (3) of this section, the board may by rule prescribe a reduced fee for renewal of permits of those certified public accountants and public accountants who have reached the age of 65 years. [Amended by 1971 c.217 §4; 1973 c.782 §1; 1975 c.438 §3a; 1975 c.440 §12; 1977 c.873 §6; 1981 c.89 §9; 1985 c.605 §7; 1991 c.187 §7; 1993 c.193 §3; 1999 c.322 §11; 2001 c.638 §6; 2009 c.531 §12; 2011 c.56 §1]

673.153 Holders of licenses issued by other states; fees. (1) A holder of a license with a principal place of business in another state may practice public accountancy in this state if the holder has a license from another state that is of substantial equivalency, as defined in ORS 673.010 (21).

(2)(a) A holder authorized under subsection (1) of this section meets this state's requirements to practice public accountancy and has all the rights and privileges of certificate holders and licensees of this state without the need to obtain a certificate un-

der ORS 673.040 or a permit under ORS 673.150.

(b) The Oregon Board of Accountancy may not require, as a condition for practicing public accountancy under this section, an authorized holder to:

(A) Provide notice that the holder practices or intends to practice public accountancy in this state;

(B) Pay an annual fee for the authorization; or

(C) Provide any other submission.

(3) An authorized holder practicing public accountancy under this section is deemed to:

(a) Consent to the personal and subject matter jurisdiction of the board;

(b) Agree to comply with the requirements of ORS 673.010 to 673.457 and any rules adopted thereunder;

(c) If the license under which the holder is authorized to practice public accountancy under this section is no longer valid, agree to immediately cease offering or rendering professional services in this state individually or on behalf of a business firm; and

(d) Agree to the appointment of the other state's licensing authority as the agent of the holder, upon whom process may be served in any action or proceeding by the board against the holder.

(4)(a) A business organization that employs a holder authorized to practice public accountancy under this section is deemed to:

(A) Consent to the personal and subject matter jurisdiction of the board;

(B) Agree to comply with the requirements of ORS 673.010 to 673.457 and any rules adopted thereunder;

(C) If the license under which the holder is authorized to practice public accountancy under this section is no longer valid, agree to require the following persons to immediately cease offering or rendering professional services in this state:

(i) The holder; and

(ii) Any other person who is employed by the business organization and who is offering or rendering professional services in this state pursuant to the holder being authorized to practice public accountancy under this section; and

(D) Agree to the appointment of the licensing authority of the state issuing the license that is the basis of the holder's authorization to practice public accountancy under this section as the agent of the business organization, upon whom process may be served in any action or proceeding by the

board against the business organization that employs the holder during the time the holder is practicing public accountancy in this state.

(b) For purposes of this subsection, a person practicing as a sole proprietor is a business organization.

(5) A holder authorized to practice public accountancy under this section may not perform the following professional services for a business organization that has its home office in this state unless the business organization is registered under ORS 673.160:

(a) Financial statement audits or other engagements to be performed in accordance with the Statements on Auditing Standards (SAS);

(b) Examinations of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); and

(c) Engagements to be performed in accordance with the auditing standards of the Public Company Accounting Oversight Board. [2001 c.638 §3; 2001 c.638 §3a; 2009 c.531 §3]

673.160 Registration of business organizations; exceptions; fees; rules. (1) Business organizations of certified public accountants or of public accountants shall register with the Oregon Board of Accountancy if the business organization:

(a) Has an office in this state and:

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

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

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

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

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

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

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

(3)(a) Notwithstanding subsection (1) of this section, a business organization of certified public accountants that does not have an office in this state may perform attestation services described in ORS 673.010

(1)(b) or compilation services for a client in this state and may use the terms “certified public accountants” or “certified public accounting firm,” abbreviations of those terms or any similar title, designation, words or letters without obtaining a registration issued by the board under this section if the business organization:

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

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

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

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

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

(4) Registrations shall be issued and renewed for periods of not more than two years. Applications for registration shall be made in a form prescribed by the board by rule. Applications for renewal shall be made between the dates prescribed by the board by rule.

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

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

that a majority of the ownership of the firm holds certificates issued under ORS 673.040.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The identities of partners, officers, shareholders, members, managers or owners of the business organization who work regularly in this state;

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

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

(d) Any issuance, denial, revocation, lapse or suspension of authority to perform professional or other services in any jurisdiction against a partner, officer, shareholder, member, manager or owner of the applicant or registrant that seeks registration or is registered in this state; and

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

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

(9) Applicants for renewals of registrations under this section shall undergo a peer review as provided under ORS 673.455, unless the registrant notifies the board that the registrant is exempt from peer review requirements because the registrant does not perform attestation or compilation services in this state. [Amended by 1975 c.440 §13; 1985 c.605 §8; 1993 c.431 §4; 1999 c.322 §12; 2001 c.104 §256; 2001 c.638 §7; 2003 c.8 §1; 2007 c.178 §1; 2007 c.305 §1; 2009 c.531 §4]

673.165 Continuing education; types of programs; hours; waiver; rules. (1) Each holder of a permit issued under ORS 673.150, under rules adopted by the Oregon Board of Accountancy, shall participate in a continuing education program that directly contributes to professional competency.

(2) The education programs shall include any of the following:

(a) Professional development programs and technical meetings of professional associations of public accountants, of certified public accountants or of public accountants and certified public accountants.

(b) University and college courses.

(c) Such professional staff training programs provided by accountancy organizations and other education programs that meet the requirements established by the board by rule.

(3) The board shall determine the hourly value to be assigned to each education program.

(4) The number of hours of continuing education required shall be determined by the board, but shall not exceed 40 hours per year, or the equivalent, for both certified public accountants and public accountants.

(5) The board by rule may adopt conditions under which continuing education requirements may be waived. However, continuing education requirements may not be waived by the board for more than three consecutive years except for military service, retirement, disability, absence from the state or for other instances of individual hardship as determined by the board, or for accountants granted inactive status by the board. The board may, among other things, take into account the accessibility by applicants to continuing education programs and any impediments to interstate practice of public accountancy that may result from differences in continuing education requirements in other states. [1975 c.438 §2; 1981 c.89 §10; 1985 c.461 §3; 1985 c.605 §9; 1999 c.322 §13]

673.170 Disciplinary actions; grounds; investigations; costs. (1) The Oregon Board of Accountancy may take any of the following disciplinary actions:

(a) Revoke, suspend or refuse to issue any certificate issued under ORS 673.040 to 673.075.

(b) Revoke, suspend or refuse to issue any public accountant's license issued under ORS 673.100.

(c) Revoke, suspend, refuse to renew or refuse to issue any permit described in ORS 673.150.

(d) Censure a person authorized to practice public accountancy in this state under ORS 673.153.

(e) Censure the holder of any permit described in ORS 673.150 or authorization described in ORS 673.153.

(f) Revoke, suspend, refuse to renew or refuse to issue any registration issued under ORS 673.160.

(g) Censure the holder of any registration issued under ORS 673.160.

(h) Censure a business organization providing accounting services in this state that is exempt from registering under ORS 673.160 (3).

(2) The board may take any of the actions described in subsection (1) of this section for any one or any combination of the following causes:

(a) Fraud or deceit in obtaining or applying for:

(A) A certificate under ORS 673.040 to 673.075;

(B) A public accountant's license under ORS 673.100;

(C) A registration under ORS 58.345 or 673.160;

(D) A permit under ORS 673.150;

(E) Authorization to practice public accountancy in this state under ORS 673.153; or

(F) Admission to the roster of authorized accountants referred to in ORS 297.670.

(b) Dishonesty, fraud or gross negligence in the practice of public accountancy.

(c) Incompetence in the practice of public accountancy. A holder of a license issued under ORS 673.100, certificate, permit or registration or a person authorized to practice public accountancy in this state under ORS 673.153 is incompetent in the practice of public accountancy if the holder:

(A) Engages or has engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed to a client or the general public; or

(B) Engages or has engaged in conduct that evidences a lack of knowledge or ability to apply principles or skills of the practice of public accountancy, as adopted by the board.

(d) Violation of any of the provisions of ORS 673.010 to 673.457.

(e) Violation of any of the provisions of ORS 297.405 to 297.555.

(f) Violation of any provision of the Code of Professional Conduct or accounting standards adopted by the board under ORS 673.445 or rules adopted by the board under ORS 670.310.

(g) Conduct resulting in a conviction of a felony under the laws of any state, of any foreign jurisdiction or of the United States. However, such conduct may be considered only to the extent permissible under the provisions of ORS 670.280.

(h) Conviction of any crime, an essential element of which is dishonesty, fraud or misrepresentation, under the laws of any state, of any foreign jurisdiction or of the United States.

(i) Conviction of willful failure to pay any tax, file any tax return, keep records or supply information required under the tax laws of any state, of any foreign jurisdiction or of the United States, or conviction of the willful making, rendering, delivery, disclosure, signing or verifying of any false or fraudulent list, return, account, statement or other document, or of supplying any false or fraudulent information, required under the

tax laws of any state, of any foreign jurisdiction or of the United States.

(j) Cancellation, revocation or suspension of, or refusal to renew, authority to practice as a certified public accountant or a public accountant in any state or foreign jurisdiction.

(k) Cancellation, suspension, revocation or refusal to renew by any state, any foreign jurisdiction or any federal agency of the right to practice law, to practice as an enrolled agent before the Internal Revenue Service pursuant to 31 C.F.R. part 10, or to practice under other regulatory law if the cancellation, suspension, revocation or refusal to renew was related to the practice of public accountancy or if dishonesty, fraud or deception was involved.

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

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

(n) Failure to comply with the terms of a consent agreement described in subsection (4) of this section.

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

(p) Issuance of a cease and desist order against the person under subsection (9) of this section.

(3)(a) The board may investigate any alleged violation that may subject a person to discipline under this section.

(b) Investigatory information developed or obtained by the board is confidential and not subject to disclosure by the board unless a notice is issued for a contested case hearing or the matter investigated is finally resolved by board action or a consent order.

(c) Notwithstanding paragraph (b) of this subsection:

(A) The board may disclose to the public that an investigation is being conducted and describe the general nature of the matter being investigated; and

(B) The board shall notify the person being investigated of the investigation.

(4) In lieu of disciplinary actions under subsection (1) of this section, the board may enter into a consent agreement with the holder of any certificate described in ORS

673.040 to 673.075, the holder of any public accountant's license, the holder of any registration described in ORS 673.160, the holder of any permit described in ORS 673.150 or the holder of any authorization described in ORS 673.153, under which the holder agrees to comply with conditions prescribed by the board.

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

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

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

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

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

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

(8) In the case of a registered business organization, the board may take any of the actions described in subsection (1) of this section for any of the following additional causes:

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

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

(9) If the board has reasonable cause to believe that any person has engaged, is engaging or is about to engage in any violation of any provision of ORS 673.010 to 673.457 or any rule or order adopted under ORS 673.010 to 673.457, the board may issue an order,

subject to ORS 673.173, directed to the person, and to any other person directly or indirectly controlling the person, to cease and desist from the violation or threatened violation.

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

(11) If the board takes disciplinary action under this section, the board may assess against the person disciplined costs associated with the disciplinary action. An assessment under this subsection is in addition to, and not in lieu of, any other action taken by the board. Moneys collected under this subsection shall be deposited in the Oregon Board of Accountancy Account established in the General Fund pursuant to ORS 670.335. [Amended by 1971 c.734 §112; 1975 c.438 §4a; 1975 c.440 §14; 1979 c.84 §2; 1981 c.89 §11; 1983 c.255 §3; 1985 c.605 §10; 1987 c.455 §3; 1993 c.431 §5; 1999 c.322 §14; 2001 c.638 §8; 2005 c.39 §1; 2005 c.837 §12; 2009 c.531 §5; 2011 c.40 §1]

673.173 Cease and desist orders. (1) A cease and desist order issued under ORS 673.170 shall include the following:

(a) A statement of the facts constituting the violation.

(b) A provision requiring the person named in the order to cease and desist from the violation.

(c) The effective date of the order.

(d) A notice to the person named in the order of the right to a contested case hearing under ORS chapter 183.

(2) An order under this section shall be effective 30 days after the date of the order unless the person named in the order requests a hearing on the order. [2005 c.39 §3]

673.175 Review of statement or report prepared by accountant required by consent agreement; liability of accountant performing review. If the Oregon Board of Accountancy, as part of a consent agreement entered into under ORS 673.170, requires a certified public accountant or public accountant to obtain review of any financial statement or report prepared by the certified public accountant or public accountant before the statement or report is issued, the review of the statement or report shall be performed by a certified public accountant or public accountant approved by the board to conduct the review. The liability of any certified public accountant or public accountant conducting the review shall be limited to any fees paid to the reviewer for conducting the review. This section shall not

affect the liability of the certified public accountant or public accountant subject to the review. [1989 c.362 §2]

673.180 [Amended by 1971 c.734 §113; 1985 c.605 §11; repealed by 1999 c.322 §44]

673.185 Procedure for disciplinary actions and adoption of rules; continuing authority of board. (1) When the Oregon Board of Accountancy proposes to refuse to issue a certificate under ORS 673.040, license under ORS 673.100, permit under ORS 673.150, or registration under ORS 673.160, proposes to refuse to renew a permit or registration or proposes to revoke or suspend a certificate, registration, license or permit, opportunity for hearing shall be accorded as provided in ORS chapter 183 and chapter 734, Oregon Laws 1971.

(2) When the board institutes or continues a disciplinary action under ORS 673.170, the board is not deprived of its authority to institute or continue the disciplinary action against a licensee or other person subject to the jurisdiction of the board by:

(a) The surrender, retirement or other forfeiture, expiration, lapse or revocation of a license issued by the board; or

(b) The cessation of services offered or provided in this state by a person authorized to practice public accountancy in this state under ORS 673.153.

(3) Adoption of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be in accordance with ORS chapter 183 and chapter 734, Oregon Laws 1971.

(4) The decision of the board under subsection (1) of this section shall be by majority vote. [1971 c.734 §115; 1999 c.322 §15; 2001 c.638 §9; 2009 c.531 §6]

Note: Legislative Counsel has substituted "chapter 734, Oregon Laws 1971," for the words "this 1971 Act" in section 115, chapter 734, Oregon Laws 1971, compiled as 673.185. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 1971 Comparative Section Table located in Volume 20 of ORS.

673.190 [Amended by 1971 c.418 §21; repealed by 1971 c.734 §21]

673.200 [Repealed by 1971 c.734 §21]

673.210 Reissuance of revoked or suspended licenses. (1) The Oregon Board of Accountancy may reissue any license that it has revoked or may modify the suspension of any license that it has suspended.

(2) The power of the board to suspend any authority to provide professional services includes the power to reissue:

(a) At a time certain; or

(b) When the licensee or business organization subject to suspension fulfills condi-

tions for reissuance set by the board. [Amended by 1979 c.84 §3; 1999 c.322 §16]

673.220 Inactive status; conditions; rules; roster; fees. (1) The Oregon Board of Accountancy may grant inactive status to a licensee:

(a) Whose license is not suspended or revoked;

(b) Who is not:

(A) Practicing public accountancy in a business organization required to be registered with the board under ORS 673.160; or

(B) A sole practitioner; and

(c) Who does not perform or offer to perform for a client services involving the use of accounting or auditing skills, including but not limited to issuance of reports on financial statements, management advisory, financial advisory or consulting services, preparation of tax returns or the furnishing of advice on tax matters.

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

(a) Must pay a fee:

(A) In the amount of \$50 for becoming or remaining inactive; and

(B) In an amount determined by the board by rule for becoming active.

(b) Shall place the word "inactive" next to the licensee's name and title on any business card, letterhead or other professional document, other than a license issued by the board.

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

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

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

(6) The provisions of ORS 673.010 to 673.457 apply to licensees granted inactive status. [1985 c.461 §2; 1987 c.455 §4; 1993 c.193 §4; 1999 c.322 §17; 2005 c.39 §6; 2009 c.531 §13; 2011 c.56 §2]

673.310 Words or abbreviations of similar import to certified public accountant, public accountant, C.P.A. or P.A. prohibited. No person, partnership, professional corporation or other business form shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant" or any other title or designation likely to be confused with "certified public accountant" and "public accountant," or any of the abbrevi-

ations "C.A.," "R.A.," or "L.A.," or similar abbreviations likely to be confused with "C.P.A." or "P.A." [Amended by 1991 c.372 §1; 1993 c.431 §6]

(Practice of Accountancy)

673.320 Requirements for providing attestation or compilation services or issuing report; exceptions; use of terms certified public accountant, public accountant, C.P.A. or P.A.; exceptions.

(1)(a) A person or business organization in this state may not provide attestation or compilation services for or issue a report on financial statements of any other person, firm, organization or governmental unit unless the person or business organization:

(A) Holds a permit or registration issued under ORS 673.010 to 673.457;

(B) Is authorized to practice public accountancy in this state under ORS 673.153; or

(C) Is exempt from the registration requirement under ORS 673.160 (3).

(b) The prohibitions of this subsection do not apply to:

(A) An officer, partner, employee, shareholder, member, manager or owner of any firm or organization affixing that person's own signature to any statement or report in reference to the financial affairs of the firm or organization with wording designating the position, title or office that the person holds in the firm or organization;

(B) Any act of a public official or employee in the performance of official duties; or

(C) The performance by any person, other than a licensee or registrant, of other services, including the preparation of tax returns, management advisory services and the preparation of financial statements, without the issuance of reports thereon.

(2) Any transmission of financial statements or information using language as specified in ORS 673.325 or as adopted by the Oregon Board of Accountancy by rule under this subsection is not a report.

(3) A person may not assume or use the title or designation "certified public accountant," or the abbreviation "C.P.A.," or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the person is a certified public accountant, unless the person:

(a) Holds a valid certificate of certified public accountant issued under ORS 673.040 and a permit issued pursuant to ORS 673.150; or

(b) Is authorized to practice public accountancy in this state under ORS 673.153.

(4) A business organization may not assume or use the title or designation "certified public accountant," or the abbreviation "C.P.A.," or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the business organization is composed of certified public accountants unless the business organization:

(a) Is registered under ORS 673.160; or

(b) Is exempt from the registration requirement under ORS 673.160 (3).

(5) A person may not assume or use the title or designation "public accountant," or the abbreviation "P.A.," or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the person is a public accountant unless that person holds a valid license issued under ORS 673.100 and permit issued under ORS 673.150.

(6) A business organization may not assume or use the title or designation "public accountant," or the abbreviation "P.A.," or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the business organization is composed of public accountants, unless the business organization is registered under ORS 673.160.

(7)(a) A person or business organization may not assume or use any title or designation likely to be confused with the titles "certified public accountant" or "public accountant," or any abbreviations likely to be confused with the abbreviations "C.P.A." or "P.A.," unless the person or business organization:

(A) Holds a valid permit or registration issued under ORS 673.010 to 673.457;

(B) Is authorized to practice public accountancy in this state under ORS 673.153; or

(C) Is exempt from the registration requirement under ORS 673.160 (3).

(b) This subsection does not restrict the use of any title, designation or abbreviation awarded by institutions that are recognized by the board by rule.

(8)(a) A person or business organization may not assume or use any title or designation that includes the words "accountant," "auditor" or "accounting" in connection with any other wording, including that of a report, that implies that the person or business organization holds a permit or registration or has special competence as an accountant or auditor, unless the person or business organization:

(A) Holds a permit or registration issued under ORS 673.010 to 673.457;

(B) Is authorized to practice public accountancy in this state under ORS 673.153; or

(C) Is exempt from the registration requirement under ORS 673.160 (3).

(b) This subsection does not prohibit:

(A) A partner, officer, employee, shareholder, member, manager or owner of any firm or organization from affixing that person's own signature to any statement or report in reference to the financial affairs of the firm or organization with wording designating the position, title or office that the person holds in the firm or organization;

(B) Any act of a public official or employee in the performance of official duties; or

(C) Use of the words "accountant" or "accounting" by a person or business offering services that are not restricted to a person or business organization holding a license or permit to practice public accountancy.

(9) A person or business organization holding a permit or registration under ORS 673.010 to 673.457 may not use a professional or business name or designation that is misleading about the legal form of the business organization, about the persons who are partners, officers, shareholders, members, managers or owners of the business organization or about any other matter. The board by rule may specify the appropriate use by licensees of abbreviations and initials in a professional or business name. Notwithstanding any provision of this subsection, the names of one or more former partners, shareholders, members or managers may be included in the name of a registered business organization or its successor.

(10) A person holding a permit issued under ORS 673.150 shall not perform attestation or compilation services in any business organization that does not hold a valid registration under ORS 673.160.

(11) Subsections (1) to (10) of this section apply to a person or business organization holding a certification, license, permit, designation or degree granted in another jurisdiction entitling the holder to engage in the practice of public accountancy or its equivalent in the other jurisdiction unless:

(a) The person is authorized to practice public accountancy in this state under ORS 673.153;

(b) The business organization is exempt from the registration requirement under ORS 673.160 (3); or

(c)(A) The activities of the person or business organization in this state are limited to the provision of professional services to clients in this state, where the clients are

residents of, governments of or business entities in the other jurisdiction in which the person holds the entitlement;

(B) The person or business organization does not provide attestation or compilation services or issue reports regarding the financial statements of any other persons, organizations or governmental units in this state; and

(C) The person or business organization does not hold out to clients, potential clients or the public in this state that the person or business organization is licensed or registered under ORS 673.010 to 673.457 and does not use any title or designation other than the one under which the person or business organization practices in the other jurisdiction, followed by the name of the other jurisdiction and, if applicable, any translation of the title or designation into the English language.

(12) Notwithstanding subsection (11) of this section, a person or business organization holding a certification, license, permit, designation or degree granted in another jurisdiction that entitles the holder to engage in the practice of public accountancy as a certified public accountant in the other jurisdiction may prepare, advise or assist in the preparation of tax returns without obtaining a license or registration under ORS 673.010 to 673.457 and may use the title or designation "certified public accountant" or the abbreviation "C.P.A." in connection with tax services described in this subsection as long as the person or business organization does not have an office in this state. [Amended by 1999 c.322 §18; 2001 c.104 §257; 2001 c.638 §10; 2007 c.178 §2; 2009 c.531 §7]

673.325 Statement allowed without permit or authorization. The following statement signed by a person who does not hold a permit issued under ORS 673.150 or the authorization granted under ORS 673.153 shall not constitute a report under ORS 673.320, so long as the statement is not accompanied by any wording indicating the person is an accountant or auditor or other language prohibited by ORS 673.310 or 673.320:

The accompanying balance sheet of XYZ Company as of (date), and the related statements of income (or retained earnings or cash flow) for the year then ended have been prepared by me (us).

The information presented in these financial statements is the representation of management (owners).

[1997 c.610 §2; 1999 c.322 §18a; 2001 c.104 §258; 2001 c.638 §11]

673.330 [Amended by 1975 c.440 §17; 1985 c.605 §12; 1993 c.431 §7; repealed by 1999 c.322 §44]

673.340 [Amended by 1975 c.440 §18; 1993 c.431 §8; repealed by 1999 c.322 §44]

673.345 Payment or acceptance of commissions; contingent fees; referral fees; rules. (1)(a) A holder of a permit under ORS 673.150 or a business organization registered under ORS 673.160, when the conditions set forth in paragraph (b) of this subsection are present, may not:

(A) Pay a commission to obtain a client;

(B) Accept a commission for a referral to a client of products or services of others; or

(C) Accept a commission for a referral of products or services to be supplied by a client.

(b) The prohibition on commissions set forth in paragraph (a) of this subsection applies only when the holder or business organization, or any of the partners, officers, shareholders, members, managers or owners of the holder or business organization, performs:

(A) Client attestation services; or

(B) A compilation of a financial statement for a client, if the compilation report does not disclose a lack of independence.

(2)(a) A holder of a permit under ORS 673.150 or a business organization registered under ORS 673.160 may:

(A) Perform for a contingent fee any professional service for a client; or

(B) Receive a contingent fee for any professional service performed for a client.

(b) Notwithstanding paragraph (a) of this subsection, a holder or business organization may not accept a contingent fee under paragraph (a) of this subsection from a client for whom the holder or business organization, or any of the partners, officers, shareholders, members, managers or owners of the holder or business organization, performs:

(A) Client attestation services; or

(B) A compilation of a financial statement for the client, if the compilation report does not disclose a lack of independence.

(3) A holder of a permit under ORS 673.150 or a business organization registered under ORS 673.160 may not prepare for a contingent fee an original or amended tax return or a claim for a tax refund for any client.

(4) The prohibitions described in subsections (1) to (3) of this section apply during the period in which the holder of a permit

under ORS 673.150 or a business organization registered under ORS 673.160 is engaged to perform any of the services described in subsection (1)(b) or (2)(b) of this section and during the period covered by any historical financial statements involved in any of the services. The Oregon Board of Accountancy by rule may modify the period when the prohibitions described in subsections (1) to (3) of this section are applicable.

(5)(a) Any holder of a permit under ORS 673.150 or business organization registered under ORS 673.160 that expects or accepts a fee for recommending or referring any product or service to any person or entity, or that pays a referral fee or other valuable consideration to obtain a client, shall disclose the expectation, acceptance or payment to the client.

(b) The board by rule shall specify the manner and form in which disclosures under this subsection shall be made. The rules shall require that disclosures required by this subsection:

(A) Be made in clear and conspicuous writing;

(B) Be made on or before the time at which the recommendation or referral that is the basis of the fee is made, or prior to the time the client retains the licensee to whom the client has been referred and for which a referral fee or other valuable consideration has been paid; and

(C) Be acknowledged by the client in a writing that is signed and dated by the client.

(6) This section does not prohibit:

(a) Payments for the purchase of all or any part of an accountancy practice; or

(b) Retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates. [1989 c.524 §2; 2001 c.313 §2]

673.350 Application of ORS 673.010 to 673.457 to employees of registered business organizations. Nothing contained in ORS 673.010 to 673.457 shall prohibit any person not a certified public accountant or public accountant from serving as an employee of a business organization registered under ORS 673.160. However, such an employee shall not issue any report on an accounting or financial statement over that employee's name. [Amended by 1975 c.440 §19; 1985 c.605 §13; 1993 c.431 §9; 1999 c.322 §20]

673.360 Injunctions. (1) Whenever in the judgment of the Oregon Board of Accountancy any person has engaged, or is about to engage, in any acts or practices that constitute or may constitute a violation of any of the provisions of ORS 673.010 to 673.457, the

board may apply to the court for an order enjoining the acts or practices, and upon a showing by the board that the person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order or other order may be granted by the court without bond.

(2) The board may apply to the court for an injunction against a person for failure to comply with a cease and desist order. [Amended by 1999 c.322 §21; 2005 c.39 §4]

673.370 Acts constituting prima facie evidence that person is authorized to use words certified public accountant or public accountant. (1) The display or uttering by a person of a card, sign, advertisement or other printed, engraved or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or "public accountant" or any abbreviation thereof, shall be prima facie evidence in any action brought under ORS 673.360 or 673.990 that the person whose name is so displayed caused or procured the display or uttering and that the person is an individual or business organization that purports to be authorized to use the words under ORS 673.010 to 673.457.

(2) In any action referred to in subsection (1) of this section, evidence of the commission of a single act prohibited by ORS 673.010 to 673.457 shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct. [Amended by 1985 c.605 §14; 1993 c.431 §10; 1999 c.322 §22]

673.380 Disposition of statements, records, schedules, working papers and memoranda of licensee. (1) All statements, records, schedules, working papers and memoranda made by a licensee under ORS 673.010 to 673.457 or a partner, shareholder, officer, director, member, manager, owner or employee of the licensee incident to or in the course of rendering services to a client, except reports submitted by the licensee to the client and records that are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary.

(2) A statement, record, schedule, working paper or memorandum described in subsection (1) of this section shall not be sold, transferred or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than one or more surviving partners or stockholders, or new partners or stockholders, of the licensee or any combined or merged organization or successor in interest to the licensee.

(3) Nothing in this section prohibits a temporary transfer of working papers or other material necessary in the course of carrying out peer reviews or the disclosure of information under ORS 673.385.

(4) A licensee shall furnish to a client or former client of the licensee, upon request and reasonable notice:

(a) A copy of the licensee's working papers, to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(b) Any accounting or other records belonging to or obtained from or on behalf of the client that the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of the documents of the client when the documents form the basis for work done by the licensee.

(5) Nothing in this section shall require a licensee to keep any working papers beyond the period prescribed in any other applicable statute. [Amended by 1999 c.322 §23]

673.385 Disclosure of client information prohibited; exceptions. (1) Except as provided in subsection (2) of this section or by permission of the client engaging a licensee, or the heirs, successors or personal representatives of the client, a licensee or any partner, officer, shareholder, member, manager, owner or employee of the licensee shall not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee.

(2) Nothing in subsection (1) of this section shall prohibit the disclosure of information:

(a) Required to be disclosed by the standards of the public accountancy profession in reporting on the examination of financial statements;

(b) In court proceedings, in state or federal agency proceedings, in investigations or proceedings under ORS 673.170 or 673.400, in ethical investigations conducted by private professional organizations or in the course of peer reviews;

(c) To the insurance carrier of a licensee; or

(d) Required by the Oregon Board of Accountancy to be disclosed for regulatory purposes of the board. [1999 c.322 §33]

673.390 Solicitation permitted. The Oregon Board of Accountancy shall not adopt a rule prohibiting a licensee from soliciting an engagement to perform professional services. [1981 c.89 §16; 1993 c.431 §11; 1999 c.322 §24]

(Civil Penalties)

673.400 Civil penalties. (1) Any person who violates any provision of ORS 673.010 to 673.457, any rule adopted thereunder or any order of the Oregon Board of Accountancy shall forfeit and pay a civil penalty into the General Fund to be credited to the Oregon Board of Accountancy for its use in carrying out the provisions of this section. The civil penalty shall be in an amount determined by the board of not more than \$5,000 for each offense.

(2) The board may impose a civil penalty as part of a cease and desist order issued under ORS 673.170 (9). The civil penalty may not exceed \$5,000 per violation.

(3) The civil penalty may be recovered by the Attorney General in an action brought in the name of the State of Oregon in any court of appropriate jurisdiction or may be imposed as provided in ORS 183.745.

(4) The provisions of this section are in addition to and not in lieu of any other penalty provided by law. [1981 c.89 §15; 1985 c.605 §15; 1991 c.734 §69; 1999 c.322 §25; 1999 c.414 §1; 2005 c.39 §5; 2009 c.531 §10; 2011 c.40 §2]

(Oregon Board of Accountancy)

673.410 Oregon Board of Accountancy; confirmation; qualifications; enforcement authority. (1) There is created an Oregon Board of Accountancy consisting of seven members.

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

(3) The board members shall be as follows:

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

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

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

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

(4) No person shall be eligible for reappointment after the person's third consec-

utive term until a period at least equal to the appointed term has elapsed.

(5) The authority of the board to enforce the provisions of ORS 673.010 to 673.457 includes the authority to regulate the practice of public accountancy by persons or business organizations holding certificates, licenses, permits or registrations issued under ORS 673.010 to 673.457. [Amended by 1963 c.580 §35; 1971 c.753 §30; 1981 c.89 §12; 1985 c.460 §1; 1987 c.414 §66; 1991 c.372 §2; 1997 c.3 §1; 1999 c.322 §26]

673.415 Furnishing of signature block of income tax return or report by Department of Revenue; use of information; unlawful disclosure. (1) The Department of Revenue may furnish to the Oregon Board of Accountancy a copy of the signature block of an income tax return prepared by any person for another. The signature block may be furnished in instances in which the department or the board has reasonable grounds to believe the person preparing the return prepared it in violation of any provision of ORS 673.010 to 673.457. The signature block shall include the name, address and signature of the person who prepared the income tax return and the date the return was prepared. The department may include with the signature block the name and address of the taxpayer, the number of the tax form prepared, the tax year of the income tax return prepared and the information described in ORS 314.835. The board, and its members, officers and employees, shall use the names and addresses furnished under this section solely in the enforcement of ORS 673.010 to 673.457 and shall not otherwise divulge or make known such information. A violation of this prohibition against disclosure is punishable as provided in ORS 314.991 (2).

(2) The Department of Revenue may furnish to the board a copy of the signature block of a tax return or report permitted or required to be filed with the department and prepared by any person for another. The signature block may be furnished in instances where the department or the board has reasonable grounds to believe the person preparing the return or report prepared it in violation of any provision of ORS 673.010 to 673.457, or any rule adopted thereunder. The signature block shall include the name, address and signature of the person who prepared the tax return or report and the date the return or report was prepared. The department may include with the signature block the name and address of the taxpayer, the number of the tax form or report prepared, the tax year of the return or report prepared and the information described in ORS 314.835. The board, its members, officers and employees, shall use the names and ad-

resses furnished under this section solely in the enforcement of ORS 673.010 to 673.457 and shall not divulge or make known such information. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2). [1985 c.602 §12; 1985 c.605 §19; 1999 c.322 §27a; 1999 c.441 §1; 2009 c.640 §3]

673.420 [Repealed by 1971 c.753 §74]

673.430 [Repealed by 1971 c.753 §74]

673.440 Compilation of laws and rules; availability. The Oregon Board of Accountancy shall produce, at least biennially, a compilation of ORS 673.010 to 673.457 and rules of the board. A copy of the compilation shall be made available to all licensees under ORS 673.010 to 673.457 in the manner the board considers most cost-effective. [Amended by 1975 c.440 §20; 1985 c.605 §17; 1993 c.79 §1; 1993 c.431 §12; 1999 c.322 §28]

673.445 Code of professional conduct; accounting standards; rules. (1) The Oregon Board of Accountancy may adopt a code of professional conduct for certified public accountants and public accountants.

(2) The board shall adopt by rule accounting standards for the provision of attestation or compilation services and require by rule licensees to comply with the accounting standards. The board shall adopt national accounting standards as amended and in effect as of June 24, 2009. If the standards are altered or amended on or after June 24, 2009, the board may adopt the national accounting standards as altered or amended. The board shall adopt the following national accounting standards:

(a) For attestation services:

(A) For audits or other engagements, the Statements on Auditing Standards (SAS);

(B) For reviews of financial statements, the Statements on Standards for Accounting and Review Services (SSARS);

(C) For examinations of prospective financial information, the Statements on Standards for Attestation Engagements (SSAE); and

(D) For engagements of public accounting firms in the preparation and issuance of audit reports required by the Sarbanes-Oxley Act of 2002 (P.L. 107-204, 15 U.S.C. 7201 et seq.) or rules of the Securities and Exchange Commission, the Auditing Standards of the Public Company Accounting Oversight Board.

(b) For compilation services, the Statements on Standards for Accounting and Review Services (SSARS). [1981 c.89 §18; 2009 c.531 §9]

673.450 [Amended by 1969 c.314 §76; repealed by 1971 c.753 §74]

673.455 Peer Review Oversight Committee; alternative peer review programs; review of persons and business organizations performing attestation or compilation services. (1) The Oregon Board of Accountancy shall appoint a Peer Review Oversight Committee. The board may also approve applications for operation of alternative peer review programs such as programs provided by the American Institute of Certified Public Accountants and the National Society of Accountants.

(2) Each holder of a permit under ORS 673.150, each person authorized to practice public accountancy in this state under ORS 673.153, each business organization registered under ORS 673.160, and each business organization exempt from registration requirements under ORS 673.160 (3), that performs attestation or compilation services shall participate in a peer review program described in this section. The peer review shall be conducted by the board or by an alternative peer review program approved by the board under subsection (1) of this section. A person authorized to practice public accountancy in this state under ORS 673.153 who practices as a sole proprietor must meet peer review standards pertaining to business organizations. The person or business organization undergoing the peer review shall bear the cost of the peer review.

(3) The members of the committee serve at the pleasure of the board.

(4) A member of the committee appointed under this section is entitled to expenses as provided in ORS 292.495.

(5) The committee may review:

(a) Any financial statement or report filed with the state or any political subdivision and prepared by a certified public accountant or public accountant;

(b) Any procedure, working paper or supporting document relating to the financial statement or report; and

(c) Any peer review report.

(6) If the client grants permission or if all information identifying the client has been removed, the committee also may review any financial statement not described in subsection (5) of this section and prepared by a licensee, or any procedure, working paper or supporting document relating to the financial statement.

(7) The failure or refusal by any licensee, person authorized to practice public accountancy in this state under ORS 673.153 or business organization authorized to perform professional services in this state under ORS 673.160 to comply with a request for review

or explanation, or both, of such financial statement as set forth in this section constitutes a violation of ORS 673.170 (2)(b). [1981 c.89 §17; 1983 c.254 §1; 1985 c.605 §18; 1989 c.771 §2; 1993 c.193 §1; 1999 c.322 §29; 2001 c.638 §12; 2003 c.4 §1; 2005 c.39 §7; 2009 c.531 §8]

673.457 Review by alternative peer review program; right of Oregon Board of Accountancy to conduct review. A review of the accountancy practice of a holder of a permit under ORS 673.150 that provides compilation services or of a registered business organization by an alternative peer review program approved under ORS 673.455 shall not preclude the Oregon Board of Accountancy from conducting a review of specified aspects of the professional services of any licensee affiliated with the permit holder or business organization or of the permit holder or business organization itself. [1999 c.322 §30; 2001 c.638 §13]

673.460 [Amended by 1967 c.637 §27; repealed by 1971 c.753 §74]

673.465 Authority of Oregon Board of Accountancy to require fingerprints. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Oregon Board of Accountancy may require the fingerprints of a person who:

(1) Is applying for a license, certificate, registration or permit that is issued by the board;

(2) Is applying for renewal of a license, certificate, registration or permit that is issued by the board;

(3) Is under investigation by the board; or

(4)(a)(A) Is employed or applying for employment by the board; or

(B) Provides services or seeks to provide services to the board as a contractor or vendor; and

(b) Is, or will be, working or providing services in a position:

(A) In which the person has or will have access to individual Social Security numbers, dates of birth, credit card information or information that is confidential under state or federal laws, rules or regulations; or

(B) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm or make unlawful use of the information technology systems or the information contained in the systems. [2005 c.730 §53; 2007 c.619 §6; 2009 c.531 §11]

673.470 [Repealed by 1971 c.753 §74]

673.480 [Amended by 1975 c.440 §21; repealed by 1981 c.89 §21]

**TAX CONSULTANTS AND
TAX PREPARERS
(Generally)**

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

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

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

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

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

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

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

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

(6) "Tax consultant" means a person who is licensed under ORS 673.605 to 673.740 to prepare or advise or assist in the preparation of personal income tax returns for another and for valuable consideration.

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

(8) "Tax preparer" means any person who is licensed under ORS 673.605 to 673.740 as a tax preparer. [1973 c.387 §1; 1975 c.464 §2; 1977 c.100 §1; 1985 c.559 §1; 2001 c.136 §9; 2005 c.331 §1]

673.610 Application of ORS 673.605 to 673.740. ORS 673.605 to 673.740 do not apply to:

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

(2) Any attorney at law rendering services in the performance of the duties of an attorney at law.

(3) While acting as such, any fiduciary, or the regular employees thereof, acting on behalf of the fiduciary estate, the testator, trustor, grantor, or beneficiaries thereof.

(4) A certified public accountant who holds an active permit issued by any state, a public accountant holding a valid permit issued under ORS 673.100 or a public accounting firm registered in any state.

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

(6) Any person employed by a local, state or federal governmental agency but only in performance of official duties. [1973 c.387 §3; 1977 c.100 §1; 1999 c.322 §31; 2001 c.638 §14; 2007 c.178 §3]

673.615 Prohibited acts; preparation of tax returns; refund anticipation loans. Except as otherwise provided in ORS 673.605 to 673.740:

(1) A person may not prepare or advise or assist in the preparation of personal income tax returns for another and for valuable consideration or represent that the person is so engaged unless the person is licensed as a tax consultant under ORS 673.605 to 673.740.

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

(3) A person may not be a facilitator of a refund anticipation loan without first being issued a license as a tax consultant or tax preparer under ORS 673.640. [1973 c.387 §2; 1975 c.464 §6; 1977 c.100 §4; 2005 c.331 §5]

(Licensing)

673.625 Qualifications for tax consultant and tax preparer; examination. (1) Every applicant for a license as a tax consultant and every applicant for licensing as a tax preparer must:

- (a) Be 18 years of age or older;
- (b) Possess a high school diploma or have passed an equivalency examination;
- (c) Present evidence satisfactory to the State Board of Tax Practitioners that the applicant has successfully completed at least 80 hours in basic personal income tax law, theory and practice at a school training session or educational institution approved by the board; and
- (d) Possess a preparer tax identification number issued by the Internal Revenue Service.

(2) In addition to the requirements of subsection (1) of this section, every applicant for licensing as a tax preparer must pass to the satisfaction of the board an examination. The examination must be constructed in a manner that in the judgment of the board measures the applicant's knowledge of Oregon and federal personal income tax law, theory and practice.

(3) In addition to the requirements of subsection (1) of this section, every applicant for licensing as a tax consultant must:

- (a) Present evidence satisfactory to the board of active employment, as described in ORS 673.615 (2), as a tax preparer or employment in this or another state in a capacity that is, in the judgment of the board equivalent to that of a tax preparer or tax consultant, for not less than a cumulative total of 1,100 hours during at least two of the last five years. The board shall consider certification by a tax consultant or person described in ORS 673.610 (2) or (4) that the applicant was employed as a tax preparer under supervision for the period indicated in the certificate to be satisfactory evidence of the applicant's employment as a tax preparer for the period indicated. If an applicant has worked less than a cumulative total of 1,100 hours in at least two of the last five years, the board may consider the number of hours employed, the number of years employed, the number of tax returns prepared and whether the work involved contributed directly to the professional competence of the individual in determining if a tax preparer or tax consultant has met the work experience requirement.

(b) Pass to the satisfaction of the board an examination that is constructed in a manner that in the judgment of the board measures the applicant's knowledge of Oregon and federal personal income tax law,

theory and practice. The examination for a tax consultant's license must be of a more exacting nature and require higher standards of knowledge of personal income tax law, theory and practice than the examination for a tax preparer's license.

(4) If, in the judgment of the board, an applicant has, in combination, the education and experience to qualify for a tax consultant's or preparer's license, but does not meet or cannot present evidence of strict compliance with the requirements of subsection (1)(c) or subsection (3)(a) of this section, the board may allow some of the applicant's education or experience to substitute one for the other. However, this subsection does not allow a waiver of, or substitution for, any qualifications needed for a tax consultant's or preparer's license other than those described in subsection (1)(c) or subsection (3)(a) of this section. [1973 c.387 §4; 1975 c.464 §7; 1977 c.100 §5; 1985 c.559 §2; 1989 c.352 §1; 2011 c.95 §§1,2]

673.630 Tax consultant's application.

Every person desiring to be licensed as a tax consultant shall apply in writing to the State Board of Tax Practitioners. The application forms shall be approved by the board. Each application shall include or be accompanied by evidence, satisfactory to the board, that the applicant meets the qualifications prescribed in ORS 673.625. Each application shall be accompanied by the examination fee as provided under ORS 673.685. [1973 c.387 §5; 1975 c.464 §8; 1985 c.559 §3; 2005 c.21 §3]

673.635 Tax preparer's application.

Every person desiring to be licensed as a tax preparer shall apply in writing to the State Board of Tax Practitioners. The application forms shall be approved by the board. Each application shall include or be accompanied by evidence, satisfactory to the board, that the applicant meets the qualifications prescribed in ORS 673.625. The application shall be accompanied by the examination fee as provided under ORS 673.685. [1973 c.387 §6; 1985 c.559 §4; 2005 c.21 §4]

673.637 Licensing of person licensed in another state or enrolled to practice before Internal Revenue Service; requirements; fees. (1) The State Board of Tax Practitioners may issue a license to an applicant for a license as a tax consultant or as a tax preparer who:

(a) Presents evidence satisfactory to the board that the applicant is licensed as a tax consultant or preparer in a state that has requirements for licensing substantially similar to the requirements for licensing in this state; and

(b) Has passed to the satisfaction of the board an examination covering Oregon personal income tax law, theory and practice, the provisions of ORS 673.605 to 673.740 and

the code of professional conduct prescribed by the board.

(2) Notwithstanding ORS 673.625 (1) and (3), but as otherwise provided in ORS 673.605 to 673.740, the board shall license as a tax consultant any person who is, on the date of the application for a tax consultant's license, enrolled to practice before the Internal Revenue Service pursuant to 31 C.F.R. part 10 if the person has passed to the satisfaction of the board an examination covering Oregon personal income tax law, theory and practice, the provisions of ORS 673.605 to 673.740 and the code of professional conduct prescribed by the board.

(3) Except as otherwise provided in this section, an examination is not required for licensing under this section.

(4) Any person desiring to be licensed under this section shall make written application to the board and shall pay to the board at the time required by the board the examination and license fees provided by rule of the board. [1975 c.464 §16; subsection (2) enacted as 1977 c.100 §3; 1983 c.110 §5; 2011 c.95 §3]

673.640 Issuance of licenses. (1) The State Board of Tax Practitioners shall license as a tax consultant or a tax preparer each applicant who:

(a) Demonstrates to the satisfaction of the board fitness for a license;

(b) Pays to the board an initial license fee as provided under ORS 673.685; and

(c) Has no disciplinary actions pending before the board.

(2) The board shall issue evidence of licensing to each person licensed. [1973 c.387 §7; 1975 c.464 §11; 1985 c.559 §5; 2001 c.136 §6]

673.643 Preparation of tax returns by corporation, firm or partnership; requirements; liability; prohibitions. (1) A sole proprietorship, partnership, corporation or other legal entity, through individuals who are authorized within this state to render those services, may engage in the preparation, or in advising or assisting in the preparation of personal income tax returns for another and for valuable consideration and represent that it is so engaged if the entity:

(a) Registers annually with the State Board of Tax Practitioners in the manner prescribed by the board;

(b) Designates and reports in the manner prescribed by the board the authorized individual or individuals who are responsible for the tax return preparation activities and decisions of the entity; and

(c) Complies with ORS 673.605 to 673.740 and the rules adopted by the board.

(2) A sole proprietorship, partnership, corporation or other legal entity shall not be relieved of responsibility for the conduct or acts of its agents, employees or officers by reason of its compliance with subsection (1) of this section, nor shall a licensed tax consultant be relieved of responsibility for professional services performed by reason of employment by or relationship with such sole proprietorship, partnership, corporation or other legal entity.

(3) A sole proprietorship, partnership, corporation or other legal entity shall not engage in tax return preparation activities under subsection (1) of this section if the tax consultant, or the proprietor, a partner, a principal, an officer, director or manager, or a shareholder of the entity, is:

(a) An individual whose license as a tax consultant or tax preparer under ORS 673.605 to 673.740 is permanently revoked.

(b) An individual to whom the board has refused to issue or renew a license on the basis of dishonest conduct or conduct involving tax preparation.

(c) An individual whose occupational license, permit or registration has been revoked or refused by another state regulatory agency or the Internal Revenue Service for dishonest conduct or conduct involving tax preparation.

(d) A sole proprietorship, partnership, corporation or other legal entity prohibited from engaging in tax return preparation activities under subsection (1) of this section by reason of this subsection.

(4) The shareholders referred to in subsection (3) of this section are:

(a) If the corporation is publicly traded, a shareholder that owns more than 10 percent in value of the outstanding stock of the corporation.

(b) If the corporation is not publicly traded, any shareholder.

(5) For purposes of subsections (3) and (4) of this section, "publicly traded" means traded on an established securities market.

(6) If a sole proprietorship, partnership, corporation or other legal entity must sever a relationship in order that it may engage or may continue to engage in tax preparation activities in compliance with this section, the entity shall be allowed a reasonable time to sever the relationship. Except as provided under subsection (7) of this section, the time allowed to sever a relationship shall not exceed 180 days after the board gives notice that the severance is required. The notice shall include a statement affording an opportunity for hearing on the issue of severance. The notice and all proceedings conducted

under this section shall be in accordance with ORS chapter 183.

(7) If a hearing is requested under subsection (6) of this section, or if an appeal is taken of the board's order following hearing, the board or court may allow additional time for the affected parties to comply with any order requiring severance. [1975 c.464 §10; 1989 c.351 §1; 1991 c.138 §1]

673.645 Renewal of licenses; restoration of lapsed license; rules. (1) Any licensed tax consultant and tax preparer shall apply to the State Board of Tax Practitioners and pay the fee for a renewal of the license. The application shall be made annually, on or before a date established by the board by rule. The application shall be accompanied by evidence satisfactory to the board that the person applying for renewal of the license has completed the continuing education required by ORS 673.655.

(2) At least 30 days before the annual renewal date, the board shall notify the licensee that the annual renewal application and fee are due.

(3) Any license that is not renewed within 15 days after the annual renewal date shall lapse.

(4) The board may restore any lapsed license upon payment to the board of all past unpaid renewal fees and a fee for restoration of a lapsed license that shall be provided under ORS 673.685 and upon proof of compliance with any continuing education requirements that may be adopted by the board by rule. [1973 c.387 §8; 1975 c.464 §12; 1977 c.873 §7; 1985 c.559 §6; 1999 c.411 §1; 2003 c.29 §1]

673.650 [1973 c.387 §9; repealed by 1975 c.464 §26]

673.651 [1975 c.464 §14; repealed by 1977 c.842 §21 and 1977 c.873 §26]

673.655 Continuing education requirement; waiver. (1) Except as provided in subsection (2) of this section, upon annual renewal of a tax preparer's or tax consultant's license, each person licensed as a tax consultant or tax preparer under ORS 673.605 to 673.740 shall submit evidence satisfactory to the State Board of Tax Practitioners that the person has completed at least 30 hours of instruction or seminar in subjects related to income tax preparation since the preceding license renewal date. If the board does not receive evidence that the continuing education requirement has been completed by the applicant, the board shall not renew the applicant's active license.

(2) The board may exempt a tax consultant or tax preparer from the continuing education required by this section upon application showing evidence satisfactory to the board of inability to comply because of unusual or extenuating circumstances. [1973 c.387 §10; 1975 c.464 §17; 1985 c.559 §7]

673.660 Licenses to be displayed. Each tax consultant and preparer shall display the evidence of licensing issued to the tax consultant and preparer in accordance with rules adopted by the State Board of Tax Practitioners. [1973 c.387 §11; 1975 c.464 §18]

673.663 Use of title "tax consultant."

(1) An individual may not assume or use the title or designation "tax consultant" unless the person is licensed as a tax consultant under ORS 673.605 to 673.740.

(2) A sole proprietorship, partnership, corporation or other legal entity may not assume or use the title or designation "tax consultant" unless the entity is in compliance with ORS 673.643. [1991 c.297 §2]

673.665 [1973 c.387 §12; repealed by 1975 c.464 §26]

673.667 Inactive status; application; renewal; reactivation; revocation or suspension; prohibition; rules. (1) Whenever a tax consultant or tax preparer ceases to engage in the preparation or in advising or assisting in the preparation of personal income tax returns, the consultant or preparer may apply to the State Board of Tax Practitioners for inactive status. A license that is granted inactive status may be renewed upon payment of the license fee as provided under ORS 673.685. No proof that the continuing education required by ORS 673.655 has been fulfilled need be presented to the board for renewal of an inactive license.

(2) A license in inactive status may be reactivated upon payment of a reactivation fee, that shall be provided under ORS 673.685, and upon proof of compliance with such continuing education requirements as may be adopted by the board by rule.

(3) A license in inactive status may be revoked or suspended by the board when conditions exist under which the board would have been authorized to revoke or suspend the license if it were active.

(4) No person whose license is inactive shall act as a tax consultant or as a tax preparer. [1975 c.464 §25; 1985 c.559 §8]

673.670 [1973 c.387 §13; repealed by 1975 c.464 §26]

673.675 [1973 c.387 §14; repealed by 1975 c.464 §26]

673.680 [1973 c.387 §15; repealed by 1975 c.464 §26]

673.685 Fees; rules. (1) The State Board of Tax Practitioners shall adopt by rule fees for:

(a) Application for examination for a tax consultant's license.

(b) Application for examination for a tax preparer's license.

(c) Issuance or renewal of a tax consultant's license.

(d) Issuance or renewal of a tax preparer's license.

(e) Issuance or renewal of a tax consultant's inactive license.

(f) Issuance or renewal of a tax preparer's inactive license.

(g) Reactivation of a tax consultant's inactive license or reactivation of a tax preparer's inactive license.

(h) Restoration of lapsed license.

(i) Issuance or replacement of a duplicate license.

(j) Issuance of a replacement or duplicate tax consultant certificate.

(k) Registration or registration renewal for a sole proprietorship, partnership, corporation or other legal entity.

(L) Issuance or renewal of a combined tax consultant's or tax preparer's license and registration for a sole proprietorship, partnership, corporation or other legal entity. Eligibility for a combined license shall be determined under rules adopted by the board.

(m) Annual registration of a branch office of a sole proprietorship, partnership, corporation or other legal entity.

(2) The fees established by the State Board of Tax Practitioners under this section are subject to the prior approval of the Oregon Department of Administrative Services and, if their adoption occurs between regular sessions of the Legislative Assembly, a report to the Emergency Board. The fees may not exceed the cost of administering the regulatory program of the State Board of Tax Practitioners pertaining to the purposes for which the fees are established, as authorized by the Legislative Assembly within the board's budget, as that budget may be modified by the Emergency Board. [1973 c.387 §16; 1975 c.464 §19; 1985 c.377 §2; 1987 c.59 §3; 1991 c.138 §2; 1991 c.187 §8; 1997 c.260 §1; 2001 c.84 §1; 2007 c.273 §1]

673.690 Tax consultant's records. (1) Except as provided in this section, every person licensed as a tax consultant shall keep records of all personal income tax returns prepared by the person, or in the preparation of which advice or assistance of the person has been given. The records of the returns shall be kept for a period of not less than four years after the date of the preparation, advice or assistance.

(2) If a tax consultant is employed by another tax consultant, the records shall be kept by the employing tax consultant.

(3) If a tax consultant who has been designated as responsible for the tax return preparation activities and decisions of a partnership, corporation or other legal entity ceases to be connected with the partnership, corporation or other legal entity, the records shall be retained by the partnership, corpo-

ration or other legal entity. [1973 c.387 §17; 1975 c.464 §20; 2001 c.136 §7]

673.695 Secretary of State as agent for service of process against nonresident; fee.

(1) The acceptance by a nonresident of a license as tax consultant or a tax preparer shall be considered equivalent to the appointment by the nonresident of the Secretary of State as attorney upon whom may be served any summons, process or pleading in any action or suit against the nonresident in any court of this state, arising out of any business done by the nonresident as a tax consultant or tax preparer in this state.

(2) The acceptance of a license shall be considered equivalent to any agreement by the nonresident that any summons, process or pleading in the action or suit may be made by leaving a copy thereof, with a fee of \$2, with the Office of Secretary of State. Such service shall be sufficient and valid personal service upon the defendant if notice of such service and a copy of the summons, process or pleading is sent forthwith by registered mail or by certified mail with return receipt by the plaintiff or the attorney of the plaintiff to the defendant at the most recent address furnished to the State Board of Tax Practitioners by the nonresident tax consultant or tax preparer or to the last-known address. An affidavit of the plaintiff or the attorney of the plaintiff of the mailing shall be appended to the summons, process or pleading and entered as a part of the return thereof. However, personal service outside of the state in accordance with the statute relating to personal service of summons outside of the state shall relieve the plaintiff from such mailing requirement.

(3) Any summons received or provided in this section shall require the defendant to appear and answer the complaint within four weeks after receipt thereof by the Secretary of State. The court in which the action or suit is brought may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action. The fee of \$2 paid by the plaintiff to the Secretary of State shall be taxed as costs in favor of the plaintiff if the plaintiff prevails in the action. The Secretary of State shall keep a record of each summons, process or pleading served upon the Secretary of State under this section, showing the day and hour of service. [1973 c.387 §18; 1987 c.414 §67; 1991 c.249 §61]

673.697 Continuing authority of board.

The lapsing, suspension or revocation of a license by operation of law or by order of the State Board of Tax Practitioners or by decision of a court of law, or the voluntary surrender of a license by a licensee, shall not deprive the board of jurisdiction to proceed

with any investigation of or any action or disciplinary proceeding against the licensee, or to revise or render null and void an order suspending or revoking the license. [1995 c.239 §2]

673.700 Disciplinary action; grounds.

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

(1) Violation of ORS 673.615, 673.705 or 673.712.

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

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

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

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

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

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

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

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

(9) Cancellation, revocation or refusal to renew by any state or federal agency of, or entry of a consent order, stipulated agreement or judgment related to, the person's authority to practice law, to practice as a certified public accountant or a public accountant or to practice under other regulatory law in any state, or to practice as an

enrolled agent, if the grounds for the cancellation, revocation, refusal to renew, consent order, stipulated agreement or judgment were related to income tax preparation or if dishonesty, fraud or deception was involved.

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

(a) Were related to income tax preparation; or

(b) Involved dishonesty, fraud or deception. [1973 c.387 §20; 1975 c.464 §21; 1983 c.110 §6; 1985 c.559 §9; 2001 c.136 §1; 2005 c.331 §6]

673.705 Prohibited acts. It is unlawful for any person to:

(1) Obtain or attempt to obtain a license as a tax consultant or a tax preparer by any fraudulent representation.

(2) Represent that the person is licensed as a tax consultant or a tax preparer if the person is not so licensed.

(3) Present or attempt to use the license of another person.

(4) Attempt to use a suspended, lapsed or revoked license.

(5) Falsely impersonate a licensee under ORS 673.605 to 673.740.

(6) Engage in dishonesty, fraud or deception relating to the preparation of personal income tax returns.

(7) Violate a position of trust, including a position of trust outside the licensee's professional practice. [1973 c.387 §19; 1975 c.464 §22; 1983 c.110 §7; 2001 c.136 §2; 2005 c.21 §5]

673.710 Names of tax preparers and other information furnished by Department of Revenue; use of information.

(1) If a personal income tax return is prepared by someone other than the taxpayer, the Department of Revenue may furnish to the State Board of Tax Practitioners a copy of that portion of the return that shows:

(a) The name, business name and address of the preparer;

(b) The date of preparation; and

(c) The signature of the preparer.

(2) In instances where the department or the board has reasonable grounds to believe the person preparing the return prepared it in violation of ORS 673.605 to 673.740, the

department may furnish the following additional information:

- (a) The name and address of the taxpayer;
- (b) The identifying number used on any form, report or schedule filed as part of the return;
- (c) The tax year reported on the return, or any portion of the return; and
- (d) The information described in ORS 314.835.

(3) The board, its members, officers and employees, shall use the names and addresses furnished under this section solely in the enforcement of ORS 673.605 to 673.740 and shall not otherwise divulge or make known such information. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2). [1975 c.425 §2; 1979 c.690 §15; 1999 c.106 §1; 2009 c.640 §4]

(Refund Anticipation Loans)

673.712 Refund anticipation loan disclosures. (1) Prior to a taxpayer's completion of an application for a refund anticipation loan, the facilitator shall clearly disclose in writing to the taxpayer on a form separate from the application:

(a) A listing or table of refund anticipation loan fees and the annual percentage rates, as defined by the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., charged by the facilitator or lender for three or more representative refund anticipation loan amounts. For each loan amount, the schedule shall list separately the amount of each fee and the amount of interest charged by the facilitator or lender and the total amount of fees and interest charged.

(b) That the refund anticipation loan is a loan and not the taxpayer's actual personal income tax refund.

(c) That electronic filing of the taxpayer's tax return is available without applying for a refund anticipation loan.

(d) The average time announced by the appropriate taxing authority within which the taxpayer can expect to receive a refund if the taxpayer does not obtain a refund anticipation loan and the taxpayer's return is filed:

(A) Electronically and the refund is directly deposited in the taxpayer's bank account; or

(B) By mail and the refund is directly deposited in the taxpayer's bank account or mailed to the taxpayer.

(e) That the Internal Revenue Service does not guarantee:

(A) That the full amount of the anticipated refund will be paid; or

(B) A specific date on which the taxpayer will receive the refund.

(f) That the taxpayer is responsible for repayment of the loan and related fees in the event the tax refund is not paid or is not paid in full.

(g) The estimated time within which the proceeds of the loan will be paid to the taxpayer if the loan is approved.

(h) The fees charged by the facilitator or lender if the refund anticipation loan is not approved.

(2) Prior to entering into a refund anticipation loan agreement, the facilitator shall clearly disclose to the taxpayer:

(a) The estimated total fees for the loan.

(b) The estimated annual percentage rate, as defined by the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., for the loan. [2005 c.331 §3]

673.715 Local government regulation of refund anticipation loans prohibited; preemption. (1) A unit of a local government, as defined in ORS 174.116, may not adopt any rule, regulation, code or ordinance to restrict or limit any requirements under ORS 673.605 to 673.740 relating to refund anticipation loans.

(2) ORS 673.605 to 673.740 supersede and preempt any rule, regulation, code or ordinance of any unit of a local government, as defined in ORS 174.116, relating to refund anticipation loans. [2005 c.331 §4]

(State Board of Tax Practitioners)

673.725 State Board of Tax Practitioners; term; qualification. (1) There is created a State Board of Tax Practitioners. The board shall consist of seven members who shall be appointed by the Governor.

(2) The term of office for each member shall be three years and no member shall be eligible for appointment to more than three terms of office, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor or reappoint the incumbent member if the incumbent member is eligible for reappointment. The Governor shall fill vacancies on the board as they may occur and a member appointed to fill a vacancy shall serve the unexpired term of the predecessor.

(3)(a) Of the members of the board six shall be licensed as tax consultants under ORS 673.605 to 673.740. Each of the six shall have been engaged in the preparation of personal income tax returns for another and for

a valuable consideration for no less than five years.

(b) One member of the board shall be a member of the general public.

(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution. [1973 c.387 §21; 1983 c.110 §2; 1987 c.414 §68; 1993 c.744 §249a; 1997 c.21 §3; 2001 c.136 §8]

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

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

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

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

(A) At a time certain; or

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

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

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

necessary by the board for the investigation or prosecution of an alleged violation of ORS 673.605 to 673.740, or any rule or order adopted thereunder. For purposes of this subsection, personal financial information includes but is not limited to tax returns.

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

(5) To issue an order directed to a person to cease and desist from any violation or threatened violation of ORS 673.615, 673.643, 673.705 or 673.712, or any rule or order adopted thereunder, if the board has reason to believe that a person has been engaged, is engaging or is about to engage in any violation of ORS 673.615, 673.643, 673.705 or 673.712, or any rule or order adopted thereunder.

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

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

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

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

(10) To adopt rules pursuant to ORS chapter 183 necessary to carry out the provisions of ORS 673.605 to 673.740. [1973 c.387 §22; 1975 c.464 §23; 1983 c.110 §8; 1985 c.559 §10; 2001 c.136 §3; 2005 c.331 §7; 2007 c.273 §2]

673.732 Cease and desist orders. (1) Except as provided in ORS 183.745, upon entry of a cease and desist order under ORS 673.605 to 673.740, the State Board of Tax Practitioners shall promptly give appropriate notice of the cease and desist order as provided in this section. The notice shall state that a hearing will be held on the cease and desist order if written demand for a hearing is filed with the board within 20 days after the date of service of the cease and desist order.

(2) If timely demand for a hearing is filed under subsection (1) of this section, the board shall hold a contested case hearing on the cease and desist order as provided by ORS chapter 183. In the event of a contested case hearing, the civil penalties assessed in the cease and desist order are suspended until issuance of a final order, but the remaining provisions of the cease and desist order shall remain in full force and effect until issuance of the final order. A person is not entitled to judicial review of a cease and desist order unless the person has made a timely demand for a hearing.

(3) After the hearing, the board shall enter a final order vacating, modifying or affirming the cease and desist order.

(4) A person aggrieved by a cease and desist order of the board that was the subject of a timely application for hearing shall be entitled to judicial review of the cease and desist order under ORS chapter 183.

(5) A judgment of a reviewing court under ORS chapter 183 does not bar the board from thereafter vacating or modifying a cease and desist order involved in the proceeding for review, or entering any new order, for a proper cause that was not decided by the reviewing court.

(6) The board may file an injunction against a person for failure to comply with a cease and desist order. [2001 c.136 §5; 2003 c.576 §540]

Note: 673.732 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 673 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

673.735 Civil penalties. (1) Any person who violates any provision of ORS 673.605 to 673.740, any rule adopted thereunder or any order of the State Board of Tax Practitioners shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of not more than \$5,000 for each violation. The amount of penalty shall be determined by the board after taking into consideration the gravity of the violation, the previous record of the violator in complying, or in failing to comply, with the provisions of ORS 673.605 to 673.740 or the rules adopted thereunder, and other considerations as the board considers appropriate.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All penalties recovered under this section shall be paid into the General Fund to be credited to the board for use in carrying out the provisions of this section. [1973 c.387 §24; 1983 c.110 §9; 1983 c.696 §26; 1991 c.734 §70; 2001 c.136 §4]

673.740 Educational program as remedy. Under appropriate circumstances, as a further remedy in a proceeding which may or may not result in imposition of a civil penalty under ORS 673.735 or in cancellation, suspension, revocation or refusal to renew a tax consultant's or preparer's license, the State Board of Tax Practitioners may impose the requirement of successful participation and completion of an educational program specified by the board as correction or as a condition to reissuance, restoration, retention or renewal of the license. [1993 c.191 §2]

EXCHANGE FACILITATORS

673.800 Definitions for ORS 673.800 to 673.825. As used in ORS 673.800 to 673.825:

(1) "Affiliate" means a person that controls, is controlled by or is under common control with another person, directly or indirectly.

(2) "Client" means a taxpayer that enters into an agreement with an exchange facilitator for services.

(3) "Exchange accommodation titleholder" means an exchange accommodation titleholder as described in section 4.02(1) of Internal Revenue Service Revenue Procedure 2000-37.

(4)(a) "Exchange facilitator" means a person that:

(A) Is engaged in a business in which, for a fee, the person enters into agreements with clients for the purpose of performing services as:

- (i) A qualified intermediary;
- (ii) An exchange accommodation titleholder;
- (iii) A trustee of a qualified trust; or
- (iv) An escrow holder of a qualified escrow account; or

(B) Maintains an office in this state for the purpose of soliciting or engaging in business of the type described in subparagraph (A) of this paragraph.

(b) "Exchange facilitator" does not include:

(A) A taxpayer or a disqualified person, as defined in 26 C.F.R. 1.1031(k)-1(k), that is seeking to qualify for the nonrecognition provisions of 26 U.S.C. 1031.

(B) A financial institution, as defined in ORS 706.008, unless the financial institution is engaged in a business in which, for a fee, the financial institution enters into agreements with clients for the purpose of performing services as a qualified intermediary or an exchange accommodation titleholder, whether or not the financial institution is:

(i) Acting as a depository for exchange funds;

(ii) Acting solely as a trustee of a qualified trust, notwithstanding the provisions of paragraph (a)(A)(iii) of this subsection; or

(iii) Acting solely as an escrow holder of a qualified escrow account, notwithstanding the provisions of paragraph (a)(A)(iv) of this subsection.

(C) An escrow agent, as defined in ORS 696.505, title insurance company or other person unless the person is engaged in a business in which, for a fee, the person enters into agreements with clients for the purpose of performing services as a qualified intermediary or an exchange accommodation titleholder, whether or not the person is:

(i) Acting solely as a trustee of a qualified trust, notwithstanding the provisions of paragraph (a)(A)(iii) of this subsection; or

(ii) Acting solely as an escrow holder of a qualified escrow account, notwithstanding the provisions of paragraph (a)(A)(iv) of this subsection.

(D) A person that advertises and teaches seminars or classes or that otherwise makes presentations for the primary purpose of educating professionals in the field of taxation about tax-deferred exchanges or training persons to act as exchange facilitators.

(E) A qualified intermediary that holds funds from the disposition of property located outside this state and used in an exchange under 26 U.S.C. 1031, notwithstanding the provisions of paragraph (a)(A)(i) of this subsection, or an exchange accommodation titleholder that does not hold title to property located in this state.

(F) An entity that an exchange facilitator wholly owns and uses to take title to property in this state.

(5)(a) "Exchange funds" means moneys, property, instruments or other consideration an exchange facilitator receives from or on behalf of a client in connection with an exchange conducted under 26 U.S.C. 1031.

(b) "Exchange funds" does not include moneys or other consideration the exchange facilitator receives from a client as compensation for the exchange facilitator's services.

(6) "Fee" means compensation of any nature, direct or indirect, monetary or in-kind, that a person or another person related to the person in the manner described in 26 U.S.C. 267(b) or 26 U.S.C. 707(b) receives for services related or incidental to the exchange of like-kind property under 26 U.S.C. 1031.

(7) "Financial institution" has the meaning given that term in ORS 706.008.

(8) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust or other legal entity and the agents and employees of the entity.

(9) "Prudent investor standard" means an exercise of judgment and care under circumstances then prevailing that investors of prudence, discretion and intelligence exercise in the management of the investors' own affairs not in regard to speculation but in regard to the permanent disposition of the investors' funds when considering probable income and the probable safety of the investors' capital.

(10) "Qualified escrow account" has the meaning given that term in 26 C.F.R. 1.1031(k)-1(g)(3)(ii).

(11) "Qualified exchange accommodation agreement" means a qualified exchange accommodation agreement as described in section 4.02(3) of Internal Revenue Service Revenue Procedure 2000-37.

(12) "Qualified intermediary" has the meaning given that term in 26 C.F.R. 1.1031(k)-1(g)(4)(iii).

(13) "Qualified trust" has the meaning given that term in 26 C.F.R. 1.1031(k)-1(g)(3)(iii).

(14) "Relinquished property" means relinquished property as described in 26 C.F.R. 1.1031(k)-1(a).

(15) "Replacement property" means replacement property as described in 26 C.F.R. 1.1031(k)-1(a). [2013 c.392 §1]

673.805 Notice required upon change in control. (1) When a change in control occurs for an exchange facilitator, the exchange facilitator within 10 business days after the change in control becomes effective shall notify the exchange facilitator's clients with relinquished property located in this state or for which the exchange facilitator holds replacement property under a qualified exchange accommodation agreement. If the exchange facilitator is a publicly traded company and remains a publicly traded company after the change in control, the publicly traded company need not notify existing clients about the change in control.

(2) The notice required under subsection (1) of this section must:

(a) Be delivered by hand, first-class mail, overnight mail, electronic mail or facsimile;

(b) Be posted on any website the exchange facilitator maintains for 90 days after the effective date of the change in control; and

(c) Set forth the name, address, telephone number and other contact information for

the person that assumes control of the exchange facilitator.

(3) For purposes of this section, a change in control for an exchange facilitator occurs if more than 50 percent of the exchange facilitator's assets or ownership interests transfer, directly or indirectly, to another person within 12 months. [2013 c.392 §2]

673.810 Duty to maintain bonds or deposits; duty to maintain insurance or deposits. (1) An exchange facilitator shall at all times:

(a) Maintain one or more fidelity bonds that are issued by a corporate surety authorized to do business in this state in an aggregate amount of not less than \$1 million;

(b) Deposit with a financial institution in an interest-bearing deposit account or money market account, the interest of which accrues to the exchange facilitator, moneys, securities or irrevocable letters of credit issued by corporate sureties authorized to do business in this state in an aggregate amount of not less than \$1 million;

(c) Deposit with a financial institution funds used in an exchange under 26 U.S.C. 1031 in a qualified escrow account or a qualified trust and provide that withdrawals from the account or trust require both the exchange facilitator's and the client's written authorization; or

(d) Be listed as a named insured on one or more fidelity bonds that are issued by a corporate surety authorized to do business in this state in an aggregate amount of not less than \$1 million.

(2) An exchange facilitator shall at all times:

(a) Maintain errors and omissions insurance issued by an authorized insurer, as defined in ORS 731.066, in an amount not less than \$250,000;

(b) Deposit with a financial institution in an interest-bearing deposit account or money market account, the interest of which accrues to the exchange facilitator, moneys, securities or irrevocable letters of credit issued by corporate sureties authorized to do business in this state in an aggregate amount of not less than \$250,000; or

(c) Be listed as a named insured in an errors and omissions insurance policy issued by an authorized insurer, as defined in ORS 731.066, in an amount of not less than \$250,000.

(3) An exchange facilitator may maintain bonds or deposits as provided in subsection (1) of this section or insurance or deposits as provided in subsection (2) of this section

in amounts in excess of the minimum amounts specified in subsections (1) and (2) of this section. [2013 c.392 §3]

673.815 Custodial duties; standards. (1) An exchange facilitator shall act as a custodian for all exchange funds and shall invest the exchange funds only in investments that:

(a) Meet a prudent investor standard; and

(b) Satisfy the investment goals of liquidity and preservation of principal.

(2) An exchange facilitator fails to invest exchange funds according to a prudent investor standard if:

(a) The exchange facilitator knowingly commingles exchange funds with the exchange facilitator's operating accounts; or

(b) Exchange funds are loaned or otherwise transferred to a person or entity, other than a financial institution, that is an affiliate of or otherwise related to the exchange facilitator, unless the exchange funds are transferred from an exchange facilitator to an exchange accommodation titleholder in accordance with a qualified exchange accommodation agreement.

(3) Exchange funds are not subject to execution or attachment in any claim against the exchange facilitator.

(4) An exchange facilitator may not knowingly keep moneys or cause moneys to be kept in a financial institution under a name that designates the moneys as belonging to a client unless the moneys belong to the client and the client entrusted the moneys to the exchange facilitator. [2013 c.392 §4]

673.820 Prohibitions. An exchange facilitator may not knowingly:

(1) Make a materially false statement, material misrepresentation or material statement intended to mislead a client or another person concerning an exchange conducted under 26 U.S.C. 1031, or continue a course of material misrepresentation through advertising or otherwise;

(2) Fail to account within a reasonable time for moneys or property in the exchange facilitator's possession that belongs to another person;

(3) Engage in conduct that constitutes fraud or dishonesty or commit a crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery or theft; or

(4) Materially fail to fulfill the exchange facilitator's contractual duty to deliver moneys or property to a client, unless the failure results from circumstances beyond the exchange facilitator's control. [2013 c.392 §5]

673.825 Right of action. (1) A person that claims to have suffered damage because an exchange facilitator violated a provision of ORS 673.815 or 673.820 has a right of action on the bonds or deposits described in ORS 673.810. An action under this subsection does not limit the remedies available to the person under this section or under other provisions of law.

(2) An exchange facilitator that violates a provision of ORS 673.815 or 673.820 is subject to an action for damages brought in a circuit court of this state. [2013 c.392 §6]

CRIMINAL PENALTIES

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

(2) Violation of any provision of ORS 673.605 to 673.740, or any rule adopted thereunder, is a misdemeanor. [Subsection (2) enacted as 1973 c.387 §25; 1975 c.440 §22; 1999 c.322 §32]

OCCUPATIONS AND PROFESSIONS
