

House Bill 3347

Sponsored by Representative BUTLER (at the request of HSBC North America, Oregon Financial Services Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires facilitator of personal income tax refund anticipation loans to be licensed as tax consultant or tax preparer. Provides exceptions. Requires disclosures to persons applying for income tax refund anticipation loans. Prohibits certain activities. Provides for civil penalties.

A BILL FOR AN ACT

1
2 Relating to refund anticipation loans; creating new provisions; and amending ORS 673.605, 673.615,
3 673.700 and 673.730.

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

5 **SECTION 1.** ORS 673.605 is amended to read:

6 673.605. As used in ORS 673.605 to 673.740 unless the context requires otherwise:

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

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

12 **(b) "Facilitator" does not mean a financial institution as defined in ORS 706.008, a person**
13 **who has been issued a license under ORS chapter 725, an affiliate that is a servicer for a fi-**
14 **ancial institution or for a person issued a license under ORS chapter 725, or any person that**
15 **acts solely as an intermediary and does not deal with a taxpayer in the making of a refund**
16 **anticipation loan.**

17 **(3) "Lender" means a person that makes a refund anticipation loan with the person's own**
18 **funds or a line of credit or other funding from a financial institution as defined in ORS**
19 **706.008, but does not include a financial institution as defined in ORS 706.008.**

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

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

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

28 [(2)] **(6) "Tax consultant" means a person who is licensed under ORS 673.605 to 673.740 to pre-**
29 **pare or advise or assist in the preparation of personal income tax returns for another and for val-**
30 **uable consideration.**

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

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

3 [(3)] (8) "Tax preparer" means any person who is licensed under ORS 673.605 to 673.740 as a tax
4 preparer.

5 **SECTION 2.** Sections 3 and 4 of this 2005 Act are added to and made a part of ORS 673.605
6 to 673.740.

7 **SECTION 3.** At the time a taxpayer applies for a refund anticipation loan, the facilitator
8 shall disclose to the taxpayer on a form separate from the application:

9 (1) That the refund anticipation loan is a loan and not the taxpayer's actual personal in-
10 come tax refund.

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

13 (3) The fee and rate of interest for the loan.

14 (4) The fee for electronic filing of a tax return.

15 (5) The time within which the proceeds of the loan will be paid to the taxpayer if the loan
16 is approved.

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

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

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

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

25 (8) That the Internal Revenue Service does not guarantee:

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

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

28 (9) A listing or table of refund anticipation loan fees and the annual percentage rates,
29 as defined by the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., charged by the
30 facilitator or lender for refund anticipation loans of \$500, \$750, \$1,000, \$1,500, \$2,000 and
31 \$3,000. Regardless of disclosures of the annual percentage rate required by the federal Truth
32 in Lending Act, if the taxpayer is required to establish or maintain a deposit account with
33 the facilitator or lender for receipt of the taxpayer's tax refund to offset the amount owed
34 on the loan, the maturity of the loan for the purpose of determining the annual percentage
35 rate disclosure under this section is assumed to be the estimated date when the tax refund
36 will be deposited in the taxpayer's account.

37 **SECTION 4.** (1) A unit of a local government, as defined in ORS 174.116, may not adopt
38 any rule, regulation, code or ordinance to restrict or limit any requirements under ORS
39 673.605 to 673.740 relating to refund anticipation loans.

40 (2) ORS 673.605 to 673.740 supersede and preempt any rule, regulation, code or ordinance
41 of any unit of a local government, as defined in ORS 174.116, relating to refund anticipation
42 loans.

43 **SECTION 5.** ORS 673.615 is amended to read:

44 673.615. Except as otherwise provided in ORS 673.605 to 673.740:

45 (1) A person [shall] may not prepare or advise or assist in the preparation of personal income

1 tax returns for another and for valuable consideration or represent that the person is so engaged
 2 unless the person is licensed as a tax consultant under ORS 673.605 to 673.740.

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

6 **(3) A person may not facilitate the making of a refund anticipation loan without first**
 7 **being issued a license as a tax consultant or tax preparer under ORS 673.640.**

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

9 673.700. The State Board of Tax Practitioners may refuse to issue or renew a tax consultant or
 10 preparer's license, or may suspend or revoke a tax consultant or preparer's license, or may
 11 reprimand any person licensed as a tax consultant or tax preparer for:

12 (1) Violation of ORS 673.615, [or] 673.705 or section 3 of this 2005 Act.

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

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

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

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

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

27 (6) Failure to comply with continuing education requirements under ORS 673.655 or under ORS
 28 673.667 unless such requirements have been waived by the board.

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

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

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

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

44 (a) Were related to income tax preparation; or

45 (b) Involved dishonesty, fraud or deception.

1 **SECTION 7.** ORS 673.730 is amended to read:

2 673.730. The State Board of Tax Practitioners shall have the following powers, in addition to the
3 powers otherwise granted by ORS 673.605 to 673.740, and shall have all powers necessary or proper
4 to carry the granted powers into effect:

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

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

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

12 (A) At a time certain; or

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

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

20 (3) To prescribe fees, subject to ORS 673.685, and to collect fees.

21 (4) To investigate alleged violations of ORS 673.605 to 673.740, or any rule or order adopted
22 thereunder. The board may keep information gathered pursuant to an investigation by the board
23 confidential until there is a final order or determination by the board, unless disclosure is consid-
24 ered necessary by the board for the investigation or prosecution of an alleged violation of ORS
25 673.605 to 673.740, or any rule or order adopted thereunder. The board may keep personal financial
26 information gathered pursuant to an investigation by the board confidential after a final order or
27 determination by the board, unless disclosure is considered necessary by the board for the investi-
28 gation or prosecution of an alleged violation of ORS 673.605 to 673.740, or any rule or order adopted
29 thereunder. For purposes of this subsection, personal financial information includes but is not lim-
30 ited to tax returns.

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

33 (6) To issue an order directed to a person to cease and desist from any violation or threatened
34 violation of ORS 673.615, 673.643, [or] 673.705 **or section 3 of this 2005 Act**, or any rule or order
35 adopted thereunder, if the board has reason to believe that a person has been engaged, is engaging
36 or is about to engage in any violation of ORS 673.615, 673.643, [or] 673.705 **or section 3 of this 2005**
37 **Act**, or any rule or order adopted thereunder.

38 (7) To assess civil penalties within a cease and desist order issued under subsection (6) of this
39 section if the board has reason to believe that a person has been engaged or is engaging in any vi-
40 olation of ORS 673.615, 673.643, [or] 673.705 **or section 3 of this 2005 Act**, or any rule or order
41 adopted thereunder. The civil penalty may not exceed \$5,000 per violation.

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

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

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

4 **SECTION 8. Sections 3 and 4 of this 2005 Act and the amendments to ORS 673.605,**
5 **673.615, 673.700 and 673.730 by sections 1, 5, 6 and 7 of this 2005 Act apply to refund antic-**
6 **ipation loans facilitated or made on or after the effective date of this 2005 Act.**

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