

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 484

Introduced by Senator Wyland

February 21, 2013

An act to amend ~~Section 18602 of the Business and Professions Code, relating to the State Athletic Commission.~~ *Sections 22251, 22252, 22253, 22255, and 22259 of, and to add Sections 22251.1, 22251.2, 22251.2.5, 22251.3, 22252.2, 22253.3, 22253.4, and 22258.1 to, the Business and Professions Code, relating to business.*

LEGISLATIVE COUNSEL'S DIGEST

SB 484, as amended, Wyland. ~~State Athletic Commission. Tax preparers.~~

(1) Existing law requires a tax preparer to maintain a bond in favor of, and payable to, the people of the State of California for each individual preparing tax returns for another person. Existing law requires a tax preparer to register with the California Tax Education Council (council) and makes it a violation of the provisions governing tax preparers to fail to register. Existing law requires the council to issue a "certificate of completion" when a tax preparer demonstrates completion of not less than 60 hours of specified educational requirements.

This bill would prohibit a person from preparing a tax return unless he or she has been issued a registration from the council. The bill would require the council to issue a registration to any applicant who submits an application with evidence that he or she has, among other things, (A) successfully completed those educational requirements and (B) paid specified fees to be established by the council. The bill would make a

registration subject to annual renewal including the payment of a renewal fee to be established by the council.

This bill would prohibit a registrant or applicant from being disciplined or denied registration by the council except according to specified procedures. The bill would authorize the council to discipline a registrant by, among other things, placing the registration on probation or suspending or revoking the registration. The bill would require the council to notify the Franchise Tax Board and the Internal Revenue Service that a registration is suspended or revoked.

(2) Existing law defines the council as a single organization made up of not more than one representative from each specified entity operating as a nonprofit corporation that represents, among others, tax preparers with a membership in California of at least 200 for the last 3 years and not more than one representative from each for-profit tax preparation corporation that has at least 200 employees and has been operating in California for the last 3 years.

This bill would specify that the council is a nonprofit organization and would instead require the council to consist of not more than one representative from each California nonprofit corporation in good standing that represents, among others, tax preparers with a membership in California of at least 400 in each of the previous 3 calendar years and not more than one representative from each for-profit tax preparation corporation in good standing that had at least 400 employees or franchisees during the previous calendar year and has been operating in California for the last 3 years.

Existing law requires the council to establish a process by which 6 tax preparers are appointed to the council to serve specified terms.

This bill would specify that those 6 tax preparers are appointed to the board of directors and would require the council to be governed by that board of directors. The bill would authorize the council to adopt rules and regulations necessary to carry out these provisions.

(3) Existing law requires a tax preparer, prior to rendering any tax preparation services, to provide the customer in writing with, among other things, his or her name, address, and telephone number. Existing law makes it a violation for a tax preparer to, among other things, obtain a customer's signature on a document with blank spaces to be filled in after it has been signed and to engage in advertising practices that are fraudulent. A violation of the provisions governing tax preparers is a crime.

This bill would additionally require a tax preparer to provide his or her e-mail address. The bill would also make it a violation to commit certain other acts, and would authorize the council to deny a registration application or discipline a registrant for, among other things, specified unprofessional conduct and conviction of a crime substantially related to the duties of a registrant. The bill would make it an unfair business practice for any person to hold himself or herself out as a registered tax preparer without meeting the above requirements for registration.

(4) Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would instead specify that the council would be subject to review by the appropriate policy committees of the Legislature.

(5) This bill would make other technical and conforming changes.

(6) Because a violation of the bill’s requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides, until 2014, for a State Athletic Commission within the Department of Consumer Affairs, and provides for the appointment of members to the commission by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules, for the purpose of licensing and regulating boxing, kickboxing, and martial arts matches.~~

~~This bill would make a, nonsubstantive change to these provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.~~

The people of the State of California do enact as follows:

1 *SECTION 1. Section 22251 of the Business and Professions*

2 *Code is amended to read:*

3 *22251. For the purposes of this chapter, the following words*
4 *have the following meanings:*

5 *(a) (1) Except as otherwise provided in paragraph (2), “tax*
6 *preparer” includes:*

1 (A) A person who, for a fee or for other consideration, assists
2 with or prepares tax returns for another person or who assumes
3 final responsibility for completed work on a return on which
4 preliminary work has been done by another person, or who holds
5 himself or herself out as offering those services. A person engaged
6 in that activity shall be deemed to be a separate person for the
7 purposes of this chapter, irrespective of affiliation with, or
8 employment by, another tax preparer.

9 (B) A corporation, partnership, association, or other entity that
10 has associated with it persons not exempted under Section 22258,
11 which persons shall have as part of their responsibilities the
12 preparation of data and ultimate signatory authority on tax returns
13 or that holds itself out as offering those services or having that
14 authority.

15 (2) Notwithstanding paragraph (1), “tax preparer” does not
16 include an employee who, as part of the regular clerical duties of
17 his or her employment, prepares his or her employer’s income,
18 sales, or payroll tax returns.

19 (b) “Tax return” means a return, declaration, statement, refund
20 claim, or other document required to be made or filed in connection
21 with state or federal income taxes or state bank and corporation
22 franchise taxes.

23 (c) An “approved curriculum provider,” for purposes of basic
24 instruction as described in subdivision (a) of Section 22255, and
25 continuing education as described in subdivision (b) of Section
26 22255, is one who has been approved by the council as defined in
27 subdivision (d). A curriculum provider who is approved by the tax
28 education council is exempt from Chapter 7 (commencing with
29 Section 94700) of Part 59 of Division 10 of the Education Code.

30 (d) “Council” means the California Tax Education Council that
31 is a single *nonprofit* organization *exempt from taxation under*
32 *Section 501(c)(3) of Title 26 of the United States Code* made up
33 of not more than one representative from each ~~professional society,~~
34 ~~association, or other entity operating as a California~~ nonprofit
35 corporation *in good standing* that chooses to participate in the
36 council and that represents tax preparers, enrolled agents, attorneys,
37 or certified public accountants with a membership in California
38 of at least ~~200 for the last~~ 400 *in each of the previous three*
39 *calendar years*, and not more than one representative from each
40 for-profit tax preparation corporation *in good standing* that chooses

1 to participate in the council and that ~~has had~~ at least ~~200~~ 400
2 employees or franchisees, which number can include the employees
3 of a franchisee, in California during the previous calendar year
4 and that has been operating in California for the last three years.
5 The council shall establish a process by which six individuals who
6 are tax preparers pursuant to Section 22255 are appointed to the
7 board of directors of the council with full voting privileges to serve
8 terms as determined by the council, with their initial terms being
9 served on a staggered basis. A person exempt from the
10 requirements of this chapter pursuant to Section 22258 is not
11 eligible for appointment to the council, other than an employee of
12 an individual in an exempt category.

13 (e) “Client” means an individual for whom a tax preparer
14 performs or agrees to perform tax preparation services.

15 (f) “Refund anticipation loan” means a loan, whether provided
16 by the tax preparer or another entity, such as a financial institution,
17 in anticipation of, and whose payment is secured by, a client’s
18 federal or state income tax refund or by both.

19 (g) “Refund anticipation loan fee schedule” means a list or table
20 of refund anticipation loan fees that includes three or more
21 representative refund anticipation loan amounts. The schedule
22 shall separately list each fee or charge imposed, as well as a total
23 of all fees imposed, related to the making of a refund anticipation
24 loan. The schedule shall also include, for each representative loan
25 amount, the estimated annual percentage rate calculated under the
26 guidelines established by the federal Truth in Lending Act (15
27 U.S.C. Sec. 1601 and following).

28 (h) “Registrant” means a tax preparer that has met all of the
29 requirements of this chapter and has been issued a registration
30 by the council.

31 SEC. 2. Section 22251.1 is added to the Business and
32 Professions Code, to read:

33 22251.1. It is the intent of this chapter to enable consumers to
34 easily identify credible tax preparers who are bonded and
35 registered, to ensure tax preparers receive adequate education
36 and treat confidential information appropriately, to prohibit tax
37 preparers from making fraudulent, untrue, or misleading
38 representations, and to provide for a self-funded nonprofit
39 oversight body to register tax preparers and ensure that they meet
40 all of the requirements of this chapter.

1 SEC. 3. Section 22251.2 is added to the Business and Professions
2 Code, to read:

3 22251.2. (a) The council shall have the responsibilities and
4 duties set forth in this chapter. The council may take any
5 reasonable actions to carry out the responsibilities and duties set
6 forth in this chapter, including, but not limited to, hiring staff and
7 entering into contracts. The council shall be governed by a board
8 of directors comprised in the manner described in subdivision (d)
9 of Section 22151.

10 (b) The council shall issue registrations, deny applications, and
11 discipline registrants as authorized by this chapter. The council
12 may adopt bylaws, rules, regulations, and procedures necessary
13 to effectuate the purposes of this chapter.

14 (c) The council shall establish application fees, renewal fees,
15 delinquent fees, and other fees related to the regulatory cost of
16 providing services and carrying out the council's responsibilities
17 and duties pursuant to this chapter. These fees shall not exceed
18 the reasonable cost to the council of providing those services and
19 carrying out those responsibilities and duties.

20 SEC. 4. Section 22251.2.5 is added to the Business and
21 Professions Code, to read:

22 22251.2.5. No person may prepare a tax return without being
23 issued a registration from the council pursuant to Section 22251.3.

24 SEC. 5. Section 22251.3 is added to the Business and
25 Professions Code, to read:

26 22251.3. (a) The council shall issue a registration to any
27 applicant who provides satisfactory evidence that he or she meets
28 all of the requirements of this chapter and who complies with the
29 bylaws, rules, and procedures established by the council.

30 (b) In order to obtain a registration, an applicant shall submit
31 a written application in a form provided by the council and provide
32 the council with satisfactory evidence that he or she meets all of
33 the following requirements:

34 (1) The applicant has successfully completed the educational
35 requirements described in subdivision (a) of Section 22255.

36 (2) All fees required by the council as described in subdivision
37 (c) of Section 22251.2 have been paid.

38 (3) The applicant meets all of the other requirements for
39 registration in this chapter.

1 (c) Any registration under this chapter shall be subject to
2 renewal every year in a manner prescribed by the council, and
3 shall expire unless renewed in that manner. The council may
4 provide for the late renewal of a registration.

5 SEC. 6. Section 22252 of the Business and Professions Code
6 is amended to read:

7 22252. Prior to rendering any tax preparation services, a tax
8 preparer shall provide the customer in writing with the tax
9 preparer's name, address, telephone number, and evidence of
10 compliance with the bonding requirement of Section 22250,
11 including the bond number, if any, and e-mail address.

12 SEC. 7. Section 22252.2 is added to the Business and
13 Professions Code, to read:

14 22252.2. It is an unfair business practice for any person to
15 hold oneself out or use the title of "registered tax preparer" or
16 any other term, such as "licensed" that implies or suggests that
17 the person is registered as a tax preparer without meeting the
18 requirements of this chapter and being issued a registration by
19 the council.

20 SEC. 8. Section 22253 of the Business and Professions Code
21 is amended to read:

22 22253. (a) It is a violation of this chapter for a tax preparer to
23 do any of the following or commit, and the council may deny an
24 application for registration or discipline a registrant for, any of
25 the following:

26 ~~(1) Fail to register as a tax preparer with the council.~~

27 (1) Unprofessional conduct, including, but not limited to, denial
28 of licensure, certificate, permit, or registration, or revocation,
29 suspension, restriction, or any other disciplinary action against
30 an applicant or registrant by the federal government or another
31 state or territory of the United States, by any other government
32 agency, or by another professional licensing board or organization.
33 A certified copy of the decision, order, or judgment shall be
34 conclusive evidence of these actions.

35 (2) Failing to register as a tax preparer with the council.

36 (3) Procuring or attempting to procure a registration by fraud,
37 misrepresentation, or mistake.

38 (4) Violating or attempting to violate, directly or indirectly, or
39 assisting in or abetting the violation of, or conspiring to violate,

1 *any provision or term of this chapter or any rule or bylaw adopted*
2 *by the council.*

3 (5) *Conviction of any felony or misdemeanor that is substantially*
4 *related to the qualifications, functions, or duties of a registrant,*
5 *in which event the record of the conviction shall be conclusive*
6 *evidence of the crime.*

7 (6) *Impersonating an applicant or acting as a proxy for an*
8 *applicant in any situation or examination referred to under this*
9 *chapter for the issuance of a registration.*

10 (7) *Impersonating a registrant, or permitting or allowing an*
11 *unregistered person to use a registration.*

12 (8) *Committing any fraudulent, dishonest, or corrupt act that*
13 *is substantially related to the qualifications, functions, or duties*
14 *of a registrant.*

15 ~~(2) Make, or authorize~~

16 (9) *Making, or authorizing the making of, any statement or*
17 *representation, oral or written or recorded by any means, which is*
18 *intended to induce persons to use the tax preparation service of*
19 *the tax preparer, which statement or representation is fraudulent,*
20 *untrue, or misleading.*

21 ~~(3) Obtain~~

22 (10) *Obtaining the signature of a customer to a tax return or*
23 *authorizing document which contains blank spaces to be filled in*
24 *after it has been signed.*

25 ~~(4) Fail or refuse~~

26 (11) *Failing or refusing to give a customer, for his or her own*
27 *records, a copy of any document requiring the customer's signature,*
28 *within a reasonable time after the customer signs the document.*

29 ~~(5) Fail~~

30 (12) *Failing to maintain a copy of any tax return prepared for*
31 *a customer for four years from the date of completion or the due*
32 *date of the return, whichever is later.*

33 ~~(6) Engage~~

34 (13) *Engaging in advertising practices which are fraudulent,*
35 *untrue, or misleading, including, but not limited to, assertions that*
36 *the bond required by Section 22250 in any way implies licensure*
37 *or endorsement of a tax preparer by the State of California*
38 *misleading.*

39 ~~(7) Violate~~

40 (14) *Violating Section 17530.5 or 17530.6.*

1 ~~(8) Violate~~
2 (15) Violating Section 7216 of Title 26 of the United States
3 Code.

4 ~~(9) Fail~~
5 (16) Failing to sign a customer's tax return when payment for
6 services rendered has been made.

7 ~~(10) Fail~~
8 (17) Failing to return, upon the demand by or on behalf of a
9 customer, records or other data provided to the tax preparer by the
10 customer.

11 ~~(11)~~
12 (18) Knowingly give false or misleading information to the
13 consumer pursuant to Section 22252, or give false or misleading
14 information to the surety company pursuant to subdivision (a) of
15 Section 22250, 22252 or give false or misleading information to
16 the California Tax Education Council pursuant to Section 22255.

17 (b) Each violation of this section constitutes a separate offense.

18 SEC. 9. Section 22253.3 is added to the Business and
19 Professions Code, to read:

20 22253.3. (a) The council may discipline a registrant by any,
21 or a combination, of the following methods:

- 22 (1) Placing the registration on probation.
- 23 (2) Suspending the registration and the rights conferred by this
24 chapter on a registrant for a period not to exceed one year.
- 25 (3) Revoking the registration.
- 26 (4) Suspending or staying the disciplinary order, or portions of
27 it, with or without conditions.
- 28 (5) Taking other action as the council, as authorized by this
29 chapter or its bylaws, rules, or procedures, deems proper.

30 (b) The council may issue an initial registration on probation,
31 with specific terms and conditions, to any applicant.

32 (c) If a registration is suspended or revoked, the council shall
33 notify the Franchise Tax Board and the Internal Revenue Service.

34 SEC. 10. Section 22253.4 is added to the Business and
35 Professions Code, to read:

36 22253.4. (a) No registrant or applicant may be disciplined or
37 denied registration except according to procedures satisfying the
38 requirements of this section. A denial or discipline not in accord
39 with this section shall be void and without effect.

1 (b) Any application denial or registrant discipline shall be done
2 in good faith and in a fair and reasonable manner. Any procedures
3 that conform to the requirements of this chapter are fair and
4 reasonable, but a court may also find other procedures to be fair
5 and reasonable when the full circumstances of the application
6 denial or registrant discipline are considered.

7 (c) A procedure is fair and reasonable if all of the following
8 apply:

9 (1) It provides the giving of 15 days prior notice of the
10 application denial or registration discipline and the reasons
11 therefore.

12 (2) It provides an opportunity for the applicant or registrant to
13 be heard, either orally or in writing, not less than five days before
14 the effective date of the application denial or registrant discipline
15 by a person or body authorized to decide that the proposed
16 application denial or registrant discipline not take place.

17 (d) Any notice required under this section may be given by any
18 method reasonably calculated to provide actual notice. Any notice
19 given by mail must be given by first-class or express mail sent to
20 the last address of the applicant or registrant shown on the
21 council's records.

22 (e) Any action challenging an application denial or registrant
23 discipline, including any claim alleging defective notice, shall be
24 commenced within one year after the effective date of the
25 application denial or registrant discipline in the superior court in
26 and for the county of the council's principal place of business. If
27 the action is successful, the court may order any relief, including
28 reinstatement, that it finds equitable under the circumstances.

29 (f) The council may charge applicants and registrants a
30 reasonable regulatory fee as a condition of any hearing requested
31 by the applicant or registrant for the purpose of contesting denial
32 of a registration or discipline of a registrant. This fee shall not
33 exceed the reasonable cost to the council of providing the hearing.
34 Upon a favorable judgment for the council in any proceeding, the
35 council shall be entitled to recover its reasonable attorney's fees.

36 (g) This section governs only the procedures for application
37 denial or registrant discipline and not the substantive grounds
38 therefore. An application denial or registrant discipline based
39 upon substantive grounds that violates contractual or other rights

1 *of the applicant or registrant or is otherwise unlawful is not made*
2 *valid by compliance with this section.*

3 *SEC. 11. Section 22255 of the Business and Professions Code*
4 *is amended to read:*

5 22255. (a) The council shall issue a “certificate of completion”
6 *completion,” as part of the education registration requirements*
7 *described in Section 22251.3, to the tax preparer when the tax*
8 *preparer demonstrates that he or she has (1) completed not less*
9 *than 60 hours of instruction in basic personal income tax law,*
10 *theory, and practice by an approved curriculum provider within*
11 *the previous 18 months; and (2) provides evidence of compliance*
12 *with the bonding requirement of Section 22250, including the*
13 *name of the surety company, the bond number, and the bond*
14 *expiration date. Of the required 60 hours, 45 hours shall be*
15 *concerned with federal tax curriculum and 15 hours shall be*
16 *concerned with state tax curriculum.*

17 (b) A tax preparer shall complete on an annual basis not less
18 than 20 hours of continuing education, including 15 hours in federal
19 taxation and 5 hours in California taxation from an approved
20 curriculum provider. The council shall issue annually a “statement
21 of compliance” when the tax preparer demonstrates that he or she
22 has (1) completed the required 20 hours of continuing education,
23 and (2) provides evidence of compliance with the bonding
24 requirement of Section 22250, including the name of the surety
25 company, the bond number, and the bond expiration date.

26 (c) An individual who possesses a minimum of two recent years
27 experience in the preparation of personal income tax returns may
28 petition the council to review the experience and determine if it is
29 the equivalent of the required qualifying education *described in*
30 *subdivision (a).* The council may provide that individual with a
31 “certificate of completion” if it is determined that the experience
32 is the equivalent of the required hours. Tax preparation performed
33 in situations that violate this chapter, by an individual who is
34 neither registered nor exempted, may not be used toward the
35 qualifying experience needed for registration as a tax preparer.

36 *SEC. 12. Section 22258.1 is added to the Business and*
37 *Professions Code, to read:*

38 22258.1. *This chapter shall be liberally construed. If any*
39 *provision of this chapter or the application thereof to any person*
40 *or circumstance is held to be invalid, the invalidity shall not affect*

1 other provisions or applications of the chapter that can be given
2 effect without the invalid provision or application, and to this end
3 the provisions of this chapter are severable.

4 SEC. 13. Section 22259 of the Business and Professions Code
5 is amended to read:

6 22259. This chapter shall be subject to the review required by
7 Division 1.2 (commencing with Section 473) by the appropriate
8 policy committees of the Legislature.

9 This chapter shall remain in effect only until January 1, 2015,
10 and as of that date is repealed, unless a later enacted statute, that
11 is enacted before January 1, 2015, deletes or extends that date.

12 SEC. 14. No reimbursement is required by this act pursuant
13 to Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 SECTION 1. Section 18602 of the Business and Professions
22 Code is amended to read:

23 18602. (a) Except as provided in this section, there is in the
24 Department of Consumer Affairs the State Athletic Commission,
25 which consists of seven members. Five members shall be appointed
26 by the Governor, one member shall be appointed by the Senate
27 Rules Committee, and one member shall be appointed by the
28 Speaker of the Assembly.

29 The members of the commission appointed by the Governor are
30 subject to confirmation by the Senate pursuant to Section 1322 of
31 the Government Code.

32 No person who is currently licensed, or who was licensed within
33 the last two years, under this chapter may be appointed or
34 reappointed to, or serve on, the commission.

35 (b) In appointing commissioners under this section, the
36 Governor, the Senate Rules Committee, and the Speaker of the
37 Assembly shall make every effort to ensure that at least four of
38 the members of the commission shall have experience and
39 demonstrate expertise in one of the following areas:

1 ~~(1) A licensed physician or surgeon having expertise or~~
2 ~~specializing in neurology, neurosurgery, head trauma, or sports~~
3 ~~medicine. Sports medicine includes, but is not limited to,~~
4 ~~physiology, kinesiology, or other aspects of sports medicine.~~

5 ~~(2) Financial management.~~

6 ~~(3) Public safety.~~

7 ~~(4) Past experience in the activity regulated by this chapter,~~
8 ~~either as a contestant, a referee or official, a promoter, or a venue~~
9 ~~operator.~~

10 ~~(e) Each member of the commission shall be appointed for a~~
11 ~~term of four years. All terms shall end on January 1. Vacancies~~
12 ~~occurring prior to the expiration of the term shall be filled by~~
13 ~~appointment for the unexpired term. No commission member may~~
14 ~~serve more than two consecutive terms.~~

15 ~~(d) Notwithstanding any other provision of this chapter,~~
16 ~~members first appointed shall be subject to the following terms:~~

17 ~~(1) The Governor shall appoint two members for two years, two~~
18 ~~members for three years, and one member for four years.~~

19 ~~(2) The Senate Committee on Rules shall appoint one member~~
20 ~~for four years.~~

21 ~~(3) The Speaker of the Assembly shall appoint one member for~~
22 ~~four years.~~

23 ~~(e) This section shall remain in effect only until January 1, 2014,~~
24 ~~and as of that date is repealed, unless a later enacted statute, that~~
25 ~~is enacted before January 1, 2014, deletes or extends that date.~~

26 ~~Notwithstanding any other law, the repeal of this section renders~~
27 ~~the board subject to review by the appropriate policy committees~~
28 ~~of the Legislature.~~