

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 484

Introduced by Senator Wyland

February 21, 2013

An act to amend Sections 22251, ~~22252, 22253,~~ 22255, 22256, and 22259 of, and to add Sections 22251.1, 22251.2, ~~22251.2.5,~~ 22251.3, ~~22252.2,~~ 22253.1.5, 22253.3, and 22253.4, and ~~22258.1~~ to, the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 484, as amended, Wyland. 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~~ *failure to register* 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, *but not a crime*, 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.~~

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

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:
7 (A) A person who, for a fee or for other consideration, assists
8 with or prepares tax returns for another person or who assumes
9 final responsibility for completed work on a return on which
10 preliminary work has been done by another person, or who holds
11 himself or herself out as offering those services. A person engaged
12 in that activity shall be deemed to be a separate person for the
13 purposes of this chapter, irrespective of affiliation with, or
14 employment by, another tax preparer.
15 (B) A corporation, partnership, association, or other entity that
16 has associated with it persons not exempted under Section 22258,
17 which persons shall have as part of their responsibilities the

1 preparation of data and ultimate signatory authority on tax returns
2 or that holds itself out as offering those services or having that
3 authority.

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

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

12 (c) An “approved curriculum provider,” for purposes of basic
13 instruction as described in subdivision (a) of Section 22255, and
14 continuing education as described in subdivision (b) of Section
15 22255, is one who has been approved by the council as defined in
16 subdivision (d). A curriculum provider who is approved by the tax
17 education council is exempt from Chapter 7 (commencing with
18 Section 94700) of Part 59 of Division 10 of the Education Code.

19 (d) “Council” means the California Tax Education Council that
20 is a single nonprofit organization exempt from taxation under
21 Section 501(c)(3) of Title 26 of the United States Code made up
22 of not more than one representative from each California nonprofit
23 corporation in good standing that chooses to participate in the
24 council and that represents tax preparers, enrolled agents, attorneys,
25 or certified public accountants with a membership in California
26 of at least 400 in each of the previous three calendar years, and
27 not more than one representative from each for-profit tax
28 preparation corporation in good standing that chooses to participate
29 in the council and that had at least 400 employees or franchisees,
30 which number can include the employees of a franchisee, in
31 California during the previous calendar year and that has been
32 operating in California for the last three years. The council shall
33 establish a process by which six individuals who are tax preparers
34 pursuant to Section 22255 are appointed to the board of directors
35 of the council with full voting privileges to serve terms as
36 determined by the council, with their initial terms being served on
37 a staggered basis. A person exempt from the requirements of this
38 chapter pursuant to Section 22258 is not eligible for appointment
39 to the council, other than an employee of an individual in an
40 exempt category.

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

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

7 (g) “Refund anticipation loan fee schedule” means a list or table
8 of refund anticipation loan fees that includes three or more
9 representative refund anticipation loan amounts. The schedule
10 shall separately list each fee or charge imposed, as well as a total
11 of all fees imposed, related to the making of a refund anticipation
12 loan. The schedule shall also include, for each representative loan
13 amount, the estimated annual percentage rate calculated under the
14 guidelines established by the federal Truth in Lending Act (15
15 U.S.C. Sec. 1601 and following).

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

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

21 22251.1. It is the intent of this chapter to enable consumers to
22 easily identify credible tax preparers who are bonded and
23 registered, to ensure tax preparers receive adequate education and
24 treat confidential information appropriately, to prohibit tax
25 preparers from making fraudulent, untrue, or misleading
26 representations, and to provide for a self-funded nonprofit oversight
27 body to register tax preparers and ensure that they meet all of the
28 requirements of this chapter.

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

31 22251.2. (a) The council shall have the responsibilities and
32 duties set forth in this chapter. The council may take any reasonable
33 actions to carry out the responsibilities and duties set forth in this
34 chapter, including, but not limited to, hiring staff and entering into
35 contracts. The council shall be governed by a board of directors
36 comprised in the manner described in subdivision (d) of Section
37 22151.

38 (b) The council shall issue registrations, deny applications, and
39 discipline registrants as authorized by this chapter. The council

1 may adopt bylaws, rules, regulations, and procedures necessary
2 to effectuate the purposes of this chapter.

3 (c) The council shall establish application fees, renewal fees,
4 delinquent fees, and other fees related to the regulatory cost of
5 providing services and carrying out the council's responsibilities
6 and duties pursuant to this chapter. These fees shall not exceed the
7 reasonable cost to the council of providing those services and
8 carrying out those responsibilities and duties.

9 ~~SEC. 4. Section 22251.2.5 is added to the Business and~~
10 ~~Professions Code, to read:~~

11 ~~22251.2.5. No person may prepare a tax return without being~~
12 ~~issued a registration from the council pursuant to Section 22251.3.~~

13 ~~SEC. 5.~~

14 ~~SEC. 4. Section 22251.3 is added to the Business and~~
15 ~~Professions Code, to read:~~

16 22251.3. (a) The council shall issue a registration to any
17 applicant who provides satisfactory evidence that he or she meets
18 all of the requirements of this chapter and who complies with the
19 bylaws, rules, and procedures established by the council.

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

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

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

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

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

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

36 ~~22252. Prior to rendering any tax preparation services, a tax~~
37 ~~preparer shall provide the customer in writing with the tax~~
38 ~~preparer's name, address, telephone number, and evidence of~~
39 ~~compliance with the bonding requirement of Section 22250,~~
40 ~~including the bond number, if any, and e-mail address.~~

1 ~~SEC. 7. Section 22252.2 is added to the Business and Professions~~
2 ~~Code, to read:~~

3 ~~22252.2. It is an unfair business practice for any person to hold~~
4 ~~oneself out or use the title of “registered tax preparer” or any other~~
5 ~~term, such as “licensed” that implies or suggests that the person~~
6 ~~is registered as a tax preparer without meeting the requirements~~
7 ~~of this chapter and being issued a registration by the council.~~

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

10 ~~22253. (a) It is a violation of this chapter for a tax preparer to~~
11 ~~do or commit, and the council may deny an application for~~
12 ~~registration or discipline a registrant for, any of the following:~~

13 ~~(1) Unprofessional conduct, including, but not limited to, denial~~
14 ~~of licensure, certificate, permit, or registration, or revocation,~~
15 ~~suspension, restriction, or any other disciplinary action against an~~
16 ~~applicant or registrant by the federal government or another state~~
17 ~~or territory of the United States, by any other government agency,~~
18 ~~or by another professional licensing board or organization. A~~
19 ~~certified copy of the decision, order, or judgment shall be~~
20 ~~conclusive evidence of these actions:~~

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

22 ~~(3) Procuring or attempting to procure a registration by fraud,~~
23 ~~misrepresentation, or mistake.~~

24 ~~(4) Violating or attempting to violate, directly or indirectly, or~~
25 ~~assisting in or abetting the violation of, or conspiring to violate,~~
26 ~~any provision or term of this chapter or any rule or bylaw adopted~~
27 ~~by the council.~~

28 ~~(5) Conviction of any felony or misdemeanor that is substantially~~
29 ~~related to the qualifications, functions, or duties of a registrant, in~~
30 ~~which event the record of the conviction shall be conclusive~~
31 ~~evidence of the crime.~~

32 ~~(6) Impersonating an applicant or acting as a proxy for an~~
33 ~~applicant in any situation or examination referred to under this~~
34 ~~chapter for the issuance of a registration.~~

35 ~~(7) Impersonating a registrant, or permitting or allowing an~~
36 ~~unregistered person to use a registration.~~

37 ~~(8) Committing any fraudulent, dishonest, or corrupt act that is~~
38 ~~substantially related to the qualifications, functions, or duties of a~~
39 ~~registrant.~~

1 ~~(9) Making, or authorizing the making of, any statement or~~
2 ~~representation, oral or written or recorded by any means, which is~~
3 ~~intended to induce persons to use the tax preparation service of~~
4 ~~the tax preparer, which statement or representation is fraudulent,~~
5 ~~untrue, or misleading.~~

6 ~~(10) Obtaining the signature of a customer to a tax return or~~
7 ~~authorizing document which contains blank spaces to be filled in~~
8 ~~after it has been signed.~~

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

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

15 ~~(13) Engaging in advertising practices which are fraudulent,~~
16 ~~untrue, or misleading, including, but not limited to, assertions that~~
17 ~~the bond required by Section 22250 in any way implies licensure~~
18 ~~or endorsement of a tax preparer by the State of California~~
19 ~~misleading.~~

20 ~~(14) Violating Section 17530.5 or 17530.6.~~

21 ~~(15) Violating Section 7216 of Title 26 of the United States~~
22 ~~Code.~~

23 ~~(16) Failing to sign a customer's tax return when payment for~~
24 ~~services rendered has been made.~~

25 ~~(17) Failing to return, upon the demand by or on behalf of a~~
26 ~~customer, records or other data provided to the tax preparer by the~~
27 ~~customer.~~

28 ~~(18) Knowingly give false or misleading information to the~~
29 ~~consumer pursuant to Section 22252, or give false or misleading~~
30 ~~information to the surety company pursuant to subdivision (a) of~~
31 ~~Section 22250, 22252 or give false or misleading information to~~
32 ~~the California Tax Education Council pursuant to Section 22255.~~

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

34 *SEC. 5. Section 22253.1.5 is added to the Business and*
35 *Professions Code, to read:*

36 *22253.1.5. (a) It is a violation of this chapter for a tax preparer*
37 *to do or commit, and the council may deny an application for*
38 *registration or discipline a registrant for, any of the following:*

39 *(1) Unprofessional conduct, including, but not limited to, denial*
40 *of licensure, certificate, permit, or registration, or revocation,*

1 *suspension, restriction, or any other disciplinary action against*
2 *an applicant or registrant by the federal government or another*
3 *state or territory of the United States, by any other government*
4 *agency, or by another professional licensing board or organization.*
5 *A certified copy of the decision, order, or judgment shall be*
6 *conclusive evidence of these actions.*

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

8 (3) *Procuring or attempting to procure a registration by fraud,*
9 *misrepresentation, or mistake.*

10 (4) *Violating or attempting to violate, directly or indirectly, or*
11 *assisting in or abetting the violation of, or conspiring to violate,*
12 *any provision or term of this chapter or any rule or bylaw adopted*
13 *by the council.*

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

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

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

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

26 (b) *A violation of this section is not subject to subdivision (b)*
27 *of Section 22256.*

28 (c) *Each violation of this section shall constitute a separate*
29 *offense.*

30 ~~SEC. 9.~~

31 *SEC. 6.* Section 22253.3 is added to the Business and
32 Professions Code, to read:

33 22253.3. (a) The council may discipline a registrant by any,
34 or a combination, of the following methods:

35 (1) Placing the registration on probation.

36 (2) Suspending the registration and the rights conferred by this
37 chapter on a registrant for a period not to exceed one year.

38 (3) Revoking the registration.

39 (4) Suspending or staying the disciplinary order, or portions of
40 it, with or without conditions.

1 (5) Taking other action as the council, as authorized by this
2 chapter or its bylaws, rules, or procedures, deems proper.

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

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

7 ~~SEC. 10.~~

8 *SEC. 7.* Section 22253.4 is added to the Business and
9 Professions Code, to read:

10 22253.4. (a) No registrant or applicant may be disciplined or
11 denied registration except according to procedures satisfying the
12 requirements of this section. A denial or discipline not in accord
13 with this section shall be void and without effect.

14 (b) Any application denial or registrant discipline shall be done
15 in good faith and in a fair and reasonable manner. Any procedures
16 that conform to the requirements of this chapter are fair and
17 reasonable, but a court may also find other procedures to be fair
18 and reasonable when the full circumstances of the application
19 denial or registrant discipline are considered.

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

22 (1) It provides the giving of 15 days prior notice of the
23 application denial or registration discipline and the reasons
24 therefore.

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

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

35 (e) Any action challenging an application denial or registrant
36 discipline, including any claim alleging defective notice, shall be
37 commenced within one year after the effective date of the
38 application denial or registrant discipline in the superior court in
39 and for the county of the council's principal place of business. If

1 the action is successful, the court may order any relief, including
2 reinstatement, that it finds equitable under the circumstances.

3 (f) The council may charge applicants and registrants a
4 reasonable regulatory fee as a condition of any hearing requested
5 by the applicant or registrant for the purpose of contesting denial
6 of a registration or discipline of a registrant. This fee shall not
7 exceed the reasonable cost to the council of providing the hearing.
8 Upon a favorable judgment for the council in any proceeding, the
9 council shall be entitled to recover its reasonable attorney's fees.

10 (g) This section governs only the procedures for application
11 denial or registrant discipline and not the substantive grounds
12 therefore. An application denial or registrant discipline based upon
13 substantive grounds that violates contractual or other rights of the
14 applicant or registrant or is otherwise unlawful is not made valid
15 by compliance with this section.

16 ~~SEC. 11.~~

17 *SEC. 8.* Section 22255 of the Business and Professions Code
18 is amended to read:

19 22255. (a) The council shall issue a "certificate of completion,"
20 as part of the education registration requirements described in
21 Section 22251.3, to the tax preparer when the tax preparer
22 demonstrates that he or she has (1) completed not less than 60
23 hours of instruction in basic personal income tax law, theory, and
24 practice by an approved curriculum provider within the previous
25 18 months; and (2) provides evidence of compliance with the
26 bonding requirement of Section 22250, including the name of the
27 surety company, the bond number, and the bond expiration date.
28 Of the required 60 hours, 45 hours shall be concerned with federal
29 tax curriculum and 15 hours shall be concerned with state tax
30 curriculum.

31 (b) A tax preparer shall complete on an annual basis not less
32 than 20 hours of continuing education, including 15 hours in federal
33 taxation and 5 hours in California taxation from an approved
34 curriculum provider. The council shall issue annually a "statement
35 of compliance" when the tax preparer demonstrates that he or she
36 has (1) completed the required 20 hours of continuing education,
37 and (2) provides evidence of compliance with the bonding
38 requirement of Section 22250, including the name of the surety
39 company, the bond number, and the bond expiration date.

1 (c) An individual who possesses a minimum of two recent years
 2 experience in the preparation of personal income tax returns may
 3 petition the council to review the experience and determine if it is
 4 the equivalent of the required qualifying education described in
 5 subdivision (a). The council may provide that individual with a
 6 “certificate of completion” if it is determined that the experience
 7 is the equivalent of the required hours. Tax preparation performed
 8 in situations that violate this chapter, by an individual who is
 9 neither registered nor exempted, may not be used toward the
 10 qualifying experience needed for registration as a tax preparer.

11 ~~SEC. 12. Section 22258.1 is added to the Business and~~
 12 ~~Professions Code, to read:~~

13 ~~22258.1. This chapter shall be liberally construed. If any~~
 14 ~~provision of this chapter or the application thereof to any person~~
 15 ~~or circumstance is held to be invalid, the invalidity shall not affect~~
 16 ~~other provisions or applications of the chapter that can be given~~
 17 ~~effect without the invalid provision or application, and to this end~~
 18 ~~the provisions of this chapter are severable.~~

19 *SEC. 9. Section 22256 of the Business and Professions Code*
 20 *is amended to read:*

21 22256. (a) The superior court in and for the county in which
 22 any person acts as a tax preparer in violation of the provisions of
 23 this chapter, may, upon a petition by any person, issue an injunction
 24 or other appropriate order restraining the conduct. The proceedings
 25 under this paragraph shall be governed by Chapter 3 (commencing
 26 with Section 525) of Title 7 of Part 2 of the Code of Civil
 27 Procedure.

28 (b) ~~A~~ *Except as provided in Section 22253.1.5, a person who*
 29 *violates a provision of this chapter is guilty of a misdemeanor,*
 30 *which offense is punishable by a fine not exceeding one thousand*
 31 *dollars (\$1,000), or by imprisonment in a county jail for not more*
 32 *than one year, or by both.*

33 ~~SEC. 13.~~

34 *SEC. 10. Section 22259 of the Business and Professions Code*
 35 *is amended to read:*

36 22259. This chapter shall be subject to review by the
 37 appropriate policy committees of the Legislature.

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

1 ~~SEC. 14. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

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