

AMENDED IN SENATE MAY 6, 2013  
AMENDED IN SENATE APRIL 22, 2013  
AMENDED IN SENATE APRIL 2, 2013

**SENATE BILL**

**No. 484**

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**Introduced by Senator Wyland**

February 21, 2013

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An act to amend Sections 22251, 22253, 22255, 22256, and 22259 of, and to add Sections 22251.1, 22251.2, 22251.3, 22253.1.5, 22253.3, and 22253.4; 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 failure to register a violation of the provisions governing tax preparers. 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 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 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 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.

(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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

SECTION 1. Section 22251 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

(c) An “approved curriculum provider,” for purposes of basic instruction as described in subdivision (a) of Section 22255, and continuing education as described in subdivision (b) of Section 22255, is one who has been approved by the council as defined in

1 subdivision (d). A curriculum provider who is approved by the tax  
2 education council is exempt from Chapter 7 (commencing with  
3 Section 94700) of Part 59 of Division 10 of the Education Code.

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

26 (e) "Client" means an individual for whom a tax preparer  
27 performs or agrees to perform tax preparation services.

28 (f) "Refund anticipation loan" means a loan, whether provided  
29 by the tax preparer or another entity, such as a financial institution,  
30 in anticipation of, and whose payment is secured by, a client's  
31 federal or state income tax refund or by both.

32 (g) "Refund anticipation loan fee schedule" means a list or table  
33 of refund anticipation loan fees that includes three or more  
34 representative refund anticipation loan amounts. The schedule  
35 shall separately list each fee or charge imposed, as well as a total  
36 of all fees imposed, related to the making of a refund anticipation  
37 loan. The schedule shall also include, for each representative loan  
38 amount, the estimated annual percentage rate calculated under the  
39 guidelines established by the federal Truth in Lending Act (15  
40 U.S.C. Sec. 1601 and following *et seq.*).

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

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

6 22251.1. It is the intent of this chapter to enable consumers to  
7 easily identify credible tax preparers who are bonded and  
8 registered, to ensure tax preparers receive adequate education and  
9 treat confidential information appropriately, to prohibit tax  
10 preparers from making fraudulent, untrue, or misleading  
11 representations, and to provide for a self-funded nonprofit oversight  
12 body to register tax preparers and ensure that they meet all of the  
13 requirements of this chapter.

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

16 22251.2. (a) The council shall have the responsibilities and  
17 duties set forth in this chapter. The council may take any reasonable  
18 actions to carry out the responsibilities and duties set forth in this  
19 chapter, including, but not limited to, hiring staff and entering into  
20 contracts. The council shall be governed by a board of directors  
21 comprised in the manner described in subdivision (d) of Section  
22 22151.

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

27 (c) The council shall establish application fees, renewal fees,  
28 delinquent fees, and other fees related to the regulatory cost of  
29 providing services and carrying out the council’s responsibilities  
30 and duties pursuant to this chapter. These fees shall not exceed the  
31 reasonable cost to the council of providing those services and  
32 carrying out those responsibilities and duties.

33 SEC. 4. Section 22251.3 is added to the Business and  
34 Professions Code, to read:

35 22251.3. (a) The council shall issue a registration to any  
36 applicant who provides satisfactory evidence that he or she meets  
37 all of the requirements of this chapter and who complies with the  
38 bylaws, rules, and procedures established by the council.

39 (b) In order to obtain a registration, an applicant shall submit a  
40 written application in a form provided by the council and provide

1 the council with satisfactory evidence that he or she meets all of  
2 the following requirements:

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

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

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

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

13 *SEC. 5. Section 22253 of the Business and Professions Code*  
14 *is amended to read:*

15 22253. (a) It is a violation of this chapter for a tax preparer to  
16 *do or commit, and the council may deny an application for*  
17 *registration or discipline a registrant for,* any of the following:

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

19 (2) Make, or authorize the making of, any statement or  
20 representation, oral or written or recorded by any means, which is  
21 intended to induce persons to use the tax preparation service of  
22 the tax preparer, which statement or representation is fraudulent,  
23 untrue, or misleading.

24 (3) Obtain the signature of a customer to a tax return or  
25 authorizing document which contains blank spaces to be filled in  
26 after it has been signed.

27 (4) Fail or refuse to give a customer, for his or her own records,  
28 a copy of any document requiring the customer's signature, within  
29 a reasonable time after the customer signs the document.

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

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

37 (7) Violate Section 17530.5 or 17530.6.

38 (8) Violate Section 7216 of Title 26 of the United States Code.

39 (9) Fail to sign a customer's tax return when payment for  
40 services rendered has been made.

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

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

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

~~SEC. 5.~~

SEC. 6. Section 22253.1.5 is added to the Business and Professions Code, to read:

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

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

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

~~(3)~~

(2) Procuring or attempting to procure a registration by fraud, misrepresentation, or mistake.

~~(4)~~

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

~~(5)~~

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

~~(6)~~

1 (5) Impersonating an applicant or acting as a proxy for an  
2 applicant in any situation or examination referred to under this  
3 chapter for the issuance of a registration.

4 ~~(7)~~

5 (6) Impersonating a registrant, or permitting or allowing an  
6 unregistered person to use a registration.

7 ~~(8)~~

8 (7) Committing any fraudulent, dishonest, or corrupt act that is  
9 substantially related to the qualifications, functions, or duties of a  
10 registrant.

11 (b) A violation of ~~this section~~ *subdivision (a)* is not subject to  
12 subdivision (b) of Section 22256.

13 (c) Each violation of this section shall constitute a separate  
14 offense.

15 ~~SEC. 6.~~

16 *SEC. 7.* Section 22253.3 is added to the Business and  
17 Professions Code, to read:

18 22253.3. (a) The council may discipline a registrant by any,  
19 or a combination, of the following methods:

20 (1) Placing the registration on probation.

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

23 (3) Revoking the registration.

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

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

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

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

32 ~~SEC. 7.~~

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

35 22253.4. (a) No registrant or applicant may be disciplined or  
36 denied registration except according to procedures satisfying the  
37 requirements of this section. A denial or discipline not in accord  
38 with this section shall be void and without effect.

39 (b) Any application denial or registrant discipline shall be done  
40 in good faith and in a fair and reasonable manner. Any procedures



1 that conform to the requirements of this chapter are fair and  
2 reasonable, but a court may also find other procedures to be fair  
3 and reasonable when the full circumstances of the application  
4 denial or registrant discipline are considered.

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

7 (1) It provides the giving of 15 days prior notice of the  
8 application denial or registration discipline and the reasons  
9 ~~therefore therefor~~.

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

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

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

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

34 (g) This section governs only the procedures for application  
35 denial or registrant discipline and not the substantive grounds  
36 ~~therefore therefor~~. An application denial or registrant discipline  
37 based upon substantive grounds that violates contractual or other  
38 rights of the applicant or registrant or is otherwise unlawful is not  
39 made valid by compliance with this section.

1     ~~SEC. 8.~~

2     *SEC. 9.* Section 22255 of the Business and Professions Code  
3 is amended to read:

4     22255. (a) The council shall issue a “certificate of completion,”  
5 as part of the education registration requirements described in  
6 Section 22251.3, to the tax preparer when the tax preparer  
7 demonstrates that he or she has (1) completed not less than 60  
8 hours of instruction in basic personal income tax law, theory, and  
9 practice by an approved curriculum provider within the previous  
10 18 months; and (2) provides evidence of compliance with the  
11 bonding requirement of Section 22250, including the name of the  
12 surety company, the bond number, and the bond expiration date.  
13 Of the required 60 hours, 45 hours shall be concerned with federal  
14 tax curriculum and 15 hours shall be concerned with state tax  
15 curriculum.

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

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

35     ~~SEC. 9.~~

36     *SEC. 10.* Section 22256 of the Business and Professions Code  
37 is amended to read:

38     22256. (a) The superior court in and for the county in which  
39 any person acts as a tax preparer in violation of the provisions of  
40 this chapter, may, upon a petition by any person, issue an injunction

1 or other appropriate order restraining the conduct. The proceedings  
2 under this paragraph shall be governed by Chapter 3 (commencing  
3 with Section 525) of Title 7 of Part 2 of the Code of Civil  
4 Procedure.

5 (b) Except as provided in *subdivision (a)* of Section 22253.1.5,  
6 a person who violates a provision of this chapter is guilty of a  
7 misdemeanor, which offense is punishable by a fine not exceeding  
8 one thousand dollars (\$1,000), or by imprisonment in a county jail  
9 for not more than one year, or by both.

10 ~~SEC. 10.~~

11 *SEC. 11.* Section 22259 of the Business and Professions Code  
12 is amended to read:

13 22259. This chapter shall be subject to review by the  
14 appropriate policy committees of the Legislature.

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