

Senate Bill No. 484

CHAPTER 660

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.

[Approved by Governor October 8, 2013. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

SB 484, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22253. (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) Fail to register as a tax preparer with the council.
 - (2) Make, or authorize the making of, any statement or representation, oral or written or recorded by any means, which is intended to induce persons to use the tax preparation service of the tax preparer, which statement or representation is fraudulent, untrue, or misleading.
 - (3) Obtain the signature of a customer to a tax return or authorizing document which contains blank spaces to be filled in after it has been signed.
 - (4) Fail or refuse to give a customer, for his or her own records, a copy of any document requiring the customer's signature, within a reasonable time after the customer signs the document.
 - (5) Fail to maintain a copy of any tax return prepared for a customer for four years from the date of completion or the due date of the return, whichever is later.
 - (6) Engage in advertising practices which are fraudulent, untrue, or misleading, including, but not limited to, assertions that the bond required by Section 22250 in any way implies licensure or endorsement of a tax preparer by the State of California.
 - (7) Violate Section 17530.5 or 17530.6.
 - (8) Violate Section 7216 of Title 26 of the United States Code.
 - (9) Fail to sign a customer's tax return when payment for 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. 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) Procuring or attempting to procure a registration by fraud, misrepresentation, or mistake.

(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.

(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.

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

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

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

(b) A violation of subdivision (a) is not subject to subdivision (b) of Section 22256.

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

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

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

(1) Placing the registration on probation.

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

(3) Revoking the registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A tax preparer shall complete on an annual basis not less than 20 hours of continuing education, including 15 hours in federal taxation and 5 hours in California taxation from an approved curriculum provider. The council shall issue annually a "statement of compliance" when the tax preparer demonstrates that he or she has (1) completed the required 20 hours of continuing education, and (2) provides evidence of compliance with the

bonding requirement of Section 22250, including the name of the surety company, the bond number, and the bond expiration date.

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

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

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

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

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

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

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