

A-Engrossed
Senate Bill 968

Ordered by the Senate June 7
Including Senate Amendments dated June 7

Sponsored by COMMITTEE ON RULES

SUMMARY

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

[Requires facilitators of income tax refund anticipation loans to register with Director of Department of Consumer and Business Services. Sets maximum fees for facilitating refund anticipation loans. Requires filing and posting of loan fees and interest. Prohibits certain activities. Punishes violations by maximum one year's imprisonment, \$6,250 fine, or both. Provides for civil penalties and damages.]

[Becomes operative January 1, 2006.]

[Declares emergency, effective on passage.]

Requires facilitators of income tax refund anticipation loans to be licensed. Specifies types of acceptable licenses. Requires facilitator to disclose specified information to taxpayer applying for loan. Authorizes Oregon Board of Accountancy and State Board of Tax Practitioners to take disciplinary action and impose civil penalties if facilitator violates disclosure requirements. Makes violation of disclosure requirements unlawful practice subject to enforcement by Attorney General.

Preempts authority of local governments to regulate refund anticipation loans.

A BILL FOR AN ACT

1
2 Relating to refund anticipation loans; creating new provisions; and amending ORS 646.607, 673.170,
3 673.400, 673.700, 673.730 and 673.735.

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

5 **SECTION 1. As used in this section and section 2 of this 2005 Act:**

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

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

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

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

20 (4)(a) **"Refund anticipation loan fee" means any charge, fee or other consideration**
21 **charged or imposed by the lender, facilitator or financial institution as defined in ORS 706.008**
22 **for the making of a refund anticipation loan.**

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

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

5 (5) "Taxpayer" means an individual who files a federal or Oregon personal income tax
6 return.

7 **SECTION 2.** (1) A person may not be a facilitator of a refund anticipation loan unless the
8 person:

9 (a) Is a licensee as defined in ORS 673.010; or

10 (b) Holds a license as a tax consultant or tax preparer under ORS 673.605 to 673.740.

11 (2) Prior to a taxpayer's completion of an application for a refund anticipation loan, the
12 facilitator shall clearly disclose in writing to the taxpayer on a form that is separate from
13 the application and that the taxpayer may keep:

14 (a) A listing or table of refund anticipation loan fees and the annual percentage rates,
15 as defined by the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., charged by the
16 facilitator or lender for three or more representative refund anticipation loan amounts. For
17 each loan amount, the schedule shall list separately the amount of each fee and the amount
18 of interest charged by the facilitator or lender and the total amount of fees and interest
19 charged.

20 (b) That the refund anticipation loan is a loan and not the taxpayer's actual personal
21 income tax refund.

22 (c) That electronic filing of the taxpayer's tax return is available without applying for a
23 refund anticipation loan.

24 (d) The average time announced by the appropriate taxing authority within which the
25 taxpayer can expect to receive a refund if the taxpayer does not obtain a refund anticipation
26 loan and the taxpayer's return is filed:

27 (A) Electronically and the refund is directly deposited in the taxpayer's bank account;
28 or

29 (B) By mail and the refund is directly deposited in the taxpayer's bank account or mailed
30 to the taxpayer.

31 (e) That the Internal Revenue Service does not guarantee:

32 (A) That the full amount of the anticipated refund will be paid; or

33 (B) A specific date on which the taxpayer will receive the refund.

34 (f) That the taxpayer is responsible for repayment of the loan and related fees in the
35 event the tax refund is not paid or is not paid in full.

36 (g) The estimated time within which the proceeds of the loan will be paid to the taxpayer
37 if the loan is approved.

38 (h) The fees charged by the facilitator or lender if the refund anticipation loan is not
39 approved.

40 (3) Prior to entering into a refund anticipation loan agreement, the facilitator shall
41 clearly disclose in writing to the taxpayer on a form that is separate from the application
42 and that the taxpayer may keep:

43 (a) The estimated total fees for the loan.

44 (b) The estimated annual percentage rate, as defined by the federal Truth in Lending Act,
45 15 U.S.C. 1601 et seq., for the loan.

1 **SECTION 3.** ORS 673.170 is amended to read:

2 673.170. (1) The Oregon Board of Accountancy may take any of the following disciplinary
3 actions:

4 (a) Revoke, suspend or refuse to issue any certificate issued under ORS 673.040 to 673.075.

5 (b) Revoke, suspend or refuse to issue any public accountant's license issued under ORS 673.100.

6 (c) Revoke, suspend, refuse to renew or refuse to issue any permit described in ORS 673.150.

7 (d) Revoke, suspend, refuse to renew or refuse to issue authorization to practice public
8 accountancy in this state under ORS 673.153.

9 (e) Censure the holder of any permit described in ORS 673.150 or authorization described in ORS
10 673.153.

11 (f) Revoke, suspend, refuse to renew or refuse to issue any registration issued under ORS
12 673.160.

13 (g) Censure the holder of any registration issued under ORS 673.160.

14 (2) The board may take any of the actions described in subsection (1) of this section for any one
15 or any combination of the following causes:

16 (a) Fraud or deceit in obtaining or applying for:

17 (A) A certificate under ORS 673.040 to 673.075;

18 (B) A public accountant's license under ORS 673.100;

19 (C) A registration under ORS 58.345 or 673.160;

20 (D) A permit under ORS 673.150;

21 (E) Authorization to practice public accountancy in this state under the provisions of ORS
22 673.153; or

23 (F) Admission to the roster of authorized accountants referred to in ORS 297.670.

24 (b) Dishonesty, fraud or gross negligence in the practice of public accountancy.

25 (c) Incompetence in the practice of public accountancy. A holder of a license issued under ORS
26 673.100, certificate, permit or registration is incompetent in the practice of public accountancy if the
27 holder:

28 (A) Engages or has engaged in conduct that evidences a lack of ability or fitness to discharge
29 the duty owed to a client or the general public; or

30 (B) Engages or has engaged in conduct that evidences a lack of knowledge or ability to apply
31 principles or skills of the practice of public accountancy, as adopted by the board.

32 (d) Violation of any of the provisions of ORS 673.010 to 673.457.

33 (e) Violation of any of the provisions of ORS 297.405 to 297.555.

34 (f) Violation of any provision of the Code of Professional Conduct adopted by the board under
35 the authority granted by ORS 673.010 to 673.457, or rules adopted by the board under ORS 670.310.

36 (g) Conduct resulting in a conviction of a felony under the laws of any state, of any foreign ju-
37 risdiction or of the United States. However, such conduct may be considered only to the extent
38 permissible under the provisions of ORS 670.280.

39 (h) Conviction of any crime, an essential element of which is dishonesty, fraud or misrepresen-
40 tation, under the laws of any state, of any foreign jurisdiction or of the United States.

41 (i) Conviction of willful failure to pay any tax, file any tax return, keep records or supply in-
42 formation required under the tax laws of any state, of any foreign jurisdiction or of the United
43 States, or conviction of the willful making, rendering, delivery, disclosure, signing or verifying of
44 any false or fraudulent list, return, account, statement or other document, or of supplying any false
45 or fraudulent information, required under the tax laws of any state, of any foreign jurisdiction or

1 of the United States.

2 (j) Cancellation, revocation, suspension or refusal to renew, authority to practice as a certified
3 public accountant or a public accountant in any state or foreign jurisdiction.

4 (k) Cancellation, suspension, revocation or refusal to renew by any state, any foreign jurisdic-
5 tion or any federal agency of the right to practice law, to practice as an enrolled agent before the
6 Internal Revenue Service pursuant to 31 C.F.R. part 10, or to practice under other regulatory law
7 if the cancellation, suspension, revocation or refusal to renew was related to the practice of public
8 accountancy or if dishonesty, fraud or deception was involved.

9 (L) Failure to comply with the continuing education requirements under ORS 673.165 unless
10 such requirements have been waived by the board.

11 (m) Failure to pay a civil penalty imposed by the board after the period for requesting a hearing
12 on the civil penalty terminates if the person or business organization against whom the penalty is
13 imposed has not requested a hearing, or after the period for seeking judicial review of the order
14 assessing the civil penalty has passed.

15 (n) Failure to comply with the terms of a consent agreement described in subsection (3) of this
16 section.

17 (o) Failure to comply with any reporting or other requirement established by the board by rule.

18 **(p) Violation of section 2 of this 2005 Act.**

19 (3) In lieu of disciplinary actions under subsection (1) of this section, the board may enter into
20 a consent agreement with the holder of any certificate described in ORS 673.040 to 673.075, the
21 holder of any public accountant's license, the holder of any registration described in ORS 673.160,
22 the holder of any permit described in ORS 673.150 or the holder of any authorization described in
23 ORS 673.153, under which the holder agrees to comply with conditions prescribed by the board.

24 (4) In addition to the causes in subsection (2) of this section, the board may take any of the
25 actions described in subsection (1) of this section for dishonesty, fraud or misrepresentation not in
26 the practice of public accountancy.

27 (5) In lieu of or in addition to any action described in subsection (1) of this section, the board
28 may take any of the following actions:

29 (a) Require a holder of a permit under ORS 673.150 that provides compilation services or a
30 business organization registered under ORS 673.160 to undergo a peer review conducted as the
31 board may specify; or

32 (b) Require a holder of a permit under ORS 673.150 to complete any continuing professional
33 education programs the board may specify.

34 (6) In the case of a registered business organization, the board may take any of the actions de-
35 scribed in subsection (1) of this section for any of the following additional causes:

36 (a) The cancellation, revocation or suspension of, or refusal to renew, the authority to provide
37 professional services, in this state or any other jurisdiction, of any partner, officer, shareholder,
38 member, manager or owner of the business organization; or

39 (b) The cancellation, revocation or suspension of, or refusal to renew, the authority of the
40 business organization to practice public accountancy or provide other professional services in any
41 other state or foreign jurisdiction.

42 (7) Notwithstanding any protective order issued under ORCP 36 C, upon motion of the board,
43 the court shall order disclosure of materials or information subject to a protective order under
44 ORCP 36 C. The board may use the material or information to take disciplinary action under this
45 section.

1 **SECTION 4.** ORS 673.700 is amended to read:

2 673.700. The State Board of Tax Practitioners may refuse to issue or renew a tax consultant or
3 preparer's license, or may suspend or revoke a tax consultant or preparer's license, or may
4 reprimand any person licensed as a tax consultant or tax preparer for:

5 (1) Violation of ORS 673.615 or 673.705 **or section 2 of this 2005 Act.**

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

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

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

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

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

20 (6) Failure to comply with continuing education requirements under ORS 673.655 or under ORS
21 673.667 unless such requirements have been waived by the board.

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

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

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

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

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

38 (b) Involved dishonesty, fraud or deception.

39 **SECTION 5.** ORS 673.730 is amended to read:

40 673.730. The State Board of Tax Practitioners shall have the following powers, in addition to the
41 powers otherwise granted by ORS 673.605 to 673.740, and shall have all powers necessary or proper
42 to carry the granted powers into effect:

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

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

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

5 (A) At a time certain; or

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

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

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

14 (4) To investigate alleged violations of ORS 673.605 to 673.740, or any rule or order adopted
15 thereunder. The board may keep information gathered pursuant to an investigation by the board
16 confidential until there is a final order or determination by the board, unless disclosure is consid-
17 ered necessary by the board for the investigation or prosecution of an alleged violation of ORS
18 673.605 to 673.740, or any rule or order adopted thereunder. The board may keep personal financial
19 information gathered pursuant to an investigation by the board confidential after a final order or
20 determination by the board, unless disclosure is considered necessary by the board for the investi-
21 gation or prosecution of an alleged violation of ORS 673.605 to 673.740, or any rule or order adopted
22 thereunder. For purposes of this subsection, personal financial information includes but is not lim-
23 ited to tax returns.

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

26 (6) To issue an order directed to a person to cease and desist from any violation or threatened
27 violation of ORS 673.615, 673.643 or 673.705 **or section 2 of this 2005 Act**, or any rule or order
28 adopted thereunder, if the board has reason to believe that a person has been engaged, is engaging
29 or is about to engage in any violation of ORS 673.615, 673.643 or 673.705 **or section 2 of this 2005**
30 **Act**, or any rule or order adopted thereunder.

31 (7) To assess civil penalties within a cease and desist order issued under subsection (6) of this
32 section if the board has reason to believe that a person has been engaged or is engaging in any vi-
33 olation of ORS 673.615, 673.643 or 673.705 **or section 2 of this 2005 Act**, or any rule or order
34 adopted thereunder. The civil penalty may not exceed \$5,000 per violation.

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

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

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

42 **SECTION 6.** ORS 673.400 is amended to read:

43 673.400. (1) Any person who violates any provision of ORS 673.010 to 673.457 **or section 2 of**
44 **this 2005 Act** or any rule adopted [*thereunder*] **under ORS 673.010 to 673.457** shall forfeit and pay
45 a civil penalty into the General Fund to be credited to the Oregon Board of Accountancy for its use

1 in carrying out the provisions of this section. The civil penalty shall be in an amount determined
2 by the board of not more than \$5,000 for each offense.

3 (2) The civil penalty may be recovered by the Attorney General in an action brought in the
4 name of the State of Oregon in any court of appropriate jurisdiction or may be imposed as provided
5 in ORS 183.745.

6 (3) The provisions of this section are in addition to and not in lieu of any other penalty provided
7 by law.

8 **SECTION 7.** ORS 673.735 is amended to read:

9 673.735. (1) Any person who violates any provision of ORS 673.605 to 673.740[,] **or section 2 of**
10 **this 2005 Act**, any rule adopted [*thereunder*] **under ORS 673.605 to 673.740** or any order of the
11 State Board of Tax Practitioners shall incur, in addition to any other penalty provided by law, a
12 civil penalty in an amount of not more than \$5,000 for each violation. The amount of penalty shall
13 be determined by the board after taking into consideration the gravity of the violation, the previous
14 record of the violator in complying, or in failing to comply, with the provisions of ORS 673.605 to
15 673.740 or the rules adopted thereunder, and other considerations as the board considers appropri-
16 ate.

17 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

18 (3) All penalties recovered under this section shall be paid into the General Fund to be credited
19 to the board for use in carrying out the provisions of this section.

20 **SECTION 8.** ORS 646.607 is amended to read:

21 646.607. A person engages in an unlawful practice when in the course of the person's business,
22 vocation or occupation the person:

23 (1) Employs any unconscionable tactic in connection with sale, rental or other disposition of real
24 estate, goods or services, or collection or enforcement of an obligation;

25 (2) Violates section 3, chapter 759, Oregon Laws 2003; [*or*]

26 **(3) Violates section 2 of this 2005 Act; or**

27 [(3)] **(4)** Fails to deliver all or any portion of real estate, goods or services as promised, and upon
28 request of the customer, fails to refund any money that has been received from the customer that
29 was for the purchase of the undelivered real estate, goods or services and that is not retained by
30 the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not
31 create a warranty obligation and does not apply to a dispute over the quality of real estate, goods
32 or services delivered to a customer.

33 **SECTION 9.** ORS 646.607, as amended by section 10, chapter 759, Oregon Laws 2003, is
34 amended to read:

35 646.607. A person engages in an unlawful practice when in the course of the person's business,
36 vocation or occupation the person:

37 (1) Employs any unconscionable tactic in connection with sale, rental or other disposition of real
38 estate, goods or services, or collection or enforcement of an obligation; [*or*]

39 **(2) Violates section 2 of this 2005 Act; or**

40 [(2)] **(3)** Fails to deliver all or any portion of real estate, goods or services as promised, and upon
41 request of the customer, fails to refund any money that has been received from the customer that
42 was for the purchase of the undelivered real estate, goods or services and that is not retained by
43 the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not
44 create a warranty obligation and does not apply to a dispute over the quality of real estate, goods
45 or services delivered to a customer.

1 **SECTION 10.** (1) A unit of a local government, as defined in ORS 174.116, may not adopt
2 any rule, regulation, code or ordinance to restrict or limit any provision under ORS 646.607,
3 673.170, 673.400, 673.700, 673.730 and 673.735 or section 1 or 2 of this 2005 Act relating to re-
4 fund anticipation loans.

5 (2) Sections 1 and 2 of this 2005 Act and ORS 646.607, 673.170, 673.400, 673.700, 673.730 and
6 673.735 supersede and preempt any rule, regulation, code or ordinance of any unit of a local
7 government, as defined in ORS 174.116, relating to refund anticipation loans.

8 **SECTION 11.** (1) Sections 1 and 2 of this 2005 Act and the amendments to ORS 646.607,
9 673.170, 673.400, 673.700, 673.730 and 673.735 by sections 3 to 9 of this 2005 Act apply to refund
10 anticipation loans made or facilitated on or after the effective date of this 2005 Act.

11 (2) Section 10 of this 2005 Act applies to any rule, regulation, code or ordinance of any
12 unit of a local government, as defined in ORS 174.116, relating to refund anticipation loans,
13 whether adopted before, on or after the effective date of this 2005 Act.

14