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AB-3143 Tax preparers. (2017-2018)

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Assembly Bill No. 3143

CHAPTER 597

An act to amend Sections 22251, 22251.2, 22251.3, 22252, 22253, 22255, 22256, 22258, and 22259 of, to amend, renumber, and add Section 22250 of, to add Sections 22251.4 and 22253.5 to, and to repeal Section 22253.1.5 of, the Business and Professions Code, relating to tax preparers.

[Approved by Governor September 20, 2018. Filed with Secretary of State September 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3143, Low. Tax preparers.

Existing law regulates tax preparers and states that it is the intent of the provisions governing the regulation of tax preparers 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 the California Tax Education Council (council) to register tax preparers and ensure that they meet all necessary requirements. Existing law, for the purposes of these provisions, defines client to mean an individual for whom a tax preparer performs or agrees to perform tax preparation services, and defines the council as a single nonprofit organization exempt from taxation and made up of representatives from specified entities. Existing law requires the council to issue a registration to any applicant who provides satisfactory evidence that he or she meets specified requirements and who complies with the rules established by the council. Existing law requires a tax preparer to provide to the customer in writing specified information prior to rendering any tax preparation services. Except as specified, a violation of these provisions is a crime. Existing law repeals these provisions on January 1, 2019.

The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend.

This bill would name these provisions the Tax Preparation Act, and would require a tax preparer, on and after July 1, 2019, to report a paid claim against its surety bond to the council, which would be required to post a notice of the claim on its Internet Web site. The bill would extend the definition of client to the term "customer." The bill would establish public protection as the council's highest priority in exercising its registration and disciplinary authority and other functions. The bill would make the meetings of the council's board of directors subject to the Bagley-Keene Open Meeting Act. The bill would require the council to establish and maintain on its Internet Web site a searchable public registry of registrants with specified information about each registrant. The bill would require a tax preparer to include the address of the council's Internet Web site in the information the tax preparer is required to provide to a customer before rendering services. The bill would direct the council to require an applicant, beginning July 1, 2020, to submit fingerprint images for submission to the Department of Justice, and would require the Department of Justice to compile and disseminate a fitness determination regarding the applicant based on the applicant's criminal offender record information, as prescribed. The bill would require the Department of Justice and the council to charge a fee sufficient to cover the costs of processing the request for state- and federal-level criminal offender record information. The bill would include

among the list of persons exempt from the act an employee supervised by a person who is exempt from the act, subject to specified conditions. The bill would extend the operation of the act's provisions to January 1, 2023. By extending the operation of these provisions, 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22250 of the Business and Professions Code is amended and renumbered to read:

22250.1. (a) A tax preparer shall maintain a bond issued by a surety company admitted to do business in this state for each individual preparing tax returns for another person. The principal sum of the bond shall be five thousand dollars (\$5,000). A tax preparer subject to this section shall provide to the surety company proof that the individual is at least 18 years of age before a surety bond may be issued.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person or persons damaged by any fraud, dishonesty, misstatement, misrepresentation, deceit, or any unlawful acts or omissions by the tax preparer, or the tax preparers employed or associated with it to provide tax preparation services.

(c) The tax preparer filing the bond shall identify all tax preparers employed or associated with the tax preparer and shall provide for each employee or associate the evidence required by subdivision (a) to the surety company. A tax preparer employed or associated with a tax preparer shall be covered by the bond of the tax preparer with which he or she is employed or associated. However, in no event shall the total bond required for any single tax preparer and the tax preparers employed or associated with it be required to exceed one hundred twenty-five thousand dollars (\$125,000). The aggregate liability of the surety to any and all persons regardless of the number of claims against the bond or the number of years the bond remains in force shall not exceed five thousand dollars (\$5,000) for any one tax preparer. Any revision of the bond amount shall not be cumulative. The liability of the surety on the bond shall not include payment of any civil penalties, fines, attorneys' fees, or any other cost provided by statute or regulation.

(d) The tax preparer shall file an amendment to the bond within 30 days of a change in information contained in the bond, including a change in the tax preparers employed or associated with the tax preparer.

(e) (1) A tax preparer may not conduct business without having a current surety bond in the amount prescribed by this section.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to the tax preparer and the California Tax Education Council, identifying the bond and the date of cancellation or termination.

(3) If a tax preparer fails to obtain a new bond by the effective date of the cancellation or termination of the former bond, the tax preparer shall cease to conduct business until that time as a new surety bond is obtained.

(f) Notwithstanding Section 995.710 of the Code of Civil Procedure, a tax preparer may not make a deposit in lieu of bond.

(g) A tax preparer shall furnish evidence of the bond required by this section upon the request of any state or federal agency or any law enforcement agency or the California Tax Education Council.

(h) On and after July 1, 2019, a tax preparer shall report a paid claim against its surety bond to the council, and the council shall post a notice of the claim on its Internet Web site.

SEC. 2. Section 22250 is added to the Business and Professions Code, to read:

22250. This chapter shall be known and may be cited as the Tax Preparation Act. Whenever a reference is made to the Tax Preparation Act by any statute, it shall be construed to refer to this chapter.

SEC. 3. Section 22251 of the Business and Professions Code is amended to read:

22251. For the purposes of this chapter, the following terms 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).

(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.

(e) "Client" or "customer" 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. 4. Section 22251.2 of the Business and Professions Code is amended to read:

22251.2. (a) The California Tax Education Council, as defined in subdivision (d) of Section 22251, shall carry out the responsibilities and duties set forth in this chapter.

(b) Protection of the public shall be the highest priority for the council in exercising its registration and disciplinary authority, and any other functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

(c) The council shall be governed by a board of directors comprised of the following:

(1) 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.

(2) 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.

(3) Six individuals who are tax preparers pursuant to Section 22255 and are appointed through a process established by the council to the board of directors 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.

(d) The meetings of the board of directors shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). The board of directors may adopt additional policies and procedures that provide greater transparency to registrants and the public than required by the Bagley-Keene Open Meeting Act.

(e) 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.

(f) 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.

(g) 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. 5. Section 22251.3 of the Business and Professions Code is amended 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) The applicant has successfully passed a background investigation pursuant to Section 22253.5.

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

(4) 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. 6. Section 22251.4 is added to the Business and Professions Code, to read:

22251.4. (a) The council shall establish and maintain on its Internet Web site a searchable public registry of registrants. Each registrant's listing shall clearly indicate whether the registrant is actively in compliance with the annual registration requirements and shall include any of the following information that is applicable to the registrant:

(1) The registrant's name and mailing address.

(2) The registrant's California Tax Education Council registration number.

(3) Any other information the council believes would be beneficial to consumers of tax preparation services that is consistent with protecting the public pursuant to subdivision (b) of Section 22251.2.

(b) The Internet Web site of the council shall contain direct links to the Internet Web sites maintained by the California Board of Accountancy, the State Bar of California, and the Internal Revenue Service where public information regarding tax preparers exempt from this chapter may be obtained.

SEC. 7. Section 22252 of the Business and Professions Code is amended to read:

22252. Prior to rendering any tax preparation services, a tax preparer shall provide the customer in writing with the following:

(a) The tax preparer's name, address, and telephone number.

(b) Evidence of compliance with the bonding requirement of Section 22250.1, including the bond number, if any.

(c) The address of the Internet Web site of the council.

SEC. 8. 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 22250.1 in any way implies licensure or endorsement of a tax preparer by the State of California.

(7) Violate Section 17530.5.

(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 22250.1, or give false or misleading information to the California Tax Education Council pursuant to Section 22255.

(12) Commit 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.

(13) Procure or attempt to procure a registration by fraud, misrepresentation, or mistake.

(14) Violate or attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this chapter or any rule or bylaw adopted by the council.

(15) Be convicted 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.

(16) Impersonate an applicant or act as a proxy for an applicant in any situation or examination referred to under this chapter for the issuance of a registration.

(17) Impersonate a registrant, or permit or allow an unregistered person to use a registration.

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

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

(c) A violation of paragraphs (12) to (18), inclusive, of subdivision (a) is not subject to subdivision (b) of Section 22256.

(d) The council may enter into an agreement with the Franchise Tax Board to provide reimbursement to the Franchise Tax Board for assistance in carrying out enforcement activities consistent with this chapter.

(e) Beginning July 1, 2019, the council shall post the following on its Internet Web site:

(1) All disciplinary actions taken against registrants by the council, including, but not limited to, misconduct that resulted in a suspension or revocation.

(2) A list of registrants on probation, including the misconduct that resulted in the probation and any terms of probation.

SEC. 9. Section 22253.1.5 of the Business and Professions Code is repealed.

SEC. 10. Section 22253.5 is added to the Business and Professions Code, to read:

22253.5. (a) Beginning July 1, 2020, as a condition of registration, the council shall require the applicant to submit fingerprint images as directed by the council and in a form consistent with the requirements of this section.

(b) The council shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state- and federal-level convictions and of state- and federal-level arrests for which the Department of Justice establishes that the applicant was released on bail or on his or her own recognizance pending trial.

(c) Requests for federal-level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and shall compile and disseminate a fitness determination regarding the applicant. The Department of Justice shall provide information to the council pursuant to subdivision (p) of Section 11105 of the Penal Code.

(d) The Department of Justice and the council shall charge a fee sufficient to cover the cost of processing the request for state- and federal-level criminal offender record information.

(e) The council shall request subsequent arrest notification service from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for all applicants for registration for whom fingerprint images and related information are submitted to conduct a search for state- and federal-level criminal offender record information.

(f) The council may receive arrest notifications and other background materials about applicants and registrants from a city, county, or city and county.

SEC. 11. 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 22250.1, 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 22250.1, 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. 12. 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 paragraphs (12) to (18), inclusive, of subdivision (a) of Section 22253, 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. 13. Section 22258 of the Business and Professions Code is amended to read:

22258. (a) The following persons are exempt from the requirements of this title, subject to the requirements of subdivision (b):

(1) A person with a current and valid license issued by the California Board of Accountancy.

(2) A person who is an active member of the State Bar of California.

(3) Any trust company or trust business as defined in Chapter 1 (commencing with Section 99) of Division 1 of the Financial Code.

(4) A financial institution regulated by the state or federal government, insofar as the activities of the financial institution with respect to tax preparation are subject to federal or state examination or oversight.

(5) A person who is enrolled to practice before the Internal Revenue Service pursuant to Subpart A (commencing with Section 10.1) of Part 10 of Title 31 of the Code of Federal Regulations.

(6) Any employee of any person described in paragraph (1), (2), (3), (4), or (5), while functioning within the scope of that employment, insofar that the employee is supervised by a person exempt under this subdivision who reviews the return, signs it, and is responsible for its content.

(7) Any employee of any corporation, partnership, association, or any entity described in subparagraph (B) of paragraph (1) of subdivision (a) of Section 22251.

(b) (1) Except for employees of entities described in paragraph (3) or (4) of subdivision (a), paragraph (6) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by a person described in paragraph (1), (2), or (5) of subdivision (a).

(2) Paragraph (7) of subdivision (a) shall apply only if all tax returns prepared by that employee are signed by the person described in paragraph (7) of subdivision (a).

(3) No person described in this subdivision as an employee may sign a tax return, unless that employee is otherwise exempt under this section, is registered as a tax preparer with the council, or is an employee of either a trust company or trust business described in paragraph (3) of subdivision (a), or any employee of a financial institution described in paragraph (4) of subdivision (a).

(c) For purposes of this section, preparation of a tax return includes the inputting of tax data into a computer.

SEC. 14. Section 22259 of the Business and Professions Code is amended to read:

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

(b) This chapter shall remain in effect only until January 1, 2023, and as of that date is repealed.

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