

# House Bill 3163

Sponsored by Representatives HOLVEY, KAHL; Representatives KOTEK, RILEY, SHIELDS, Senators BONAMICI, DINGFELDER, ROSENBAUM

## 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 **as introduced**.

Requires facilitators of income tax refund anticipation loans and refund anticipation payment instruments to obtain license from Director of Department of Consumer and Business Services. Requires filing and posting of loan fees and interest and certain disclosures. Prohibits certain activities. Punishes violations by maximum of one year's imprisonment, \$6,250 fine, or both. Provides for enforcement of violations as unlawful trade practice.

Becomes operative January 1, 2010.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to refund anticipation loans; creating new provisions; amending ORS 673.605, 673.700 and  
3 673.730; repealing ORS 673.712 and 673.715; and declaring an emergency.

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

### **SECTION 1. As used in sections 1 to 15 of this 2009 Act:**

6 (1) **"Annualized fee percentage" means the total amount of fees, charges or other con-**  
7 **sideration, other than interest due a lender from a loan, that a consumer pays to a facilitator**  
8 **in connection with a refund anticipation loan or refund anticipation payment instrument,**  
9 **calculated and expressed as a percentage in the manner provided in section 6 (2) of this 2009**  
10 **Act.**

11 (2) **"Applicant" means a person that applies for a license to conduct business as a**  
12 **facilitator.**

13 (3) **"Consumer" means an individual who, alone or together with another individual:**

14 (a) **Receives a solicitation for a refund anticipation loan from a facilitator;**

15 (b) **Applies for a refund anticipation loan; or**

16 (c) **Receives from a facilitator or lender approval for or funds in connection with a refund**  
17 **anticipation loan or refund anticipation payment instrument.**

18 (4) **"Facilitator" means:**

19 (a) **A person that alone or in conjunction or cooperation with another person:**

20 (A) **Solicits or conducts negotiations in connection with an application for a refund an-**  
21 **ticipation loan or a refund anticipation payment instrument;**

22 (B) **Receives, accepts or processes an application for a refund anticipation loan or refund**  
23 **anticipation payment instrument;**

24 (C) **Collects a fee, charge or other consideration for services in connection with a refund**  
25 **anticipation loan or a refund anticipation payment instrument;**

26 (D) **Services or collects proceeds from a refund anticipation loan or refund anticipation**  
27 **payment instrument on behalf of another person; or**

28 (E) **Facilitates a refund anticipation loan or refund anticipation payment instrument in**

**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 any other manner.

2 (b) A lender that, without the assistance or cooperation of another person, directly:

3 (A) Solicits or conducts negotiations in connection with an application for a refund an-  
4 ticipation loan or a refund anticipation payment instrument;

5 (B) Receives, accepts or processes an application for a refund anticipation loan or refund  
6 anticipation payment instrument;

7 (C) Collects for the lender's own benefit a fee, charge or other consideration, other than  
8 interest due a lender from a refund anticipation loan, for services related to receiving, ac-  
9 cepting or processing an application for a refund anticipation loan or refund anticipation  
10 payment instrument; or

11 (D) Services or collects proceeds from a refund anticipation loan or refund anticipation  
12 payment instrument on behalf of another person.

13 (5)(a) "Facilitator's fee" means a charge, fee or other consideration that the lender or  
14 facilitator charges or imposes for a refund anticipation loan or a refund anticipation payment  
15 instrument or for a facility or service related, directly or indirectly, to a refund anticipation  
16 loan or refund anticipation payment instrument.

17 (b) "Facilitator's fee" does not include a charge, fee or other consideration that the  
18 facilitator usually charges or imposes in the ordinary course of business for services not  
19 connected with a refund anticipation loan or refund anticipation payment instrument, such  
20 as fees for preparing tax returns or filing tax returns electronically.

21 (6)(a) "Lender" means a person that makes a refund anticipation loan with the person's  
22 own funds or a line of credit or other funding from a financial institution, as defined in ORS  
23 706.008.

24 (b) "Lender" does not include a federal bank, as defined in ORS 706.008, or a federal credit  
25 union.

26 (7) "Licensee" means a person that is licensed to conduct business as a facilitator under  
27 section 3 of this 2009 Act.

28 (8) "Person" means an individual, a joint venture, a partnership, a cooperative, a limited  
29 liability company, an association, a joint stock company, a corporation, a trust or an  
30 unincorporated organization.

31 (9) "Refund anticipation payment instrument" means evidence of an arrangement under  
32 which a lender, facilitator or affiliated person:

33 (a) Opens a temporary account to receive a consumer's tax refund on the consumer's  
34 behalf;

35 (b) Issues the proceeds of the consumer's tax refund to the consumer in the form of a  
36 check, prefunded debit card, gift card or other record of a promise to pay an amount of  
37 money or provide goods or services in an amount specified in the record when the record is  
38 presented to another person; and

39 (c) Charges and receives a fee or other compensation from the consumer for the ar-  
40 rangement.

41 (10) "Refund anticipation loan" means:

42 (a) A loan that a lender makes under a contract or agreement that requires the con-  
43 sumer to repay the loan from the proceeds of the consumer's federal or state income tax  
44 refund, or a loan that the consumer expects to repay from the proceeds of the tax refund;  
45 or

1 (b) A loan that a lender makes under a contract or agreement that requires the con-  
2 sumer to repay the loan from the proceeds of a subsequent loan of the type described in  
3 paragraph (a) of this subsection, or a loan that the consumer expects to repay from the  
4 proceeds of a subsequent loan of the type described in paragraph (a) of this subsection.

5 (11) "Taxpayer" means an individual that, in return for paying a fee, charge or other  
6 consideration, receives the services of a facilitator in preparing the individual's tax return,  
7 filing the tax return electronically or applying for a refund anticipation loan or refund an-  
8 ticipation payment instrument.

9 (12) "Unconscionable" means actions or conduct by which a lender or facilitator know-  
10 ingly takes advantage of a consumer's or taxpayer's physical infirmity, lack of knowledge,  
11 illiteracy or inability to understand the contracts, documents, charges or fees related to a  
12 refund anticipation loan or refund anticipation payment instrument.

13 **SECTION 2.** (1) A person may not act or conduct business as a facilitator in this state  
14 unless the person:

15 (a) Is licensed as a tax preparer under ORS 673.640; and

16 (b) Is licensed under section 3 of this 2009 Act.

17 (2) This section does not apply to a person or an employee of a person doing business as  
18 a financial institution, as defined in ORS 706.008, or as a savings association, as defined in  
19 ORS 722.004.

20 (3) An employee or agent of a person licensed under section 3 of this 2009 Act need not  
21 obtain a license in the employee's or agent's own name in order to conduct business on the  
22 licensee's behalf.

23 **SECTION 3.** (1) An applicant for a license to conduct business as a facilitator shall apply  
24 to the Director of the Department of Consumer and Business Services on a form and in a  
25 manner that the director prescribes by rule. An application for a license under this section  
26 must contain:

27 (a) The applicant's name and assumed business name or other identity the applicant uses  
28 in conducting business;

29 (b) The applicant's business address, mailing address, electronic mail address and the  
30 Internet address of any website the applicant maintains for public access;

31 (c) The applicant's federal employer identification number or Internal Revenue Service  
32 taxpayer identification number;

33 (d) The applicant's principal place of business inside or outside this state;

34 (e) The name and address of the applicant's agent for the service of process, notice or  
35 demand, or a power of attorney that the applicant has executed and by which the applicant  
36 appoints the director as the applicant's agent for the service of process, notice or demand;

37 (f) Names, trade names, service marks or other means by which the applicant identifies  
38 the refund anticipation loan or refund anticipation payment instrument products or services  
39 the applicant offers or that a consumer might receive;

40 (g) A statement in which the applicant agrees to submit to the personal jurisdiction of  
41 the courts of this state; and

42 (h) A statement that, for the applicant, the applicant's employees or agents and any in-  
43 dividual who has an ownership interest in or supervisory responsibility for the applicant or  
44 the applicant's activities, discloses:

45 (A) Any criminal conviction in the five-year period before the date of application;

1 (B) Any pending investigation into the applicant's business activities brought by a li-  
 2 censing, regulatory or law enforcement authority in any jurisdiction; and

3 (C) Litigation that materially concerns the applicant or the applicant's business activities  
 4 in any jurisdiction in the five-year period before the date of application.

5 (2) The director may require other information from the applicant in order to carry out  
 6 the provisions of sections 1 to 15 of this 2009 Act.

7 (3) As part of an applicant's initial application for a license under this section, the ap-  
 8 plicant shall pay a fee to the director for each business location in which the applicant in-  
 9 tends to conduct business in an amount the director sets by rule. The fee amount must be  
 10 sufficient, when aggregated with other application and renewal fees, to pay the expenses of  
 11 administering and enforcing sections 1 to 15 of this 2009 Act.

12 (4) Upon receiving a completed application for a license to conduct business as a  
 13 facilitator, the director may investigate the applicant as necessary to verify the information  
 14 contained in the application.

15 (5) The director may deny a license to an applicant if the director finds in writing that:

16 (a) The applicant has provided false, misleading, incomplete or inaccurate information in  
 17 the application for the license;

18 (b) The applicant is not qualified to conduct business as a facilitator because the appli-  
 19 cant is not financially solvent, does not have adequate experience or expertise, has engaged  
 20 in dishonest, fraudulent or illegal practices or conduct in any business or profession or is  
 21 otherwise unfit; or

22 (c) The applicant has been convicted in any jurisdiction of a crime, an essential element  
 23 of which is fraud.

24 (6) If the director is satisfied that the information contained in the application is accu-  
 25 rate and complete and that no reason exists under subsection (5) of this section to deny the  
 26 applicant a license, the director shall issue a license to the applicant and may make or keep  
 27 records concerning the licensee that are necessary to carry out the provisions of sections 1  
 28 to 15 of this 2009 Act.

29 (7) A license issued under this section expires on December 31 following the date on  
 30 which the license was issued, unless the licensee renews the license for the succeeding year  
 31 by filing a renewal application with the director on a form and with the information the di-  
 32 rector prescribes. The licensee, as part of the renewal application, shall pay a fee to the di-  
 33 rector for each location in which the licensee intends to conduct business in an amount the  
 34 director sets by rule. The fee amount must be sufficient, when aggregated with other appli-  
 35 cation and renewal fees, to pay the expenses of administering and enforcing sections 1 to 15  
 36 of this 2009 Act. The director shall renew the license if the director is satisfied that the  
 37 licensee continues to meet the criteria for licensing set forth in this section.

38 (8) A licensee shall prominently display a license issued under this section in each place  
 39 of business in this state where the licensee conducts business as a facilitator.

40 (9) If the director denies an application for a license or license renewal under this sec-  
 41 tion, the director shall notify the licensee, stating the reasons for the denial. The applicant  
 42 or licensee may request a hearing under ORS 183.435 and, upon receiving the request, the  
 43 director shall grant the applicant or licensee a hearing under ORS 183.413 to 183.470.

44 SECTION 4. (1) A licensee shall file with the Director of the Department of Consumer  
 45 and Business Services a corporate surety bond or irrevocable letter of credit running to the

1 State of Oregon in the sum of \$25,000. The corporate surety bond or irrevocable letter of  
 2 credit must be issued by a corporate surety or an insured institution, as defined in ORS  
 3 706.008, that is authorized to do business in this state.

4 (2) The liability of the surety company or insured institution that issued the surety bond  
 5 or irrevocable letter of credit shall continue until two years after the licensee ceases to  
 6 conduct business as a facilitator in this state or until the bond or irrevocable letter of credit  
 7 is canceled, whichever is later. The surety company or insured institution shall give the di-  
 8 rector at least 30 days' written notice before canceling or terminating liability under the  
 9 surety bond or irrevocable letter of credit. The licensee, in order to comply with this sec-  
 10 tion, shall ensure that the full amount of the surety bond or irrevocable letter of credit re-  
 11 quired under this section is available at all times.

12 (3) The aggregate liability of the surety company or insured institution may not exceed  
 13 the principal sum of the surety bond or irrevocable letter of credit.

14 **SECTION 5.** (1) On or before January 2 of each year, a licensee shall file schedules with  
 15 the Director of the Department of Consumer and Business Services that disclose for the  
 16 succeeding year:

17 (a) The facilitator's fees that the licensee will charge and the annualized fee percentage  
 18 applicable to the facilitator's fees; and

19 (b) The interest rates that lenders for whom the licensee facilitates refund anticipation  
 20 loans will charge.

21 (2) If at any point after January 2 the licensee learns of a change to a rate, charge or  
 22 percentage disclosed under subsection (1) of this section, the licensee shall immediately file  
 23 with the director an amendment setting forth the corrected rate, charge or percentage.

24 (3) In each location where the licensee conducts business as a facilitator, the licensee  
 25 shall prominently display:

26 (a) A schedule of the lender's current interest rates for refund anticipation loans;

27 (b) A schedule of the licensee's current facilitator's fees and the annualized fee percent-  
 28 age that applies to the facilitator's fees;

29 (c) A schedule of the licensee's fees for filing tax forms electronically; and

30 (d) A statement that the licensee may not require a taxpayer to obtain a refund antic-  
 31 ipation loan or refund anticipation payment instrument as a condition of filing the taxpayer's  
 32 tax return electronically and that the fee for filing a tax return electronically does not de-  
 33 pend on whether the taxpayer has obtained a refund anticipation loan or refund anticipation  
 34 payment instrument.

35 (4) The licensee may not conduct business as a facilitator unless the licensee displays the  
 36 schedules required to be displayed under subsection (3) of this section and unless:

37 (a) The licensee charges only the facilitator's fee that is both displayed on the licensee's  
 38 schedule and disclosed to the consumer or taxpayer as provided in section 6 of this 2009 Act;  
 39 and

40 (b) The licensee ensures that the lender charges and that the consumer pays only the  
 41 interest rate for a refund anticipation loan that is both displayed on the schedule and dis-  
 42 closed to the consumer as provided in section 6 of this 2009 Act.

43 **SECTION 6.** (1) The licensee shall disclose to a consumer, in the manner described in  
 44 subsection (4) of this section and at the time the consumer applies for a refund anticipation  
 45 loan or a refund anticipation payment instrument, all of the following items:

1 (a) A listing or table that shows examples of the amounts that the licensee and the lender  
 2 will charge in fees and in interest for refund anticipation loans of \$500, \$750, \$1,000, \$1,500,  
 3 \$2,000 and \$3,000. For each loan example, the table or listing shall disclose separately the  
 4 amount of each fee, the annual percentage rate for the loan and the total amount of money  
 5 a consumer would pay in fees and interest for the loan. In making this disclosure, the  
 6 licensee shall calculate the annual percentage rate as defined by the federal Truth In Lending  
 7 Act, 15 U.S.C. 1601 et seq.

8 (b) The lender's fees, interest rate and annual percentage rate for the refund anticipation  
 9 loan that the taxpayer will pay if approved. If a consumer, as a condition of obtaining the  
 10 loan, must establish or maintain a deposit account with the lender to receive the consumer's  
 11 tax refund and thereby to offset the amount owed on the loan, the maturity date of the loan  
 12 for the purpose of determining the annual percentage rate disclosure under this section, re-  
 13 gardless of the annual percentage rate disclosure that the federal Truth In Lending Act re-  
 14 quires, is the estimated date on which the tax refund will be deposited in the consumer's  
 15 account.

16 (c) The facilitator's fee and the annualized fee percentage applicable to the facilitator's  
 17 fee, the fee for filing a tax return electronically and the fees the licensee will charge the  
 18 consumer if the consumer's application for a refund anticipation loan is not approved.

19 (d) The time at which the consumer will receive the amount loaned if the lender approves  
 20 the loan.

21 (e) A statement that a refund anticipation loan is a loan and not the consumer's actual  
 22 tax refund.

23 (f) A statement that a refund anticipation payment instrument is not necessary if the  
 24 consumer has an account in a depository institution.

25 (g) A statement in which the licensee discloses:

26 (A) The average amount of time in which a person that files a tax return electronically  
 27 in the current filing year can expect to receive a tax refund deposited directly into the per-  
 28 son's bank account, according to information available from state and federal taxing au-  
 29 thorities;

30 (B) The average amount of time in which a person that files a tax return electronically  
 31 in the current filing year can expect to receive a tax refund mailed to the person, according  
 32 to information provided by state and federal taxing authorities; and

33 (C) The difference, in days, between the time at which the consumer would receive the  
 34 loan amount from a refund anticipation loan, as disclosed in accordance with paragraph (d)  
 35 of this subsection, and the times by which, on average, a person that files a tax return  
 36 electronically will receive a refund from the taxing authority deposited directly to the per-  
 37 son's deposit account, without applying for or receiving a refund anticipation loan.

38 (h) A statement that the state and federal taxing authorities do not guarantee that the  
 39 consumer will receive the full amount of an anticipated tax refund or that the consumer will  
 40 receive a refund on a specific date.

41 (i) A statement that the consumer is responsible for repaying the loan and related fees  
 42 and interest from other money or assets the consumer has if the consumer does not receive  
 43 a tax refund or the anticipated full amount of the tax refund.

44 (2) The annualized fee percentage required in disclosures under this section must be  
 45 calculated as follows:

1 (a) Divide the sum of all facilitator's fees by:

2 (A) The amount of the refund anticipation loan, less all loan origination or other fees  
3 connected with the loan and imposed by the lender; or

4 (B) The anticipated amount of the consumer's tax refund, if the consumer will receive a  
5 refund anticipation payment instrument instead of a refund anticipation loan;

6 (b) Divide the result obtained from the calculation in paragraph (a) of this subsection by:

7 (A) The number of days in the term of the refund anticipation loan, if the consumer will  
8 receive a refund anticipation loan;

9 (B) The number of days in which the consumer may anticipate receiving the consumer's  
10 tax refund, according to information available from state and federal taxing authorities; or

11 (C) If a reliable figure is not available for the number required under subparagraphs (A)  
12 and (B) of this paragraph, the number of days in which a person who files an electronic tax  
13 return will, on average, receive a tax refund deposited directly into the person's bank ac-  
14 count, according to information available from state and federal taxing authorities;

15 (c) Multiply the result obtained from the calculation in paragraph (b) of this subsection  
16 by 365; and

17 (d) Multiply the result obtained from the calculation in paragraph (c) of this subsection  
18 by 100 to express the result as a percentage.

19 (3) For purposes of calculating the annualized fee percentage under subsection (2) of this  
20 section:

21 (a) The facilitator's fee includes fees or charges imposed for opening, servicing and clos-  
22 ing a temporary deposit account used to receive an electronic deposit of the consumer's tax  
23 refund.

24 (b) The number of days in the loan term, if not specified in the loan contract, is equiv-  
25 alent to the number of days in which the consumer may anticipate receiving the consumer's  
26 tax return, according to information available from state and federal taxing authorities.

27 (4)(a) The facilitator must make the disclosures described in this section orally and in  
28 writing on a form separate from the application form. If the facilitator solicits, conducts  
29 negotiations with or otherwise communicates with the consumer concerning a refund antic-  
30 ipation loan or a refund anticipation payment instrument in a language other than the Eng-  
31 lish language, or if the facilitator knows or has reason to know that the consumer primarily  
32 speaks or reads a language other than the English language, the facilitator shall make the  
33 disclosures described in this section orally in the language the consumer primarily speaks  
34 or reads and in writing in both English and the language the consumer primarily speaks or  
35 reads.

36 (b) For purposes of this subsection, a facilitator has reason to know that a consumer  
37 primarily speaks or reads a language other than the English language if the facilitator has  
38 previously communicated with the consumer primarily in the other language in the course  
39 of a previous transaction.

40 **SECTION 7.** (1) The Director of the Department of Consumer and Business Services by  
41 rule may:

42 (a) Specify the form and content for the schedules and disclosures required in sections  
43 5 and 6 of this 2009 Act, except for information in the schedules or disclosures that the  
44 licensee must fill in or supply; and

45 (b) Specify which fees a facilitator must include in the sum of facilitator's fees required

1 for the purpose of the calculation described in section 6 (2) of this 2009 Act.

2 (2) The director shall make the forms and schedules described in subsection (1) of this  
 3 section available to facilitators in the three languages other than the English language that  
 4 are most commonly spoken in this state.

5 **SECTION 8.** A licensee may not:

6 (1) Charge a consumer, in a transaction related to a refund anticipation loan or refund  
 7 anticipation payment instrument, a facilitator's fee that, when expressed as an annualized  
 8 fee percentage, exceeds 36 percent. For the purposes of this subsection, the facilitator's fee  
 9 consists of the aggregate of all separate facilitator's fees the facilitator charges or imposes  
 10 in connection with the transaction.

11 (2) Charge or impose a fee in a transaction related to a refund anticipation loan or refund  
 12 anticipation payment instrument apart from the facilitator's fees specified in the schedules  
 13 provided to the Department of Consumer and Business Services under section 5 of this 2009  
 14 Act and in the disclosures provided to the consumer under section 6 of this 2009 Act.

15 (3) Misrepresent a term, condition or material fact associated with an agreement for a  
 16 refund anticipation loan or a refund anticipation payment instrument.

17 (4) Fail to arrange for a refund anticipation loan promptly after a consumer applies for  
 18 the loan or fail to deliver a refund anticipation loan approved by the lender to the consumer  
 19 within 48 hours of the time disclosed in accordance with section 6 (1)(d) of this 2009 Act.

20 (5) Require a taxpayer to obtain a refund anticipation loan or refund anticipation pay-  
 21 ment instrument in exchange for filing the taxpayer's tax return electronically or in ex-  
 22 change for a reduction or discount in any fee the licensee charges for preparing or filing the  
 23 taxpayer's tax return.

24 (6) Engage in a fraudulent transaction, practice or course of business in connection with  
 25 a refund anticipation loan.

26 (7) Facilitate a refund anticipation loan for which the lender charges more interest than  
 27 the licensee indicated in schedules filed with the Director of the Department of Consumer  
 28 and Business Services under section 5 of this 2009 Act.

29 (8) Facilitate a loan that a lender secures with or arranges to have repaid directly from  
 30 the proceeds of a tax refund a consumer receives from the State Treasury.

31 (9) Collect or facilitate in collecting, alone or in conjunction with another person, an  
 32 outstanding or delinquent refund anticipation loan for a lender or other creditor, or an  
 33 assignee of the lender or creditor. For purposes of this subsection, soliciting, processing,  
 34 receiving or accepting an application for a refund anticipation loan or refund anticipation  
 35 payment instrument in which a contract provision or other agreement permits the lender,  
 36 creditor or assignee to receive payment for an outstanding or delinquent refund anticipation  
 37 loan by offset or other means constitutes facilitating the collection of the outstanding or  
 38 delinquent refund anticipation loan.

39 (10) Direct, or arrange for the direction of, any portion of the amount that a consumer  
 40 pays in facilitator's fees, or toward a refund anticipation loan, into paying fees or charges  
 41 for check cashing, credit insurance or other goods or services unrelated to preparing and  
 42 filing tax returns or facilitating the refund anticipation loan.

43 (11) Take, or arrange for another person to take, an interest in property of the consumer  
 44 other than the proceeds of the consumer's tax refund as security for the payment of the  
 45 refund anticipation loan.



1 (12) Engage in unconscionable activity.

2 (13) Violate a rule or order that the director adopts or issues under sections 1 to 15 of  
3 this 2009 Act, or violate a consent agreement between the licensee and the director.

4 **SECTION 9.** The Director of the Department of Consumer and Business Services may  
5 deny, suspend, revoke or impose conditions or restrictions on a licensee's license if the di-  
6 rector finds that the licensee has taken any of the following actions:

7 (1) Engaged in dishonest, fraudulent or illegal practices or conduct in any business or  
8 profession, or engaged in unfair or unethical practices or conduct in connection with con-  
9 ducting business as a facilitator, including taking unconscionable actions.

10 (2) Intentionally concealed or misstated information material to the licensee's application  
11 for a license or renewal of a license.

12 (3) Violated or failed to comply, willfully or repeatedly, with section 2, 3, 4, 5, 6 or 8 of  
13 this 2009 Act or with a condition or restriction the director imposed on the licensee's license  
14 or a rule or order the director adopted or issued under sections 1 to 15 of this 2009 Act.

15 (4)(a) Permitted or directed the licensee's employee or agent to violate section 2, 3, 4, 5,  
16 6 or 8 of this 2009 Act, a condition or restriction the director imposed on the licensee's li-  
17 cense or a rule or order the director adopted or issued under sections 1 to 15 of this 2009  
18 Act; or

19 (b) Failed to supervise the licensee's employee or agent, as a consequence of which the  
20 employee or agent violated section 2, 3, 4, 5, 6 or 8 of this 2009 Act, a condition or restriction  
21 the director imposed on the licensee's license or a rule or order the director adopted or is-  
22 sued under sections 1 to 15 of this 2009 Act.

23 (5) Was convicted of a felony or another crime of which an essential element is fraud.

24 **SECTION 10.** (1) The Director of the Department of Consumer and Business Services  
25 may issue an order to cease and desist from an activity that the director finds:

26 (a) Constitutes a violation or impending violation of section 2, 3, 4, 5, 6 or 8 of this 2009  
27 Act or a rule or order the director adopted or issued under sections 1 to 15 of this 2009 Act;  
28 or

29 (b) Constitutes an unfair or deceptive act or practice.

30 (2) If the director finds that a licensee has violated a cease and desist order, the director  
31 may temporarily suspend or revoke the licensee's license under section 9 of this 2009 Act.

32 **SECTION 11.** Violation of section 2, 3, 6 or 8 of this 2009 Act is an unlawful practice un-  
33 der ORS 646.608 that is subject to enforcement under ORS 646.638.

34 **SECTION 12.** The Director of the Department of Consumer and Business Services may  
35 adopt rules or issue orders to administer sections 1 to 15 of this 2009 Act, to provide for  
36 consumer protection related to refund anticipation loans and refund anticipation payment  
37 instruments and to assist licensees in interpreting sections 1 to 15 of this 2009 Act.

38 **SECTION 13.** (1) The Director of the Department of Consumer and Business Services has  
39 general supervision and control over facilitators, whether licensed or not, residing or doing  
40 business in this state with respect to any aspect of the facilitator's refund anticipation loan  
41 or refund anticipation payment instrument business. Facilitators described in this subsection  
42 and records connected with the activities of the facilitators are subject to the director's ex-  
43 amination at any time.

44 (2) The director may make such investigations within or outside this state to determine  
45 whether a person has violated or is about to violate a provision of section 2, 3, 4, 5, 6 or 8

1 of this 2009 Act or a rule or order the director adopted or issued under sections 1 to 15 of  
2 this 2009 Act.

3 (3) For the purpose of an investigation or proceeding under sections 1 to 15 of this 2009  
4 Act, the director may administer oaths and affirmations, subpoena witnesses, compel the  
5 attendance of witnesses, take evidence and require production of records that the director  
6 considers relevant or material to the inquiry. The records may be embodied in any form or  
7 media. Each witness who appears pursuant to a subpoena shall receive the fees and mileage  
8 provided for witnesses in ORS 44.415 (2). The director may also require or permit a person  
9 to file a statement in writing, under oath or otherwise, as to facts and circumstances con-  
10 cerning the matter under investigation.

11 (4) If a person fails to comply with a subpoena issued under this section or a party or  
12 witness refuses to testify on any matter, the judge of the Circuit Court for Marion County  
13 or the county where the person is located shall compel obedience by proceedings for con-  
14 tempt as in the case of disobedience of the requirements of a subpoena issued from the court  
15 or a refusal to testify therein.

16 (5) A person examined or investigated under this section shall pay the actual cost of the  
17 examination or investigation to the director. The director may maintain an action to recover  
18 the costs in any court of competent jurisdiction.

19 **SECTION 14.** Sections 1 to 15 of this 2009 Act do not apply to a person that does not deal  
20 directly with taxpayers or consumers but that acts solely as an intermediary between a  
21 facilitator and a lender or between a facilitator and a state or federal taxing authority by  
22 processing or transmitting, electronically or otherwise, tax or credit information or by pre-  
23 paring a payment instrument by means of which a facilitator delivers a refund anticipation  
24 loan to a consumer.

25 **SECTION 15.** Violation of a provision of section 2, 3, 5, 6 or 8 of this 2009 Act or a rule  
26 or order the Director of the Department of Consumer and Business Services has adopted or  
27 issued under sections 1 to 15 of this 2009 Act is a Class A misdemeanor.

28 **SECTION 16.** ORS 673.605 is amended to read:

29 673.605. As used in ORS 673.605 to 673.740 unless the context requires otherwise:

30 (1) "Board" means the State Board of Tax Practitioners created by ORS 673.725.

31 [(2)(a)] (2) "Facilitator" **has the meaning given that term in section 1 of this 2009 Act.**  
32 [*means a person that individually or in conjunction or cooperation with another person processes, re-*  
33 [*ceives or accepts for delivery an application for a refund anticipation loan or a check in payment of*  
34 [*refund anticipation loan proceeds or in any other manner materially facilitates the making of a refund*  
35 [*anticipation loan.*]

36 [(b) "Facilitator" does not mean a financial institution as defined in ORS 706.008, a person who  
37 has been issued a license under ORS chapter 725, an affiliate that is a servicer for a financial insti-  
38 tution or for a person issued a license under ORS chapter 725, a person issued a certificate as a cer-  
39 tified public accountant or licensed as a public accountant by the Oregon Board of Accountancy, or  
40 any person that acts solely as an intermediary and does not deal with a taxpayer in the making of a  
41 refund anticipation loan.]

42 [(3) "Lender" means a person that makes a refund anticipation loan with the person's own funds  
43 or a line of credit or other funding from a financial institution as defined in ORS 706.008, but does  
44 not include a financial institution as defined in ORS 706.008.]

45 [(4)] (3) "Refund anticipation loan" **has the meaning given that term in section 1 of this 2009**

1 **Act.** *[means a loan that the lender arranges to be repaid directly from the proceeds of the taxpayer's*  
 2 *federal or state personal income tax refund.]*

3 [(5)(a) "Refund anticipation loan fee" means the charges, fees or other consideration charged or  
 4 imposed by the lender or facilitator for the making of a refund anticipation loan.]

5 [(b) "Refund anticipation loan fee" does not mean any charge, fee or other consideration usually  
 6 charged or imposed by the facilitator in the ordinary course of business for nonloan services, including  
 7 fees for tax return preparation and fees for electronic filing of tax returns.]

8 [(6)] (4) "Tax consultant" means a person who is licensed under ORS 673.605 to 673.740 to pre-  
 9 pare or advise or assist in *[the preparation of]* **preparing** personal income tax returns for another  
 10 and for valuable consideration.

11 [(7)] (5) "Taxpayer" means an individual who files a federal or Oregon personal income tax re-  
 12 turn.

13 [(8)] (6) "Tax preparer" means *[any]* a person who is licensed under ORS 673.605 to 673.740 as  
 14 a tax preparer.

15 **SECTION 17.** ORS 673.700 is amended to read:

16 673.700. The State Board of Tax Practitioners may refuse to issue or renew a tax consultant or  
 17 **tax** preparer's license, or may suspend or revoke a tax consultant or **tax** preparer's license, or may  
 18 reprimand *[any]* a person licensed as a tax consultant or tax preparer for:

19 (1) Violation of ORS 673.615[,] **or** 673.705 *[or 673.712]*.

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

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

24 (4)(a) Conduct resulting in a conviction of a felony under the laws of *[any]* a state or of the  
 25 United States. However, such conduct may be considered only to the extent permissible under the  
 26 provisions of ORS 670.280; or

27 (b) Conviction of *[any]* a crime, an essential element of which is dishonesty, fraud or deception,  
 28 under the laws of *[any]* a state or of the United States.

29 (5) Conviction of willful failure to pay *[any]* a tax or estimated tax, file *[any]* a tax return, keep  
 30 records or supply information required under the tax laws of *[any]* a state or of the United States,  
 31 or conviction of *[the willful]* **willfully** making, rendering, *[delivery, disclosure,]* **delivering, disclos-**  
 32 **ing,** signing or verifying *[of any]* a false or fraudulent list, return, account, statement or other doc-  
 33 ument, or of supplying *[any]* false or fraudulent information, required under the tax laws of *[any]* a  
 34 state or of the United States.

35 (6) Failure to comply with continuing education requirements under ORS 673.655 or under ORS  
 36 673.667 unless **the board has waived the** *[such]* requirements *[have been waived by the board]*.

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

38 (8) Failure to pay *[any]* a civil penalty incurred under ORS 673.735 within the time determined  
 39 by the board.

40 (9) Cancellation, revocation or refusal to renew by *[any]* a state or federal agency of, or entry  
 41 of a consent order, stipulated agreement or judgment related to, the person's authority to practice  
 42 law, to practice as a certified public accountant or a public accountant or to practice under other  
 43 regulatory law in *[any]* a state, or to practice as an enrolled agent, if the grounds for the cancella-  
 44 tion, revocation, refusal to renew, consent order, stipulated agreement or judgment were related to  
 45 income tax preparation or if dishonesty, fraud or deception was involved.

1 (10) Cancellation, revocation or refusal to renew by any state or federal agency of, or entry of  
 2 a consent order, stipulated agreement or judgment related to, a business's authority to conduct op-  
 3 erations related to the practice of law, certified public accountancy, public accountancy or other  
 4 services provided under regulatory law in *[any]* a state, or to provide enrolled agent services, if the  
 5 grounds for the cancellation, revocation, refusal to renew, consent order, stipulated agreement or  
 6 judgment involved the conduct or actions of the licensee or applicant and:

- 7 (a) Were related to income tax preparation; or
- 8 (b) Involved dishonesty, fraud or deception.

9 **SECTION 18.** ORS 673.730 is amended to read:

10 673.730. The State Board of Tax Practitioners *[shall have]* **has** the following powers, in addition  
 11 to the powers otherwise granted by ORS 673.605 to 673.740, and *[shall have]* **has** all powers neces-  
 12 sary or proper to carry the granted powers into effect:

13 (1)(a) To determine qualifications of applicants for licensing as a tax consultant or a tax  
 14 preparer in this state;

15 (b) To cause examinations to be prepared, conducted and graded; and

16 (c) To issue licenses to qualified applicants upon *[their]* **the applicants'** compliance with ORS  
 17 673.605 to 673.740 and the rules of the board.

18 (2)(a) To restore the license of *[any]* a tax consultant or preparer whose license has been sus-  
 19 pended or revoked. **The board's power to restore a license specifically includes the power to**  
 20 **restore a license suspended or revoked because a person has been convicted of a crime. In**  
 21 **making a determination to restore a license, the board shall consider the relationship of the**  
 22 **facts that supported the conviction to the code of professional conduct and intervening cir-**  
 23 **cumstances in determining the person's fitness to receive or hold a tax consultant's or tax**  
 24 **preparer's license.**

25 *[(b)]* The power of the board to suspend *[any]* a license under ORS 673.700 includes the power  
 26 to restore **the license**:

27 *[(A)]* (a) At a time certain; or

28 *[(B)]* (b) When the person subject to suspension fulfills conditions for reissuance set by the  
 29 board.

30 *[(c)]* *The power of the board to restore a license under paragraph (a) of this subsection specifically*  
 31 *includes the power to restore a license suspended or revoked for the reason that the person has been*  
 32 *convicted of a crime. In making a determination to restore a license, the board shall consider the re-*  
 33 *lationship of the facts which supported the conviction to the code of professional conduct and all in-*  
 34 *tervening circumstances in determining the fitness of the person to receive or hold a tax consultant's*  
 35 *or tax preparer's license.]*

36 (3) To investigate alleged violations of ORS 673.605 to 673.740, or *[any]* a rule or order adopted  
 37 *[thereunder]* **under ORS 673.605 to 673.740.** The board may keep information gathered pursuant to  
 38 an investigation by the board confidential until there is a final order or determination by the board,  
 39 unless **the board considers** disclosure *[is considered]* necessary *[by the board for the investigation*  
 40 *or prosecution of]* **to investigate or prosecute** an alleged violation of ORS 673.605 to 673.740, or  
 41 *[any]* a rule or order adopted *[thereunder]* **under ORS 673.605 to 673.740.** The board may keep per-  
 42 sonal financial information gathered pursuant to an investigation by the board confidential after a  
 43 final order or determination by the board, unless **the board considers** disclosure *[is considered]*  
 44 necessary *[by the board for the investigation or prosecution of]* **to investigate or prosecute** an al-  
 45 leged violation of ORS 673.605 to 673.740, or *[any]* a rule or order adopted *[thereunder]* **under ORS**

1 **673.605 to 673.740.** For purposes of this subsection, personal financial information includes but is  
 2 not limited to tax returns.

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

5 (5) To issue an order directed to a person to cease and desist from *[any]* a violation or threat-  
 6 ened violation of ORS 673.615, 673.643[,] or 673.705 *[or 673.712]*, or *[any]* a rule or order adopted  
 7 *[thereunder]* **under ORS 673.615, 673.643 or 673.705**, if the board has reason to believe that a person  
 8 has *[been]* engaged, is engaging or is about to engage in *[any violation of]* **violating** ORS 673.615,  
 9 673.643[,] or 673.705 *[or 673.712]*, or *[any]* a rule or order adopted *[thereunder]* **under ORS 673.615,**  
 10 **673.643 or 673.705.**

11 (6) To assess civil penalties within a cease and desist order issued under subsection (5) of this  
 12 section if the board has reason to believe that a person has *[been]* engaged or is engaging in *[any]*  
 13 a violation of ORS 673.615, 673.643[,] or 673.705 *[or 673.712]*, or *[any]* a rule or order adopted  
 14 *[thereunder]* **under ORS 673.615, 673.643 or 673.705.** The civil penalty may not exceed \$5,000 per  
 15 violation.

16 (7) To formulate a code of professional conduct for tax consultants and tax preparers.

17 (8) To assess against the licensee or any other person found guilty of violating *[any]* a provision  
 18 of ORS 673.605 to 673.740, or *[any]* a rule or order adopted *[thereunder]* **under ORS 673.605 to**  
 19 **673.740**, in addition to any other sanctions, the costs associated with the disciplinary or other action  
 20 taken by the board.

21 (9) To order that *[any]* a person who has engaged in or is engaging in *[any]* a violation of ORS  
 22 673.605 to 673.740, or *[any]* a rule or order adopted *[thereunder]* **under ORS 673.605 to 673.740**, shall  
 23 offer to rescind and pay restitution to *[anyone]* a **person** harmed by the violation who seeks  
 24 rescission.

25 (10) To adopt rules pursuant to ORS chapter 183 necessary to carry out the provisions of ORS  
 26 673.605 to 673.740.

27 **SECTION 19. ORS 673.712 and 673.715 are repealed on January 1, 2010.**

28 **SECTION 20. Sections 1 to 15 of this 2009 Act, the amendments to ORS 673.605, 673.700**  
 29 **and 673.730 by sections 16, 17 and 18 of this 2009 Act and the repeal of ORS 673.712 and 673.715**  
 30 **by section 19 of this 2009 Act apply to the activities of facilitators and lenders, as defined in**  
 31 **section 1 of this 2009 Act, conducting business on or after the operative date of sections 1**  
 32 **to 15 of this 2009 Act.**

33 **SECTION 21. (1) Sections 1 to 15 of this 2009 Act, the amendments to ORS 673.605, 673.700**  
 34 **and 673.730 by sections 16, 17 and 18 of this 2009 Act and the repeal of ORS 673.712 and 673.715**  
 35 **by section 19 of this 2009 Act become operative on January 1, 2010.**

36 **(2) The Director of the Department of Consumer and Business Services may adopt rules**  
 37 **or take any action before the operative date of sections 1 to 15 of this 2009 Act that is nec-**  
 38 **essary to enable the director to exercise, on and after the operative date of sections 1 to 15**  
 39 **of this 2009 Act, all the duties, functions and powers conferred upon the director by sections**  
 40 **1 to 15 of this 2009 Act.**

41 **SECTION 22. This 2009 Act being necessary for the immediate preservation of the public**  
 42 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
 43 **on its passage.**