

1 SB402
2 175942-1
3 By Senator Melson
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 12-APR-16

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8 SYNOPSIS: Under current law, Certified Public
9 Accountants, Attorneys, and Enrolled Agents are
10 required to obtain a license or certification in
11 order to prepare tax returns in Alabama.

12 However, there are few provisions in place
13 to protect consumers against individual income tax
14 preparers that repeatedly misrepresent information
15 on their tax returns.

16 This legislation would require certain tax
17 preparers to register with the Department, prior to
18 preparing returns, which will help regulate
19 services, prohibit unregistered persons from
20 performing said services, and establish penalties
21 for violators.

22 It would also establish qualifications for
23 registration, requirements of disclosures to
24 consumers, and exemptions to those obligated to
25 register.

26 The legislation also establishes an
27 Individual Tax Preparers Fund that will be used to

1 provide for the cost associated with the
2 administration and enforcement of this act.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To provide for the registration and regulation of
9 certain individual tax preparers; to provide for registration
10 exemptions; to prohibit individuals not registered from
11 conducting tax preparation services; and to provide penalties
12 for violations; and in connection therewith would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds within the meaning of Amendment 621
15 of the Constitution of Alabama of 1901, now appearing as
16 Section 111.05 of the Official Recompilation of the
17 Constitution of Alabama of 1901, as amended.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This act shall be known and may be cited
20 as the "Alabama Taxpayer Protection and Assistance Act."

21 Section 2. The Alabama Taxpayer Protection and
22 Assistance Act is enacted to protect consumers by establishing
23 a registration program to ensure that qualified individuals
24 provide individual tax preparation services.

25 Section 3. When used in this act, the following
26 terms shall have the following meanings:

1 (1) CONSUMER. Any natural person who, singly or
2 jointly with another consumer, pays an individual tax preparer
3 to prepare his or her individual federal or state tax return.

4 (2) DEPARTMENT. The Alabama Department of Revenue.

5 (3) FUND. The Individual Tax Preparers Fund
6 established under this act.

7 (4) INDIVIDUAL TAX PREPARER. An individual who is
8 registered by the Department to provide individual tax
9 preparation services.

10 (5) IN GOOD STANDING. An individual who has not
11 engaged in conduct that would justify censure, suspension, or
12 disbarment from practice.

13 (6) PERSON. An individual, firm, proprietorship,
14 association, corporation, or another entity.

15 (7) PROVIDE INDIVIDUAL TAX PREPARATION SERVICES. To
16 prepare, advise, or assist in the preparation of, or assume
17 final responsibility for, preparation of another individual's
18 federal or state personal income tax return for valuable
19 consideration.

20 (8) PTIN. Preparer Tax Identification Number issued
21 by the IRS.

22 (9) REGISTRATION. An authorization issued by the
23 Department to provide individual tax preparation services.

24 (10) TAX RETURN. A return, declaration, statement,
25 refund claim, or other document required to be made or filed
26 in connection with state income taxes.

1 Section 4. (a) There are different levels of tax
2 preparers each with specific requirements for compliance.
3 CPAs, Enrolled agents, and attorneys who prepare tax returns
4 already fulfill the necessary Department requirements by
5 completing the compliance standards required by their
6 professions to be in good standing. All CPAs, Enrolled agents,
7 and attorneys are required to pass a rigorous exam before
8 being certified.

9 (b) The following individuals are exempt from the
10 requirements of this act:

11 (1) Any individual or firm licensed or otherwise
12 authorized to practice accountancy in the state of Alabama, or
13 to any supervised person working for such an individual or
14 firm, when said individual, firm, or supervised person is
15 performing duties within the scope of accountancy statutes
16 and/or regulations.

17 (2) An individual in good standing and admitted to
18 practice law in this state or in another state.

19 (3) An individual enrolled to practice before the
20 Internal Revenue Service, or to any supervised person working
21 for such person.

22 Section 5. (a) No individual may provide tax
23 preparation services of Alabama individual income tax returns
24 unless registered with the Department. This provision does not
25 apply to persons exempt under Section 4, provided that such
26 persons provide an IRS issued Preparer Tax Identification
27 Number when submitting a return and signing as a paid

1 preparer. Upon meeting all registration requirements, the
2 Individual Tax Preparer shall be issued an Alabama
3 identification number.

4 (b) The Department may set reasonable fees for the
5 registration and renewal of registration of individual tax
6 preparers. The amount of each shall be prescribed by the
7 Department.

8 (c) Each individual tax preparer that registers
9 under this act shall pay the Department a registration fee at
10 the time of registration or a renewal fee at the time of
11 renewal of registration.

12 (d) The Department shall pay all fees collected
13 under this section to the Comptroller who shall distribute the
14 fees to the fund established herein.

15 Section 6. (a) The Department may investigate a
16 complaint that alleges a violation of this act.

17 (b) On receipt of the results of an investigation
18 made under this section, the Department shall promptly take
19 action that is appropriate under this act to ensure compliance
20 with this act.

21 (c) If the Department concludes that conduct alleged
22 to be in violation of this act will result in harm to a
23 resident of the state, the Department may seek a permanent or
24 temporary injunction with respect to the conduct from the
25 circuit court of the county in which the alleged violation
26 occurred.

1 (d) In seeking an injunction under this subsection,
2 the Department is not required to post bond or prove that an
3 adequate remedy at law does not exist.

4 (e) The Department or its designee may issue a
5 subpoena for the attendance of witnesses to testify or the
6 production of evidence in connection with a disciplinary
7 action brought under this act or a proceeding brought for an
8 alleged violation of this act.

9 (f) If an individual fails to comply with a subpoena
10 issued under this section a court of competent jurisdiction
11 may compel compliance with the subpoena.

12 Section 7. (a) There is established the Individual
13 Tax Preparers Fund in the State Treasury.

14 (b) The purpose of the fund is to provide for the
15 costs associated with the administration and enforcement of
16 this act, and increase outreach efforts to encourage
17 low-income taxpayers to make use of free tax services.

18 (c) The Department shall administer the fund.

19 (d) The fund shall consist of the following:

20 (1) Revenue distributed to the fund under this act.

21 (2) Money appropriated in the state budget to the
22 fund.

23 (3) Any other money from any other source accepted
24 for the benefit of the fund.

25 (e) The fund may be used only for costs associated
26 with the administration and enforcement of this act.

1 (f) Revenue from registration fees that exceeds the
2 amount necessary to administer this act shall be made
3 available for the following purposes:

4 To support outreach efforts that provide low-income
5 taxpayers with information about the availability of free tax
6 assistance available in the state. The Department shall
7 establish an outreach subcommittee to develop or implement, or
8 both, a plan to achieve this purpose.

9 Section 8. (a) The Department shall confirm the
10 registration status and qualifications of any individual who
11 is the subject of the request.

12 (b) Each registration under this section shall
13 include a statement of the registration status of the
14 individual who is the subject of the request and may include
15 any of the following:

16 (1) Information about examination results and other
17 qualifications of the individual.

18 (2) Information about the dates of issuance of the
19 registration of the individual.

20 (3) Information about any disciplinary action taken
21 against the individual.

22 Section 9. (a) An individual shall be registered by
23 the Department before the individual may provide individual
24 tax preparation services in this state.

25 (b) To qualify for registration, the applicant shall
26 meet the following minimum requirements that he or she:

27 (1) Has never been convicted of a felony.

1 (2) Is at least 18 years of age.

2 (3) Possess a high school diploma or have passed a
3 graduation equivalency examination.

4 (4) Submit an application in a manner prescribed by
5 the Department.

6 (5) Be a citizen of the United States or, if not a
7 citizen of the United States, a person who is legally present
8 in the United States with appropriate documentation from the
9 federal government.

10 Section 10. (a) An applicant who otherwise qualifies
11 for registration may be examined as provided in this section.

12 (b) The Department may give examinations to
13 applicants, in a manner prescribed by the Department.

14 Section 11. (a) The Department shall issue a
15 registration number to each qualified applicant who has passed
16 the examination prescribed by the Department, and upon payment
17 of the registration fee.

18 (b) A registration authorizes the individual to
19 provide individual tax preparation services.

20 (c) Unless renewed, a registration expires on the
21 first December 31 after the effective date of the
22 registration.

23 (d) Before a registration expires, the individual
24 may renew the registration for an additional one-year term if
25 the individual meets the following requirements:

26 (1) Otherwise is entitled to be registered.

1 (2) Pays to the Department a renewal fee, as set by
2 the Department.

3 (3) Submits to the Department a renewal application
4 in a manner prescribed by the Department and satisfactory
5 evidence of compliance with the continuing education
6 requirements set by the Department for registration renewal.

7 (e) The Department shall renew the registration of
8 each individual who meets the requirements of this section.

9 Section 12. (a) The Department shall adopt
10 continuing education requirements as a condition of the
11 renewal of a registration issued under this act.

12 (b) The department will prescribe the continuing
13 education requirements and in what manner these requirements
14 will be submitted to the department. Such continuing education
15 requirements may be provided by IRS or state board of public
16 accountancy approved continuing education providers.

17 Section 13. (a) The Department shall adopt rules for
18 the reinstatement of an individual who has failed to renew a
19 registration for any reason if the individual otherwise is
20 entitled to be registered, complies with the continuing
21 education requirements set by the Department, and pays to the
22 Department all past due renewal fees and a reinstatement fee.

23 (b) The Department may deny a registration to any
24 applicant, reprimand any registered individual, or suspend or
25 revoke a registration if the applicant or registered
26 individual does any of the following:

1 (1) Fraudulently or deceptively obtains or attempts
2 to obtain a registration for the applicant or registered
3 individual or for another.

4 (2) Fraudulently or deceptively uses a registration.

5 (3) Under the laws of the United States or of any
6 state, is convicted of a felony or a misdemeanor directly
7 related to the fitness and qualification of the applicant or
8 registered individual to provide individual tax preparation
9 services.

10 (4) Is guilty of negligence, incompetence, or
11 misconduct while providing individual tax preparation
12 services.

13 (5) Violates any provision of this act.

14 (c) Civil penalties for unethical tax preparation
15 imposed under this act, will be imposed as prescribed under
16 40-2A-11.1.

17 Section 14. (a) An individual tax preparer shall
18 maintain for seven years all records of personal income tax
19 returns prepared by the individual tax preparer.

20 (b) Prior to rendering individual tax preparation
21 services, an individual tax preparer shall disclose to the
22 consumer, in writing, all of the following information:

23 (1) The individual tax preparer's name, state
24 preparer registration number, physical address, email address,
25 and telephone number.

1 (2) That the individual tax preparer is not a
2 certified public accountant, an enrolled agent, or an
3 attorney.

4 (3) Services that the individual tax preparer is
5 qualified to provide individual income tax preparation
6 services in Alabama.

7 (4) The individual tax preparer's education and
8 training, including examinations taken and successfully
9 passed.

10 (5) Any other information that the Department
11 requires.

12 (c) The individual tax preparer must only use the
13 title of "individual income tax preparer" in reference to
14 himself or herself and may not use the terms "certified" or
15 "registered" in any advertisement, website, business cards, or
16 any other information or materials made available to the
17 public.

18 (d) The disclosure required under subsection (b)
19 shall be provided to a consumer at an initial meeting between
20 the individual tax preparer and the consumer and, if the
21 individual tax preparer maintains a website, on the website.

22 (e) An individual tax preparer may not do any of the
23 following:

24 (1) Fail to sign a consumer's individual tax return.

25 (2) Obtain the consumer's signature on an individual
26 tax return or other authorization document prior to the
27 completion of the individual tax preparation services.

1 (3) Disclose information received for the purposes
2 of preparing a consumer's federal or state income tax return,
3 unless consented to in writing by the consumer, expressly
4 authorized by law and in compliance with Internal Revenue Code
5 §7216, necessary for the preparation of the tax return, or in
6 accordance with a court order.

7 (f) A penalty of 100 dollars will be imposed for
8 each violation under (e) of this section.

9 Section 15. Except as otherwise provided in this
10 act, a person may not provide, attempt to provide, or offer to
11 provide individual tax preparation services in the state
12 unless registered by the Department.

13 Section 16. On or before July 1 of each year,
14 beginning July 2018, each individual tax preparer shall file
15 an annual report with the Department pursuant to procedures
16 that the Department shall establish. An annual consolidated
17 report shall be prepared by the Department and made available
18 to the public. These reports shall include the following
19 information for the time period of January 1 to December 31 of
20 that year:

21 (1) The total number of completed federal and state
22 tax returns.

23 (2) Any other information required by the
24 Department.

25 Section 17. The provisions of this act are servable.
26 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 18. All laws or parts of laws which conflict
4 with this act are hereby repealed.

5 Section 19. This act shall become effective on
6 January 1, 2017 following its passage and approval by the
7 Governor, or upon its otherwise becoming law.