

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 14-0734.01 Jennifer Berman x3286

HOUSE BILL 14-1285

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A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT A PROFESSIONAL TAX PREPARER**
102 **PROVIDE CERTAIN DISCLOSURES TO A CLIENT WHEN PREPARING**
103 **TAX DOCUMENTS FOR THE CLIENT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires a person who prepares, for a fee, an income tax return or a claim for a refund on an income tax return for a taxpayer (professional tax preparer) to make certain disclosures to the taxpayer

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
March 17, 2014

HOUSE
Amended 2nd Reading
March 14, 2014

concerning the professional tax preparer's qualifications, fees, year-round contact information, willingness to represent the taxpayer in a government audit, and obligation to sign the tax documents prepared.

Section 1 of the bill makes a professional tax preparer's failure to provide a taxpayer with the requisite disclosures a deceptive trade practice, and **section 2** provides the penalty scheme for the deceptive trade practice.

Section 3 requires the department of revenue to provide a disclosure form available on its web site and requires every professional tax preparer to provide a copy of either the department's disclosure form or a substantially similar disclosure form to each taxpayer before commencing work on preparing the taxpayer's income tax return or claim for refund on an income tax return.

Section 4 of the bill criminalizes the act of providing fraudulent information in a professional tax preparer's disclosure form and makes the crime a class 2 misdemeanor.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-105, **add** (1) (fff)
3 as follows:

4 **6-1-105. Deceptive trade practices.** (1) A person engages in a
5 deceptive trade practice when, in the course of the person's business,
6 vocation, or occupation, the person:

7 (fff) VIOLATES PART 12 OF THIS ARTICLE.

8 **SECTION 2.** In Colorado Revised Statutes, 6-1-112, **amend** (1)
9 (c); and **add** (1) (e) as follows:

10 **6-1-112. Civil penalties.** (1) The attorney general or a district
11 attorney may bring a civil action on behalf of the state to seek the
12 imposition of civil penalties as follows:

13 (c) ~~Any~~ A person who violates or causes another to violate ~~any~~
14 ~~provision~~ of this article, where ~~such~~ THE violation was committed against
15 an elderly person, shall forfeit and pay to the general fund of the state a
16 civil penalty of not more than ten thousand dollars for each ~~such~~

1 violation; EXCEPT THAT, WHERE THE PERSON COMMITS A VIOLATION OF
2 SECTION 6-1-1203 AGAINST AN ELDERLY PERSON, THE PERSON SHALL
3 FORFEIT AND PAY TO THE GENERAL FUND OF THE STATE A CIVIL PENALTY
4 OF NOT MORE THAN ONE HUNDRED DOLLARS FOR EACH VIOLATION. For
5 purposes of this paragraph (c), a violation of ~~any provision of this article~~
6 ~~shall constitute~~ CONSTITUTES a separate violation with respect to each
7 elderly person involved.

8 (e) A TAX PREPARER, AS DEFINED IN SECTION 6-1-1202, WHO FAILS
9 TO DISCLOSE ALL OR PART OF THE INFORMATION REQUIRED TO BE
10 DISCLOSED UNDER SECTION 6-1-1203 SHALL FORFEIT AND PAY TO THE
11 GENERAL FUND OF THE STATE A CIVIL PENALTY OF NOT MORE THAN FIFTY
12 DOLLARS FOR EACH CLIENT, AS DEFINED IN SECTION 6-1-1202, TO WHOM
13 THE TAX PREPARER FAILED TO DISCLOSE THE REQUISITE INFORMATION;
14 EXCEPT THAT THE MAXIMUM CIVIL PENALTY MUST NOT EXCEED
15 TWENTY-FIVE THOUSAND DOLLARS.

16 **SECTION 3.** In Colorado Revised Statutes, **add** part 12 to article
17 1 of title 6 as follows:

18 PART 12

19 COLORADO TAXPAYER PROTECTION ACT

20 **6-1-1201. Short title.** THIS PART 12 SHALL BE KNOWN AND MAY
21 BE CITED AS THE "COLORADO TAXPAYER PROTECTION ACT".

22 **6-1-1202. Definitions.** AS USED IN THIS PART 12, UNLESS THE
23 CONTEXT OTHERWISE REQUIRES:

24 (1) "CLIENT" MEANS A TAXPAYER WHO PAYS A FEE TO A TAX
25 PREPARER TO PREPARE OR SUBMIT THE TAXPAYER'S INCOME TAX RETURN
26 OR CLAIM FOR A REFUND ON AN INCOME TAX RETURN.

27 (2) "INCOME TAX RETURN" MEANS A RETURN FILED UNDER

1 SECTION 39-22-601, C.R.S., OR A RETURN FILED UNDER SECTION 6012 OF
2 THE FEDERAL INTERNAL REVENUE CODE.

3 (3) (a) "TAX PREPARER" MEANS A PERSON WHO, FOR A FEE,
4 PREPARES ALL OR SUBSTANTIALLY ALL OF AN INCOME TAX RETURN OR A
5 CLAIM FOR REFUND ON AN INCOME TAX RETURN.

6 (b) "TAX PREPARER" DOES NOT INCLUDE:

7 (I) A CERTIFIED PUBLIC ACCOUNTANT, CERTIFIED BY AND IN GOOD
8 STANDING WITH THE STATE BOARD OF ACCOUNTANCY UNDER SECTION
9 12-2-108, C.R.S., OR SIMILARLY CERTIFIED AND IN GOOD STANDING IN
10 ANOTHER STATE;

11 (II) AN ATTORNEY-AT-LAW, LICENSED BY AND IN GOOD STANDING
12 WITH THE COLORADO SUPREME COURT UNDER SECTION 12-5-101, C.R.S.,
13 OR SIMILARLY LICENSED AND IN GOOD STANDING IN ANOTHER STATE;

14 (III) AN ENROLLED AGENT, WHO IS AUTHORIZED BY AND IN GOOD
15 STANDING WITH THE UNITED STATES DEPARTMENT OF TREASURY UNDER
16 31 CFR, SECS. 10.5 AND 10.6; OR

17 (IV) AN INDIVIDUAL EMPLOYED BY A LOCAL, STATE, OR FEDERAL
18 GOVERNMENT AGENCY, BUT ONLY WHILE IN THE PERFORMANCE OF HIS OR
19 HER OFFICIAL DUTIES.

20 **6-1-1203. Tax preparer disclosure requirements.** (1) A TAX
21 PREPARER SHALL PROVIDE EACH CLIENT WITH A COPY OF THE DISCLOSURE
22 FORM CREATED BY THE DEPARTMENT OF REVENUE, AS REQUIRED IN
23 SUBSECTION (2) OF THIS SECTION, OR A SUBSTANTIALLY SIMILAR
24 DISCLOSURE FORM.

25 (2) THE DEPARTMENT OF REVENUE SHALL PROVIDE ON ITS WEB
26 SITE A DISCLOSURE FORM THAT CONTAINS:

27 (a) THE FOLLOWING DISCLOSURE STATEMENTS:

1 (I) THAT A CLIENT IS ENTITLED TO KNOW HOW THE TAX PREPARER
2 CALCULATES HIS OR HER FEES AND CHARGES AND THAT THE TAX
3 PREPARER SHALL PROVIDE A RECEIPT STATING THE CHARGES FOR EACH
4 TAX RETURN OR CLAIM FOR REFUND;

5 (II) THAT A TAX PREPARER OR TAX PREPARATION COMPANY IS
6 REQUIRED TO PROVIDE THE CLIENT WITH INFORMATION ON HOW THE
7 CLIENT MAY CONTACT THE TAX PREPARER OR TAX PREPARATION COMPANY
8 THROUGHOUT THE YEAR;

9 (III) THAT A CLIENT IS ENTITLED TO KNOW WHETHER A TAX
10 PREPARER IS QUALIFIED TO REPRESENT THE CLIENT AT A GOVERNMENT
11 AUDIT, AND THAT, IF THE TAX PREPARER IS WILLING TO REPRESENT A
12 CLIENT AT A GOVERNMENT AUDIT, THE TAX PREPARER SHALL DISCLOSE HIS
13 OR HER FEE FOR REPRESENTATION; AND

14 (IV) THAT A CLIENT IS ENTITLED TO HAVE A TAX PREPARER SIGN
15 EVERY INCOME TAX RETURN THAT THE TAX PREPARER PREPARES ON THE
16 CLIENT'S BEHALF. IF THE INCOME TAX RETURN IS FILED ELECTRONICALLY,
17 THE TAX PREPARER SHALL PROVIDE AN ELECTRONIC SIGNATURE.

18 (b) A PLACE FOR THE TAX PREPARER TO PROVIDE INFORMATION
19 ABOUT THE TAX PREPARER'S BACKGROUND, QUALIFICATIONS, EDUCATION,
20 AND EXPERIENCE. THE TAX PREPARER SHALL, UPON REQUEST, PRODUCE
21 DOCUMENTATION VERIFYING HIS OR HER QUALIFICATIONS.

22 (c) SIGNATURE LINES FOR BOTH THE TAX PREPARER AND CLIENT TO
23 SIGN AND DATE THE DISCLOSURE FORM;

24 (d) A PLACE FOR THE TAX PREPARER TO PROVIDE HIS OR HER
25 PREPARER TAX IDENTIFICATION NUMBER, REQUIRED FOR ALL PAID
26 FEDERAL TAX RETURN PREPARERS BY THE FEDERAL INTERNAL REVENUE
27 SERVICE UNDER SECTION 6695 (c) OF THE FEDERAL "INTERNAL REVENUE

1 CODE OF 1986", AS AMENDED; AND

2 (e) THE DEPARTMENT OF REVENUE'S WEB SITE ADDRESS AND A
3 STATEMENT INDICATING THAT THE CLIENT MIGHT FIND HELPFUL
4 INFORMATION CONCERNING TAXES ON THE WEB SITE.

5 (3) BEFORE COMMENCING WITH THE PREPARATION OF A CLIENT'S
6 INCOME TAX RETURN OR CLAIM FOR REFUND ON AN INCOME TAX RETURN,
7 A TAX PREPARER MUST:

8 (a) PROVIDE THE CLIENT WITH A COPY OF THE DISCLOSURE FORM
9 CREATED BY THE DEPARTMENT OF REVENUE, AS REQUIRED IN SUBSECTION
10 (2) OF THIS SECTION, OR A SUBSTANTIALLY SIMILAR DISCLOSURE FORM;
11 AND

12 (b) OBTAIN A SIGNED AND DATED COPY OF THE DISCLOSURE FORM
13 THAT CONTAINS THE CLIENT'S SIGNATURE.

14 **SECTION 4.** In Colorado Revised Statutes, **add** 18-5-310 as
15 follows:

16 **18-5-310. Fraudulent information in tax preparer disclosure**
17 **form.** (1) A TAX PREPARER, AS DEFINED IN SECTION 6-1-1202 (3), C.R.S.,
18 COMMITS A CLASS 2 MISDEMEANOR IF HE OR SHE PROVIDES A CLIENT, AS
19 DEFINED IN SECTION 6-1-1202 (1), C.R.S., WITH FRAUDULENT
20 INFORMATION IN THE TAX PREPARER DISCLOSURE FORM THAT THE TAX
21 PREPARER IS REQUIRED TO PROVIDE THE CLIENT UNDER SECTION 6-1-1203,
22 C.R.S.

23 (2) THE TAX PREPARER COMMITS A SEPARATE OFFENSE FOR EACH
24 FRAUDULENT STATEMENT INCLUDED IN A DISCLOSURE FORM AND FOR
25 EACH CLIENT TO WHOM THE TAX PREPARER PROVIDED A DISCLOSURE FORM
26 CONTAINING FRAUDULENT INFORMATION.

27 **SECTION 5. Potential appropriation.** Pursuant to section

1 2-2-703, Colorado Revised Statutes, any bill that results in a net increase
2 in periods of imprisonment in the state correctional facilities must include
3 an appropriation of moneys that is sufficient to cover any increased
4 capital construction and operational costs for the first five fiscal years in
5 which there is a fiscal impact. Because this act may increase periods of
6 imprisonment, this act may require a five-year appropriation.

7 **SECTION 6. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
9 the expiration of the ninety-day period after final adjournment of the
10 general assembly (August 6, 2014, if adjournment sine die is on May 7,
11 2014); except that, if a referendum petition is filed pursuant to section 1
12 (3) of article V of the state constitution against this act or an item, section,
13 or part of this act within such period, then the act, item, section, or part
14 will not take effect unless approved by the people at the general election
15 to be held in November 2014 and, in such case, will take effect on the
16 date of the official declaration of the vote thereon by the governor.

17 (2) This act applies to offenses committed on or after the
18 applicable effective date of this act.