

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 46 (Chair, Education, Health, and Environmental Affairs
Committee)(By Request - Departmental - Labor,
Licensing and Regulation)

Education, Health, and Environmental Affairs

State Board of Individual Tax Preparers - Prohibited Acts - Civil Penalty

This departmental bill authorizes the State Board of Individual Tax Preparers to impose a civil penalty of up to \$5,000 on a person who performs – or who represents to perform – individual tax preparation services in the State without being registered under the Maryland Individual Tax Preparers Act. The board must consider the seriousness of the violation and the harm caused by the violation, among other conditions, in determining the amount of the penalty. Fine revenues must be paid to the general fund.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues (from penalties collected by the board) and/or special fund revenues (from increased compliance with the registration requirement). Expenditures are not affected.

Local Effect: None.

Small Business Effect: The Department of Labor, Licensing, and Regulation has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Current Law: The State Board of Individual Tax Preparers may impose a civil penalty on an applicant or registered individual in addition to otherwise reprimanding or suspending the individual for violating the Maryland Individual Tax Preparers Act.

However, the board does not have the authority to impose a civil penalty on an individual who performs – or represents himself or herself as performing – individual tax preparation services in the State without being registered with the board.

The board is authorized to deny registration, reprimand a *registered* individual, or suspend or revoke a registration if the individual (1) fraudulently obtains or uses a registration; (2) is convicted of a felony or misdemeanor that is directly related to the fitness and qualification of the individual to provide tax preparation services; (3) is guilty of professional negligence, incompetence, or misconduct; or (4) violates the Maryland Individual Tax Preparers Act or associated regulations. In addition to taking disciplinary action, the board may impose a penalty on one of these individuals of up to \$5,000 for each violation of the Act, with penalties to be used for enforcement purposes. An individual must be given an opportunity for a hearing before the board before any final action is taken.

Violation of the Act is also an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

In addition to remedies provided under MCPA, an individual who is aggrieved by a person who violates the Maryland Individual Tax Preparers Act may bring action against a person who violates the Act to recover \$500 for each violation and actual damages sustained as a result of the violation.

Background: Chapter 623 of 2008 established the State Board of Individual Tax Preparers. Individuals are required to register with the board before providing individual tax preparation services in the State. Registration is valid for two years; a continuing education requirement must be fulfilled for renewal. To qualify, an individual must be a high school graduate, pay a registration fee, and pass an examination administered by the board. Approximately 4,000 individuals are registered with the board.

Individuals licensed by the State Board of Public Accountancy, admitted to practice law in Maryland or another state, employed by government in performance of official duties, enrolled to practice before the Internal Revenue Service under Circular 230, or serving as an employee or assistant to a registered individual tax preparer or other exempt individual are exempted from registration requirements.

Additional Information

Prior Introductions: SB 57 of 2013 passed the Senate but received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - January 14, 2014
ns/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Board of Individual Tax Preparers – Prohibited Acts – Civil Penalty

BILL NUMBER: SB 46

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS