

1 HB258
2 173440-1
3 By Representative Scott
4 RFD: Financial Services
5 First Read: 18-FEB-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) REGISTRATION. An authorization issued by the
21 Department to provide individual tax preparation services.

22 (9) TAX RETURN. A return, declaration, statement,
23 refund claim, or other document required to be made or filed
24 in connection with state or federal income taxes.

25 Section 4. (a) There are different levels of tax
26 preparers each with specific requirements for compliance.
27 CPAs, Enrolled agents, and attorneys who prepare tax returns

1 already fulfill the necessary Department requirements by
2 completing the compliance standards required by their
3 professions to be in good standing. All CPAs, Enrolled agents,
4 and attorneys are required to pass a rigorous exam before
5 being certified.

6 (b) The following individuals are exempt from the
7 requirements of this act:

8 (1) An individual in good standing with an active
9 license issued by the Alabama State Department of Public
10 Accountancy or the state Department of Public Accountancy in
11 another state.

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

14 (3) An individual employed by a local, state, or
15 federal governmental agency, but only in performance of
16 official duties.

17 (4) An individual enrolled to practice before the
18 Internal Revenue Service.

19 (5) An individual preparing returns other than
20 individual tax returns for a firm, a proprietorship, an
21 association, or a corporation by which the individual is
22 employed.

23 Section 5. (a) No individual may provide tax
24 preparation services of Alabama individual income tax returns
25 unless registered with the Department. This provision does not
26 apply to persons exempt under Section 4. Upon meeting all

1 registration requirements, the Individual Tax Preparer shall
2 be issued an Alabama identification number.

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

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

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

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

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

20 (c) If the Department concludes that conduct alleged
21 to be in violation of this act will result in harm to a
22 resident of the state, the Department may seek a permanent or
23 temporary injunction with respect to the conduct from the
24 circuit court of the county in which the alleged violation
25 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, support the efforts of Internal Revenue Service
17 certified Volunteer Income Tax Assistance (VITA) programs, and
18 increase outreach efforts to encourage low-income taxpayers to
19 make use of free tax services and claim the earned income tax
20 credit.

21 (c) The Department shall administer the fund.

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

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

24 (2) Money appropriated in the state budget to the
25 fund.

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

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

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

6 (1) To provide funding for IRS-Certified Volunteer
7 Income Tax Assistance (VITA) Programs through a grant
8 application program. The grant applications and organizations
9 which receive the funds shall be determined through a process
10 determined by the Department in consultation with the IRS
11 Office of Stakeholder Partnerships, Education and
12 Communication.

13 (2) To support outreach efforts that provide
14 low-income taxpayers with information about the availability
15 of the earned income tax credit and encourage low-income
16 taxpayers to make use of Internal Revenue Service certified
17 Volunteer Income Tax Assistance programs. The Department may
18 establish an outreach subcommittee to develop or implement, or
19 both, a plan to achieve this purpose.

20 Section 8. (a) The Department shall confirm the
21 registration status and qualifications of any individual who
22 is the subject of the request.

23 (b) Each registration under this section shall
24 include a statement of the registration status of the
25 individual who is the subject of the request and may include
26 any of the following:

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

3 (2) Information about the dates of issuance of the
4 registration of the individual.

5 (3) Information about any disciplinary action taken
6 against the individual.

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

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

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

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

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

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

18 (5) Be a citizen of the United States or, if not a
19 citizen of the United States, a person who is legally present
20 in the United States with appropriate documentation from the
21 federal government.

22 Section 10. (a) An applicant who otherwise qualifies
23 for registration is entitled to be examined as provided in
24 this section.

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

1 Section 11. (a) The Department shall issue a
2 registration number to each qualified applicant and upon
3 payment of the registration fee.

4 (b) A registration authorizes the individual to
5 provide individual tax preparation services.

6 (c) Unless renewed, a registration expires on the
7 first December 31 after the effective date of the
8 registration.

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

12 (1) Otherwise is entitled to be registered.

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

15 (3) Submits to the Department a renewal application
16 in a manner prescribed by the Department and satisfactory
17 evidence of compliance with the continuing education
18 requirements set by the Department for registration renewal.

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

21 Section 12. (a) The Department shall adopt
22 continuing education requirements as a condition of the
23 renewal of a registration issued under this act.

24 (b) The department will prescribe the continuing
25 education requirements and in what manner these requirements
26 will be submitted to the department.

1 Section 13. (a) The Department shall adopt rules for
2 the reinstatement of an individual who has failed to renew a
3 registration for any reason if the individual otherwise is
4 entitled to be registered, complies with the continuing
5 education requirements set by the Department, and pays to the
6 Department all past due renewal fees and a reinstatement fee.

7 (b) The Department may deny a registration to any
8 applicant, reprimand any registered individual, or suspend or
9 revoke a registration if the applicant or registered
10 individual does any of the following:

11 (1) Fraudulently or deceptively obtains or attempts
12 to obtain a registration for the applicant or registered
13 individual or for another.

14 (2) Fraudulently or deceptively uses a registration.

15 (3) Under the laws of the United States or of any
16 state, is convicted of a felony or a misdemeanor directly
17 related to the fitness and qualification of the applicant or
18 registered individual to provide individual tax preparation
19 services.

20 (4) Is guilty of negligence, incompetence, or
21 misconduct while providing individual tax preparation
22 services.

23 (5) Violates any provision of this act.

24 (c) Civil penalties for unethical tax preparation
25 imposed under this act, will be imposed as prescribed under
26 40-2A-11.1.

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

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

7 (1) The individual tax preparer's name, state
8 preparer registration number, physical address, email address,
9 and telephone number.

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

13 (3) Services that the individual tax preparer is
14 qualified to provide individual income tax preparation
15 services in Alabama.

16 (4) The individual tax preparer's education and
17 training, including examinations taken and successfully
18 passed.

19 (5) Any other information that the Department
20 requires.

21 (c) The individual tax preparer must only use the
22 title of "individual income tax preparer" in reference to
23 himself or herself and may not use the terms "certified" or
24 "registered" in any advertisement, website, business cards, or
25 any other information or materials made available to the
26 public.

1 (d) The disclosure required under subsection (b)
2 shall be provided to a consumer at an initial meeting between
3 the individual tax preparer and the consumer and, if the
4 individual tax preparer maintains a website, on the website.

5 (e) An individual tax preparer may not do any of the
6 following:

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

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

11 (3) Disclose information received for the purposes
12 of preparing a consumer's federal or state income tax return,
13 unless consented to in writing by the consumer, expressly
14 authorized by law and in compliance with Internal Revenue Code
15 §7216, necessary for the preparation of the tax return, or in
16 accordance with a court order.

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

19 Section 15. Except as otherwise provided in this
20 act, a person may not provide, attempt to provide, or offer to
21 provide individual tax preparation services in the state
22 unless registered by the Department.

23 Section 16. On or before July 1 of each year,
24 beginning July 2018, each individual tax preparer shall file
25 an annual report with the Department pursuant to procedures
26 that the Department shall establish. An annual consolidated
27 report shall be prepared by the Department and made available

1 to the public. These reports shall include the following
2 information for the time period of January 1 to December 31 of
3 that year:

4 (1) The total number of completed federal and state
5 tax returns.

6 (2) Any other information required by the
7 Department.

8 Section 17. The provisions of this act are servable.
9 If any part of this act is declared invalid or
10 unconstitutional, that declaration shall not affect the part
11 which remains.

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

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