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3 SUBSTITUTE FOR SB201
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8 SYNOPSIS: This bill would create a Board of Individual
9 Tax Preparers to register and regulate individual
10 tax preparation services.

11 This bill would establish qualifications for
12 registration and provide for exemptions.

13 This bill would authorize the board to
14 collect fees, to promulgate rules pertaining to the
15 examination and registration of the tax preparers,
16 and would provide for disciplinary action for
17 certain acts.

18 This bill would require registered tax
19 preparers to disclose certain information to a
20 consumer and display certain fees for refund
21 anticipation loans.

22 This bill would prohibit unregistered
23 persons from conducting tax preparation services,
24 and would provide penalties for violations.

25 Amendment 621 of the Constitution of Alabama
26 of 1901, now appearing as Section 111.05 of the
27 Official ReCompilation of the Constitution of

1 Alabama of 1901, as amended, prohibits a general
2 law whose purpose or effect would be to require a
3 new or increased expenditure of local funds from
4 becoming effective with regard to a local
5 governmental entity without enactment by a 2/3 vote
6 unless: it comes within one of a number of
7 specified exceptions; it is approved by the
8 affected entity; or the Legislature appropriates
9 funds, or provides a local source of revenue, to
10 the entity for the purpose.

11 The purpose or effect of this bill would be
12 to require a new or increased expenditure of local
13 funds within the meaning of the amendment. However,
14 the bill does not require approval of a local
15 governmental entity or enactment by a 2/3 vote to
16 become effective because it comes within one of the
17 specified exceptions contained in the amendment.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To provide for the registration and regulation of
24 individual tax preparers; to provide for registration
25 exemptions; to prohibit individuals not registered from
26 conducting tax preparation services; and to provide penalties
27 for violations; and in connection therewith would have as its

1 purpose or effect the requirement of a new or increased
2 expenditure of local funds within the meaning of Amendment 621
3 of the Constitution of Alabama of 1901, now appearing as
4 Section 111.05 of the Official ReCompilation of the
5 Constitution of Alabama of 1901, as amended.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

9 Section 2. The Alabama Taxpayer Protection and
10 Assistance Act is enacted to protect consumers by establishing
11 a registration program to ensure that qualified individuals
12 provide individual tax preparation services.

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

15 (1) APPLICANT. A consumer who applies for a refund
16 anticipation loan through a facilitator.

17 (2) BOARD. The State Board of Individual Tax
18 Preparers.

19 (3) BORROWER. An applicant who receives a refund
20 anticipation loan through a facilitator.

21 (4) CONSUMER. Any natural person who, singly or
22 jointly with another consumer, pays an individual tax preparer
23 to prepare his or her individual federal or state tax return.

24 (5) FACILITATOR. A person who receives or accepts
25 for delivery an application for a refund anticipation loan,
26 delivers a check in payment of refund anticipation loan
27 proceeds, or in any other manner acts to allow the making of a

1 refund anticipation loan. "Facilitator" does not include a
2 bank, thrift, savings association, industrial bank, or credit
3 union operating under the laws of the United States or this
4 state, an affiliate that is a servicer for such an entity, or
5 any person who acts solely as an intermediary and does not
6 deal with an applicant in the making of the refund
7 anticipation loan.

8 (6) FUND. The Individual Tax Preparers Fund
9 established under this act.

10 (7) INDIVIDUAL TAX PREPARER. An individual who is
11 registered by the board to provide individual tax preparation
12 services.

13 (8) IN GOOD STANDING. An individual who has not
14 engaged in conduct that would justify censure, suspension, or
15 disbarment from practice.

16 (9) PERSON. An individual, firm, proprietorship,
17 association, corporation, or another entity.

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

23 (11) REFUND ANTICIPATION LOAN (RAL). A loan, whether
24 provided through a facilitator or by another entity such as a
25 financial institution, made at approximately the same time an
26 income tax return is filed, in anticipation of, and whose

1 payment is secured by, a consumer's federal or state income
2 tax refund or by both.

3 (12) REFUND ANTICIPATION LOAN FEE. Any fee, charge,
4 or other consideration imposed by a lender or a facilitator
5 for a refund anticipation loan. The term does not include any
6 fee, charge, or other consideration usually imposed by a
7 facilitator in the ordinary course of business for non-loan
8 services, such as fees for preparing tax returns and fees for
9 the electronic filing of tax returns, if the same fees in the
10 same amount are charged to the facilitator's consumers who do
11 not receive refund anticipation loans. This term includes any
12 charge, fee, or other consideration for a deposit account, if
13 the deposit account is used for receipt of the consumer's tax
14 refund to repay the amount owed on the loan.

15 (13) REFUND ANTICIPATION LOAN FEE SCHEDULE. A list
16 or table of refund anticipation loan fees that include three
17 or more representative refund anticipation loan amounts. The
18 schedule shall separately list each fee or charge imposed, as
19 well as a total of all fees imposed, related to the making of
20 a refund anticipation loan. The schedule shall also include,
21 for each representative loan amount, the estimated annual
22 percentage rate calculated under the guidelines established by
23 the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.).

24 (14) REFUND ANTICIPATION LOAN INTEREST RATE. The
25 estimated annual percentage rate calculated under the
26 guidelines established by the federal Truth in Lending Act (15
27 U.S.C. § 1601 et seq.).

1 (15) REGISTRATION. An authorization issued by the
2 board to provide individual tax preparation services.

3 (16) TAX RETURN. A return, declaration, statement,
4 refund claim, or other document required to be made or filed
5 in connection with state or federal income taxes.

6 Section 4. The following individuals are exempt from
7 the requirements of this act:

8 (1) An individual in good standing with an active
9 license issued by the Alabama State Board of Public
10 Accountancy or the state Board 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 serving as an employee of or
20 assistant to an individual exempted under this section in the
21 performance of official duties for the individual exempted
22 under this section.

23 (6) An individual who has obtained at least 15
24 consecutive years of individual tax preparation experience and
25 has prepared at least 25 tax returns each year in the State of
26 Alabama and is in good standing is exempt from the examination
27 requirement but still must obtain a license, fulfill the

1 continuing education requirements as set by the board, and
2 meet all of the other requirements of this act.

3 (7) An individual preparing returns other than
4 individual tax returns for a firm, a proprietorship, an
5 association, or a corporation by which the individual is
6 employed.

7 Section 5. (a) There is created the State Board of
8 Individual Tax Preparers.

9 (b) The board shall consist of seven members. The
10 board shall be organized within two months of the effective
11 date of this act and shall consist of the following:

12 (1) Two members appointed by the Governor, one of
13 whom shall be a representative of the Department of Revenue.

14 (2) Two members appointed by the Lieutenant
15 Governor, one of whom shall be a representative of either a
16 municipal or county government and one member representing
17 paid tax preparation companies who have prepared and
18 electronically filed at least 500 individual income tax
19 returns in Alabama each of the past three (3) years.

20 (3) One member appointed by the Speaker of the House
21 of Representatives, who shall be a representative from a
22 nonprofit organization operating 10 or more Volunteer Income
23 Tax Assistance (VITA) sites in Alabama.

24 (4) One member in good standing of the tax section
25 of the Alabama State Bar who has at least five years'
26 experience in the practice of tax law in this state, to be

1 appointed by the State Bar in consultation with the chair of
2 the tax section.

3 (5) One member in good standing of the State Tax
4 Committee of the Alabama Society of Certified Public Accounts,
5 who has at least five years' experience in the practice of
6 taxation in this state, to be appointed by the Executive
7 Director of the Alabama Society of Certified Public
8 Accountants.

9 (c) The appointing authorities shall submit to the
10 Governor's office the name or names of the initial member or
11 members appointed to the board. The term of a member of the
12 board shall be four years, and shall begin on the first day of
13 the month following the submission of the member's appointment
14 letter by the appointing authority to the Governor's office.
15 An appointing authority may remove a sitting member or members
16 previously appointed by such authority and appoint another
17 member or members before the term of the sitting member or
18 members has expired, by filing notice of such action with the
19 Governor's office. An appointing authority may also appoint a
20 new or replacement member if a sitting member dies, resigns,
21 or is otherwise unable to serve. The term of any new or
22 replacement member shall begin on the first day of the month
23 following the submission to the Governor's office of the
24 appointment letter naming the new or replacement member to the
25 board.

1 (d) The membership of the board shall be inclusive
2 and reflect the racial, gender, geographic, urban/rural, and
3 economic diversity of the state.

4 (e) In addition to the groups mentioned above,
5 members of the following groups may also be considered for
6 membership on the board:

7 (1) Commercial individual tax preparers who have
8 been in practice in this state for more than 10 years.

9 (2) Members of the National Association of Enrolled
10 Agents.

11 (f) Each member of the board shall be a citizen of
12 the United States and a resident of the State of Alabama.

13 (g) Of the initial members appointed, two shall be
14 appointed for a term of two years, two for a term of three
15 years, and three for a term of four years. At the end of a
16 term, a member continues to serve until a successor is
17 appointed and qualifies. A member appointed after a term has
18 begun shall serve only for the rest of the term and until a
19 successor is appointed and qualifies. Each member of the board
20 is eligible for reappointment but may not serve more than two
21 consecutive terms.

22 (h) The Governor may remove a member for
23 incompetence, misconduct, neglect of duties, or other
24 sufficient cause.

25 Section 6. (a) The board shall appoint a chair, a
26 secretary-treasurer, and other such officers as are necessary.
27 The manner of election and term of an officer shall be as the

1 board determines. The board shall adopt rules and procedures
2 for the conduct of its meetings and other business of the
3 board. The secretary shall maintain the permanent records of
4 the board. A copy of all appointment letters submitted by an
5 appointing authority to the Governor's office shall be mailed
6 or otherwise delivered to the secretary of the board. The
7 board shall act, by a majority vote at any meeting at which a
8 quorum is present either in person or by written proxy or by
9 the written consent of all its members. For the purposes of
10 this section, a quorum shall consist of a majority of the
11 members of the board then serving.

12 (b) The board shall meet at least five times a year.

13 (c) Each member of the board is entitled to receive
14 compensation and reimbursement for actual expenses incurred in
15 the performance of duties.

16 (d) The board may employ the necessary personnel for
17 performance of its function and fix their compensation.

18 Section 7. (a) The board shall perform all of the
19 following duties:

20 (1) Adopt rules to govern its proceedings.

21 (2) Adopt by regulation an administrative code and a
22 code of professional conduct, which shall be published by the
23 board and made available to every applicant for registration
24 under this act.

25 (3) Select and administer examinations.

26 (4) Establish fees which meet all of the other
27 requirements of this act.

1 (5) Maintain a list of all authorized individual tax
2 preparers registered by the board.

3 (6) Maintain a record of its proceedings.

4 (7) Maintain records of all complaints regarding
5 individual tax preparers in the state.

6 (b) The board shall have all the powers and
7 authority consistent with this section not enumerated herein,
8 as are necessary for the administration and enforcement of
9 this act.

10 Section 8. (a) The board may investigate a complaint
11 that alleges a violation of this act.

12 (b) On receipt of the results of an investigation
13 made under this section, the board shall promptly take action
14 that is appropriate under this act to ensure compliance with
15 this act.

16 (c) If the board concludes that conduct alleged to
17 be in violation of this act will result in harm to a resident
18 of the state, the board may seek a permanent or temporary
19 injunction with respect to the conduct from the circuit court
20 of the county in which the alleged violation occurred.

21 (d) In seeking an injunction under this subsection,
22 the board is not required to post bond, allege or prove that
23 an adequate remedy at law does not exist, or allege or prove
24 that substantial or irreparable damage would result from the
25 continued violation.

1 (e) A member of the board may not be held personally
2 liable for action taken under this section in good faith with
3 reasonable grounds.

4 (f) The board, or a hearing officer designated by
5 the board, may administer oaths, hold hearings, and take
6 testimony about all matters within the jurisdiction of the
7 board.

8 (g) The board or its designee may issue a subpoena
9 for the attendance of witnesses to testify or the production
10 of evidence in connection with a disciplinary action brought
11 under this act or a proceeding brought for an alleged
12 violation of this act.

13 (h) If an individual fails to comply with a subpoena
14 issued under this section, on petition of the board, a court
15 of competent jurisdiction may compel compliance with the
16 subpoena.

17 Section 9. (a) The board may set reasonable fees for
18 the registration and renewal of registration of individual tax
19 preparers. The amount of each shall not be less than eighty
20 dollars (\$80) annually.

21 (b) Each individual tax preparer that registers
22 under this act shall pay the board a registration fee at the
23 time of registration or a renewal fee at the time of renewal
24 of registration.

25 (c) The board shall pay all fees collected under
26 this section to the Comptroller who shall distribute the fees
27 to the fund established herein.

1 Section 10. (a) There is established the Individual
2 Tax Preparers Fund in the State Treasury.

3 (b) The purpose of the fund is to provide for the
4 costs associated with the administration and enforcement of
5 this act, support the efforts of Internal Revenue Service
6 certified Volunteer Income Tax Assistance (VITA) programs, and
7 increase outreach efforts to encourage low-income taxpayers to
8 make use of free tax services and claim the earned income tax
9 credit.

10 (c) The board shall administer the fund.

11 (d) The secretary-treasurer of the board shall
12 prepare, certify, and file an annual report of all receipts,
13 expenditures, and fund balances with the state Comptroller.

14 (e) The fund shall consist of the following:

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

16 (2) Money appropriated in the state budget to the
17 fund.

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

20 (f) The fund may be used only for costs associated
21 with the administration and enforcement of this act.

22 (g) Revenue from registration fees that exceeds the
23 amount necessary to carry out the board's powers and duties
24 shall be made available for the following purposes:

25 (1) To provide funding for IRS-Certified Volunteer
26 Income Tax Assistance (VITA) Programs through a grant
27 application program. The grant applications and organizations

1 which receive the funds shall be determined through a process
2 determined by the board in consultation with the IRS Office of
3 Stakeholder Partnerships, Education and Communication.

4 (2) To support outreach efforts that provide
5 low-income taxpayers with information about the availability
6 of the earned income tax credit and encourage low-income
7 taxpayers to make use of Internal Revenue Service certified
8 Volunteer Income Tax Assistance programs. The board may
9 establish an outreach subcommittee to develop or implement, or
10 both, a plan to achieve this purpose.

11 Section 11. (a) On request of any person and payment
12 of a registration fee set by the board, the board shall
13 confirm the registration status and qualifications of any
14 individual who is the subject of the request.

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

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

21 (2) Information about the dates of issuance of the
22 registration of the individual.

23 (3) Information about any disciplinary action taken
24 against the individual.

25 Section 12. (a) An individual shall be registered by
26 the board before the individual may provide individual tax
27 preparation services in this state.

1 (b) No person may individually or in conjunction or
2 cooperation with another person solicit the execution of,
3 process, receive, or accept an application or agreement for a
4 refund anticipation loan without first being registered by the
5 board as an individual tax preparer.

6 (c) To qualify for registration, the applicant shall
7 meet the following minimum requirements that he or she:

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

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

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

12 (4) Pass an examination given by the board.

13 (5) Submit to the board an application on a form
14 provided by the board. If the individual tax preparer is also
15 a facilitator, the individual must include this information on
16 the application in the manner requested by the board.

17 (6) Pay to the board or the board's designee an
18 examination fee set by the board in an amount not to exceed
19 the cost of the required examination.

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

24 Section 13. (a) An applicant who otherwise qualifies
25 for registration is entitled to be examined as provided in
26 this section.

1 (b) The board shall give examinations to applicants
2 at least twice a year, at the times and places that the board
3 determines.

4 (c) The board shall give each qualified applicant
5 notice of the time and place of examination.

6 (d) The board shall give the examination which shall
7 be initially developed in a manner determined by the board and
8 in consultation with the Oregon Board of Tax Practitioners.

9 (e) The board shall adopt rules that establish the
10 passing score for an examination.

11 (f) The board shall notify each applicant of the
12 applicant's examination score.

13 (g) Any applicant, upon request within 60 days after
14 the date on which notification is sent, may review the
15 applicant's answers to the examination.

16 (h) An applicant who fails may retake the
17 examination.

18 (i) The board may not limit the number of times an
19 applicant may take an examination.

20 (j) The board may adopt rules to set conditions for
21 retaking the examination, including a requirement that the
22 applicant wait a reasonable period between examinations and
23 prepare to retake the examination in a specified manner.

24 (k) The board shall set fees for reexamination so
25 that the fee for reexamination on the entire examination does
26 not exceed the cost of the required reexamination and the fee

1 for reexamination on less than the entire examination is less
2 than the fee set for the entire examination.

3 Section 14. (a) The board shall issue a registration
4 to each applicant that qualifies for registration upon payment
5 of the registration fee.

6 (b) A registration authorizes the individual to
7 provide individual tax preparation services.

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

11 (d) At least one month before a registration
12 expires, the board shall mail to the individual, at the last
13 known address of the individual, a renewal application form
14 and a notice that states the following:

15 (1) The date on which the current registration
16 expires.

17 (2) The date by which the board must receive the
18 renewal application for the renewal to be issued and mailed
19 before the registration expires.

20 (3) The amount of the renewal fee.

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

24 (1) Otherwise is entitled to be registered.

25 (2) Pays to the board a renewal fee, as set by the
26 board.

1 (3) Submits to the board a renewal application on a
2 form provided by the board and satisfactory evidence of
3 compliance with the continuing education requirements set by
4 the board for registration renewal.

5 (f) The board shall renew the registration of each
6 individual who meets the requirements of this section.

7 Section 15. (a) The board shall adopt continuing
8 education requirements as a condition of the renewal of a
9 registration issued under this act.

10 (b) The board may appoint a continuing education
11 committee to help the board in carrying out this section.

12 (c) The regulations adopted shall provide a system
13 for reporting and recording the program hours earned by the
14 individual.

15 (d) The board may not require an individual to
16 submit scores or grades earned during participation by the
17 individual in a program.

18 Section 16. (a) The board shall adopt rules for the
19 reinstatement of an individual who has failed to renew a
20 registration for any reason if the individual otherwise is
21 entitled to be registered, complies with the continuing
22 education requirements set by the board, and pays to the board
23 all past due renewal fees and a reinstatement fee.

24 (b) The board, on the affirmative vote of a majority
25 of its members then serving, may deny a registration to any
26 applicant, reprimand any registered individual, or suspend or

1 revoke a registration if the applicant or registered
2 individual does any of the following:

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

6 (2) Fraudulently or deceptively uses a registration.

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

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

15 (5) Violates any provision of this act.

16 (c) For purposes of the individual income tax
17 imposed by Chapter 18, Title 40 of the Code of Alabama 1975,
18 if there is an understatement of liability on a return that
19 would cause a tax return preparer to be subject to the
20 penalties imposed by 26 U.S.C. §6694, except §6694(c), §6700,
21 or §6701, and if any of the failures enumerated in 26 U.S.C.
22 §6695, except §6695(e) and (g), occurs, the board may impose,
23 in addition to any other penalties assessed by the Internal
24 Revenue Service and the Department of Revenue, upon a tax
25 return preparer certain penalties. The board shall promulgate
26 regulations to establish such penalties.

1 (d) (1) A civil action in the name of the State of
2 Alabama may be commenced at the request of the board to enjoin
3 any person who is a tax return preparer, or an employer having
4 knowledge of an employee tax return preparer, who is doing
5 business in this state and engaging in conduct described in
6 this subsection, from further engaging in preparing tax
7 returns. This action may be brought by the board in the
8 circuit court for the judicial circuit of the tax return
9 preparer's residence or principal place of business, or in
10 which the taxpayer with respect to whose tax return the action
11 is brought resides. The court may exercise its jurisdiction
12 over the action separate and apart from any other action
13 brought by the State of Alabama against the tax return
14 preparer or any taxpayer.

15 (2) In an action under this subsection, the court
16 may issue an injunction prohibiting a person from acting as a
17 tax return preparer if the court finds that the individual has
18 done any of the following:

19 a. Engaged in any pattern of conduct subject to a
20 civil penalty under subsection (a) or a violation of Section
21 40-29-115, Code of Alabama 1975.

22 b. Willfully misrepresented the preparer's
23 eligibility to practice before the department, or otherwise
24 willfully misrepresented the preparer's experience or
25 education as a tax return preparer.

26 c. Knowingly guaranteed the payment of any tax
27 refund or the allowance of any tax credit.

1 d. Aided or assisted in, counseled, or advised the
2 preparation or presentation under, or in connection with any
3 matter arising under, the state revenue laws, of any returns,
4 affidavits, claims, or other documents, which may constitute a
5 significant congruous pattern of any of the following:

- 6 1. Omissions of income.
- 7 2. Excessive or nonexistent deductions.
- 8 3. Claims of nonexistent dependents.
- 9 4. Fictitious business schedules.
- 10 5. Excessive losses.

11 6. documents that are fraudulent or false as to any
12 material matter, whether or not such falsity or fraud is with
13 the knowledge or consent of the person authorized or required
14 to present the return, affidavit, claim, or document.

15 (e) For purposes of this section, the term
16 "understatement of liability" means an understatement of the
17 net amount payable with respect to the individual income tax
18 imposed by Chapter 18, Title 40 of the Code of Alabama 1975,
19 or an overstatement of the net amount creditable or refundable
20 with respect to the individual income tax imposed by Chapter
21 18 of Title 40 of the Code of Alabama 1975. The determination
22 of whether there is an understatement of liability must be
23 made without regard to any administrative or judicial action
24 involving the taxpayer. For purposes of this section, the
25 amount determined as an underpayment of estimated income tax
26 under either Sections 40-18-80 or 40-18-80.1, Code of Alabama
27 1975, is not considered an understatement of liability.

1 (f) For purposes of this section, the term "tax
2 refund preparer," "return preparer," or "tax return preparer"
3 means an individual who prepares for compensation, or who
4 employs one or more individuals who prepare for compensation,
5 a tax return or a claim for refund of tax. The preparation of
6 a substantial part of a return or claim for refund is treated
7 as if it were the preparation of the entire return or claim
8 for refund. An individual is not considered a tax return
9 preparer merely because the individual does any of the
10 following:

11 (1) Furnishes typing, reproducing, or other
12 mechanical assistance.

13 (2) Prepares a return or claim for refund of the
14 employer, or an officer or employee, by whom the individual is
15 regularly and continuously employed.

16 (3) Prepares a return or claim for refund of any
17 person as a fiduciary for that person.

18 (4) Prepares a claim for refund for a taxpayer in
19 response to an assessment issued to the taxpayer.

20 (g) (1) A civil action in the name of the State of
21 Alabama to enjoin any person from further engaging in conduct
22 subject to penalty under 26 U.S.C. §6700, relating to penalty
23 for promoting abusive tax shelters, or 26 U.S.C. §6701,
24 relating to penalties for aiding and abetting understatement
25 of tax liability, may be commenced at the request of the
26 commissioner. Any action under this section shall be brought
27 in the circuit court of Alabama for the judicial circuit in

1 which that person resides, has his or her principal place of
2 business, or has engaged in conduct subject to penalty under
3 26 U.S.C §6700 and 26 U.S.C §6701. The court may exercise its
4 jurisdiction over such action separate and apart from any
5 other action brought by the State of Alabama against that
6 person.

7 (2) In any action under subdivision (1), the court
8 may enjoin a person from engaging in conduct or in any other
9 activity subject to penalty under 26 U.S.C. §6700 or 26 U.S.C.
10 §6701 if the court finds both of the following:

11 a. The person has engaged in any conduct subject to
12 penalty under 26 U.S.C. §6700 or 26 U.S.C. §6701.

13 b. Injunctive relief is appropriate to prevent
14 recurrence of such conduct.

15 (3) If any citizen or resident of the United States
16 does not reside in, and does not have his or her principal
17 place of business in, any Alabama judicial circuit, that
18 citizen or resident shall be treated for purposes of this
19 section as residing in Montgomery County.

20 (h) The board may impose a monetary penalty or
21 suspension of license for each violation.

22 (i) To determine the appropriate penalty, the board
23 shall consider the following:

24 (1) The seriousness of the violation.

25 (2) The harm caused by the violation.

26 (3) The good faith of the registered individual.

1 (4) Any history of previous violations by the
2 registered individual.

3 (j) Except as otherwise provided, before the board
4 takes any final action to deny, suspend, or revoke
5 registration, the board shall give an individual an
6 opportunity for a hearing before the board.

7 (k) Nothing herein shall prohibit the exchange of
8 tax return preparer information between the State Board of
9 Individual Income Tax Preparers and the Department of Revenue,
10 provided that any exchange shall be subject to the same
11 restrictions and criminal penalties imposed on the department
12 and its personnel as described in Title 40 of the Code of
13 Alabama 1975. The board and its personnel shall be subject to
14 the same restrictions and criminal penalties imposed on the
15 department and its personnel as described in Title 40 of the
16 Code of Alabama 1975.

17 Section 17. (a) An individual tax preparer shall
18 maintain for five 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, address, and
24 telephone number.

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

1 (3) Services that the individual tax preparer is
2 qualified to provide.

3 (4) The individual tax preparer's education and
4 training, including examinations taken and successfully
5 passed.

6 (5) Any other information that the board requires.

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

13 (d) The disclosure required under subsection (b)
14 shall be provided to a consumer at an initial meeting between
15 the individual tax preparer and the consumer and, if the
16 individual tax preparer maintains a website, on the website.

17 (e) An individual tax preparer may not do any of the
18 following:

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

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

23 (3) Disclose information received for the purposes
24 of preparing a consumer's federal or state income tax return,
25 unless consented to in writing by the consumer, expressly
26 authorized by law and in compliance with Internal Revenue Code

1 \$7216, necessary for the preparation of the tax return, or in
2 accordance with a court order.

3 Section 18. (a) Any facilitator who advertises the
4 availability of a refund anticipation loan shall not directly
5 or indirectly represent the loan as a consumer's actual
6 refund. Any advertisement that mentions a refund anticipation
7 loan shall state conspicuously that it is a loan and that a
8 fee or interest will be charged by the lending institution.
9 The advertisement shall also disclose the name of the lending
10 institution.

11 (b) Every facilitator who offers to facilitate, or
12 who facilitates, a refund anticipation loan to a consumer
13 shall display a refund anticipation loan schedule showing the
14 current fees for refund anticipation loans facilitated at the
15 office, for the electronic filing of consumer's tax return,
16 for setting up a refund account, and any other related
17 activities necessary to receive a refund anticipation loan.
18 The fee schedule shall also include a statement indicating
19 that a consumer may have the tax return filed electronically
20 without also obtaining a refund anticipation loan.

21 (c) Prior to an applicant's completion of the refund
22 anticipation loan application, a facilitator that offers to
23 facilitate a refund anticipation loan shall provide to the
24 applicant a clear disclosure in a minimum of 14 point font
25 containing all of the following information:

26 (1) The refund anticipation loan fee schedule.

1 (2) That a refund anticipation loan is a loan and is
2 not the applicant's actual income tax refund.

3 (3) That a consumer can file an income tax return
4 electronically without applying for a refund anticipation
5 loan.

6 (4) The average amount of time, according to the
7 Internal Revenue Service, within which a consumer who does not
8 obtain a refund anticipation loan can expect to receive a
9 refund if a consumer's return is filed or mailed as follows:

10 a. Filed electronically and the refund is deposited
11 directly into a consumer's bank account or mailed to the
12 consumer.

13 b. Mailed to the Internal Revenue Service and the
14 refund is deposited directly into a consumer's bank account or
15 mailed to a consumer.

16 (5) That the Internal Revenue Service does not
17 guarantee that it will pay the full amount of the anticipated
18 refund and it does not guarantee a specific date that a refund
19 will be deposited into a consumer's bank account or mailed to
20 a consumer.

21 (6) That the borrower is responsible for the
22 repayment of the refund anticipation loan and the related fees
23 in the event that the tax refund is not paid in full.

24 (7) The estimated time within which the loan
25 proceeds will be paid to the borrower if the loan is approved.

26 (8) The fee that will be charged, if any, if the
27 applicant's loan is not approved.

1 (d) Prior to an applicant's consummation of the
2 refund anticipation loan transaction, a facilitator shall
3 provide to the applicant, in written form, the following
4 information:

5 (1) The estimated total fees for obtaining the
6 refund anticipation loan.

7 (2) The estimated refund anticipation loan interest
8 rate.

9 (3) The various costs, fees, and finance charges, if
10 applicable, associated with receiving a refund by mail or by
11 direct deposit directly from the Internal Revenue Service, a
12 refund anticipation loan, a refund anticipation check, or any
13 other refund settlement options facilitated by the
14 facilitator.

15 (4) A copy of the completed loan application and
16 agreement and the disclosures required by this act in English
17 and in the language in which the loan was negotiated.

18 (e) No facilitator may facilitate a refund
19 anticipation loan or refund anticipation check unless the
20 disclosures required by this section are displayed and the fee
21 actually charged for the refund anticipation loan is the same
22 as the fee displayed on the schedule.

23 (f) Any facilitator who offers to facilitate or who
24 facilitates a refund anticipation loan may not engage in any
25 of the following activities:

26 (1) Requiring a consumer to enter into a loan
27 arrangement in order to complete a tax return.

1 (2) Misrepresenting a material fact or condition of
2 a refund anticipation loan.

3 (3) Failing to process the application for a refund
4 anticipation loan promptly after an applicant applies for the
5 loan.

6 (4) Engaging in any transaction, practice, or course
7 of business that operates a fraud upon any person in
8 connection with a refund anticipation loan.

9 (5) Directly or indirectly charging or arranging for
10 the charging of any interest, fee, or charge related to a
11 refund anticipation loan, other than those specifically
12 authorized by this act, including, but not limited to, charges
13 for insurance, attorneys' fees, or other collection costs or
14 for check cashing.

15 (g) When an application involves more than one
16 consumer, notification pursuant to this section need only be
17 given to one consumer.

18 (h) A borrower who obtains a refund anticipation
19 loan may rescind the loan on or before the close of business
20 on the next day of business by either returning the original
21 check issued for the loan or providing the amount of the loan
22 in cash to the lender. The facilitator may not charge the
23 borrower a fee for rescinding the loan or a refund
24 anticipation loan fee if the loan is rescinded but may charge
25 the consumer a fee for establishing and administering a bank
26 account to electronically receive and distribute the refund.

1 Section 19. Except as otherwise provided in this
2 act, a person may not provide, attempt to provide, or offer to
3 provide individual tax preparation services in the state
4 unless registered by the board.

5 Section 20. On or before July 1 of each year,
6 beginning July 2010, each individual tax preparer shall file
7 an annual report with the board pursuant to procedures that
8 the board shall establish. An annual consolidated report shall
9 be prepared by the board and made available to the public.
10 These reports shall include the following information for the
11 time period of January 1 to December 31 of that year:

12 (1) The total number of completed federal and state
13 tax returns.

14 (2) Any other information required by the board.

15 Section 21. The board shall be subject to the
16 Alabama Sunset Law, Title 41, Chapter 20, Code of Alabama
17 1975, as enumerated agency as provided in Section 41-20-3,
18 Code of Alabama 1975, and shall have a termination date of
19 October 1, 2012, and every four years thereafter, unless
20 continued pursuant to the Alabama Sunset Law.

21 Section 22. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.