

House Study Bill 590 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON RIZER)

A BILL FOR

1 An Act creating the tax return preparer oversight Act to
2 provide for the regulation of tax return preparers by the
3 Iowa accountancy examining board, modifying the powers and
4 duties of the Iowa accountancy examining board and the
5 director of revenue, and providing penalties.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 421.17, Code 2018, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 35. To make state individual income tax
4 returns and related tax information available to the Iowa
5 accountancy examining board for purposes of the administration
6 and enforcement of chapter 542A. The department of revenue and
7 the Iowa accountancy examining board may exchange information
8 in a manual and automated fashion. The department of revenue,
9 in cooperation with the Iowa accountancy examining board, may
10 adopt rules, if necessary, to implement this subsection. The
11 sharing of information by the department of revenue with the
12 Iowa accountancy examining board pursuant to this subsection
13 shall not be deemed a violation of the confidentiality
14 provisions of sections 422.20 and 422.72.

15 Sec. 2. Section 542.4, Code 2018, is amended by adding the
16 following new subsection:

17 NEW SUBSECTION. 10. The board shall be responsible for
18 administering chapter 542A. With respect to the administration
19 of chapter 542A, to the extent that any provision of this
20 chapter conflicts with any provision of chapter 542A, including
21 but not limited to any power or duty prescribed to the board in
22 section 542A.3, chapter 542A shall control.

23 Sec. 3. NEW SECTION. 542A.1 **Short title.**

24 This chapter shall be known and may be cited as the "*Tax*
25 *Return Preparer Oversight Act*".

26 Sec. 4. NEW SECTION. 542A.2 **Definitions.**

27 For purposes of this chapter and unless otherwise required
28 by the context:

29 1. "*Board*" means the Iowa accountancy examining board
30 created in chapter 542.

31 2. "*Client*" means a person for whom a tax return preparer
32 performs or agrees to perform tax return preparation.

33 3. "*Enrolled agent*" means an agent enrolled to practice
34 before the federal internal revenue service pursuant to 31
35 C.F.R. §10.4.

1 4. "Tax return" means any return, declaration, refund,
2 claim, or other document required to be made or filed in
3 connection with local, state, or federal income taxes.

4 5. a. "Tax return preparer" means any of the following:

5 (1) An individual who, for a fee or other consideration,
6 prepares or assists with the preparation of five or more tax
7 returns for clients during a calendar year or who assumes
8 final responsibility for completed work on such tax returns on
9 which preliminary work has been done by another individual,
10 or an individual who holds himself or herself out as offering
11 services described in this subparagraph.

12 (2) A corporation, partnership, association, or other
13 entity that associates with or employs individuals described in
14 subparagraph (1) of this paragraph "a", unless such association
15 or employment is unrelated to the individual's tax return
16 preparation services.

17 b. "Tax return preparer" does not include any of the
18 following:

19 (1) An individual licensed as a certified public accountant
20 under chapter 542 or a similar law of another state, including
21 an employee of that individual while functioning within the
22 employee's scope of employment if the employee does not sign
23 tax returns.

24 (2) An individual admitted to practice law in this state or
25 another state, including an employee of that individual while
26 functioning within the employee's scope of employment if the
27 employee does not sign tax returns.

28 (3) A fiduciary of an estate, trust, or individual, while
29 functioning within the fiduciary's legal duty and authority
30 with respect to that individual, or that estate or trust or its
31 testator, trustor, grantor, or beneficiaries, and including
32 an employee of that fiduciary while functioning within the
33 employee's scope of employment if the employee does not sign
34 tax returns.

35 (4) An individual who prepares the tax returns of

1 the individual's employer, while functioning within the
2 individual's scope of employment with the employer.

3 (5) An individual employed by a local, state, or federal
4 government agency, while functioning within the individual's
5 scope of employment with the government agency.

6 (6) An employee of a person described in paragraph "a",
7 subparagraphs (1) and (2), if the employee provides only
8 clerical or other comparable services.

9 **Sec. 5. NEW SECTION. 542A.3 Board powers and duties.**

10 The board shall have the following powers and duties in
11 administering this chapter:

12 1. To determine qualifications for registration as a tax
13 return preparer, to develop and administer the examination
14 for registration as a tax return preparer, and to issue
15 registrations to qualified applicants. In developing the
16 examination for registration as a tax return preparer, the
17 board may utilize, in whole or in part, any examination
18 approved by the federal internal revenue service, or any state
19 board or authority responsible for the licensing or regulation
20 of accountants, tax practitioners, or attorneys.

21 2. To develop and administer forms for use in implementing
22 the provisions of this chapter, including but not limited to
23 forms for initial registration and renewal registration of tax
24 return preparers.

25 3. To issue reports and to make recommendations to the
26 governor and general assembly on matters pertaining to the
27 regulation of tax return preparers.

28 4. To adopt rules for implementation of this chapter, to
29 provide for the protection of clients, and to assist tax return
30 preparers in interpreting this chapter. Such rules shall
31 include but not be limited to the following:

32 a. Developing and administering examinations required for
33 registration as a tax return preparer.

34 b. The renewal of a tax return preparer registration,
35 the selecting of inactive status of a registration and the

1 reactivation of that registration, and the reinstatement of a
2 tax return preparer who fails to renew a registration for any
3 reason if the tax return preparer is otherwise entitled to be
4 registered.

5 c. Adoption of rules of professional conduct for tax return
6 preparers.

7 d. After consultation with the department of administrative
8 services, the adoption of reasonable fees for all of the
9 following that are sufficient to offset the expenses incurred
10 in the administration of the activity for which the fee is
11 established:

12 (1) Application for examination for a tax return preparer
13 registration.

14 (2) Issuance or renewal of a tax return preparer
15 registration.

16 (3) Issuance or renewal of an inactive tax return preparer
17 registration.

18 (4) Reactivation of an inactive tax return preparer
19 registration.

20 (5) Restoration of a lapsed tax return preparer
21 registration.

22 (6) Issuance of a duplicate or replacement of a lost tax
23 return preparer registration.

24 5. To establish a fund within the state treasury under
25 the control of the board. Moneys deposited in or accruing
26 to such fund are appropriated to the board for purposes of
27 administering this chapter. Notwithstanding section 12C.7,
28 subsection 2, interest or earnings on moneys in the fund shall
29 be credited to the fund. Notwithstanding section 8.33, moneys
30 credited to the fund that remain unexpended or unobligated at
31 the end of a fiscal year shall not revert to any other fund.
32 All fees, penalties, and fines imposed and collected by the
33 board shall be deposited in the fund.

34 6. To employ and discharge personnel as necessary,
35 prescribe their duties and powers, and fix their compensation.

1 7. To administer oaths, hold hearings, and take testimony
2 about matters within the jurisdiction of the board.

3 8. To issue subpoenas for the attendance of witnesses to
4 testify or the production of evidence in connection with a
5 disciplinary action brought under this chapter or a proceeding
6 brought for an alleged violation of this chapter, and to
7 petition courts of competent jurisdiction to compel compliance
8 with subpoenas.

9 9. a. Except as provided in paragraph "b", to investigate
10 all complaints that allege a violation of this chapter. If the
11 complaint involves an enrolled agent, a copy of the complaint
12 and the findings of the board shall be forwarded to the federal
13 internal revenue service office of professional responsibility,
14 unless the complaint is determined to be without merit.

15 b. (1) If the complaint involves an individual or firm
16 governed by the board under chapter 542, or a similar board in
17 another jurisdiction, the complaint shall be handled by the
18 board under chapter 542, or forwarded to the appropriate board
19 of the other jurisdiction.

20 (2) If the complaint involves an attorney admitted to
21 practice law in this state or in another jurisdiction, the
22 complaint shall be immediately forwarded to the Iowa supreme
23 court or to the equivalent attorney governing body of the other
24 jurisdiction, as applicable.

25 10. The board may by rule establish and impose penalties
26 upon tax return preparers for violations of section 542A.7,
27 subsection 3, paragraphs "i", "j", "k", "l", "m", and "n".
28 Such penalties shall be in addition to any other penalties
29 imposed by the board, the department of revenue, or the federal
30 internal revenue service.

31 11. The lapse, suspension, or revocation of a tax return
32 preparer registration under this chapter by operation of law or
33 by order of the board or a court, or the voluntary surrender of
34 such a registration by a tax return preparer, shall not deprive
35 the board of jurisdiction or authority to proceed with any

1 investigation or other action against the tax return preparer,
2 nor shall it revise or render void any previous action by the
3 board against the tax return preparer.

4 Sec. 6. NEW SECTION. 542A.4 **Administrative remedies —**
5 **civil penalties.**

6 1. The board on the affirmative vote of a majority of the
7 members may deny registration to any applicant registering as
8 a tax return preparer, reprimand any tax return preparer, or
9 suspend or revoke the registration of any tax return preparer
10 if the tax return preparer does any of the following:

11 a. Fails to meet the qualifications for registration as a
12 tax return preparer under section 542A.6.

13 b. Violates any provision of this chapter or the rules
14 adopted by the board, or knowingly aids or abets another person
15 in violating any provision of this chapter or the rules adopted
16 by the board.

17 c. Is convicted of a misdemeanor or felony directly related
18 to the tax return preparer's fitness and qualification to
19 provide tax return preparation services.

20 d. Is guilty of negligence, incompetence, or misconduct
21 while providing services as a tax return preparer.

22 2. Except as otherwise provided in this chapter, before
23 the board takes any final action to deny, suspend, or revoke a
24 registration or to reprimand a tax return preparer, the board
25 shall give the person an opportunity for a hearing before the
26 board in accordance with chapter 17A.

27 3. The board, after a hearing and upon a finding that a
28 violation of this chapter or the rules adopted by the board has
29 occurred, may do one or more of the following:

30 a. Issue an order requiring the person to cease and desist
31 from the violation found.

32 b. Seek an injunction against the person pursuant to section
33 542A.5.

34 c. Deny, suspend, or revoke the registration of the person.

35 d. Assess costs incurred by the board against the person.

1 e. Assess a civil penalty not to exceed ten thousand dollars
2 against the person for any such violation.

3 Sec. 7. NEW SECTION. **542A.5 Civil action.**

4 1. The board may commence a civil action against a person to
5 do any of the following:

6 a. Enjoin a person from violating any provision of this
7 chapter.

8 b. Enjoin a person who has violated or is violating any
9 provision of this chapter, or the employer of that person
10 having knowledge of such violations, from further engaging in
11 the preparation of tax returns.

12 2. The Iowa district court shall have jurisdiction over
13 actions brought under this section and may grant appropriate
14 relief.

15 Sec. 8. NEW SECTION. **542A.6 Registration of tax return
16 preparers.**

17 1. a. On or after January 1, 2019, a tax return preparer
18 shall not, for a fee or other consideration, prepare or assist
19 with the preparation of five or more tax returns for clients
20 during a calendar year, or assume final responsibility for
21 completed work on such tax returns on which preliminary work
22 has been done by another individual, or shall not hold the tax
23 return preparer out as offering such tax return preparation
24 services, unless the tax return preparer meets the requirements
25 of paragraph "b" or "c", as applicable, and registers with the
26 board in the manner and form prescribed by the board.

27 b. For an individual to be eligible to register as a tax
28 return preparer under this subsection, the applicant shall
29 fulfill all of the following requirements:

30 (1) The applicant shall submit a complete application to the
31 board in the manner and form prescribed by the board.

32 (2) The applicant shall have completed the required number
33 of hours of instruction, as determined by the board, in basic
34 personal income tax law, theory and practice, and ethics from a
35 provider approved by the board.

1 (3) The applicant shall be at least eighteen years of age.

2 (4) The applicant shall be of good moral character as
3 determined by the board.

4 (5) The applicant shall agree in writing to comply with the
5 rules of professional conduct adopted by the board.

6 (6) The applicant shall pay a registration fee, the amount
7 of which shall be determined by the board.

8 (7) The applicant shall pass a tax return preparer
9 examination. The following individuals shall be exempt from
10 the examination requirement in this subparagraph:

11 (a) An individual who is accredited by and in good standing
12 with the accreditation council for accountancy and taxation,
13 inc., as an accredited business accountant/advisor, an
14 accredited tax advisor, or an accredited tax preparer.

15 (b) An individual who is an enrolled agent in good standing
16 with the federal internal revenue service.

17 c. For a corporation, partnership, association, or other
18 entity to be eligible to register as a tax return preparer
19 under this subsection, the applicant shall fulfill all of the
20 following requirements:

21 (1) The applicant shall submit a complete application to the
22 board in the manner and form prescribed by the board.

23 (2) Each principal of the entity shall agree in writing that
24 the principals and the entity will comply with the rules of
25 professional conduct adopted by the board.

26 (3) The applicant shall pay a registration fee, the amount
27 of which shall be determined by the board.

28 2. a. Registration under subsection 1 shall be valid for a
29 period of two years and may be renewed as provided in paragraph
30 "b". Each renewal shall be valid for a period of two years.

31 b. For an individual to be eligible to renew registration,
32 the applicant shall successfully complete annual continuing
33 education requirements that are equivalent to the continuing
34 education requirements for registered tax return preparers
35 described in 31 C.F.R. §10.6, and shall pay a renewal fee,

1 the amount of which shall be determined by the board. For a
2 corporation, partnership, association, or other entity to be
3 eligible to renew registration, the applicant shall comply with
4 subsection 1, paragraph "c", subparagraph (1), and shall pay
5 a renewal fee, the amount of which shall be determined by the
6 board.

7 3. A person who fails to timely renew registration as
8 determined by the board shall not be allowed reinstatement
9 unless the person pays a reinstatement fee, the amount of which
10 shall be determined by the board.

11 4. A person whose registration is on inactive status shall
12 not be allowed reinstatement to active status unless the
13 person pays a reactivation fee, the amount of which shall be
14 determined by the board.

15 5. Unless a foreign tax return preparer has a valid
16 registered agent for service of process in this state on file
17 with the secretary of state, that foreign tax return preparer,
18 by acting as a tax return preparer in this state, appoints
19 the secretary of state as the tax return preparer's agent for
20 service of process in any civil action related to the tax
21 return preparer's acting as a tax return preparer in this
22 state. For purposes of this subsection, "foreign tax return
23 preparer" means a tax return preparer that is a nonresident
24 individual or an entity whose commercial domicile is not in
25 this state.

26 **Sec. 9. NEW SECTION. 542A.7 Responsibilities of tax return**
27 **preparers — prohibitions — violations — criminal penalties.**

28 1. A tax return preparer shall have the affirmative
29 responsibility to act in the best interests of the tax
30 return preparer's client and in accordance with the rules of
31 professional conduct adopted by the board under this chapter.

32 2. A tax return preparer shall conspicuously display at the
33 tax return preparer's place of business the documentation of
34 registration under this chapter in accordance with the rules
35 adopted by the board.

1 3. On or after January 1, 2019, it shall be a violation
2 of this section for a tax return preparer to do any of the
3 following:

4 a. Fail to register as a tax return preparer with the board.

5 b. Act as a tax return preparer while the tax return
6 preparer's registration is inactive, revoked, or lapsed.

7 c. Fraudulently or deceptively obtain or attempt to obtain
8 a registration as a tax return preparer.

9 d. Fraudulently or deceptively claim to be a registered tax
10 return preparer.

11 e. Make or authorize the making of any fraudulent, untrue,
12 or misleading statement or representation, oral or written or
13 recorded by any means, that is intended to induce a person to
14 use the tax preparation service of the tax return preparer.

15 f. Obtain the signature of a client on a tax return or
16 authorizing document that has not been fully completed in
17 accordance with the official instructions of the tax return.

18 g. Knowingly give false or misleading information to the
19 board or to a client.

20 h. Violate the rules of professional conduct adopted by the
21 board.

22 i. Fail without reasonable cause to sign a client's tax
23 return if payment for services rendered has been made.

24 j. Fail without reasonable cause to maintain for at least
25 three years copies of all tax returns prepared by the tax
26 return preparer, fail to make such records available to the
27 client during the three-year period, or fail to present a
28 completed tax return to the client not later than the time such
29 tax return is presented for such client's signature.

30 k. Prepare, aid or assist, procure, or advise with respect
31 to an understatement of liability for a client that causes
32 the tax return preparer to be subject to penalties imposed
33 under section 6694 or 6701 of the Internal Revenue Code, or
34 would cause the tax return preparer to be subject to such
35 penalties if those sections applied to the taxes imposed under

1 chapter 422. For purposes of the taxes imposed under chapter
2 422, "*understatement of liability*" means any understatement of
3 the net amount payable with respect to any tax imposed under
4 chapter 422 or any overstatement of the net amount creditable
5 or refundable with respect to any such tax. The determination
6 of whether there is an understatement of liability must be
7 made without regard to any administrative or judicial action
8 involving the tax return preparer.

9 1. Violate section 6695(e), 6695(g), or 6700 of the Internal
10 Revenue Code.

11 m. Fail without reasonable cause to include on each tax
12 return prepared by the tax return preparer an identifying
13 number as may be provided by the board for securing the proper
14 identification of the tax return preparer, the tax return
15 preparer's employer, or both.

16 n. Endorse or otherwise negotiate, directly or through an
17 agent, any check made in respect of the tax that is the subject
18 of a tax return that is issued to a person other than the tax
19 return preparer. This paragraph shall not apply with respect
20 to the deposit by a bank of the full amount of the check in the
21 person's account in such bank for the benefit of the person.

22 o. Violate any other provision of this section or section
23 542A.6, or the rules adopted by the board relating to this
24 chapter.

25 4. On or after January 1, 2019, a person shall not assume
26 or use the title or designation "tax return preparer", or
27 assume or use any other title, designation, word, letter,
28 abbreviation, sign, card, or device tending to indicate
29 such person is a tax return preparer, unless the person is
30 registered under section 542A.6 or is a person described in
31 section 542A.2, subsection 5, paragraph "b".

32 5. A violation of this section is a simple misdemeanor. In
33 addition to any other applicable penalties, a court may order a
34 person to pay restitution for any damages caused in violating a
35 provision of this section.

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EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill creates the tax return preparer oversight Act in new Code chapter 542A to provide for the regulation of tax return preparers by the Iowa accountancy examining board (board).

BOARD. The bill prescribes numerous powers and duties of the board relating to its regulation of tax return preparers, including but not limited to the registration of such persons, creation of forms and exams, adoption of administrative rules, adoption of rules of professional conduct for tax return preparers, employment of personnel, establishment of fees and penalties, and the investigation and enforcement of violations. The board is authorized to establish a fund under its control and to retain all fees, penalties, and fines it imposes and collects.

The bill amends the powers and duties of the board in Code chapter 542 (public accountants) to provide that the board is responsible for administering the tax return preparer oversight Act in Code chapter 542A. The bill provides that with respect to the administration of the tax return preparer oversight Act, to the extent any provision of Code chapter 542 conflicts with any provision of the tax return preparer oversight Act, the tax return preparer oversight Act shall control.

The bill also modifies the powers and duties of the director of revenue to provide that the director shall make state individual income tax returns and related tax information available to the board for purposes of administration and enforcement of the tax return preparer oversight Act, and provides that the sharing of such information is not a violation of the confidentiality provisions of Code sections 422.20 and 422.72.

TAX RETURN PREPARERS. On or after January 1, 2019, tax return preparers are required to register with the board and

1 comply with the provisions in the bill. "Tax return preparer"
2 is defined in the bill to generally include individuals
3 who prepare five or more tax returns in a calendar year and
4 corporations or other entities that associate with or employ
5 such individuals. Certified public accountants, attorneys,
6 and certain other fiduciaries and individuals are excluded
7 from the definition. The bill prescribes several requirements
8 that must be met in order to be eligible to register as a
9 tax return preparer, including but not limited to paying a
10 registration fee, being at least 18 years old and of good
11 moral character, agreeing in writing to comply with rules
12 of professional conduct adopted by the board, completing
13 certain tax law training as determined by the board, and
14 passing of an examination approved by the board. Enrolled
15 agents as designated by the internal revenue service (IRS)
16 and certain other accredited tax advisors as described in the
17 bill are exempt from the examination requirement. The bill
18 provides that registration as a tax return preparer is valid
19 for two years, and then must be renewed. In order to renew
20 registration, individual tax return preparers must complete
21 certain continuing education requirements as described in the
22 bill that are similar to continuing education requirements for
23 tax return preparers established by the IRS.

24 The bill provides for the appointment, by operation of law,
25 of the secretary of state as agent for service of process
26 in Iowa for foreign tax return preparers, as defined in the
27 bill, unless those foreign tax return preparers have a valid
28 registered agent on file with the secretary of state.

29 Code section 542A.7 as created in the bill prohibits, on
30 or after January 1, 2019, numerous actions by a tax return
31 preparer, and prohibits persons from assuming the title of
32 "tax return preparer" unless duly registered with the board or
33 exempt from such registration. The bill makes violations of
34 these and other provisions relating to tax return preparers
35 a simple misdemeanor. A simple misdemeanor is punishable by

1 confinement for no more than 30 days or a fine of at least \$65
2 but not more than \$625 or by both. The bill provides that
3 violations may also subject a person to civil penalties and
4 other costs imposed by the board, and may result in a denial,
5 suspension, or revocation by the board of the tax return
6 preparer's registration. The bill provides administrative
7 procedures that must be followed when such denial, suspension,
8 or revocation occurs and further provides that the board
9 may seek civil injunctions against persons from violating
10 provisions of the bill or from preparing tax returns.