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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1800

02/27/2017 Authored by Marquart and Davids
The bill was read for the first time and referred to the Committee on Taxes
03/01/2017 By motion, recalled and re-referred to the Committee on State Government Finance

A bill for an act

relating to taxation; modifying provisions for paid preparers; amending Minnesota Statutes 2016, sections 270C.445, subdivisions 2, 3, 5a, 6, 6a, 6b, 6c, 7, 8, by adding a subdivision; 270C.446, subdivisions 2, 3, 4, 5; 270C.447, subdivisions 1, 2, 3, by adding a subdivision; 289A.60, subdivisions 13, 28; repealing Minnesota Statutes 2016, sections 270C.445, subdivision 1; 270C.447, subdivision 4.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2016, section 270C.445, subdivision 2, is amended to read:

Subd. 2. Definitions. (a) For purposes of this section and sections 270C.4451 to 270C.447, the following terms have the meanings given.

(b) "Advertise" means to solicit business through any means or medium.

(c) "Client" means ~~an individual~~ a person for whom a tax preparer performs or agrees to perform tax preparation services.

(d) "Facilitate" means to individually or in conjunction or cooperation with another person:

(1) accept an application for a refund anticipation loan;

(2) pay to a client the proceeds, through direct deposit, a negotiable instrument, or any other means, of a refund anticipation loan; or

(3) offer, arrange, process, provide, or in any other manner act to allow the making of, a refund anticipation loan.

~~(e) "Person" means an individual, corporation, partnership, limited liability company, association, trustee, or other legal entity.~~

2.1 ~~(f)~~ (e) "Refund anticipation check" means a negotiable instrument provided to a client
 2.2 by the tax preparer or another person, which is issued from the proceeds of a taxpayer's
 2.3 federal or state income tax refund or both and represents the net of the refund minus the tax
 2.4 preparation fee and any other fees. A refund anticipation check includes a refund transfer.

2.5 ~~(g)~~ (f) "Refund anticipation loan" means a loan or any other extension of credit, whether
 2.6 provided by the tax preparer or another entity such as a financial institution, in anticipation
 2.7 of, and whose payment is secured by, a client's federal or state income tax refund or both.

2.8 ~~(h)~~ (g) "Tax preparation services" means services provided for a fee or other consideration
 2.9 compensation to a client to:

2.10 (1) assist with preparing or filing ~~state or federal individual income tax returns~~ a return;

2.11 (2) assume final responsibility for completed work on ~~an individual income tax~~ a return
 2.12 on which preliminary work has been done by another; ~~or~~

2.13 (3) sign or include on a return the preparer tax identification number required under
 2.14 section 6109(a)(4) of the Internal Revenue Code; or

2.15 ~~(3)~~ (4) facilitate the provision of a refund anticipation loans and loan or a refund
 2.16 anticipation checks check.

2.17 ~~(i)~~ (h) "Tax preparer" or "preparer" means a person providing tax preparation services
 2.18 ~~subject to this section.~~ except:

2.19 (1) an employee who prepares their employer's return;

2.20 (2) any fiduciary, or the regular employees of a fiduciary, while acting on behalf of the
 2.21 fiduciary estate, testator, trustor, grantor, or beneficiaries of them;

2.22 (3) nonprofit organizations providing tax preparation services under the Internal Revenue
 2.23 Service Volunteer Income Tax Assistance Program or Tax Counseling for the Elderly
 2.24 Program;

2.25 (4) a person who merely furnishes typing, reproducing, or other mechanical assistance;

2.26 (5) a third-party bulk filer as defined in section 290.92, subdivision 30, that is currently
 2.27 registered with the commissioner; and

2.28 (6) a certified service provider as defined in section 297A.995, subdivision 2, paragraph
 2.29 (c), that provides all of the sales tax functions for a retailer not maintaining a place of
 2.30 business in this state as described in section 297A.66.

2.31 (i) Except as otherwise provided, "return" means:

- 3.1 (1) a return as defined in section 270C.01, subdivision 8;
 3.2 (2) a claim for refund of an overpayment;
 3.3 (3) a claim filed pursuant to chapter 290A; and
 3.4 (4) a claim for a credit filed under section 290.0677, subdivision 1.

3.5 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 3.6 31, 2017.

3.7 Sec. 2. Minnesota Statutes 2016, section 270C.445, subdivision 3, is amended to read:

3.8 Subd. 3. **Standards of conduct.** No tax preparer shall:

3.9 (1) without good cause fail to promptly, diligently, and without unreasonable delay
 3.10 complete a client's ~~tax~~ return;

3.11 (2) obtain the signature of a client to a ~~tax~~ return or authorizing document that contains
 3.12 blank spaces to be filled in after it has been signed;

3.13 (3) fail to sign a client's ~~tax~~ return when ~~payment~~ compensation for services rendered
 3.14 has been made;

3.15 (4) fail to provide on a client's return the preparer tax identification number when required
 3.16 under section 6109(a)(4) of the Internal Revenue Code or section 289A.60, subdivision 28;

3.17 ~~(4)~~ (5) fail or refuse to give a client a copy of any document requiring the client's signature
 3.18 within a reasonable time after the client signs the document;

3.19 ~~(5)~~ (6) fail to retain for at least four years a copy of ~~individual income tax~~ a client's
 3.20 returns;

3.21 ~~(6)~~ (7) fail to maintain a confidential relationship with clients or former clients;

3.22 ~~(7)~~ (8) fail to take commercially reasonable measures to safeguard a client's nonpublic
 3.23 personal information;

3.24 ~~(8)~~ (9) make, authorize, publish, disseminate, circulate, or cause to make, either directly
 3.25 or indirectly, any false, deceptive, or misleading statement or representation relating to or
 3.26 in connection with the offering or provision of tax preparation services;

3.27 ~~(9)~~ (10) require a client to enter into a loan arrangement in order to complete a ~~tax~~ client's
 3.28 return;

3.29 ~~(10)~~ (11) claim credits or deductions on a client's ~~tax~~ return for which the tax preparer
 3.30 knows or reasonably should know the client does not qualify;

4.1 (12) report a household income on a client's claim filed under chapter 290A that the tax
4.2 preparer knows or reasonably should know is not accurate;

4.3 (13) engage in any conduct that is subject to a penalty under section 289A.60, subdivision
4.4 13, 20, 20a, 26, or 28;

4.5 (14) whether or not acting as a taxpayer representative, fail to conform to the standards
4.6 of conduct required by Minnesota Rules, part 8052.0300, subpart 4;

4.7 (15) whether or not acting as a taxpayer representative, engage in any conduct that is
4.8 incompetent conduct under Minnesota Rules, part 8052.0300, subpart 5;

4.9 (16) whether or not acting as a taxpayer representative, engage in any conduct that is
4.10 disreputable conduct under Minnesota Rules, part 8052.0300, subpart 6;

4.11 ~~(17)~~ (17) charge, offer to accept, or accept a fee based upon a percentage of an anticipated
4.12 refund for tax preparation services;

4.13 ~~(18)~~ (18) under any circumstances, withhold or fail to return to a client a document
4.14 provided by the client for use in preparing the client's tax return;

4.15 ~~(19)~~ (19) establish an account in the preparer's name to receive a client's refund through
4.16 a direct deposit or any other instrument unless the client's name is also on the account,
4.17 except that a taxpayer may assign the portion of a refund representing the Minnesota
4.18 education credit available under section 290.0674 to a bank account without the client's
4.19 name, as provided under section 290.0679;

4.20 ~~(20)~~ (20) fail to act in the best interests of the client;

4.21 ~~(21)~~ (21) fail to safeguard and account for any money handled for the client;

4.22 ~~(22)~~ (22) fail to disclose all material facts of which the preparer has knowledge which
4.23 might reasonably affect the client's rights and interests;

4.24 ~~(23)~~ (23) violate any provision of section 332.37;

4.25 ~~(24)~~ (24) include any of the following in any document provided or signed in connection
4.26 with the provision of tax preparation services:

4.27 (i) a hold harmless clause;

4.28 (ii) a confession of judgment or a power of attorney to confess judgment against the
4.29 client or appear as the client in any judicial proceeding;

4.30 (iii) a waiver of the right to a jury trial, if applicable, in any action brought by or against
4.31 a debtor;

5.1 (iv) an assignment of or an order for payment of wages or other compensation for
5.2 services;

5.3 (v) a provision in which the client agrees not to assert any claim or defense otherwise
5.4 available;

5.5 (vi) a waiver of any provision of this section or a release of any obligation required to
5.6 be performed on the part of the tax preparer; or

5.7 (vii) a waiver of the right to injunctive, declaratory, or other equitable relief or relief on
5.8 a class basis; or

5.9 ~~(19)~~ (25) if making, providing, or facilitating a refund anticipation loan, fail to provide
5.10 all disclosures required by the federal Truth in Lending Act, United States Code, title 15,
5.11 in a form that may be retained by the client.

5.12 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
5.13 31, 2017.

5.14 Sec. 3. Minnesota Statutes 2016, section 270C.445, subdivision 5a, is amended to read:

5.15 Subd. 5a. **Nongame wildlife checkoff.** A tax preparer must give written notice of the
5.16 option to contribute to the nongame wildlife management account in section 290.431 to
5.17 corporate clients that file an income tax return and to individual clients who file an income
5.18 tax return or ~~property tax refund claim form~~ under chapter 290A. This notification must be
5.19 included with information sent to the client at the same time as the preliminary worksheets
5.20 or other documents used in preparing the client's return and must include a line for displaying
5.21 contributions.

5.22 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
5.23 31, 2017.

5.24 Sec. 4. Minnesota Statutes 2016, section 270C.445, subdivision 6, is amended to read:

5.25 Subd. 6. **Enforcement; administrative order; penalties; cease and desist.** (a) The
5.26 commissioner may impose an administrative penalty of not more than \$1,000 per violation
5.27 of subdivision ~~3, 3a, 4, 5, or 5b~~ or 5, or section 270C.4451, provided that a penalty may not
5.28 be imposed for any conduct ~~that is also subject to the~~ for which a tax return preparer penalties
5.29 ~~in~~ penalty is imposed under section 289A.60, subdivision 13. The commissioner may
5.30 terminate a tax preparer's authority to transmit returns electronically to the state, if the
5.31 commissioner determines the tax preparer engaged in a pattern and practice of violating
5.32 this section. Imposition of a penalty under this ~~subdivision~~ paragraph is subject to the

6.1 contested case procedure under chapter 14. The commissioner shall collect the penalty in
6.2 the same manner as the income tax. There is no right to make a claim for refund under
6.3 section 289A.50 of the penalty imposed under this paragraph. Penalties imposed under this
6.4 subdivision paragraph are public data.

6.5 (b) In addition to the penalty under paragraph (a), if the commissioner determines that
6.6 a tax preparer has violated or is about to violate subdivision 3 or 5, or section 270C.4451,
6.7 the commissioner may issue an administrative order to the tax preparer requiring the tax
6.8 preparer to cease and desist from committing the violation. The administrative order may
6.9 include an administrative penalty provided in paragraph (a).

6.10 (c) If the commissioner issues an administrative order under paragraph (b), the
6.11 commissioner must send the order to the tax preparer addressed to the last known address
6.12 of the tax preparer.

6.13 (d) A cease and desist order under paragraph (b) must:

6.14 (1) describe the act, conduct, or practice committed or about to be committed and include
6.15 a reference to the law that the act, conduct, or practice violates or would violate; and

6.16 (2) provide notice that the tax preparer may request a hearing as provided in this
6.17 subdivision.

6.18 (e) Within 30 days after the commissioner issues an administrative order under paragraph
6.19 (b), the tax preparer may request a hearing to review the commissioner's action. The request
6.20 for hearing must be made in writing and must be served on the commissioner at the address
6.21 specified in the order. The hearing request must specifically state the reasons for seeking
6.22 review of the order. The date on which a request for hearing is served by mail is the postmark
6.23 date on the envelope in which the request for hearing is mailed.

6.24 (f) If a tax preparer does not timely request a hearing regarding an administrative order
6.25 issued under paragraph (b), the order becomes a final order of the commissioner and is not
6.26 subject to review by any court or agency.

6.27 (g) If a tax preparer timely requests a hearing regarding an administrative order issued
6.28 under paragraph (b), the hearing must be commenced within ten days after the commissioner
6.29 receives the request for a hearing.

6.30 (h) A hearing timely requested under paragraph (e) is subject to the contested case
6.31 procedure under chapter 14, as modified by this subdivision. The administrative law judge
6.32 must issue a report containing findings of fact, conclusions of law, and a recommended

7.1 order within ten days after the completion of the hearing, the receipt of late-filed exhibits,
7.2 or the submission of written arguments, whichever is later.

7.3 (i) Within five days of the date of the administrative law judge's report issued under
7.4 paragraph (h), any party aggrieved by the administrative law judge's report may submit
7.5 written exceptions and arguments to the commissioner. Within 15 days after receiving the
7.6 administrative law judge's report, the commissioner must issue an order vacating, modifying,
7.7 or making final the administrative order.

7.8 (j) The commissioner and the tax preparer requesting a hearing may by agreement
7.9 lengthen any time periods prescribed in paragraphs (g) to (i).

7.10 (k) An administrative order issued under paragraph (b) is in effect until it is modified
7.11 or vacated by the commissioner or an appellate court. The administrative hearing provided
7.12 by paragraphs (e) to (i) and any appellate judicial review as provided in chapter 14 constitute
7.13 the exclusive remedy for a tax preparer aggrieved by the order.

7.14 (l) The commissioner may impose an administrative penalty, in addition to the penalty
7.15 under paragraph (a), up to \$5,000 per violation of a cease and desist order issued under
7.16 paragraph (b). Imposition of a penalty under this paragraph is subject to the contested case
7.17 procedure under chapter 14. Within 30 days after the commissioner imposes a penalty under
7.18 this paragraph, the tax preparer assessed the penalty may request a hearing to review the
7.19 penalty order. The request for hearing must be made in writing and must be served on the
7.20 commissioner at the address specified in the order. The hearing request must specifically
7.21 state the reasons for seeking review of the order. The cease and desist order issued under
7.22 paragraph (b) is not subject to review in a proceeding to challenge the penalty order under
7.23 this paragraph. The date on which a request for hearing is served by mail is the postmark
7.24 date on the envelope in which the request for hearing is mailed. If the tax preparer does not
7.25 timely request a hearing, the penalty order becomes a final order of the commissioner and
7.26 is not subject to review by any court or agency. A penalty imposed by the commissioner
7.27 under this paragraph may be collected and enforced by the commissioner as an income tax
7.28 liability. There is no right to make a claim for refund under section 289A.50 of the penalty
7.29 imposed under this paragraph. A penalty imposed under this paragraph is public data.

7.30 (m) If a tax preparer violates a cease and desist order issued under paragraph (b), the
7.31 commissioner may terminate the tax preparer's authority to transmit returns electronically
7.32 to the state. Termination under this paragraph is public data.

7.33 (n) A cease and desist order issued under paragraph (b) is public data when it is a final
7.34 order.

8.1 (o) Notwithstanding any other law, the commissioner may impose a penalty or take other
 8.2 action under this subdivision against a tax preparer, with respect to a return, within the
 8.3 period to assess tax on that return as provided by section 289A.38.

8.4 (p) Notwithstanding any other law, the imposition of a penalty or any other action against
 8.5 a tax preparer under this subdivision, other than with respect to a return, must be taken by
 8.6 the commissioner within five years of the violation of statute.

8.7 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 8.8 31, 2017.

8.9 Sec. 5. Minnesota Statutes 2016, section 270C.445, subdivision 6a, is amended to read:

8.10 Subd. 6a. **Exchange of data; State Board of Accountancy.** The State Board of
 8.11 Accountancy shall refer to the commissioner complaints it receives about tax preparers who
 8.12 are not subject to the jurisdiction of the State Board of Accountancy and who are alleged
 8.13 to have violated the provisions of ~~subdivisions 3, 3a, 4, 4a, 4b, 5, and 5b~~ this section, except
 8.14 subdivision 5a, or section 270C.4451.

8.15 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 8.16 31, 2017.

8.17 Sec. 6. Minnesota Statutes 2016, section 270C.445, subdivision 6b, is amended to read:

8.18 Subd. 6b. **Exchange of data; Lawyers Board of Professional Responsibility.** The
 8.19 Lawyers Board of Professional Responsibility may refer to the commissioner complaints
 8.20 it receives about tax preparers who are not subject to its jurisdiction and who are alleged to
 8.21 have violated the provisions of ~~subdivisions 3, 3a, 4, 4a, 4b, 5, and 5b~~ this section, except
 8.22 subdivision 5a, or section 270C.4451.

8.23 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 8.24 31, 2017.

8.25 Sec. 7. Minnesota Statutes 2016, section 270C.445, subdivision 6c, is amended to read:

8.26 Subd. 6c. **Exchange of data; commissioner.** The commissioner shall refer information
 8.27 and complaints about tax preparers who are alleged to have violated the provisions of
 8.28 subdivisions 3, 3a, 4, 4a, 4b, 5, and 5b this section, except subdivision 5a, or section
 8.29 270C.4451, to:

8.30 (1) the State Board of Accountancy, if the tax preparer is under its jurisdiction; and

9.1 (2) the Lawyers Board of Professional Responsibility, if the tax preparer is under its
9.2 jurisdiction.

9.3 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
9.4 31, 2017.

9.5 Sec. 8. Minnesota Statutes 2016, section 270C.445, subdivision 7, is amended to read:

9.6 Subd. 7. **Enforcement; civil actions.** (a) Any violation of this section or section
9.7 270C.4451 is an unfair, deceptive, and unlawful trade practice within the meaning of section
9.8 8.31. An action taken under this section is in the public interest.

9.9 (b) A client may bring a civil action seeking redress for a violation of this section in the
9.10 conciliation or the district court of the county in which unlawful action is alleged to have
9.11 been committed or where the respondent resides or has a principal place of business.

9.12 (c) A court finding for the plaintiff must award:

9.13 (1) actual damages;

9.14 (2) incidental and consequential damages;

9.15 (3) statutory damages of twice the sum of: (i) the tax preparation fees; and (ii) if the
9.16 plaintiff violated ~~subdivision 3a, 4, or 5b~~ section 270C.4451, subdivision 1, 2, or 5, all
9.17 interest and fees for a refund anticipation loan;

9.18 (4) reasonable attorney fees;

9.19 (5) court costs; and

9.20 (6) any other equitable relief as the court considers appropriate.

9.21 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
9.22 31, 2017.

9.23 Sec. 9. Minnesota Statutes 2016, section 270C.445, subdivision 8, is amended to read:

9.24 Subd. 8. **Limited exemptions.** (a) Except as provided in paragraph (b), the provisions
9.25 of this section, except for subdivisions 3a, 4, and 5b, subdivisions 3; 5; 5a; 6, paragraphs
9.26 (a) to (n); and 7, do not apply to:

9.27 (1) an attorney admitted to practice under section 481.01;

9.28 (2) a registered accounting practitioner, a registered accounting practitioner firm, a
9.29 certified public accountant, or other person who is subject to the jurisdiction of the State

10.1 ~~Board of Accountancy~~ a certified public accountant firm, licensed in accordance with chapter
 10.2 326A;

10.3 (3) an enrolled agent who has passed the special enrollment examination administered
 10.4 by the Internal Revenue Service; ~~or~~

10.5 (4) ~~anyone~~ a person who provides, or assists in providing, tax preparation services within
 10.6 the scope of duties as an employee or supervisor under the direction or supervision of a
 10.7 person who is exempt under this subdivision; or

10.8 (5) a person acting as a supervisor to a tax preparer who is exempt under this subdivision.

10.9 (b) The provisions of subdivisions 3; 6, paragraphs (a) to (n); and 7, apply to a tax
 10.10 preparer who would otherwise be exempt under paragraph (a) if the tax preparer has:

10.11 (1) had a professional license suspended or revoked for cause, not including a failure to
 10.12 pay a professional licensing fee, by any authority of any state, territory, or possession of
 10.13 the United States, including a commonwealth, or the District of Columbia, any federal court
 10.14 of record, or any federal agency, body, or board;

10.15 (2) irrespective of whether an appeal has been taken, been convicted of any crime
 10.16 involving dishonesty or breach of trust;

10.17 (3) been censured, suspended, or disbarred under United States Treasury Department
 10.18 Circular 230;

10.19 (4) been sanctioned by a court of competent jurisdiction, whether in a civil or criminal
 10.20 proceeding, including suits for injunctive relief, relating to any taxpayer's tax liability or
 10.21 the tax preparer's own tax liability, for:

10.22 (i) instituting or maintaining proceedings primarily for delay;

10.23 (ii) advancing frivolous or groundless arguments; or

10.24 (iii) failing to pursue available administrative remedies; or

10.25 (5) demonstrated a pattern of willful disreputable conduct by:

10.26 (i) failing to file a return that the tax preparer was required to file annually for two of
 10.27 the three immediately preceding tax periods; or

10.28 (ii) failing to file a return that the tax preparer was required to file more frequently than
 10.29 annually for three of the six immediately preceding tax periods.

10.30 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 10.31 31, 2017.

11.1 Sec. 10. Minnesota Statutes 2016, section 270C.445, is amended by adding a subdivision
11.2 to read:

11.3 Subd. 9. Powers additional. The powers and authority granted in this section are in
11.4 addition to all other powers of the commissioner. The use of the powers granted in this
11.5 section does not preclude the use of any other power or authority of the commissioner.

11.6 EFFECTIVE DATE. This section is effective for claims and returns filed after December
11.7 31, 2017.

11.8 Sec. 11. Minnesota Statutes 2016, section 270C.446, subdivision 2, is amended to read:

11.9 Subd. 2. **Required and excluded tax preparers.** (a) Subject to the limitations of
11.10 paragraph (b), the commissioner must publish lists of tax preparers as defined in section
11.11 ~~289A.60, subdivision 13, paragraph (f)~~ 270C.445, subdivision 2, paragraph (h), who have
11.12 been:

11.13 (1) convicted under section 289A.63 for returns or claims prepared as a tax preparer or;

11.14 (2) assessed penalties in excess of \$1,000 under section 289A.60, subdivision 13,
11.15 paragraph (a);

11.16 (3) convicted for identity theft under section 609.527, or a similar statute, for a return
11.17 filed with the commissioner, the Internal Revenue Service, or another state;

11.18 (4) assessed a penalty under section 270C.445, subdivision 6, paragraph (a), in excess
11.19 of \$1,000;

11.20 (5) issued a cease and desist order under section 270C.445, subdivision 6, paragraph
11.21 (b), that has become a final order; or

11.22 (6) assessed a penalty under section 270C.445, subdivision 6, paragraph (l), for violating
11.23 a cease and desist order.

11.24 (b) For the purposes of this section, tax preparers are not subject to publication if:

11.25 (1) an administrative or court action contesting ~~the~~ or appealing a penalty described in
11.26 paragraph (a), clause (2), (4), or (6), has been filed or served and is unresolved at the time
11.27 when notice would be given under subdivision 3;

11.28 (2) an appeal period to contest ~~the~~ a penalty described in paragraph (a), clause (2), (4),
11.29 or (6), has not expired; ~~or~~

11.30 (3) the commissioner has been notified that the tax preparer is deceased;

12.1 (4) an appeal period to contest a cease and desist order issued under section 270C.445,
 12.2 subdivision 6, paragraph (b), has not expired;

12.3 (5) an administrative or court action contesting or appealing a cease and desist order
 12.4 issued under section 270C.445, subdivision 6, paragraph (b), has been filed or served and
 12.5 is unresolved at the time when notice would be given under subdivision 3;

12.6 (6) a direct appeal of a conviction described in paragraph (a), clause (1) or (3), has been
 12.7 filed or served and is unresolved at the time when the notice would be given under
 12.8 subdivision 3; or

12.9 (7) an appeal period to contest a conviction described in paragraph (a), clause (1) or (3),
 12.10 has not expired.

12.11 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 12.12 31, 2017.

12.13 Sec. 12. Minnesota Statutes 2016, section 270C.446, subdivision 3, is amended to read:

12.14 Subd. 3. **Notice to tax preparer.** (a) At least 30 days before publishing the name of a
 12.15 tax preparer subject to ~~penalty~~ publication under this section, the commissioner shall mail
 12.16 a written notice to the tax preparer, detailing the ~~amount and nature of each penalty~~ basis
 12.17 for the publication and the intended publication of the information listed in subdivision 4
 12.18 related to the penalty. The notice must be ~~mailed by first class and certified mail~~ sent to the
 12.19 tax preparer addressed to the last known address of the tax preparer. The notice must include
 12.20 information regarding the exceptions listed in subdivision 2, paragraph (b), and must state
 12.21 that the tax preparer's information will not be published if the tax preparer provides
 12.22 information establishing that subdivision 2, paragraph (b), prohibits publication of the tax
 12.23 preparer's name.

12.24 (b) Thirty days after the notice is mailed and if the tax preparer has not proved to the
 12.25 commissioner that subdivision 2, paragraph (b), prohibits publication, the commissioner
 12.26 may publish in a list of tax preparers subject to penalty the information about the tax preparer
 12.27 that is listed in subdivision 4.

12.28 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 12.29 31, 2017.

12.30 Sec. 13. Minnesota Statutes 2016, section 270C.446, subdivision 4, is amended to read:

12.31 Subd. 4. **Form of list.** The list may be published by any medium or method. The list
 12.32 must contain the name, associated business name or names, address or addresses, and

13.1 violation or violations ~~for which a penalty was imposed of~~ that make each tax preparer
 13.2 subject to ~~penalty~~ publication.

13.3 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 13.4 31, 2017.

13.5 Sec. 14. Minnesota Statutes 2016, section 270C.446, subdivision 5, is amended to read:

13.6 Subd. 5. **Removal from list.** The commissioner shall remove the name of a tax preparer
 13.7 from the list of tax preparers published under this section:

13.8 (1) when the commissioner determines that the name was included on the list in error;

13.9 (2) ~~within 90 days~~ three years after the preparer has demonstrated to the commissioner
 13.10 that the preparer fully paid all fines and penalties imposed, served any suspension, satisfied
 13.11 any sentence imposed, successfully completed any probationary period imposed, and
 13.12 successfully completed any remedial actions required by the commissioner, the State Board
 13.13 of Accountancy, or the Lawyers Board of Professional Responsibility; or

13.14 (3) when the commissioner has been notified that the tax preparer is deceased.

13.15 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 13.16 31, 2017.

13.17 Sec. 15. Minnesota Statutes 2016, section 270C.447, subdivision 1, is amended to read:

13.18 Subdivision 1. **Commencement of action.** (a) Whenever it appears to the commissioner
 13.19 that a tax preparer doing business in Minnesota has engaged or is about to engage in any
 13.20 conduct described in subdivision 2, a civil action in the name of the state of Minnesota may
 13.21 be commenced to enjoin any person who is a tax return preparer doing business in this state
 13.22 from further engaging in any conduct described in subdivision 2 the conduct and enforce
 13.23 compliance.

13.24 (b) An action under this subdivision must be brought by the attorney general in:

13.25 (1) the district court for the judicial district of the tax ~~return~~ preparer's residence or
 13.26 principal place of business, ~~or in which the~~;

13.27 (2) the district court for the judicial district of the residence of any taxpayer with respect
 13.28 to whose tax return the action is brought resides; or

13.29 (3) Ramsey County District Court.

14.1 (c) The court may exercise its jurisdiction over the action separate and apart from any
 14.2 other action brought by the state of Minnesota against the tax ~~return~~ preparer or any taxpayer.
 14.3 The court must grant a permanent injunction or other appropriate relief if the commissioner
 14.4 shows that the person has engaged in or is about to engage in conduct constituting a violation
 14.5 of a law administered by the commissioner or a cease and desist order issued by the
 14.6 commissioner. The commissioner shall not be required to show irreparable harm.

14.7 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 14.8 31, 2017.

14.9 Sec. 16. Minnesota Statutes 2016, section 270C.447, subdivision 2, is amended to read:

14.10 Subd. 2. **Injunction prohibiting specific conduct.** In an action under subdivision 1,
 14.11 the court may enjoin the person from further engaging in that conduct if the court finds that
 14.12 a tax ~~return~~ preparer has:

14.13 (1) engaged or is about to engage in any conduct subject to a civil penalty under section
 14.14 289A.60 ~~or~~ a criminal penalty under section 289A.63, or a criminal penalty under section
 14.15 609.527 or a similar statute for a return filed with the commissioner, the Internal Revenue
 14.16 Service, or another state;

14.17 (2) misrepresented or is about to misrepresent the preparer's eligibility to practice before
 14.18 the Department of Revenue, or ~~otherwise~~ misrepresented the preparer's experience or
 14.19 education as a tax ~~return~~ preparer;

14.20 (3) guaranteed or is about to guarantee the payment of any tax refund or the allowance
 14.21 of any tax credit; ~~or~~

14.22 (4) violated or is about to violate a cease and desist order issued by the commissioner;
 14.23 or

14.24 ~~(4)~~ (5) engaged or is about to engage in any other fraudulent or deceptive conduct that
 14.25 substantially interferes with the proper administration of a law administered by the
 14.26 commissioner, and injunctive relief is appropriate to prevent the recurrence of that conduct;
 14.27 ~~the court may enjoin the person from further engaging in that conduct.~~

14.28 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 14.29 31, 2017.

15.1 Sec. 17. Minnesota Statutes 2016, section 270C.447, subdivision 3, is amended to read:

15.2 Subd. 3. **Injunction prohibiting all business activities.** If the court finds that a tax
15.3 ~~return~~ preparer has continually or repeatedly engaged in conduct described in subdivision
15.4 2, and that an injunction prohibiting that conduct would not be sufficient to prevent the
15.5 person's interference with the proper administration of a law administered by the
15.6 commissioner, the court may enjoin the person from acting as a tax ~~return~~ preparer. The
15.7 court may not enjoin the employer of a tax ~~return~~ preparer for conduct described in
15.8 subdivision 2 engaged in by one or more of the employer's employees unless the employer
15.9 was also actively involved in that conduct.

15.10 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
15.11 31, 2017.

15.12 Sec. 18. Minnesota Statutes 2016, section 270C.447, is amended by adding a subdivision
15.13 to read:

15.14 Subd. 3a. **Enforcement of cease and desist orders.** (a) Whenever the commissioner
15.15 under subdivision 1 or 3 seeks to enforce compliance with a cease and desist order, the court
15.16 must consider the allegations in the cease and desist order conclusively established, regardless
15.17 of whether: (1) the order is a final order, (2) a hearing or hearing request on the cease and
15.18 desist order is pending, or (3) the time has not yet expired to request a hearing on the cease
15.19 and desist order.

15.20 (b) If the court finds the tax preparer was not in compliance with a cease and desist order,
15.21 the court may impose a further civil penalty against the tax preparer for contempt in an
15.22 amount up to \$10,000 for each violation and may grant any other relief the court determines
15.23 is just and proper in the circumstances. A civil penalty imposed by a court under this section
15.24 may be collected and enforced by the commissioner as an income tax liability.

15.25 (c) The court may not require the commissioner to post a bond in an action or proceeding
15.26 under this section.

15.27 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
15.28 31, 2017.

15.29 Sec. 19. Minnesota Statutes 2016, section 289A.60, subdivision 13, is amended to read:

15.30 Subd. 13. **Penalties for tax ~~return~~ preparers.** (a) If an understatement of liability with
15.31 respect to a return or claim for refund is due to a reckless disregard of laws and rules or
15.32 willful attempt in any manner to understate the liability for a tax by a person who is a tax

16.1 ~~return~~ preparer with respect to the return or claim, the person shall pay to the commissioner
 16.2 a penalty of \$500. If a part of a ~~property tax refund~~ claim filed under section 290.0677,
 16.3 subdivision 1, or chapter 290A is excessive due to a reckless disregard or willful attempt
 16.4 in any manner to overstate the claim ~~for relief allowed under chapter 290A~~ by a person who
 16.5 is a tax ~~refund or return~~ preparer, the ~~person~~ tax preparer shall pay to the commissioner a
 16.6 penalty of \$500 with respect to the claim. These penalties may not be assessed against the
 16.7 employer of a tax ~~return~~ preparer unless the employer was actively involved in the reckless
 16.8 disregard or willful attempt to understate the liability for a tax or to overstate the claim for
 16.9 refund. These penalties are income tax liabilities and may be assessed at any time as provided
 16.10 in section 289A.38, subdivision 5.

16.11 (b) A civil action in the name of the state of Minnesota may be commenced to enjoin
 16.12 any person who is a tax ~~return~~ preparer doing business in this state as provided in section
 16.13 270C.447.

16.14 (c) The commissioner may terminate or suspend a tax preparer's authority to transmit
 16.15 returns electronically to the state, if the commissioner determines that the tax preparer has
 16.16 engaged in a pattern and practice of conduct in violation of paragraph (a) of this subdivision
 16.17 or has been convicted under section 289A.63.

16.18 (d) For purposes of this subdivision, the term "understatement of liability" means an
 16.19 understatement of the net amount payable with respect to a tax imposed by state tax law,
 16.20 or an overstatement of the net amount creditable or refundable with respect to a tax. The
 16.21 determination of whether or not there is an understatement of liability must be made without
 16.22 regard to any administrative or judicial action involving the taxpayer. For purposes of this
 16.23 subdivision, the amount determined for underpayment of estimated tax under either section
 16.24 289A.25 or 289A.26 is not considered an understatement of liability.

16.25 (e) For purposes of this subdivision, the term "overstatement of claim" means an
 16.26 overstatement of the net amount refundable with respect to a claim ~~for property tax relief~~
 16.27 ~~provided by~~ filed under section 290.0677, subdivision 1, or chapter 290A. The determination
 16.28 of whether or not there is an overstatement of a claim must be made without regard to
 16.29 administrative or judicial action involving the claimant.

16.30 (f) For purposes of this section, the term ~~"tax refund or return preparer" means an~~
 16.31 ~~individual who prepares for compensation, or who employs one or more individuals to~~
 16.32 ~~prepare for compensation, a return of tax, or a claim for refund of tax. The preparation of~~
 16.33 ~~a substantial part of a return or claim for refund is treated as if it were the preparation of~~

17.1 ~~the entire return or claim for refund. An individual is not considered a tax return preparer~~
 17.2 ~~merely because the individual:~~

17.3 ~~(1) gives typing, reproducing, or other mechanical assistance;~~

17.4 ~~(2) prepares a return or claim for refund of the employer, or an officer or employee of~~
 17.5 ~~the employer, by whom the individual is regularly and continuously employed;~~

17.6 ~~(3) prepares a return or claim for refund of any person as a fiduciary for that person; or~~

17.7 ~~(4) prepares a claim for refund for a taxpayer in response to a tax order issued to the~~
 17.8 ~~taxpayer. "tax preparer" or "preparer" has the meaning given in section 270C.445, subdivision~~
 17.9 ~~2, paragraph (h).~~

17.10 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 17.11 31, 2017.

17.12 Sec. 20. Minnesota Statutes 2016, section 289A.60, subdivision 28, is amended to read:

17.13 Subd. 28. **Preparer identification number.** ~~Any Minnesota individual income tax return~~
 17.14 ~~or claim for refund prepared by a "tax refund or return preparer" as defined in subdivision~~
 17.15 ~~13, paragraph (f), shall bear the identification number the preparer is required to use federally~~
 17.16 ~~under section 6109(a)(4) of the Internal Revenue Code. (a) Each of the following that is~~
 17.17 ~~prepared by a tax preparer must include the tax preparer's tax identification number:~~

17.18 (1) a tax return required to be filed under this chapter;

17.19 (2) a claim filed under section 290.0677, subdivision 1, or chapter 290A; and

17.20 (3) a claim for refund of an overpayment.

17.21 (b) A tax preparer is not required to include their preparer tax identification number on
 17.22 a filing if the number is not required in the forms or filing requirements provided by the
 17.23 commissioner.

17.24 (c) A tax refund or return preparer who prepares a Minnesota individual income tax
 17.25 return or claim for refund and fails to include the required preparer tax identification number
 17.26 on the return or claim as required by this section is subject to a penalty of \$50 for each
 17.27 failure.

17.28 (d) A tax preparer who fails to include the preparer tax identification number as required
 17.29 by this section, and who is required to have a valid preparer tax identification number issued
 17.30 under section 6109(a)(4) of the Internal Revenue Code, but does not have one, is subject to

18.1 a \$500 penalty for each failure. A tax preparer subject to the penalty in this paragraph is
 18.2 not subject to the penalty in paragraph (c).

18.3 (e) For the purposes of this subdivision, "tax preparer" has the meaning given in section
 18.4 270C.445, subdivision 2, paragraph (h), and "preparer tax identification number" means
 18.5 the number the tax preparer is required to use federally under section 6109(a)(4) of the
 18.6 Internal Revenue Code.

18.7 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
 18.8 31, 2017.

18.9 Sec. 21. **REVISOR'S INSTRUCTION.**

18.10 (a) The revisor of statutes shall renumber the provisions of Minnesota Statutes listed in
 18.11 column A to the references listed in column B.

	<u>Column A</u>	<u>Column B</u>
18.12		
18.13	<u>270C.445, subdivision 3a</u>	<u>270C.4451, subdivision 1</u>
18.14	<u>270C.445, subdivision 4</u>	<u>270C.4451, subdivision 2</u>
18.15	<u>270C.445, subdivision 4a</u>	<u>270C.4451, subdivision 3</u>
18.16	<u>270C.445, subdivision 4b</u>	<u>270C.4451, subdivision 4</u>
18.17	<u>270C.445, subdivision 5b</u>	<u>270C.4451, subdivision 5</u>

18.18 (b) The revisor shall make necessary cross-reference changes in Minnesota Statutes and
 18.19 Minnesota Rules consistent with the renumbering of Minnesota Statutes, section 270C.445,
 18.20 subdivisions 3a, 4, 4a, 4b, and 5b.

18.21 (c) The revisor shall publish the statutory derivations of the laws renumbered in this act
 18.22 in Laws of Minnesota and report the derivations in Minnesota Statutes.

18.23 (d) If Minnesota Statutes, section 270C.445, subdivisions 3a, 4, 4a, 4b, and 5b, are further
 18.24 amended in the 2017 legislative session, the revisor shall codify the amendments in a manner
 18.25 consistent with this act. The revisor may make necessary changes to sentence structure to
 18.26 preserve the meaning of the text.

18.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.

18.28 Sec. 22. **REPEALER.**

18.29 Minnesota Statutes 2016, sections 270C.445, subdivision 1; and 270C.447, subdivision
 18.30 4, are repealed.

- 19.1 **EFFECTIVE DATE.** This section is effective for claims and returns filed after December
- 19.2 31, 2017.

270C.445 TAX PREPARATION SERVICES.

Subdivision 1. **Scope.** This section applies to a person who provides tax preparation services, except:

- (1) a person who provides tax preparation services for fewer than ten clients in a calendar year;
- (2) a person who provides tax preparation services only to immediate family members. For the purposes of this section, "immediate family members" means a spouse, parent, grandparent, child, or sibling;
- (3) an employee who prepares a tax return for an employer's business;
- (4) any fiduciary, or the regular employees of a fiduciary, while acting on behalf of the fiduciary estate, testator, trustor, grantor, or beneficiaries of them; and
- (5) nonprofit organizations providing tax preparation services under the Internal Revenue Service Volunteer Income Tax Assistance Program or Tax Counseling for the Elderly Program.

270C.447 LEGAL ACTION TO ENJOIN TAX RETURN PREPARER.

Subd. 4. **Tax return preparer.** For purposes of this section, the term "tax return preparer" means an individual who prepares for compensation, or who employs one or more individuals to prepare for compensation, a return of tax or a claim for refund of tax. The preparation of a substantial part of a return or claim for refund is treated as if it were the preparation of the entire return or claim for refund. An individual is not considered a tax return preparer merely because the individual:

- (1) gives typing, reproducing, or other mechanical assistance;
- (2) prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the individual is regularly and continuously employed;
- (3) prepares a return or claim for refund of any person as a fiduciary for that person; or
- (4) prepares a claim for refund for a taxpayer in response to a tax order issued to the taxpayer.