

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 812 (Roth) – As Amended April 27, 2023

SENATE VOTE: 39-0

SUBJECT: Tax preparers

SUMMARY: Extends the sunset date for the California Tax Education Council (CTEC) by four years to January 1, 2028.

EXISTING LAW:

- 1) Establishes the Tax Preparation Act (Act) which provides for the registration of paid tax preparers by CTEC and repeals the Act on January 1, 2023. (Business and Professions Code (BPC) §§ 22250 *et seq.*)
- 2) Requires a CTEC-registered tax preparer (CRTP) to maintain a \$5,000 surety bond. (BPC § 22250.1)
- 3) Specifies that a “tax preparer” includes a person who, for a fee or other consideration, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who hold themselves out as offering those services. A tax preparer is also a business entity that has associated with it people who have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns or that hold themselves out as offering those services or having that authority. (BPC § 22251(a))
- 4) Specifies that CTEC is a single nonprofit organization exempt from taxation under section 501(c)(3) of Title 26 of the United States Code. (BPC § 22251(d))
- 5) Specifies that it is the intent of the Act to enable consumers to easily identify credible CRTPs who are bonded and registered, to ensure CRTPs receive adequate education and treat confidential information appropriately, to prohibit CRTPs from making fraudulent, untrue, or misleading representations, and to provide for a self-funded nonprofit oversight body to register paid tax preparers and ensure that they meet all of the requirements of CRTPs. (BPC § 22251.1)
- 6) Specifies that protection of the public must be the highest priority for CTEC when exercising its registration and disciplinary authority, and any other functions. (BPC § 22251.2(b))
- 7) Requires CTEC to be governed by a board of directors, as specified, and subjects board meetings to the Bagley-Keene Open Meeting Act. (BPC § 22251.2(c) and (d))
- 8) Requires CTEC to issue registrations, deny applications, and discipline registrants as authorized by the Act. (BPC § 22251.2)

- 9) Requires CTEC to establish application fees, renewal fees, delinquent fees, and other fees related to the regulatory cost of providing services and carrying out CTEC's responsibilities and duties. (BPC § 22251.2)
- 10) Requires CTEC to establish and maintain on its website a searchable public registry of CRTPs, as specified. (BPC § 22251.4)
- 11) Requires any CRTP, before providing services, to provide a customer in writing with the following:
 - a) The CRTP's name, address, and telephone number.
 - b) Evidence of compliance with the surety bond requirement, including the bond number, if any.
 - c) CTEC's website.(BPC § 22252)
- 12) Prohibits a CRTP from disclosing confidential information concerning a client or a prospective client without their written permission, except as provided. (BPC § 22252.1)
- 13) Specifies acts and omissions that constitute a violation of the Act and for which CTEC is authorized to deny an application for registration or discipline a CRTP. (BPC § 22253)
- 14) Authorizes the Franchise Tax Board (FTB) to notify CTEC when it identifies an individual who has failed to register as a tax preparer and authorizes the Attorney General, a district attorney, or a city attorney to cite, fine, and issue a cease and desist order to that individual. (BPC § 22253.2(a) and (b))
- 15) Authorizes CTEC to enter into an agreement with the FTB to provide reimbursement to the FTB for any expenses incurred. (BPC § 22253.2(c))
- 16) Authorizes CTEC to take disciplinary action against a CRTP, as specified. (BPC § 22253.3)
- 17) Prohibits CTEC from disciplining a CRTP or denying registration to an applicant except as specified. (BPC § 22253.4)
- 18) Requires, as a condition of registration, applicants to submit fingerprints for a background check. CTEC must submit the fingerprints and related information to the Department of Justice (DOJ) for the purpose of obtaining state and federal criminal history information. (BPC § 22253.5)
- 19) Requires providers of tax preparer education to meet standards and procedures as approved by CTEC. A listing of providers approved by CTEC must be made available to CRTPs upon request. (BPC § 22254)
- 20) Mandates that CTEC issue a "certificate of completion" to a tax preparer when the tax preparer demonstrates that they have completed at least 60 hours of instruction in basic

income tax law, theory, and practice by an approved curriculum provider within the previous 18 months and provides evidence of the surety bond requirement. (BPC § 22255(a))

- 21) Requires a CRTP to complete 20 hours of continuing education (CE), as specified, annually. (BPC § 22255(b))
- 22) Specifies that a person who violates the Act, except as specified, is guilty of a misdemeanor punishable by a fine not exceeding \$1,000 or by imprisonment in county jail for not more than one year, or by both. (BPC § 22256)
- 23) Specifies that if a CRTP fails to perform a duty specifically imposed by the Act, any person may maintain an action for enforcement of those duties or to recover a civil penalty in the amount of \$1,000 or both enforcement and recovery. A prevailing plaintiff is also entitled to attorney's fees and costs. (BPC § 22257)
- 24) Exempts certified public accountants, attorneys, enrolled agents, and employees of these licensees, as well as specified financial institutions and their employees, from the requirement to register as a tax preparer. (BPC § 22258)
- 25) Specifies that the Act will be repealed on January 1, 2024. (BPC § 22259)

THIS BILL:

- 1) Extends the Act's sunset date to January 1, 2028.

FISCAL EFFECT: Pursuant to Senate Rule 28.8, no significant state costs anticipated.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author: "This bill ensures continued oversight of tax preparers in California by extending the operations of the California Tax Education Council for 4 years. California consumers are better off with standardized education and professional accountability for professionals who provide fee-based tax preparation services throughout the state."

Background.

Sunset review. In order to ensure that California's myriad of professional boards, bureaus, commissions, and councils are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunset" unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals. Currently, the sunset review process applies to approximately three dozen different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils.

On a schedule averaging every four years, each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on

the efficacies and efficiencies of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

History and function of the California Tax Education Council. CTEC is responsible for the registration and enforcement of paid tax preparers in California. Anyone who charges a fee to assist with or prepare a state or federal income tax return, excluding certified public accountants, attorneys, enrolled agents, and certain financial institutions and their employees, must be registered with CTEC.¹ These exempt individuals are subject to their respective professional disciplinary standards for conduct and competence. CRTPs make up the second largest segment of tax preparation professionals serving California, following certified public accountants.² On June 30, 2022, a total of 38,278 individuals had registered with CTEC.³

To register with CTEC, an applicant must complete a total of 60 hours of education from a CTEC-approved provider, of which 45 hours are dedicated to federal tax education and 15 hours to state tax education.⁴ Although CTEC does not require applicants to pass a standardized exam to register, applicants are required to pass the final exam of their qualifying education course with a grade of 70% or higher.⁵ Additionally, applicants must purchase and maintain a \$5,000 surety bond, pass a background check, obtain a Preparer Tax Identification Number (PTIN) from the Internal Revenue Service, and pay the registration fee.⁶ Once all these requirements have been fulfilled, CTEC issues a Certificate of Completion to an applicant. Once registered, CRTPs are required to complete 20 hours of CE annually, including 10 hours on federal tax law, 5 hours on state tax law, 3 hours on tax law updates, and 2 hours on ethics.⁷

CTEC is responsible for approving all providers of tax preparer qualifying education (QE) and CE providers for applicants and registrants.⁸ On June 30, 2022, CTEC has a total of 103 approved providers, 52 QE providers and 71 CE providers.⁹

CTEC's board of directors is required to be comprised of no more than one representative from each California nonprofit corporation representing CRTPs, enrolled agents, attorneys, or certified public accountants with a membership in California of at least 400 in each of the last three calendar years that elects to participate; no more than one representative from each for-profit tax preparation corporation that had at least 400 employees or franchisees in California during the

¹ California Tax Education Council. (n.d.-a). *About Us*. California Tax Education Council.

<https://www.ctec.org/taxpayers/about-ctec>

² Ibid.

³ California Tax Education Council. (95812). (rep.). *Background Information and Overview of the Current Regulatory Program* Sunset Review June 30, 2022. Sacramento, CA.

⁴ BPC § 22255

⁵ California Tax Education Council. (95812). (rep.). *Background Information and Overview of the Current Regulatory Program* Sunset Review June 30, 2022. Sacramento, CA.

⁶ California Tax Education Council. (n.d.). *CTEC APPLICATION PROCESS FOR NEW PREPARERS*. California Tax Education Council. <https://www.ctec.org/App/Preparer/NewApplication/index>

⁷ California Tax Education Council. (95812). (rep.). *Background Information and Overview of the Current Regulatory Program* Sunset Review June 30, 2022. Sacramento, CA.

⁸ Ibid.

⁹ Ibid.

previous calendar year and has been operating in California for the last three years that chooses to participate; and six CRTPs.¹⁰ On June 30, 2022, CTEC had 14 volunteers on its board of directors, which include representatives from the following:

- California Society of Enrolled Agents
- California Society of Tax Consultants, Inc.
- H & R Block Tax Services, Inc.
- Jackson Hewitt Tax Service
- Liberty Tax Service
- National Association of Enrolled Agents
- National Association of Tax Professionals
- National Society of Accountants¹¹

CTEC has adopted the following mission statement:

The California Tax Education Council (CTEC) will continue to protect the public by establishing professional tax education standards, approving tax education providers who comply with these standards, and facilitating tax preparer compliance.¹²

Sunset issues for consideration. In preparation for the sunset hearings, committee staff prepared public background papers that identify outstanding issues relating to the entity being reviewed. These background papers are available on the Committee's website:

<https://abp.assembly.ca.gov/jointsunsethearings>. While all of the issues identified in the background paper remain available for discussion, the following are currently being addressed in this bill or otherwise actively discussed:

- 1) *Sunset Issue #3: Implementation of AB 3143 (Low), Chapter 597, Statutes of 2018.* AB 3143 (Low), in part, required applicants to submit fingerprints for a background check as a condition of registration with CTEC, beginning July 1, 2020. Applicants are required to submit fingerprints to DOJ for a background check. A report from DOJ is then issued to CTEC indicating whether or not the applicant has a criminal history.¹³ CTEC's paralegal reviews each report provided by DOJ and if the applicant has criminal history that is relevant to tax preparation, the report is sent on to CTEC background reviewers for further review. CTEC reports that it has denied 92 applications for registration.¹⁴ Of the 92 denials, 78 applications were denied for failure to disclose criminal history information on the application.

CTEC reports that it has been informed by the DOJ that the language establishing the new fingerprinting and background requirement in AB 3143 (Low) was not worded in such a manner that the Federal Bureau of Investigation (FBI) would provide federal

¹⁰ BPC § 22251.2

¹¹ California Tax Education Council. (95812). (rep.). *Background Information and Overview of the Current Regulatory Program* Sunset Review June 30, 2022. Sacramento, CA.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

criminal history information to CTEC regarding applicants.¹⁵ Consequently, CTEC has not been able to comply with the existing law, which requires both a state and federal background check.¹⁶ CTEC has provided at least one example of an applicant who had no criminal offenses in California but had significant federal offenses that are related to tax preparation.

This committee has recently become aware of at least two other entities (the California Massage Therapy Council and the Department of Cannabis Control) that are also unable to receive federal criminal history information from the FBI.

- 2) *Sunset Issue #12: Continued Regulation.* CTEC ensures a minimum level of education and professional accountability for CRTPs in California.

This bill would extend CTEC's sunset date to January 1, 2028.

Current Related Legislation.

AB 1257 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Dental Hygiene Board of California. *Pending in the Senate Business, Professions, and Economic Development Committee.*

AB 1262 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Professional Fiduciaries Bureau. *Pending in the Senate Judiciary Committee.*

AB 1263 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Bureau of Automotive Repair. *Pending in the Senate Business, Professions, and Economic Development Committee.*

AB 1264 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Acupuncture Board. *Pending in the Senate Business, Professions, and Economic Development Committee.*

SB 813 (Roth) is the sunset review bill for the Structural Pest Control Board. *Pending in this committee.*

SB 814 (Roth) is the sunset review bill for the Bureau of Household Goods and Services. *Pending in this committee.*

SB 815 (Roth) is the sunset review bill for the Medical Board of California. *Pending in this committee.*

Prior Related Legislation.

SB 1140 (Stone) Chapter 65, Statutes of 2020, would have, in part, required CRTPs to provide clients with a written notice of all costs and fees prior to starting tax preparation services and

¹⁵ Ibid.

¹⁶ BPC § 22253.5

inform clients that they may be eligible for free tax preparation services. SB 1140 was substantially amended in the Assembly Appropriations Committee and was not germane to tax preparation when it was signed into law.

AB 3143 (Low), Chapter 597, Statutes of 2018, in part, extended the Act's sunset date by four years, authorized CTEC to contract with the FTB to carry out enforcement activities, and required applicants to undergo a background check.

SB 1476 (Figueroa), Chapter 658, Statutes of 2006, in part, increased the number of CRTPs appointed to CTEC from two to six.

POLICY ISSUES:

During CTEC's sunset review in March of this year, a coalition of organizations including the California Budget & Policy Center, Golden State Opportunity, United Ways of California, and GRACE submitted a memo with recommendations to provide greater consumer protections for low-income tax filers. Their proposed policy changes include: 1) requiring CRTPs to disclose fees up-front; 2) requiring CTEC to post complaints made against CRTPs on its website; 3) limiting the individuals who are exempt from registration with CTEC; 4) requiring CRTPs to provide written disclosure of free tax preparation assistance; 5) increasing CRTPs bond requirement; 6) reconsidering the approval process for tax provider education curriculum providers; and 7) requiring CRTPs to provide side-by-side comparison of the full amount of the tax refund a filer would receive if they pursued a Refund Anticipation Loan (RAL) compared to if they did not. A RAL is a loan based upon a filer's anticipated refund and is not the refund itself.

IMPLEMENTATION ISSUES:

Existing law currently requires applicants to submit fingerprints for a background check. However, as previously discussed in the Background section of this analysis, CTEC has not been able to receive federal criminal history information from the FBI since the fingerprinting and background check requirement took effect on July 1, 2020.

In the event that a statutory resolution is not identified in time for this bill to be passed by the Legislature and signed into law this year, the author may wish to remove or postpone the federal background check requirement.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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