

Enrolled Senate Bill 109

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Attorney General Hardy Myers for Department of Justice)

CHAPTER

AN ACT

Relating to charitable organizations; creating new provisions; amending ORS 128.620, 128.630, 128.650, 128.660, 128.670, 128.680 and 128.735; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 128.670 is amended to read:

128.670. (1) Except as otherwise provided, every charitable [*corporation and trustee*] **organization** subject to ORS 128.610 to 128.750 shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation or trustee.

(2) The Attorney General may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends that:

(a) The Attorney General shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable the Attorney General to ascertain whether they are being properly administered; and

(b) Periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships.

(3) The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by the Attorney General's office.

(4) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules of the Attorney General, may be filed as a report required by this section.

(5) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as provided in subsection (3) of this section, shall be filed not later than four months and 15 days following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied to a charitable purpose. Subsequent an-

nual reports shall be submitted not later than four months and 15 days following the close of each calendar or fiscal year adopted by the charitable *[corporation or trustee]* **organization**.

(6) The Attorney General shall make rules as to the time for filing reports, the contents thereof, and the manner of executing and filing them. The Attorney General may make additional rules and amend existing rules as necessary for the proper administration of the Charitable Trust and Corporation Act.

[(7) Each charitable corporation, trustee, or other charitable organization filing a report required by this section shall pay to the Department of Justice, with such report, a fee based in part on the total amount of its income and receipts during the time covered by the report and in part on its fund balance at the close of the calendar or fiscal year adopted by the charitable corporation or trustee:]

[(a) The fee based on income and receipts shall be as follows:]

[(A) \$10, if it received no income and receipts during the time covered by the report or if it received less than \$25,000;]

[(B) \$25, if \$25,000 or more but less than \$50,000;]

[(C) \$45, if \$50,000 or more but less than \$100,000;]

[(D) \$75, if \$100,000 or more but less than \$250,000;]

[(E) \$100, if \$250,000 or more but less than \$500,000;]

[(F) \$135, if \$500,000 or more but less than \$750,000;]

[(G) \$170, if \$750,000 or more but less than \$1 million; or]

[(H) \$200, if \$1 million or more.]

[(b) The fee based on the fund balance shall be one-hundredth of one percent of the fund balance. The fee shall be rounded off to whole dollars; amounts under 50 cents shall be dropped and amounts from 50 cents to 99 cents shall be increased to the next dollar. The fee shall allow for the following exceptions:]

[(A) Any amount of a fund balance over and above \$10 million shall not be subject to the fund balance fee.]

[(B) No fee shall be due under this paragraph if the fund balance is less than \$50,000.]

[(C) With respect to foreign organizations, only the fund balance of assets held in Oregon shall be subject to the fee due under this paragraph.]

[(D) The fee shall not apply to fixed assets held for use in the operation of a charitable organization.]

(7)(a) A charitable organization, when filing a report required under this section, shall pay a fee to the Department of Justice in accordance with a fee schedule established by the department by rule.

(b) The fee schedule shall consist of the following elements:

(A) A fee that the department shall set according to a scale graduated on the basis of the charitable organization's receipts and income during the time covered by the report, with a lower fee applying to lower receipts and income and a higher fee applying to higher receipts and income. The minimum applicable fee is \$10 and the maximum applicable fee is \$400.

(B) A fee based on a percentage of the fund balance the charitable organization has at the close of the organization's calendar or fiscal year. The department shall set the fee under this subparagraph at not more than 0.02 of one percent of the fund balance or \$2,000, whichever is less.

(c) The charitable organization shall pay a fee that consists of both elements set forth in paragraph (b) of this subsection at the time the organization files a report required under this section.

(d) In calculating the fee element set forth in paragraph (b)(B) of this subsection, the department may not include in the fund balance any fixed assets that the charitable organization uses for operations.

(e) The department shall ensure that the aggregate amount of fees paid under this section is sufficient to pay the department's expenses in administering ORS 128.610 to 128.750 and 128.801 to 128.898.

(8)(a) If the **charitable organization does not pay the fee prescribed by rules adopted under subsection (7) of this section** [*is not paid when due or if the charitable corporation or trustee*] **or fails to file a report by the date due,** [*a penalty charge of an additional \$20 shall be paid to the Department of Justice.*] **the charitable organization, in addition to the fee due, shall pay a delinquency fee in an amount the department specifies by rule. The department may increase the delinquency fee or charge additional delinquency fees based on the length of time the payment or report is delinquent.**

[(b) The Attorney General may at any time after a fee or report is delinquent give written notice by certified mail to the charitable corporation, trustee or other charitable organization of the delinquency, requiring it to correct the delinquency and informing it of the Attorney General's authority to impose an additional penalty if it fails to do so within a specified number of days thereafter, but not less than 10. Thereafter, unless the fee, including the penalty charge prescribed by paragraph (a) of this subsection, or the report, or both, are filed within the specified number of days, the Attorney General may impose an additional penalty, not exceeding the greater of \$300 or twice the fee prescribed by subsection (7) of this section which is due with the delinquent report, in the manner provided by ORS 183.745.]

(b) In addition to charging any delinquency fee required under paragraph (a) of this subsection, the Attorney General, in compliance with the procedures set forth in ORS chapter 183, may take either or both of these actions:

(A) Impose a civil penalty of not more than \$1,000 on any charitable organization that fails to file a delinquent report or fails to pay a delinquency fee or a fee due under subsection (7) of this section within 90 days after receiving notice of the delinquency; or

(B) Order any charitable organization to cease soliciting contributions until the charitable organization has paid a fee or delinquency fee imposed under this section or has filed a report required under this section.

(c) In any judicial review of the order of the Attorney General, the order shall be reversed or modified only if the court finds that the Attorney General lacked authority to **issue the order or** impose the penalty or **that** the amount of the penalty imposed was unconscionable in the circumstances.

[(c)] **(d)** The Attorney General may grant an extension of time for a reasonable period for filing a report upon written application filed by or on behalf of the charitable [*corporation or trustee*] **organization** stating the reason that additional time should be allowed for filing the report beyond the ordinary due date. If the request is submitted on or prior to the due date for filing the report, the [*\$20 penalty charge*] **delinquency fee described in paragraph (a) of this subsection** will not be due unless the report and fee are thereafter not filed within the extended period granted for filing the report, or, if the request is denied, within 10 days after the denial is received by the corporation.

(9) All fees and penalties received by the Department of Justice under subsections (7) and (8) of this section shall be paid over to the State Treasurer monthly for deposit in the Department of Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited pursuant to this subsection are continuously appropriated to the Attorney General to pay the expenses of the Department of Justice in administering [*the Charitable Trust and Corporation Act and the Charitable Solicitations Act as established in*] ORS 128.610 to 128.750 and 128.801 to 128.898 **and for no other purpose.**

SECTION 2. ORS 128.620 is amended to read:

128.620. As used in ORS 128.610 to 128.750:

(1) "Charitable corporation" means any nonprofit corporation organized under the laws of this state for charitable or eleemosynary purposes and any similar foreign corporation doing business or holding property in this state for such purposes. The mere making of grants or donations to institutions or beneficiaries within the State of Oregon, or the investigation of applicants for such grants or donations, [*shall*] **does** not constitute doing business in this state. However, the solicitation of funds for charitable purposes in this state shall constitute doing business therein.

(2) "*Trustee*" means:]

[(a) Any individual, group of individuals, corporation or other legal entity holding property in trust pursuant to any charitable trust;]

[(b) Any corporation which has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation; and]

[(c) A corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.]

(2) “Charitable organization” includes charitable corporations, trustees and other charitable organizations not specifically exempted from the application of ORS 128.610 to 128.750.

(3) “Charitable purpose” means any purpose to promote the well-being of the public at large, or for the benefit of an indefinite number of persons, including but not limited to educational, literary, or scientific purposes, or for the prevention of cruelty to children or animals, or for the benefit of religion, rehabilitation services, public recreation, civic improvement, or services which lessen the burdens of government.

(4) “Religious organization” means any organized church or group organized for the purpose of divine worship, religious teaching, or other directly ancillary purposes.

(5) “Trustee” means:

(a) Any individual, group of individuals, corporation or other legal entity holding property in trust pursuant to any charitable trust;

(b) Any corporation that has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation; and

(c) A corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

SECTION 3. ORS 128.630 is amended to read:

128.630. (1) ORS 128.610 to 128.750 apply to all charitable [*corporations and trustees*] **organizations** holding property for charitable purposes over which the state or the Attorney General has enforcement or supervisory powers.

(2) ORS 128.610 to 128.750 shall apply regardless of any contrary provisions of any instrument.

SECTION 4. ORS 128.650 is amended to read:

128.650. The Attorney General shall establish and maintain a register of charitable [*corporations and trustees*] **organizations** subject to ORS 128.610 to 128.750 and of the particular trust or other relationship under which [*they*] **the charitable organizations** hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports and records **that** are needed for the establishment and maintenance of the register.

SECTION 5. ORS 128.660 is amended to read:

128.660. Every charitable [*corporation and trustee*] **organization** subject to ORS 128.610 to 128.750 [*who*] **that** has received property for charitable purposes shall file with the Attorney General, upon receiving possession or control of such property, a copy of the articles of incorporation, trust agreement or other instrument providing for title, powers or duties.

SECTION 6. ORS 128.735 is amended to read:

128.735. (1) In any suit or action against a [*charitable corporation or trustee or any other*] charitable organization to enforce any fiduciary or other duty arising under ORS 128.610 to 128.750 or to enforce any fiduciary duty arising under the common law, the court in its discretion may award the prevailing party reasonable attorney fees at trial and on appeal and, as part of costs and disbursements, reasonable investigative expenses and reasonable expert witness fees.

(2) If the Attorney General prevails, the attorney fees, costs and disbursements of the Attorney General may, in the discretion of the court, be a judgment against the responsible officers of the charitable corporation or trustee of a charitable trust, or may be paid out of the corpus of the trust.

SECTION 7. ORS 128.680 is amended to read:

128.680. The Attorney General may investigate transactions and relationships of [*corporations and trustees*] **charitable organizations** subject to ORS 128.610 to 128.750 for the purpose of ascer-

taining whether or not the purposes of the [*corporation or trust*] **charitable organization** are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument, whether a person or organization has engaged in a violation of [*the Charitable Trust and Corporation Act,*] ORS 128.610 to 128.750 or whether such a person or organization has breached a fiduciary duty arising under the common law. The Attorney General may require any agent, trustee, fiduciary, beneficiary, institution, association or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts or disbursements in the possession or control of the person ordered to appear.

SECTION 8. Except as provided in section 11 of this 2007 Act, the amendments to ORS 128.670 by section 1 of this 2007 Act apply to all fees paid or penalties imposed on or after the operative date of the amendments to ORS 128.670 by section 1 of this 2007 Act for reports required to be filed by charitable corporations, trustees and other charitable organizations subject to ORS 128.610 to 128.750.

SECTION 9. The amendments to ORS 128.620, 128.630, 128.650, 128.660, 128.670, 128.680 and 128.735 by sections 1 to 7 of this 2007 Act become operative on January 1, 2008.

SECTION 10. The Attorney General may take any action before the operative date of the amendments to ORS 128.670 by section 1 of this 2007 Act that is necessary to enable the Attorney General to exercise, on and after the operative date of the amendments to ORS 128.670 by section 1 of this 2007 Act, all the duties, functions and powers conferred on the Attorney General by the amendments to ORS 128.670 by section 1 of this 2007 Act.

SECTION 11. (1) If on January 1, 2008, the Department of Justice has not adopted rules establishing the fee schedule and the delinquency fee amount described in ORS 128.670 as amended by section 1 of this 2007 Act, a charitable organization shall pay a fee or delinquency fee in accordance with the provisions of ORS 128.670 that are operative on December 31, 2007, until such time as the Department of Justice adopts final rules to establish a fee schedule and delinquency fee amount under ORS 128.670 as amended by section 1 of this 2007 Act. On and after the effective date of final rules adopted by the Department of Justice under ORS 128.670 as amended by section 1 of this 2007 Act, the charitable organization shall pay a fee or delinquency fee in accordance with the fee schedule established by the final rules.

(2) The Department of Justice shall adopt final rules under ORS 128.670 as amended by section 1 of this 2007 Act not later than December 31, 2008.

(3) This section is repealed on January 2, 2010.

SECTION 12. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by Senate April 11, 2007

.....
Secretary of Senate

.....
President of Senate

Passed by House June 4, 2007

.....
Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Secretary of State