

House Bill 3414

Sponsored by COMMITTEE ON REVENUE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Eliminates Oregon Charitable Checkoff Commission. Provides that Legislative Assembly shall select entities that are listed on individual income tax forms as eligible for charitable donations made by taxpayers through checkoff.

Applies to individual income tax returns for tax years beginning on or after January 1, 2012.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to charitable checkoffs; creating new provisions; amending ORS 305.690, 305.710, 305.715,
3 305.720, 305.725, 305.730, 305.745, 305.747, 305.751, 316.491, 316.493, 329.183 and 329.228; repealing
4 ORS 305.695, 305.700, 305.705, 305.723, 305.727, 305.735, 305.740, 305.749 and 496.380; and pre-
5 scribing an effective date.

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

7 **SECTION 1.** ORS 305.690, as amended by section 3, chapter 45, Oregon Laws 2008, is amended
8 to read:

9 305.690. As used in ORS 305.690 to 305.753, unless the context otherwise requires:

10 (1) "Biennial years" means the two income tax years of individual taxpayers that begin in the
11 two calendar years immediately following the calendar year in which a list is certified under ORS
12 305.715.

13 [(2) "*Commission*" means the Oregon Charitable Checkoff Commission.]

14 [(3) "*Department*" means the Department of Revenue.]

15 [(4) "*Eligibility roster*" means a list, prepared under ORS 305.715 and maintained by the commis-
16 sion in chronological order based on the date of form listing or date of eligibility determination,
17 whichever is later, of charitable and governmental entities seeking inclusion on the Oregon individual
18 income tax return forms.]

19 [(5)] (2) "Form listed" or "form listing" means being listed on the Oregon individual income tax
20 return form.

21 [(6)] (3) "Instruction listing" means being listed on the Department of Revenue instructions for
22 tax return checkoff contribution.

23 [(7)] (4) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in
24 effect on December 31, 2007.

25 **SECTION 2.** ORS 305.710 is amended to read:

26 305.710. [(1)] The Department of Revenue shall notify the [*Oregon Charitable Checkoff Commis-*
27 **Legislative Assembly** of the number of lines available for the material described in ORS
28 305.745 (2) without adding a page to the various individual tax forms for full-year residents, non-
29 residents and part-year residents. The department shall provide lines on the form to permit legible
30 form listing of at least 12 entities, if possible, but may provide fewer lines if there is insufficient

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 space on the form. The *[commission]* **Legislative Assembly** shall limit the number of entities to be
 2 listed on the form to conform to the department's notice unless it determines that the number of
 3 eligible entities justifies adding a page to the form.

4 *[(2) Any new entity added to the list must, in the judgment of the commission, have a high proba-*
 5 *bility of meeting the requirement in ORS 305.720 (5).]*

6 **SECTION 3.** ORS 305.715 is amended to read:

7 305.715. (1)*[(a)]* The *[Oregon Charitable Checkoff Commission]* **Department of Revenue** shall
 8 determine if a charitable or governmental entity is qualified under ORS 305.720, for the biennial
 9 years, for listing on the Oregon individual income tax return to receive contributions by means of
 10 checkoff, as described under and subject to ORS 305.710 and 305.745.

11 **(2) No later than October 15 of each even-numbered calendar year, the department shall**
 12 **provide to an interim legislative committee on revenue the applications of all entities that**
 13 **have applied to receive contributions by means of checkoff as provided by ORS 305.725 and**
 14 **that meet the requirements of ORS 305.720.**

15 *[(b) Upon determination, pursuant to an initial application, that an entity qualifies for inclusion*
 16 *on the Oregon individual income tax return forms to receive contributions by means of checkoff, the*
 17 *commission, subject to ORS 305.723, shall cause the name of the entity to be included on the eligibility*
 18 *roster prepared under this section.]*

19 *[(c) If the commission determines that the entity is not qualified to be included on the eligibility*
 20 *roster, the commission shall give notice in the manner provided in ORS 183.415, and ORS 305.740 (3)*
 21 *shall apply.]*

22 *[(2)]* **(3) [The commission] The Legislative Assembly** shall certify *[in each even-numbered]* **on**
 23 **or before July 1 of each odd-numbered** calendar year to the department *[of Revenue]* a list of at
 24 least 12 charitable and governmental entities to be listed, if possible, on the Oregon individual in-
 25 come tax return to receive contributions by means of checkoff for the biennial years indicated in
 26 the certification, as described in and subject to ORS 305.710 and 305.745. **The Legislative Assembly**
 27 **may select and certify additional eligible entities to receive instruction listing.**

28 **SECTION 4.** ORS 305.720 is amended to read:

29 305.720. Subject to ORS 305.710~~], 305.723]~~ and 305.745, an entity qualifies for *[listing on the el-*
 30 *igibility roster for]* form listing **or instruction listing** to receive contributions by means of checkoff
 31 if:

32 (1) The entity supports private charitable causes or engages in public activities that are con-
 33 sistent with policies and programs of the state and:

34 (a) Checkoff resources are used to augment existing programs or provide new funding to related
 35 activities of proven value. Checkoff funds are not to be used to meet the administrative expenses
 36 of the entity; **and**

37 (b) Programs funded by checkoff resources must result in substantial and direct benefits to the
 38 human and natural resources of the state that *[the Oregon Charitable Checkoff Commission deter-*
 39 *mines]* are unlikely to occur under existing public and private programs~~]; and]~~.

40 *[(c) After checkoff resources are received by the entity, the entity shows a pattern over several years*
 41 *of increasing its total revenues from other than checkoff sources or reaches the level where no more*
 42 *than 50 percent of its revenues are from checkoff sources.]*

43 (2) The entity is qualified to receive contributions that are tax deductible under the following:

44 (a) Section 170 of the Internal Revenue Code (relating to contributions and gifts to charitable
 45 and governmental entities).

1 (b) Section 501(k) of the Internal Revenue Code (relating to contributions to certain organiza-
 2 tions providing child care).

3 (c) Section 7871 of the Internal Revenue Code (relating to contributions to Indian tribal gov-
 4 ernments).

5 (d) Any other federal law allowing a deduction from federal individual income tax for charitable
 6 contributions to an entity classified by rule of the Department of Revenue as being an entity be-
 7 longing to the general class described in paragraphs (a) to (c) of this subsection.

8 (3) The entity makes application for listing within the time and in the manner prescribed by ORS
 9 305.725.

10 (4) The entity files a financial report, and other information, with the [*commission*] **Department**
 11 **of Revenue** as described under ORS 305.730.

12 [*(5) The entity received \$25,000 or more in checkoff contributions in at least one of the two tax*
 13 *years immediately preceding the tax year for which it is to be listed on the Oregon income tax return.*
 14 *This subsection does not apply if the entity has not been included on the Oregon personal income tax*
 15 *return for each of the two tax years immediately preceding the tax year for which determination for*
 16 *purposes of this subsection is being made.]*

17 **SECTION 5.** ORS 305.725 is amended to read:

18 305.725. (1) Each entity desiring to receive contributions by means of checkoff on the Oregon
 19 individual income tax return shall make initial application to the [*Oregon Charitable Checkoff Com-*
 20 *mission*] **Department of Revenue** not later than July 1 of each even-numbered calendar year. The
 21 application shall contain or be accompanied by:

22 (a) The name of the entity.

23 (b) The address of the principal place of business of the entity and the name of the person, of-
 24 ficer or employee to whom the moneys contributed by means of checkoff are to be remitted pursuant
 25 to ORS 305.747.

26 (c) The names and personal addresses of the principals of the entity.

27 (d) The name and personal address of a person who is a principal in the solicitation activities
 28 for the entity.

29 (e) Evidence satisfactory to the [*commission*] **department** that contributions to the entity qualify
 30 for tax deduction under section 170 of the Internal Revenue Code or other law listed under ORS
 31 305.720 (2) [*or, in the case of an application for instruction listing, ORS 305.727*]. This evidence may,
 32 but need not, take the form of an Internal Revenue Service ruling, a listing of the entity on the list
 33 published by the Internal Revenue Service listing organizations qualified to receive tax deductible
 34 contributions or an answer to an inquiry as to the status of the entity addressed to the Commis-
 35 sioner of Internal Revenue.

36 (f) If applicable, evidence that ORS 128.610 to 128.750 has been complied with.

37 (g) A financial report, and other information, as described in ORS 305.730.

38 (2) If, at any time, there is a change of person, officer or employee to whom contributions re-
 39 ceived by means of checkoff are to be remitted under ORS 305.747, the governing body of the entity
 40 shall give notice to the department [*of Revenue*]. The notice shall contain the name of the entity and
 41 the name of the new person, officer or employee to whom contributions shall be remitted.

42 **SECTION 6.** ORS 305.730 is amended to read:

43 305.730. (1) Each entity desiring to be listed on the Oregon individual income tax return in order
 44 to receive contributions by means of checkoff for the biennial years shall file a financial report with
 45 the [*Oregon Charitable Checkoff Commission*] **Department of Revenue** no later than July 1 of each

1 even-numbered year.

2 (2) The financial report shall contain, in detail:

3 (a) The amount of funds received from contributions made by means of checkoff.

4 (b) The disposition of the funds received from contributions made by means of checkoff.

5 (3) If required by the [commission] **department** by rule, the entity shall also file with the [com-
6 mission] **department** its budget, financial statements or other documents or information needed by
7 the [commission] **department** to determine the use of funds received through checkoff.

8 (4) All information required by this section shall be as of the close of each fiscal year of the two
9 fiscal years of the entity that ended during the 12-month period ending prior to July 1 of the even-
10 numbered calendar year.

11 **SECTION 7.** ORS 305.745 is amended to read:

12 305.745. (1) Upon receipt of the [list] **lists** certified by the [Oregon Charitable Checkoff Commis-
13 sion] **Legislative Assembly** under ORS 305.715 [(2)] **(3)**, the Department of Revenue shall cause the
14 name of each entity so listed to be included on the Oregon individual income tax return forms **or**
15 **in the tax return instructions** prepared for the biennial years as certified.

16 (2) Individual taxpayers who file an Oregon income tax return and who will receive a tax refund
17 from the department may designate that a contribution be made to one or more entities listed.
18 Designation shall be made in a space that the department shall cause to be printed on the return
19 form.

20 (3) Overpayments of tax that are insufficient, due to ORS 293.250 or otherwise, to satisfy the
21 total amount of checkoffs designated on a tax return under subsection (2) of this section and under
22 statute other than ORS 305.690 to 305.753 shall be allocated among the entities designated on a pro
23 rata basis.

24 **SECTION 8.** ORS 305.747 is amended to read:

25 305.747. (1) Amounts equal to the amounts checked off under ORS 305.745 shall be remitted by
26 the Department of Revenue to the State Treasurer who shall deposit the amounts in a suspense ac-
27 count established under ORS 293.445.

28 [(2)(a) *Of the amounts remitted and deposited under subsection (1) of this section, a portion is*
29 *continuously appropriated for use in reimbursing the General Fund for costs paid or incurred by the*
30 *Oregon Charitable Checkoff Commission in administering the checkoff programs established under*
31 *ORS 305.690 to 305.753. No more than one percent of the moneys generated by the checkoff programs*
32 *per fiscal year ending June 30, 1990, or per any fiscal year thereafter, is appropriated under this par-*
33 *agraph.*]

34 [(b)] **(2)(a)** Of the amounts remitted and deposited under subsection (1) of this section, a portion
35 is continuously appropriated for use in reimbursing the General Fund for costs paid or incurred by
36 the department in administering the checkoff program established under ORS 305.690 to 305.753. The
37 department shall adopt by rule a formula or other method of determining the cost of administering
38 each checkoff program. Each program shall be charged the cost of administration not to exceed 10
39 percent of the amount received in checkoff contributions.

40 [(c)] **(b)** Moneys appropriated under this subsection shall be transferred to the General Fund on
41 a quarterly basis.

42 (3) The records of the department shall reflect the amount that the department has credited to
43 each entity less administrative expenses. Subject to ORS 305.745 (3), the amount credited to each
44 entity shall be equal to the amount checked off for that entity under ORS 305.745 less administrative
45 expenses. The net amount of moneys credited to an entity shall be transferred by the department

1 to the entity, as specified by law, on a periodic basis, or is continuously appropriated to the de-
2 partment for payment to the entity and the department shall pay and remit the net amount credited
3 to the entity, without interest, to the entity on a periodic basis. The department shall adopt rules
4 governing the transferring or remitting of checkoff moneys to the entities for which the amounts
5 were checked off. The rules shall specify the time, no less often than quarterly, that the moneys are
6 to be transferred or remitted to the entities by the department.

7 **SECTION 9.** ORS 305.751 is amended to read:

8 305.751. The Department of Revenue shall adopt such rules as are necessary for the *[operation*
9 *of the Oregon Charitable Checkoff Commission and the]* administration of ORS 305.690 to 305.753.
10 *[The commission may recommend that the department adopt rules under this section.]*

11 **SECTION 10.** ORS 316.491 is amended to read:

12 316.491. (1) Personal income taxpayers who file an Oregon income tax return and who will re-
13 ceive a tax refund from the Department of Revenue may designate that a contribution of all or a
14 portion of the refund be made to the Oregon Military Emergency Financial Assistance Program *[by*
15 *marking the appropriate box printed on the return]* as provided in ORS 305.690 to 305.753.

16 (2) Moneys contributed to the Oregon Military Emergency Financial Assistance Program
17 *[through the checkoff program]* as described in subsection (1) of this section shall be deposited in the
18 Oregon Military Emergency Financial Assistance Fund.

19 **SECTION 11.** ORS 316.493 is amended to read:

20 316.493. (1) Recognizing that children are Oregon's most valuable resource and that child abuse
21 and neglect is a threat to the physical, mental and emotional health of children; and further recog-
22 nizing that the incidence of validated cases of reported child abuse and neglect has been increasing
23 at an alarming rate in Oregon and represents an enormous threat to the welfare of our community,
24 the Legislative Assembly hereby provides an additional opportunity to taxpayers to assist in child
25 abuse and neglect prevention *[by means of an income tax checkoff]*.

26 (2) Any individual taxpayer who files an Oregon income tax return and who will receive a tax
27 refund from the Department of Revenue may designate that a contribution be made to the holder
28 of the subaccount established pursuant to section 36 (2), chapter 1084, Oregon Laws 1999, or a
29 successor subaccount, account or fund *[by marking the appropriate box printed on the return]* as
30 provided in ORS 305.690 to 305.753.

31 (3) The Department of Revenue shall transfer to the subaccount established pursuant to section
32 36 (2), chapter 1084, Oregon Laws 1999, or a successor subaccount, account or fund an amount as
33 credited to the subaccount or its successor.

34 **SECTION 12.** ORS 329.183 is amended to read:

35 329.183. (1) The Prekindergarten Program Trust Fund is established as a fund in the State
36 Treasury, separate and distinct from the General Fund. Interest earned by the trust fund shall be
37 credited to the trust fund. The primary purpose of the trust fund is to assist eligible children with
38 comprehensive services including educational, social, health and nutritional development to enhance
39 their chances for success in school and life. For this purpose, the trust fund is continuously appro-
40 priated to the Department of Education for the Oregon prekindergarten program described in ORS
41 329.170 to 329.200.

42 (2) The department may solicit and accept money in the form of gifts, contributions and grants
43 to be deposited in the trust fund. Except as provided in ORS 329.185, the acceptance of federal
44 grants for purposes of ORS 329.170 to 329.200 does not commit state funds nor place an obligation
45 upon the Legislative Assembly to continue the purposes for which the federal funds are made

1 available.

2 (3) The trust fund may be listed, if otherwise qualified, on the Oregon income tax return [*for*
 3 *checkoff*] **or instructions** pursuant to application made to the [*Oregon Charitable Checkoff Commis-*
 4 *sion*] **Department of Revenue** under ORS 305.690 to 305.753 by the Department **of Education**.

5 **SECTION 13.** ORS 329.228 is amended to read:

6 329.228. (1) The Early Childhood Education Trust Fund is established as a fund in the State
 7 Treasury, separate and distinct from the General Fund. Interest earned by the trust fund shall be
 8 credited to the trust fund. The primary purpose of the trust fund is to assist public school districts
 9 in providing programs designed to improve educational services for children enrolled in kindergarten
 10 through grade three. For this purpose, the trust fund is continuously appropriated to the Department
 11 of Education for programs described in ORS 329.235.

12 (2) The State Board of Education may solicit and accept money in the form of gifts, contribu-
 13 tions and grants to be deposited in the trust fund. The acceptance of federal grants for purposes of
 14 ORS 329.235 does not commit state funds nor place an obligation upon the Legislative Assembly to
 15 continue the purposes for which the federal funds are made available.

16 (3) The trust fund may be listed, if otherwise qualified, on the Oregon income tax return [*for*
 17 *checkoff*] **or instructions** pursuant to application made to the [*Oregon Charitable Checkoff Commis-*
 18 *sion*] **Department of Revenue** under ORS 305.690 to 305.753 by the State Board of Education.

19 **SECTION 14.** **The amendments to ORS 305.690, 305.710, 305.715, 305.720, 305.725, 305.730,**
 20 **305.745, 305.747, 305.751, 316.491, 316.493, 329.183 and 329.228 by sections 1 to 13 of this 2009**
 21 **Act and the repeal of statutes by section 15 of this 2009 Act apply to individual income tax**
 22 **returns for tax years beginning on or after January 1, 2012.**

23 **SECTION 15.** **ORS 305.695, 305.700, 305.705, 305.723, 305.727, 305.735, 305.740, 305.749 and**
 24 **496.380 are repealed.**

25 **SECTION 16.** **This 2009 Act takes effect on the 91st day after the date on which the**
 26 **regular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

27