

A-Engrossed
House Bill 4081

Ordered by the House February 11
Including House Amendments dated February 11

Sponsored by Representatives BERGER, WILLIAMSON (Presession filed.)

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.

Specifies acts and practices of charitable organizations that are violations of law [*and unlawful trade practices*]. Authorizes Attorney General to take corrective actions and impose penalties for specified violations of law by charitable organizations. Increases amount of penalty that can be imposed for failure to pay fees or file timely annual report.

A BILL FOR AN ACT

1
2 Relating to regulation of charitable organizations; creating new provisions; amending ORS 128.620,
3 128.660, 128.670, 128.710 and 128.735; repealing ORS 128.899; and appropriating money.

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

5 **SECTION 1.** ORS 128.620 is amended to read:

6 128.620. As used in ORS 128.610 to 128.769:

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

13 (2) "**Charitable fiduciary**" means an officer, director, trustee or other fiduciary of a
14 charitable organization, or a person in possession of funds for one or more charitable pur-
15 poses.

16 [(2)] (3) "Charitable organization" includes charitable corporations, trustees and other charita-
17 ble organizations not specifically exempted from the application of ORS 128.610 to 128.769.

18 [(3)] (4) "Charitable purpose" means any purpose to promote the well-being of the public at
19 large, or for the benefit of an indefinite number of persons, including but not limited to educational,
20 literary, or scientific purposes, or for the prevention of cruelty to children or animals, or for the
21 benefit of religion, rehabilitation services, public recreation, civic improvement, or services which
22 lessen the burdens of government.

23 [(4)] (5) "Religious **corporation or** organization" means any organized church or group organ-
24 ized for the purpose of divine worship, religious teaching, or other directly ancillary purposes.

25 [(5)] (6) "Trustee" means:

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

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

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

5 (7) **“Willfully” means committing an act when it is known or should be known by the**
6 **actor that the act is a violation of law.**

7 **SECTION 2.** ORS 128.660 is amended to read:

8 128.660. Every charitable organization subject to ORS 128.610 to 128.769 that has received
9 property for charitable purposes shall file with the Attorney General, upon receiving possession or
10 control of such property[,]:

11 (1) **A registration statement in the form and with the information designated by the At-**
12 **torney General by rule; and**

13 (2) A copy of the articles of incorporation, trust agreement or other instrument providing for
14 title, powers or duties.

15 **SECTION 3.** ORS 128.670 is amended to read:

16 128.670. (1) Except as otherwise provided, every charitable organization subject to ORS 128.610
17 to 128.769 shall, in addition to filing copies of the instruments previously required, file with the
18 Attorney General [*periodic*] **annual** written reports setting forth information as to the nature of the
19 assets held for charitable purposes and the administration thereof by the corporation or trustee.

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

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

28 (b) [*Periodic reports shall*] **The annual reports do** not unreasonably add to the expense of the
29 administration of charitable trusts and similar relationships.

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

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

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

44 (6) The Attorney General shall make rules as to the time for filing reports, the contents thereof,
45 and the manner of executing and filing them. The Attorney General may make additional rules and

1 amend existing rules as necessary for the proper administration of [*the Charitable Trust and Corpo-*
2 *ration Act*] **ORS 128.610 to 128.769.**

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

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

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

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

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

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

19 (e) The department shall ensure that the aggregate amount of fees paid under this section is
20 sufficient to pay the department's expenses in administering ORS 128.610 to 128.769 and 128.801 to
21 128.898.

22 (8)(a) If the charitable organization does not pay the fee prescribed by rules adopted under
23 subsection (7) of this section or fails to file a report by the date due, the charitable organization,
24 in addition to the fee due, shall pay a delinquency fee in an amount the department specifies by rule.
25 The department may increase the delinquency fee or charge additional delinquency fees based on
26 the length of time the payment or report is delinquent.

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

30 (A) Impose a civil penalty of not more than [*\$1,000*] **\$2,000** on any charitable organization that
31 fails to file a delinquent report or fails to pay a delinquency fee or a fee due under subsection (7)
32 of this section within 90 days after receiving notice of the delinquency; or

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

36 (c) In any judicial review of the order of the Attorney General, the order shall be reversed or
37 modified only if the court finds that the Attorney General lacked authority to issue the order or
38 impose the penalty or that the amount of the penalty imposed was unconscionable in the circum-
39 stances.

40 (d) The Attorney General may grant an extension of time for a reasonable period for filing a
41 report upon written application filed by or on behalf of the charitable organization stating the rea-
42 son that additional time should be allowed for filing the report beyond the ordinary due date. If the
43 request is submitted on or prior to the due date for filing the report, the delinquency fee described
44 in paragraph (a) of this subsection will not be due unless the report and fee are thereafter not filed
45 within the extended period granted for filing the report, or, if the request is denied, within 10 days

1 after the denial is received by the corporation.

2 (9) All fees and penalties received by the Department of Justice under subsections (7) and (8)
3 of this section shall be paid over to the State Treasurer monthly for deposit in the Department of
4 Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited pursu-
5 ant to this subsection are continuously appropriated to the Attorney General to pay the expenses
6 of the Department of Justice in administering ORS 128.610 to 128.769 and 128.801 to 128.898 and for
7 no other purpose.

8 **SECTION 4.** ORS 128.710 is amended to read:

9 128.710. (1) The Attorney General may institute appropriate proceedings to secure compliance
10 with ORS 128.610 to 128.769 and to invoke the jurisdiction of the court. **A court may issue a**
11 **temporary, preliminary or permanent injunction to restrain violations of ORS 128.610 to**
12 **128.769 and may require a charitable organization or responsible charitable fiduciary to pro-**
13 **vide or pay for an accounting, or may order other appropriate relief.** Willful failure to comply
14 with an order of any court having jurisdiction of charitable trusts [*requiring an accounting by a*
15 *charitable corporation or trustee*] shall constitute grounds for removal of the officers, **directors,**
16 **trustees or other charitable fiduciary** [*of such charitable corporation or of such trustee*] and the
17 appointment by the court of successor officers, **directors,** [*or trustee*] **trustees or other charitable**
18 **fiduciaries.** The powers and duties of the Attorney General provided in ORS 128.610 to 128.769 are
19 in addition to existing powers and duties.

20 (2) Nothing in ORS 128.610 to 128.769 shall impair or restrict the jurisdiction of any court with
21 respect to any of the matters covered by it, except that no court shall have jurisdiction to modify
22 or terminate any trust of property for charitable purposes unless the Attorney General is a party
23 to the proceedings.

24 **SECTION 5.** ORS 128.735 is amended to read:

25 128.735. (1) In any suit or action against a charitable organization **or charitable fiduciary** to
26 enforce any fiduciary **duty** or other duty arising under ORS 128.610 to 128.769 or to enforce any
27 fiduciary duty arising under the common law, the court in its discretion may award the prevailing
28 party reasonable attorney fees at trial and on appeal and, as part of costs and disbursements, rea-
29 sonable investigative expenses and reasonable expert witness fees.

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

34 **SECTION 6.** Section 7 of this 2014 Act is added to and made a part of ORS 128.610 to
35 **128.769.**

36 **SECTION 7.** (1) The following acts and practices are violations of ORS 128.610 to 128.769:

37 (a) **Operating in violation of, or failing to comply with, any requirement of ORS 128.610**
38 **to 128.769 or any rules promulgated under ORS 128.610 to 128.769, including but not limited**
39 **to:**

40 (A) **Failing to file the registration statement required under ORS 128.660.**

41 (B) **Failing to file an annual report required under ORS 128.670.**

42 (C) **Failing to pay any fee required under ORS 128.670.**

43 (b) **Willfully making a false or misleading statement in a registration statement, annual**
44 **report or other document required to be filed under ORS 128.610 to 128.769.**

45 (c) **Willfully failing to provide to the Attorney General, in a timely manner, upon request,**

1 documents, instruments, reports, records or other information necessary for the Attorney
2 General to:

3 (A) Substantiate representations, statements or information contained in a registration
4 statement, annual report or other document filed pursuant to ORS 128.610 to 128.769;

5 (B) Establish and maintain the register required under ORS 128.650; or

6 (C) Establish that a charitable organization has properly applied charitable funds received
7 by the organization.

8 (d) Failing to appear or otherwise comply with an order issued under ORS 128.690.

9 (2) In addition to any other actions allowed by law, including but not limited to the
10 actions described in ORS 128.670 (8), and in compliance with the procedures set forth in ORS
11 chapter 183, upon determining that a charitable organization has committed a violation
12 specified in subsection (1) of this section, the Attorney General may, as appropriate, do one
13 or more of the following:

14 (a) Deny, revoke, place conditions on or suspend the registration of the charitable or-
15 ganization after giving the organization written notice of the basis for the denial, revocation
16 or suspension. If the organization does not correct or otherwise ameliorate the violation or
17 request an administrative hearing within 90 days of receipt of the notice, the Attorney Gen-
18 eral shall take the action described in the written notice;

19 (b) Impose a civil penalty of not more than \$2,000 on the charitable organization or upon
20 a charitable fiduciary responsible for the violation;

21 (c) Order the charitable organization to cease soliciting or accepting contributions,
22 charitable donations or other payments for charitable purposes until the charitable organ-
23 ization has corrected the act or practice that violated ORS 128.610 to 128.769; or

24 (d) Order the charitable organization or responsible charitable fiduciary to submit or file
25 additional information or documentation.

26 (3) All fees and penalties received by the Department of Justice under this section shall
27 be paid over to the State Treasurer monthly for deposit in the Department of Justice Oper-
28 ating Account created under ORS 180.180. Amounts deposited pursuant to this subsection are
29 continuously appropriated to the Attorney General to pay the expenses of the Department
30 of Justice in administering ORS 128.610 to 128.769 and 128.801 to 128.898 and for no other
31 purpose.

32 SECTION 8. ORS 128.899 is repealed.
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