

House Bill 4081

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 **as introduced**.

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, 128.735 and 646.608; 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.

15 [(2)] (3) "Charitable organization" includes charitable corporations, trustees and other charita-
16 ble organizations not specifically exempted from the application of ORS 128.610 to 128.769.

17 [(3)] (4) "Charitable purpose" means any purpose to promote the well-being of the public at
18 large, or for the benefit of an indefinite number of persons, including but not limited to educational,
19 literary, or scientific purposes, or for the prevention of cruelty to children or animals, or for the
20 benefit of religion, rehabilitation services, public recreation, civic improvement, or services which
21 lessen the burdens of government.

22 [(4)] (5) "Religious **corporation or** organization" means any organized church or group organ-
23 ized for the purpose of divine worship, religious teaching, or other directly ancillary purposes.

24 [(5)] (6) "Trustee" means:

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

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

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

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

2 128.660. Every charitable organization subject to ORS 128.610 to 128.769 that has received
 3 property for charitable purposes shall file with the Attorney General, upon receiving possession or
 4 control of such property[,]:

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

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

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

10 128.670. (1) Except as otherwise provided, every charitable organization subject to ORS 128.610
 11 to 128.769 shall, in addition to filing copies of the instruments previously required, file with the
 12 Attorney General [*periodic*] **annual** written reports setting forth information as to the nature of the
 13 assets held for charitable purposes and the administration thereof by the corporation or trustee.

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

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

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

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

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

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

38 (6) The Attorney General shall make rules as to the time for filing reports, the contents thereof,
 39 and the manner of executing and filing them. The Attorney General may make additional rules and
 40 amend existing rules as necessary for the proper administration of [*the Charitable Trust and Corpo-*
 41 *ration Act*] **ORS 128.610 to 128.769.**

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

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

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

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

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

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

13 (e) The department shall ensure that the aggregate amount of fees paid under this section is
 14 sufficient to pay the department's expenses in administering ORS 128.610 to 128.769 and 128.801 to
 15 128.898.

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

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

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

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

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

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

41 (9) All fees and penalties received by the Department of Justice under subsections (7) and (8)
 42 of this section shall be paid over to the State Treasurer monthly for deposit in the Department of
 43 Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited pursu-
 44 ant to this subsection are continuously appropriated to the Attorney General to pay the expenses
 45 of the Department of Justice in administering ORS 128.610 to 128.769 and 128.801 to 128.898 and for

1 no other purpose.

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

3 128.710. (1) The Attorney General may institute appropriate proceedings to secure compliance
 4 with ORS 128.610 to 128.769 and to invoke the jurisdiction of the court. **A court may issue a**
 5 **temporary, preliminary or permanent injunction to restrain violations of ORS 128.610 to**
 6 **128.769 and may require a charitable organization or responsible charitable fiduciary to pro-**
 7 **vide or pay for an accounting, or may order other appropriate relief.** Willful failure to comply
 8 with an order of any court having jurisdiction of charitable trusts [*requiring an accounting by a*
 9 *charitable corporation or trustee*] shall constitute grounds for removal of the officers, **directors,**
 10 **trustees or other fiduciary** [*of such charitable corporation or of such trustee*] and the appointment
 11 by the court of successor officers, **directors, [or trustee] trustees or other fiduciaries.** The powers
 12 and duties of the Attorney General provided in ORS 128.610 to 128.769 are in addition to existing
 13 powers and duties.

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

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

19 128.735. (1) In any suit or action against a charitable organization **or charitable fiduciary** to
 20 enforce any fiduciary **duty** or other duty arising under ORS 128.610 to 128.769 or to enforce any
 21 fiduciary duty arising under the common law, the court in its discretion may award the prevailing
 22 party reasonable attorney fees at trial and on appeal and, as part of costs and disbursements, rea-
 23 sonable investigative expenses and reasonable expert witness fees.

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

28 **SECTION 6. Section 7 of this 2014 Act is added to and made a part of ORS 128.610 to**
 29 **128.769.**

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

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

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

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

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

37 **(b) Making a false or misleading statement in a registration statement, annual report or**
 38 **other document required to be filed under ORS 128.610 to 128.769.**

39 **(c) Failing to provide to the Attorney General, in a timely manner, upon request, docu-**
 40 **ments, instruments, reports, records or other information necessary for the Attorney Gen-**
 41 **eral to:**

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

44 **(B) Establish and maintain the register required under ORS 128.650;**

45 **(C) Properly supervise a charitable organization; or**

1 **(D) Establish that a charitable organization has properly applied charitable funds re-**
2 **ceived by the organization.**

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

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

9 **(a) Deny, revoke, place conditions on or suspend the registration of the charitable or-**
10 **ganization after giving the organization written notice of the basis for the denial, revocation**
11 **or suspension. If the organization does not correct or otherwise ameliorate the violation or**
12 **request an administrative hearing within 60 days of receipt of the notice, the Attorney Gen-**
13 **eral shall take the action described in the written notice;**

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

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

19 **(d) Order the charitable organization or responsible charitable fiduciary to submit or file**
20 **additional information or documentation.**

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

27 **SECTION 8.** ORS 646.608 is amended to read:

28 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
29 vocation or occupation the person does any of the following:

30 (a) Passes off real estate, goods or services as the real estate, goods or services of another.

31 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
32 proval, or certification of real estate, goods or services.

33 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
34 ciation with, or certification by, another.

35 (d) Uses deceptive representations or designations of geographic origin in connection with real
36 estate, goods or services.

37 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
38 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
39 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
40 person does not have.

41 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
42 teriorated, altered, reconditioned, reclaimed, used or secondhand.

43 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
44 or that real estate or goods are of a particular style or model, if the real estate, goods or services
45 are of another.

1 (h) Disparages the real estate, goods, services, property or business of a customer or another
2 by false or misleading representations of fact.

3 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
4 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
5 advertisement discloses a limitation of quantity.

6 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
7 or amounts of price reductions.

8 (k) Makes false or misleading representations concerning credit availability or the nature of the
9 transaction or obligation incurred.

10 (L) Makes false or misleading representations relating to commissions or other compensation to
11 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
12 stration purposes or in exchange for submitting names of potential customers.

13 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
14 of the goods or real estate does not authorize the service or dismantling.

15 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
16 vides the information required under ORS 646.611.

17 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
18 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
19 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
20 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
21 discount or other value is contingent upon an event occurring after the time the customer enters
22 into the transaction.

23 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
24 cize a product, business or service.

25 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
26 not to deliver the real estate, goods or services as promised.

27 (r) Organizes or induces or attempts to induce membership in a pyramid club.

28 (s) Makes false or misleading representations of fact concerning the offering price of, or the
29 person's cost for real estate, goods or services.

30 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
31 known material defect or material nonconformity.

32 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

33 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
34 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
35 ation.

36 (w) Manufactures mercury fever thermometers.

37 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
38 law, or is:

39 (A) Prescribed by a person licensed under ORS chapter 677; and

40 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
41 on the proper cleanup of mercury should breakage occur.

42 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
43 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
44 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
45 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-

1 graph, “thermostat” means a device commonly used to sense and, through electrical communication
 2 with heating, cooling or ventilation equipment, control room temperature.

3 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 4 mercury light switches.

5 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

6 (bb) Violates ORS 646A.070 (1).

7 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

8 (dd) Violates the provisions of ORS **128.610 to 128.769** or 128.801 to 128.898.

9 (ee) Violates ORS 646.883 or 646.885.

10 (ff) Violates ORS 646.569.

11 (gg) Violates the provisions of ORS 646A.142.

12 (hh) Violates ORS 646A.360.

13 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

14 (jj) Violates ORS 646.563.

15 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

16 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 17 thereto.

18 (mm) Violates ORS 646A.210 or 646A.214.

19 (nn) Violates any provision of ORS 646A.124 to 646A.134.

20 (oo) Violates ORS 646A.095.

21 (pp) Violates ORS 822.046.

22 (qq) Violates ORS 128.001.

23 (rr) Violates ORS 646A.800 (2) to (4).

24 (ss) Violates ORS 646A.090 (2) to (4).

25 (tt) Violates ORS 87.686.

26 (uu) Violates ORS 646A.803.

27 (vv) Violates ORS 646A.362.

28 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

29 (xx) Violates ORS 180.440 (1) or 180.486 (1).

30 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

31 (zz) Violates ORS 87.007 (2) or (3).

32 (aaa) Violates ORS 92.405 (1), (2) or (3).

33 (bbb) Engages in an unlawful practice under ORS 646.648.

34 (ccc) Violates ORS 646A.365.

35 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

36 (eee) Sells a gift card in violation of ORS 646A.276.

37 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.

38 (ggg) Violates ORS 646A.430 to 646A.450.

39 (hhh) Violates a provision of ORS 744.318 to 744.384.

40 (iii) Violates a provision of ORS 646A.702 to 646A.720.

41 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
 42 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
 43 subject of the violation.

44 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

45 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50

- 1 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 - 2 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
 - 3 (nnn) Violates ORS 646A.082.
 - 4 (ooo) Violates ORS 646.647.
 - 5 (ppp) Violates ORS 646A.115.
 - 6 (qqq) Violates a provision of ORS 646A.405.
 - 7 (rrr) Violates ORS 646A.092.
 - 8 (sss) Violates a provision of ORS 646.644.
 - 9 (ttt) Violates a provision of ORS 646A.295.
 - 10 (uuu) Violates ORS 646A.564.
 - 11 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
12 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
13 do so or unless the person is an active member of the Oregon State Bar.
 - 14 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
 - 15 (xxx) Violates ORS 646A.806.
 - 16 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
17 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
 - 18 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
19 need not prove competition between the parties or actual confusion or misunderstanding.
 - 20 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
21 torney General has first established a rule in accordance with the provisions of ORS chapter 183
22 declaring the conduct to be unfair or deceptive in trade or commerce.
 - 23 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
24 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
25 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.
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