

Enrolled
House Bill 2129

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Revenue)

CHAPTER

AN ACT

Relating to charitable contributions by means of checkoff; creating new provisions; amending ORS 305.690, 305.700, 305.715, 305.720, 305.725, 305.730, 305.740, 305.745, 305.747, 305.753, 329.183, 396.364 and 496.375; repealing ORS 305.705, 305.710, 305.723, 305.727, 305.729, 305.735, 305.751, 305.799, 316.490, 316.491, 316.493 and 496.380; and prescribing an effective date.

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

SECTION 1. ORS 305.690 is amended to read:

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

[(1) *“Biennial years” means the two income tax years of individual taxpayers that begin in the two calendar years immediately following the calendar year in which a list is certified under ORS 305.715.*]

[(2)] (1) *“Commission” means the Oregon Charitable Checkoff Commission.*

[(3)] (2) *“Department” means the Department of Revenue.*

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

[(5) *“Form listed” or “form listing” means being listed on the Oregon individual income tax return form.*]

[(6) *“Instruction listing” means being listed on the Department of Revenue instructions for tax return checkoff contribution.*]

[(7)] (3) *“Internal Revenue Code” means the federal Internal Revenue Code as amended and in effect on December 31, [2018] 2020.*

SECTION 2. ORS 305.700 is amended to read:

305.700. (1) The Oregon Charitable Checkoff Commission shall select from its members a chairperson, a vice chairperson and other officers as necessary. The chairperson or vice chairperson shall serve until the expiration of the term of the chairperson or vice chairperson as a member of the commission, or until the chairperson or vice chairperson resigns or is removed in accordance with subsection (5) of this section. **The vice chairperson shall perform the duties assigned by the chairperson and, in accordance with the rules of the commission, shall perform the duties and have the powers of the chairperson when the chairperson is temporarily unable to perform the duties of the chairperson.**

(2) The commission shall meet at least once in *[every even-numbered]* **each** calendar year at a place, day and hour determined by the commission. The commission also may meet at other times

and places specified by the call of the chairperson or of a majority of the members of the commission. Regular and special meetings of the commission may be convened upon notice in the manner required by ORS 192.640.

(3) A majority of the members of the commission constitute a quorum for the transaction of business.

(4) In addition to the seven members of the commission, the Director of the Department of Revenue shall be a nonvoting, ex officio member. The director shall not be entitled to compensation and expenses as provided under ORS 292.495.

(5) If the chairperson or vice chairperson resigns or is removed from office, a new chairperson or vice chairperson shall be elected by the commission. Until a new chairperson is elected, the vice chairperson shall act as chairperson.

(6) The commission by a three-fifths vote of the members may declare the office of chairperson or vice chairperson vacant if the chairperson or vice chairperson is unavailable or otherwise unable to perform the duties of the office satisfactorily.

SECTION 3. ORS 305.715 is amended to read:

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

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

(c) If the commission determines that the entity is not qualified to be included on the *[eligibility roster]* **schedule**, the commission shall give notice in the manner provided in ORS 183.415, and ORS 305.740 *[(3)]* **(2)** shall apply.

(2) The commission shall certify in each *[even-numbered]* calendar year to the Department of Revenue *[a list of at least 12]* **those** charitable and governmental entities to be *[listed, if possible, on]* **included on a schedule of the Oregon individual income tax return** *[to receive]* **for the purpose of receiving** contributions by means of checkoff for the *[biennial years]* **year** indicated in the certification, as described in and subject to ORS *[305.710 and]* 305.745.

(3) Subject to ORS 305.740, an entity that is approved by the commission is qualified for inclusion on the schedule for six years and may thereafter reapply under this section by July 1 of the next year after the final year of qualification for continued inclusion in additional six-year periods, except that an entity that reapplies is not subject to the requirement to collect signatures under ORS 305.720 (4).

SECTION 4. ORS 305.720 is amended to read:

305.720. Subject to ORS *[305.710, 305.723 and]* 305.745, an entity qualifies *[for listing on the eligibility roster for form listing]* to receive contributions by means of checkoff if **the entity:**

(1) *[The entity]* Supports private charitable causes or engages in public activities that are consistent with policies and programs of the state and:

(a) Checkoff resources are used to augment existing programs or provide new funding to related activities of proven value;

(b) Checkoff funds are not to be used to meet the administrative expenses of the entity;

(c) Programs funded by checkoff resources result in substantial and direct benefits to the human and natural resources of the state that the Oregon Charitable Checkoff Commission determines are unlikely to occur under existing public and private programs; and

(d) **Unless the entity is a governmental entity**, after checkoff resources are received by the entity, the entity shows a pattern over several years of increasing its total revenues from other than

checkoff sources or reaches the level where no more than 50 percent of its revenues are from checkoff sources.

(2) *[The entity]* Is qualified to receive contributions that are tax deductible under the following:

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

(b) Section 501(k) of the Internal Revenue Code (relating to contributions to certain organizations providing child care).

(c) Section 7871 of the Internal Revenue Code (relating to contributions to Indian tribal governments).

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

(3) **Is:**

(a) **An Oregon Veterans' Home, as defined in ORS 408.362, the Nongame Wildlife Fund, the Alzheimer's Disease Research Fund, the Oregon Military Emergency Financial Assistance Fund, the Oregon Department of Veterans' Affairs Veterans Suicide Prevention and Outreach Program Fund, the Prekindergarten Program Trust Fund, the Oregon Volunteer Firefighters Association, but only if contributions are dedicated to the direct costs of firefighter training or to the assistance of a firefighter, or a firefighter's immediate family, who has experienced hardship resulting from the death, injury or illness of the firefighter, or the subaccount described in ORS 305.747 (4)(f) for contributions dedicated to the prevention of child abuse and neglect;**

(b) **A nonprofit organization described in section 501(c)(3) of the Internal Revenue Code with a gross income of at least \$1 million for the year prior to application; or**

(c) **The central office for a group of affiliated nonprofit organizations with a collective gross income of at least \$1 million in the year prior to the year of application.**

(4) **Collects 10,000 or more signatures from electors of this state attesting that the electors support the entity qualifying for inclusion on a schedule of the Oregon individual income tax return.**

[(3)] (5) *[The entity]* Makes application *[for listing]* within the time and in the manner prescribed by ORS 305.725.

[(4)] (6) *[The entity]* Files a financial report, and other information, with the commission as described under ORS 305.730.

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

SECTION 5. ORS 305.725 is amended to read:

305.725. (1) Each entity *[desiring]* **seeking** to receive contributions by means of checkoff on a **schedule of** the Oregon individual income tax return shall make initial application to the Oregon Charitable Checkoff Commission not later than July 1 of *[each even-numbered calendar year]* **the first tax year for which the entity seeks to be included on a schedule of the individual income tax return.** The application shall contain or be accompanied by:

(a) The name of the entity.

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

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

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

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

(f) If applicable, evidence that **the entity has complied with** ORS 128.610 to 128.769 [*has been complied with*].

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

(2) If, at any time, there is a change of person, officer or employee to whom contributions received by means of checkoff are to be remitted under ORS 305.747, the governing body of the entity shall give notice to the Department of Revenue. The notice shall contain the name of the entity and the name of the new person, officer or employee to whom contributions shall be remitted.

SECTION 6. ORS 305.730 is amended to read:

305.730. (1) Each entity [*desiring to be listed on*] **included on a schedule of** the Oregon individual income tax return in order to receive contributions by means of checkoff [*for the biennial years*] shall file a financial report with the Oregon Charitable Checkoff Commission no later than July 1 of [*each even-numbered year*] **the third tax year for which the entity seeks to be included on a schedule of the individual income tax return and no later than July 1 of every second year thereafter.**

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

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

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

(3) If required by the commission by rule, the entity shall also file with the commission its budget, financial statements or other documents or information needed by the commission to determine the use of funds received through checkoff.

(4) All information required by this section shall be as of the close of each fiscal **or calendar** year of the two [*fiscal years of the entity*] **years** that ended during the 12-month period ending prior to July 1 of the [*even-numbered calendar*] year **in which the financial report is filed.**

SECTION 7. ORS 305.740 is amended to read:

305.740. [(1) *Prior to the end of each even-numbered calendar year, and subject to subsection (2) of this section, The Oregon Charitable Checkoff Commission shall examine the list of entities included on the Oregon personal income tax return for the tax year beginning in the calendar year immediately preceding and shall determine if each entity listed is qualified under ORS 305.710 and 305.720 to be listed on the return to receive contributions by means of checkoff for the ensuing biennial years.*]

[(2)(a) *The Department of Revenue shall determine for each tax year if each entity listed for checkoff on the return for the preceding tax year meets the criteria under ORS 305.720 (5) and shall notify the commission, if and when appropriate. In determining the amount received in contributions from checkoffs for an entity for a particular tax year:*]

[(A) *For purposes of meeting the \$25,000 minimum contribution, the amount received in contributions from checkoffs in the amount shown in the department's financial statement for the fiscal year shall be counted.*]

[(B) *The amount of receipts shall not be reduced by the amount of administrative expense referred to in ORS 305.747.*]

[(b) *The determination of the department made under paragraph (a) of this subsection is final and may not be appealed. Notwithstanding subsection (1) of this section, an entity that has not met the criteria of ORS 305.720 (5) shall not be listed on the return for checkoff.*]

(1) The Oregon Charitable Checkoff Commission shall examine each entity included for checkoff on a schedule of the Oregon individual income tax return at least once every two years after initial application under ORS 305.725.

[3(a)] **(2)(a)** If the commission[, for any reason other than that contributions by means of checkoff did not reach the amount required under ORS 305.720 (5),] determines that an entity [included on the list] certified under ORS 305.715 (2) for the prior [biennial years] **tax year** is not qualified to be included, or that an entity making application is not qualified to be included, [or is not included because of determinations under ORS 305.710, on the list for the ensuing biennial years] **on the checkoff schedule on the individual income tax return for the current tax year**, the commission shall so order.

(b) The commission shall serve upon the entity, either by personal service or by certified mail, return receipt requested, the order issued under paragraph (a) of this subsection. The order shall comply with the applicable notice requirements of ORS 183.415.

(c) The entity or person or persons to whom the order is directed shall have 20 days from the date of personal service or mailing of the notice in which to make written application to the commission for a contested case hearing to be held in accordance with ORS 183.415 to 183.500 before the commission or the designee of the commission. In any hearing before the designee of the commission, the designee is authorized to issue the final order in the matter.

(d) Upon failure to request a contested case hearing within the time specified, the order shall become final.

(e) Appeal may be taken from a final order as specified under ORS 183.480 to 183.497.

(f) A final order issued by the commission, the designee of the commission, the Court of Appeals or the Oregon Supreme Court determining that an entity be included on the list certified under ORS 305.715 (2) may require only that the entity be included on the list next certified after the effective date of the final order.

SECTION 8. ORS 305.745 is amended to read:

305.745. (1) Upon receipt of the list certified by the Oregon Charitable Checkoff Commission under ORS 305.715 (2), the Department of Revenue shall cause the name of each entity so listed to be included on **a schedule of** the Oregon individual income tax return [forms] prepared for the [biennial years] **tax year** as certified.

(2) Individual taxpayers who file an Oregon income tax return and who will receive a tax refund from the department may [designate] **indicate** that a contribution **is to** be made to one or more **of the included** entities [listed]. [Designation] **Indication** shall be made in a space that the department shall cause to be printed on the [return form] **schedule**.

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

SECTION 9. ORS 305.747 is amended to read:

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

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

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

(c) Moneys appropriated under this subsection shall be transferred to the General Fund on a quarterly basis.

(3) The records of the department shall reflect the amount that the department has credited to each entity less administrative expenses. Subject to ORS 305.745 (3), the amount credited to each entity shall be equal to the amount checked off for that entity under ORS 305.745 less administrative expenses. The net amount of moneys credited to an entity shall be transferred by the department to the entity, as specified by law, on a periodic basis, or is continuously appropriated to the department for payment to the entity and the department shall pay and remit the net amount credited to the entity, without interest, to the entity on a periodic basis. The department shall adopt rules governing the transferring or remitting of checkoff moneys to the entities for which the amounts were checked off. The rules shall specify the time, no less often than quarterly, that the moneys are to be transferred or remitted to the entities by the department.

(4) Moneys contributed in accordance with ORS 305.690 to 305.753 shall be deposited as follows:

(a) In the Oregon Veterans Home Account established in ORS 408.368, if contributed to an Oregon Veterans' Home, as defined in ORS 408.362.

(b) In the Oregon Department of Veterans' Affairs Veterans Suicide Prevention and Outreach Program Fund established in ORS 406.083, if contributed to the Oregon Department of Veterans' Affairs Veterans Suicide Prevention and Outreach Program.

(c) In the Nongame Wildlife Fund established in ORS 496.385, if contributed to the Non-game Wildlife Fund.

(d) In the Alzheimer's Disease Research Fund established in ORS 431A.650, if contributed to the Alzheimer's Disease Research Fund.

(e) In the Oregon Military Emergency Financial Assistance Fund established in ORS 396.364, if contributed to the Oregon Military Emergency Financial Assistance Program.

(f) In the subaccount established pursuant to section 36 (2), chapter 1084, Oregon Laws 1999, or a successor subaccount, account or fund, an amount as credited to the subaccount or its successor, if contributed to assist in child abuse and neglect prevention.

(g) In the Prekindergarten Program Trust Fund established in ORS 329.183, if contributed for the purposes of the Prekindergarten Program Trust Fund.

(5)(a) The department shall be responsible for the expenditure of all commission funds and the Director of the Department of Revenue shall sign all vouchers for obligations incurred or for expenditures authorized by the commission.

(b) The director, on behalf of the commission, shall execute all agreements, contracts or other documents entered into or approved by the commission.

(c) Subject to any applicable provisions of the State Personnel Relations Law and the approval of the commission, the department may employ or remove executive, technical and expert assistants and other employees as needed and fix their compensation. However, executive, technical and expert assistants shall be in the unclassified service for purposes of the State Personnel Relations Law.

SECTION 10. ORS 305.753 is amended to read:

305.753. (1) The State Treasurer may solicit and accept from private and public sources and cause to be credited and paid to any entity gifts, grants and other donations, in money or otherwise, if the entity is currently listed or entitled to be listed on the Oregon tax return for checkoff.

(2) In accordance with ORS chapter 183, the Department of Revenue may *[adopt rules to carry out the purposes of ORS 305.690 to 305.753]* **adopt such rules as are necessary for the operation of the Oregon Charitable Checkoff Commission and the administration of ORS 305.690 to 305.753. The commission may recommend that the department adopt rules under this section.**

SECTION 11. ORS 329.183 is amended to read:

329.183. (1) The Prekindergarten Program Trust Fund is established as a fund in the State Treasury, separate and distinct from the General Fund. Interest earned by the trust fund shall be credited to the trust fund. The primary purposes of the trust fund are to:

(a) Assist eligible children with comprehensive services, including educational, social, health and nutritional development, to enhance their chances for success in school and life;

(b) Provide scholarships awarded to current and prospective early childhood care and education professionals, as described in ORS 329.181; and

(c) Provide grants to institutions of higher education to develop high-quality degree programs for early childhood care and education professionals, as described in ORS 329.181.

(2) For the purposes identified in subsection (1) of this section, the trust fund is continuously appropriated to the Early Learning Division.

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

(4) The trust fund may be *[listed]* **included**, if otherwise qualified, on **a schedule of** the Oregon **individual** income tax return for checkoff pursuant to application made to the Oregon Charitable Checkoff Commission under ORS 305.690 to 305.753 by the division.

SECTION 12. ORS 396.364 is amended to read:

396.364. The Oregon Military Emergency Financial Assistance Fund is established in the State Treasury, separate and distinct from the General Fund. The Oregon Military Emergency Financial Assistance Fund shall consist of moneys appropriated to the fund by the Legislative Assembly and moneys contributed through the charitable checkoff program described in ORS ~~[316.491]~~ **305.690 to 305.753**. Moneys in the fund are continuously appropriated to the Oregon Military Department for the purposes of funding hardship grants and loans described in ORS 396.362. Interest earned by the fund shall be credited to the fund.

SECTION 13. ORS 496.375 is amended to read:

496.375. As used in ORS ~~[496.380 to]~~ **496.385 and** 496.390 “nongame wildlife” means all wildlife species over which the State Fish and Wildlife Commission has jurisdiction, except game mammals, as defined in ORS 496.004, fur-bearing mammals as defined in ORS 496.004, game birds as defined in ORS 496.007 and game fish as defined in ORS 496.009.

SECTION 14. **ORS 305.705, 305.710, 305.723, 305.727, 305.729, 305.735, 305.751, 305.799, 316.490, 316.491, 316.493 and 496.380 are repealed.**

SECTION 15. **The amendments to ORS 305.690, 305.700, 305.715, 305.720, 305.725, 305.730, 305.740, 305.745, 305.747, 305.753, 329.183, 396.364 and 496.375 by sections 1 to 13 of this 2021 Act and the repeal of ORS 305.705, 305.710, 305.723, 305.727, 305.729, 305.735, 305.751, 305.799, 316.490, 316.491, 316.493 and 496.380 by section 14 of this 2021 Act apply to tax years beginning on or after January 1, 2021.**

SECTION 16. **This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.**

Passed by House March 15, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate April 19, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State