

New Oregon Law Targets Inefficient Charities

On June 4, 2013 Governor Kitzhaber signed Oregon House Bill 2060 into law. This law is Oregon's attempt to crack down on large charities that spend less than 30 percent on their stated mission. Such organizations will no longer qualify for tax deductible donations, may lose Oregon property tax exemptions, and may face possible fines.

This legislation was originally introduced in 2011, in part because of the Attorney General's "20 Worst Charities List" which included a number of charities that spent under five percent of their expenditures on their supposed charitable purpose. However, the original bill did not make it out of the House of Representatives. In 2013, the legislation was reintroduced and passed the House and Senate without opposition. Critics of the law say that these types of benchmark percentages do not provide accurate information to prospective donors, and instead donors should look at each organization as a whole. Previous attempts in other states to regulate inefficient charities have led to laws prohibiting "bad" charities from fundraising and soliciting donations. The Supreme Court ruled these types of laws illegal because they violated the First Amendment by prohibiting charities' speech in connection with soliciting donations and fundraising. (See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980); *Riley v. National Federation of the Blind*, 487 U.S. 781 (1988)). Oregon's new law avoids this concern because it does not affect a charity's ability to solicit donations, it simply removes the tax exemptions and incentives for donors.

How the New Law Works

The Oregon Department of Justice, Charitable Activities Section will oversee this law and is in the process of developing additional guidelines as necessary. The law will only affect

charities in operation over four years and with budgets over \$200,000. An organization's program expenditures are calculated by averaging the amounts indicated on the charity's IRS 990 forms from the previous three years. If an organization is found in violation, it will have the opportunity to challenge the finding under the Oregon Administrative Procedures Act. If the determination of violation is upheld, the organization's disqualification will stand until it can demonstrate that it meets the 30 percent requirement.

When an organization is disqualified, donors will no longer be able to claim tax deductions (Oregon only, this does not affect federal taxes). The organization will also be listed on the Department of Justice website, and all donation solicitations must "clearly and conspicuously state that contributions are not deductible as charitable donations for Oregon income tax purposes." 2013 Bill Text OR H.B. 2060. Failure to disclose this information is a "false or misleading representation" in violation of ORS 128.886 and may lead to a \$25,000 fine per violation.

The new law is expected to affect fewer than 100 of the 17,152 charities registered in Oregon (23 percent of which are based out of state). In fact, the 20 worst Oregon registered charities, in terms of amounts spent on mission, are all based out of state. Other states will be closely following this new law and may follow in Oregon's footsteps if it proves to be a success.

Anne Borton
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University of Oregon

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