

Senate Bill 693

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Bankers Association)

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**.

Allows trustee to terminate trust under certain circumstances. Clarifies authority of trustee to advance or borrow money for payment of expenses, losses or liabilities sustained by trustee in administration of trust or by reason of owning or possessing trust assets. Provides that trustee may borrow money from financial institution operated by or affiliated with trustee.

A BILL FOR AN ACT

1 Relating to trustees; creating new provisions; and amending ORS 130.205, 130.655 and 130.725.

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

3 **SECTION 1.** ORS 130.205 is amended to read:

4 130.205. (1) The court may modify the administrative or dispositive terms of a trust or terminate
5 the trust if modification or termination will further the purposes of the trust and the modification
6 or termination is requested by reason of circumstances not anticipated by the settlor. To the extent
7 practicable, the modification must be made in accordance with the settlor's probable intention.

8 (2) The court may modify the administrative terms of a trust if continuation of the trust on its
9 existing terms would be impracticable or wasteful, or would impair the trust's administration.

10 **(3) A trustee may terminate a trust if:**

11 **(a) Termination is appropriate by reason of circumstances not anticipated by the settlor;**

12 **(b) Termination will not be inconsistent with the material purposes of the trust;**

13 **(c) All qualified beneficiaries have consented to the termination;**

14 **(d) The trustee is not a beneficiary of the trust and has no duty of support for any ben-**
15 **eficiary of the trust; and**

16 **(e) In the case of a charitable trust, the Attorney General has consented to the termi-**
17 **nation, or contingencies have made the charitable interest negligible.**

18 [(3)] (4) Upon termination of a trust under this section, the trustee shall distribute the trust
19 property in a manner consistent with the purposes of the trust.

20 **SECTION 2.** ORS 130.655 is amended to read:

21 130.655. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

22 (2) Subject to the rights of persons dealing with or assisting the trustee as provided in ORS
23 130.855, a sale, encumbrance or other transaction involving the investment or management of trust
24 property entered into by the trustee for the trustee's own personal account or that is otherwise af-
25 fected by a conflict between the trustee's fiduciary and personal interests is voidable by a benefi-
26 ciary affected by the transaction unless:

27 (a) The transaction was authorized by the terms of the trust;

28 (b) The transaction was approved by a court;

29 (c) The beneficiary did not commence a judicial proceeding within the time allowed by ORS
30

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.

1 130.820;

2 (d) The beneficiary consented to the trustee's conduct, ratified the transaction or released the
3 trustee in the manner provided by ORS 130.840; or

4 (e) The transaction involves a contract entered into or claim acquired by the trustee before the
5 person became or contemplated becoming trustee.

6 (3) A sale, encumbrance or other transaction involving the investment or management of trust
7 property is presumed to be affected by a conflict between the personal and fiduciary interests of the
8 trustee if it is entered into by the trustee with:

9 (a) The trustee's spouse;

10 (b) The trustee's descendants, siblings or parents, or their spouses;

11 (c) An agent or attorney of the trustee; or

12 (d) A corporation or other person or enterprise in which the trustee, or a person that owns a
13 significant interest in the trustee, has an interest that might affect the trustee's best judgment.

14 (4) Unless a trustee can establish that the transaction was fair to the beneficiary, a transaction
15 between a trustee and a beneficiary that does not concern trust property but from which the trustee
16 obtains an advantage is voidable by the beneficiary if the transaction occurs during the existence
17 of the trust or while the trustee retains significant influence over the beneficiary.

18 (5) A transaction not concerning trust property in which the trustee engages in the trustee's
19 individual capacity involves a conflict between personal and fiduciary interests if the transaction
20 concerns an opportunity properly belonging to the trust.

21 (6) An investment by a trustee in securities of an investment company or an investment trust
22 to which the trustee, or an affiliate of the trustee, provides services in a capacity other than as
23 trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the
24 investment otherwise complies with the prudent investor rule of ORS 130.750 to 130.775. In addition
25 to compensation for acting as trustee, the trustee may be compensated by the investment company
26 or investment trust for providing those services out of fees charged to the trust. If the trustee re-
27 ceives compensation from the investment company or investment trust for providing investment ad-
28 visory or investment management services, the trustee at least annually shall give notice of the rate
29 and method by which that compensation was determined to the persons entitled under ORS 130.710
30 to receive a copy of the trustee's annual report.

31 (7) In voting shares of stock of a corporation or in exercising powers of control over similar
32 interests in other forms of business entities, the trustee shall act in the best interests of the bene-
33 ficiaries. If the trust is the sole owner of a corporation or other form of business entity, the trustee
34 shall elect or appoint directors or other managers who will manage the corporation or entity in the
35 best interests of the beneficiaries.

36 (8) This section does not preclude the following transactions, if fair to the beneficiaries:

37 (a) An agreement between a trustee and a beneficiary relating to the appointment or compen-
38 sation of the trustee;

39 (b) Payment of reasonable compensation to the trustee;

40 (c) A transaction between a trust and another trust, decedent's estate, custodianship or conser-
41 vatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

42 (d) A deposit of trust money in a financial institution operated by the trustee; [or]

43 (e) An advance by the trustee of money for the protection of the trust;

44 (f) **An advance by the trustee of money to the trust for the payment of expenses, losses**
45 **or liabilities sustained by the trustee in the administration of the trust or by reason of**

1 **owning or possessing any trust assets; or**

2 **(g) A loan to the trustee for the protection of the trust, or for the payment of expenses,**
 3 **losses or liabilities sustained by the trustee in the administration of the trust or by reason**
 4 **of owning or possessing any trust assets. A loan under this paragraph may be from a lender**
 5 **operated by, or affiliated with, the trustee.**

6 (9) The court may appoint a special fiduciary to make a decision with respect to any proposed
 7 transaction that might violate this section if entered into by the trustee.

8 **SECTION 3.** ORS 130.725 is amended to read:

9 130.725. Without limiting the authority conferred by ORS 130.720, a trustee may do any of the
 10 following:

11 (1) Collect trust property and accept or reject additions to the trust property from a settlor or
 12 any other person.

13 (2) Acquire or sell property, for cash or on credit, at public or private sale.

14 (3) Exchange, partition or otherwise change the character of trust property.

15 (4) Deposit trust money in an account in a financial institution, including a financial institution
 16 operated by the trustee, if the deposit is adequately insured or secured.

17 (5) Borrow money, with or without security, to be repaid from trust assets or otherwise, and
 18 advance money for the protection of the trust and for all expenses, losses and liabilities sustained
 19 in the administration of the trust or because of the holding or ownership of any trust assets. **Money**
 20 **may be borrowed under this subsection from any lender, including a financial institution**
 21 **operated by or affiliated with the trustee.** A trustee is entitled to be reimbursed out of the trust
 22 property or from property that has been distributed from the trust, with reasonable interest, for an
 23 advance of money under this subsection.

24 (6) Continue operation of any proprietorship, partnership, limited liability company, business
 25 trust, corporation or other form of business or enterprise in which the trust has an interest, and
 26 take any action that may be taken by shareholders, members or property owners, including merging,
 27 dissolving or otherwise changing the form of business organization or contributing additional capi-
 28 tal.

29 (7) Exercise the rights of an absolute owner of stocks and other securities, including the right
 30 to:

31 (a) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue
 32 a voting trust agreement;

33 (b) Hold a security in the name of a nominee or in other form without disclosure of the trust
 34 so that title may pass by delivery;

35 (c) Pay calls, assessments and other sums chargeable or accruing against the securities, and sell
 36 or exercise stock subscription or conversion rights; and

37 (d) Deposit the securities with a depository or other financial institution.

38 (8) Construct, repair, alter or otherwise improve buildings or other structures on real property
 39 in which the trust has an interest, demolish improvements, raze existing or erect new party walls
 40 or buildings on real property in which the trust has an interest, subdivide or develop land, dedicate
 41 land to public use or grant public or private easements, and make or vacate plats and adjust
 42 boundaries.

43 (9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement
 44 for exploration and removal of natural resources, with or without the option to purchase or renew,
 45 even though the period of the lease extends beyond the duration of the trust.

1 (10) Grant an option involving a sale, lease or other disposition of trust property or acquire an
2 option for the acquisition of property, even though the option is exercisable after the trust is ter-
3 minated, and exercise an option so acquired.

4 (11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's
5 agents, and beneficiaries against liability arising from the administration of the trust.

6 (12) Abandon or decline to administer property of no value or property of a value that is not
7 adequate to justify its collection or continued administration.

8 (13) Avoid possible liability for violation of environmental law by:

9 (a) Inspecting or investigating property the trustee holds or has been asked to hold, or property
10 owned or operated by an organization in which the trustee holds or has been asked to hold an in-
11 terest, for the purpose of determining the application of environmental law with respect to the
12 property;

13 (b) Taking action to prevent, abate or otherwise remedy any actual or potential violation of any
14 environmental law affecting property held directly or indirectly by the trustee, whether taken before
15 or after the assertion of a claim or the initiation of governmental enforcement;

16 (c) Declining to accept property into trust or disclaiming any power with respect to property
17 that is or may be burdened with liability for violation of environmental law;

18 (d) Compromising claims against the trust that may be asserted for an alleged violation of en-
19 vironmental law; and

20 (e) Paying the expense of any inspection, review, abatement or remedial action to comply with
21 environmental law.

22 (14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or
23 in part, a claim belonging to the trust.

24 (15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the
25 trust, and other expenses incurred in the administration of the trust.

26 (16) Exercise elections available under federal, state and local tax laws.

27 (17) Select a mode of payment under any employee benefit or retirement plan, annuity or life
28 insurance payable to the trustee, exercise rights under employee benefit or retirement plans, annu-
29 ities or policies of life insurance, including exercise of the right to indemnification for expenses and
30 against liabilities, and take appropriate action to collect the proceeds.

31 (18) Make loans out of trust property. The trustee may make a loan to a beneficiary on terms
32 and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee
33 may collect loans made to a beneficiary by making deductions from future distributions to the ben-
34 eficiary.

35 (19) Pledge trust property to guarantee loans made by others to the beneficiary.

36 (20) Appoint a trustee to act in another state, country or other jurisdiction with respect to trust
37 property located in the other state, country or other jurisdiction, confer upon the appointed trustee
38 all of the powers and duties of the appointing trustee, require that the appointed trustee furnish
39 security and remove any trustee so appointed.

40 (21) Make a distribution to a beneficiary who is under a legal disability or who the trustee
41 reasonably believes is financially incapable, either:

42 (a) Directly;

43 (b) By application of the distribution for the beneficiary's benefit;

44 (c) By paying the distribution to the beneficiary's conservator or, if the beneficiary does not
45 have a conservator, the beneficiary's guardian;

1 (d) By creating a custodianship under the Uniform Transfers to Minors Act by paying the dis-
2 tribution to a custodian for the beneficiary;

3 (e) By paying the distribution to any existing custodian under the Uniform Transfers to Minors
4 Act;

5 (f) By paying the distribution to an adult relative or other person having legal or physical care
6 or custody of the beneficiary, to be expended on the beneficiary's behalf, if the trustee does not
7 know of a conservator, guardian or custodian for the beneficiary; or

8 (g) By managing the distribution as a separate fund held by the trustee on behalf of the benefi-
9 ciary, subject to the beneficiary's continuing right to withdraw the distribution.

10 (22) On distribution of trust property or the division or termination of a trust, make distributions
11 in divided or undivided interests, allocate particular assets in proportionate or disproportionate
12 shares, value the trust property for those purposes and adjust for resulting differences in valuation.

13 (23) Resolve a dispute concerning the interpretation of the trust or the administration of the
14 trust by mediation, arbitration or other procedure for alternative dispute resolution.

15 (24) Prosecute or defend an action, claim or judicial proceeding in any state, country or other
16 jurisdiction to protect trust property and the trustee in the performance of the trustee's duties.

17 (25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the
18 exercise of the trustee's powers.

19 (26) On termination of the trust, exercise the powers appropriate to wind up the administration
20 of the trust and distribute the trust property to the persons entitled to the property.

21 (27) Allocate items of income or expense to either trust income or principal, as provided by law,
22 including creation of reserves out of income for depreciation, obsolescence or amortization, or for
23 depletion in mineral or timber properties.

24 (28) Employ persons, including attorneys, auditors, investment advisors or agents, to advise or
25 assist the trustee in the performance of administrative duties. A trustee may act based on the rec-
26 ommendations of professionals without independently investigating the recommendations.

27 (29) Apply for and qualify all or part of the property in the trust estate for special governmental
28 tax programs or other programs that may benefit the trust estate or any of the beneficiaries.

29 (30) Deposit securities in a clearing corporation as provided in ORS 128.100.

30 **SECTION 4. The amendments to ORS 130.205, 130.655 and 130.725 by sections 1 to 3 of this**
31 **2007 Act apply to all trusts, whether created before, on or after the effective date of this 2007**
32 **Act.**

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