

House Bill 2331

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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**.

Provides when interests of beneficiaries vest. Clarifies when trustee may or is required to divide trust into separate shares and when trustee may combine or divide trusts. Allows trustee to include capital gains in distributable net income under certain circumstances.

A BILL FOR AN ACT

1
2 Relating to the Oregon Uniform Trust Code; creating new provisions; and amending ORS 130.230,
3 130.232, 130.715 and 130.730.

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

5 **SECTION 1.** ORS 130.232 is amended to read:

6 130.232. (1) If the occurrence of an event, satisfaction of a condition or exercise of a power al-
7 lows or creates an obligation for the trustee to divide a trust or any portion of a trust into separate
8 shares or portions for the benefit of separate beneficiaries:

9 (a) **A separate share of a trust comes into existence at the earliest possible time that a**
10 **trustee may reasonably determine, based upon the facts, that a separate economic interest**
11 **exists for a beneficiary;**

12 [(1)] (b) Each **income beneficiary's** share resulting from the division of the trust will be deemed
13 to [be a new trust for the sole benefit of its beneficiaries] **have the beneficiary's share of income**
14 **based upon the beneficiary's share of the distributable net income for the trust's tax year**
15 **relative to that of the other beneficiaries;**

16 [(2)] (c) All of the terms of the trust instrument will be applied independently to each [new
17 trust] **beneficiary's share** created pursuant to this section except as terms are specifically limited
18 in the trust instrument; and

19 [(3)] (d) The trust or portion of the trust from which [the new trust] **a beneficiary's share**
20 originates will be deemed to terminate to the extent of the [new trust] **beneficiary's share**, subject
21 only to the proper administration of the terminated trust occasioned by the terminating event, con-
22 dition or exercise.

23 (2) **The provisions of this section are not elective and must be read so as to be consistent**
24 **with section 663(c) of the Internal Revenue Code, as in effect on December 31, 2013. Appli-**
25 **cation of this section shall apply for all tax years that the trust is in existence unless an**
26 **event occurs, the result of which is that the terms of the trust prevail, in which case the**
27 **requirements of appropriate trust administration may require and result in a different**
28 **treatment than would otherwise result in accordance with the provisions of this section.**

29 **SECTION 2.** ORS 130.230 is amended to read:

30 130.230. [After notice to all qualified beneficiaries, a trustee may combine two or more trusts into

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 *a single trust or divide a trust into two or more separate trusts, if the result does not materially impair*
 2 *rights of any beneficiary or adversely affect achievement of the purposes of the trust.] (1) Subject to*
 3 **subsection (2) of this section, a trustee may:**

4 **(a) Combine two or more trusts into a single trust by taking into account the pro rata**
 5 **economic interests of each beneficiary of each trust; or**

6 **(b) Divide a trust into two or more separate trusts.**

7 **(2) In taking any of the actions under subsection (1) of this section, the trustee shall:**

8 **(a) Provide notice to all qualified beneficiaries in accordance with ORS 130.733;**

9 **(b) Consider the individual rights of each beneficiary;**

10 **(c) Exercise due care and prudent judgment;**

11 **(d) Consider the terms of the trust instrument and amendments, if any, as well as all**
 12 **applicable statutory law; and**

13 **(e) Take the action only if the result does not materially impair the rights of any bene-**
 14 **ficiary or adversely affect achievement of the intent of the trustor.**

15 **SECTION 3.** ORS 130.715 is amended to read:

16 130.715. (1) A trustee shall exercise a discretionary power in good faith and in a manner that
 17 is in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
 18 The duty imposed by this subsection is not affected by the grant of discretion in the terms of the
 19 trust, even though the terms of the trust provide that the trustee has absolute, sole or uncontrolled
 20 discretion or use other words purporting to convey broad discretion.

21 (2) Subject to subsection (4) of this section, and unless the terms of the trust expressly provide
 22 otherwise:

23 (a) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the
 24 trustee a power to make discretionary distributions to or for the trustee's personal benefit may ex-
 25 ercise the power only in accordance with an ascertainable standard; and

26 (b) A trustee may not exercise a power to make discretionary distributions to satisfy a legal
 27 obligation of support that the trustee personally owes another person.

28 (3) A power the exercise of which is limited or prohibited by subsection (2) of this section may
 29 be exercised by a majority of the remaining trustees whose exercise of the power is not so limited
 30 or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special
 31 fiduciary with authority to exercise the power.

32 (4) Subsection (2) of this section does not apply to:

33 (a) A power held by the settlor's spouse who is the trustee of a trust for which a marital de-
 34 duction, as described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code, as in effect on
 35 January 1, 2006, was previously allowed;

36 (b) Any trust during any period that the trust may be revoked or amended by its settlor; or

37 (c) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c)
 38 of the Internal Revenue Code, as in effect on January 1, 2006.

39 **(5) Unless otherwise provided by the trust, a trustee may include capital gains from the**
 40 **sale or exchange of capital assets in distributable net income to the extent that the gains**
 41 **are, in a reasonable and impartial exercise of discretion by the trustee:**

42 **(a) Allocated to income pursuant to the trustee's power to adjust between principal and**
 43 **income under ORS 129.215;**

44 **(b) Allocated to principal and treated consistently by the trustee on the trust's books,**
 45 **records and tax returns as part of a distribution to a beneficiary; or**

1 (c) Allocated to principal but actually distributed to a beneficiary or utilized by the
 2 trustee in determining the amount that is distributed or required to be distributed to a
 3 beneficiary.

4 **SECTION 4.** ORS 130.730 is amended to read:

5 130.730. (1) **The interests of a beneficiary under a testamentary trust vest upon the death**
 6 **of the testator, and the interests of a beneficiary under a revocable or irrevocable trust vest**
 7 **when the trust becomes irrevocable, and not later, unless the will or trust clearly indicates**
 8 **a contrary intent.**

9 [(1)] (2) **Unless a will or trust clearly indicates a contrary intent**, upon the occurrence of
 10 an event, satisfaction of a condition or exercise of a power that terminates or partially terminates
 11 a trust or creates an obligation for the trustee to pay or distribute all or any portion of a trust to
 12 a beneficiary, the beneficiary's interest in the terminated trust, portion or distribution indefeasibly
 13 vests in the beneficiary as of the event, satisfaction or exercise, subject to ORS 114.600 to 114.725,
 14 rights of creditors and the administration and sale of trust property by the trustee. **Upon the ter-**
 15 **mination or partial termination of a trust or upon creation of the obligation for the trustee**
 16 **to pay or distribute all or any portion of a trust to a beneficiary under this subsection**, the
 17 trustee shall proceed expeditiously to distribute the trust property to the persons entitled to the
 18 property. The trustee may retain a reasonable reserve for the payment of debts, fees, expenses and
 19 taxes.

20 [(2)] (3) Incidental to a termination or partial termination of a trust, the trustee may request
 21 that a beneficiary execute a release of the trustee from liability for breach of trust. A release under
 22 this subsection is invalid to the extent:

23 (a) The release was induced by improper conduct of the trustee; or

24 (b) The trustee failed to adequately disclose to the beneficiary, at the time of the release, the
 25 material facts relating to the breach or sufficient information to enable the beneficiary to know of
 26 a potential claim or to inquire into the existence of a breach or potential claim.

27 **SECTION 5. The amendments to ORS 130.230, 130.232, 130.715 and 130.730 by sections 1**
 28 **to 4 of this 2015 Act apply to trusts executed on or after the effective date of this 2015 Act.**

29