

**Testimony before Senate Judiciary Committee
In support of HB 2608
On behalf of the Oregon State Bar Estate Planning and Administration Section
April 24, 2017**

Senator Prozanski, members of the Committee:

Good Afternoon. My name is Philip Jones and I am an attorney with Duffy Kekel LLP. I am here today as a representative of the Estate Planning and Administration section of the Oregon State Bar in support of HB 2608.

Oregon State Bar

The Oregon State Bar (OSB) is a public corporation and an instrumentality of the court with over 14,000 active members. The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. Among its core values are fairness and diversity. The Oregon State Bar licenses and disciplines lawyers and performs other functions to benefit the public: including lawyer referral services, modest means and veterans programs, and legal education for attorneys and members of the public.

Estate Planning and Administration Section

The Estate Planning and Administration section of the Oregon State Bar was originally formed in 1978, and today is made of up of over 1200 attorneys who practice estate planning and administration law in Oregon. We have members from 32 different Oregon counties, representing a wide variety of clients each with their own unique problems and concerns.

HB 2608

Two years ago, I appeared before this committee talking about House Bill 2331, which made several important changes to ORS Chapter 130, Oregon's Uniform Trust Code. That bill included four major sections that made four specific changes to the statute:

- Follow the federal internal revenue code rule known as the separate share rule and allow the trustor's intent regarding separate shares of trusts to control under ORS 130.232;
- Clarify that a trustee has the authority to combine or divide trusts under ORS 130.230,
- Authorize a fiduciary in Oregon to report gains from the sale or exchange of capital assets as distributable net income.
- Codify the early vesting rule that has been followed by the Oregon Supreme Court since 1911.

Unfortunately, one oversight slipped through both the drafting process and our review of the bill, and that was the effective date. The intention when HB 2331 was passed was that it would apply to all trust proceedings commenced after the bill was passed, regardless of when the underlying trust itself was executed. The way the bill was drafted however, it applied only to trusts executed after the bill went into effect, which considerably limits the bill's scope.

HB 2608 corrects this oversight by providing that the changes made in the previous bill will apply to all trust proceedings commenced after this bill goes into effect, as well as to trusts executed after HB 2331. In order to correct this problem as quickly as possible, HB 2608 contains an emergency clause, and takes effect immediately upon passage.

Thanks you for your time and your assistance correcting this important oversight.