

# House Bill 2623

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**.

Allows trustee of trust to make disbursements for trustee's compensation or compensation of person providing investment advisory or custodial services out of principal or income under certain circumstances.

Requires transaction between trustee and beneficiary of trust from which trustee obtains advantage to be outside trustee's business or on unusually unfavorable terms to be voidable by beneficiary.

## A BILL FOR AN ACT

1  
2 Relating to trusts; creating new provisions; and amending ORS 129.400, 129.405 and 130.655.

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

4 **SECTION 1.** ORS 129.400 is amended to read:

5 129.400. (1) A trustee shall make the following disbursements from income to the extent that  
6 they are not disbursements to which ORS 129.250 (2)(b) or (c) applies:

7 [(1)] (a) **Except as provided in subsection (2) of this section**, one-half of the regular com-  
8 pensation of the trustee [*and*];

9 (b) **Except as provided in subsection (2) of this section, one-half of the regular compen-  
10 sation** of any person providing investment advisory or custodial services to the trustee;

11 [(2)] (c) One-half of all expenses for accountings, judicial proceedings or other matters that in-  
12 volve both the income and remainder interests;

13 [(3)] (d) All of the other ordinary expenses incurred in connection with the administration,  
14 management or preservation of trust property and the distribution of income, including interest,  
15 ordinary repairs, regularly recurring taxes assessed against principal and expenses of a proceeding  
16 or other matter that concerns primarily the income interest; and

17 [(4)] (e) Recurring premiums on insurance covering the loss of a principal asset or the loss of  
18 income from or use of the asset.

19 (2)(a) **If, in the reasonable judgment of the trustee, charging all or a part of the trustee's  
20 regular compensation or the regular compensation of any person providing investment advi-  
21 sory or custodial services to the trustee to principal is impracticable because of lack of suf-  
22 ficient cash and readily marketable assets or inadvisable because of the nature of the  
23 principal assets, the trustee may pay all or part of the trustee's regular compensation or the  
24 regular compensation of any person providing investment advisory or custodial services to  
25 the trustee out of income. Income of the trust is not entitled to reimbursement from prin-  
26 cipal for payments under this paragraph.**

27 (b) **If, in the reasonable judgment of the trustee, charging all or part of the trustee's  
28 regular compensation or the regular compensation of any person providing investment advi-**

**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 sory or custodial services to the trustee to income is impracticable because of the lack of  
 2 sufficient income, or in order to provide increased income to the beneficiary, the trustee  
 3 may pay all or part of the trustee's regular compensation or the regular compensation of  
 4 any person providing investment advisory or custodial services to the trustee out of princi-  
 5 pal.

6 (3) Notwithstanding subsection (1) of this section, during the lifetime of the settlor of a  
 7 revocable trust, the trustee may charge trust expenses, including the trustee's compen-  
 8 sation, as directed by the settlor.

9 **SECTION 2.** ORS 129.405 is amended to read:

10 129.405. (1) A trustee shall make the following disbursements from principal:

11 (a) The remaining [*one-half*] **portions** of the disbursements described in ORS 129.400 [(1) and  
 12 (2)] (1)(a) to (c);

13 (b) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution  
 14 or termination and disbursements made to prepare property for sale;

15 (c) Payments on the principal of a trust debt;

16 (d) Expenses of a proceeding that concerns primarily principal, including a proceeding to con-  
 17 strue the trust or to protect the trust or its property;

18 (e) Premiums paid on a policy of insurance not described in ORS 129.400 [(4)] (1)(e) of which the  
 19 trust is the owner and beneficiary;

20 (f) Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and

21 (g) Disbursements related to environmental matters, including reclamation, assessing environ-  
 22 mental conditions, remedying and removing environmental contamination, monitoring remedial ac-  
 23 tivities and the release of substances, preventing future releases of substances, collecting amounts  
 24 from persons liable or potentially liable for the costs of those activities, penalties imposed under  
 25 environmental laws or regulations and other payments made to comply with those laws or regu-  
 26 lations, statutory or common law claims by third parties and defending claims based on environ-  
 27 mental matters.

28 (2) If a principal asset is encumbered with an obligation that requires income from that asset  
 29 to be paid directly to the creditor, the trustee shall transfer from principal to income an amount  
 30 equal to the income paid to the creditor in reduction of the principal balance of the obligation.

31 **SECTION 3.** ORS 130.655 is amended to read:

32 130.655. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

33 (2) Subject to the rights of persons dealing with or assisting the trustee as provided in ORS  
 34 130.855, a sale, encumbrance or other transaction involving the investment or management of trust  
 35 property entered into by the trustee for the trustee's own personal account or that is otherwise af-  
 36 fected by a conflict between the trustee's fiduciary and personal interests is voidable by a benefi-  
 37 ciary affected by the transaction unless:

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

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

40 (c) The beneficiary did not commence a judicial proceeding within the time allowed by ORS  
 41 130.820;

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

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

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

4 (a) The trustee's spouse;

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

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

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

9 (4) Unless a trustee can establish that the transaction was fair to the beneficiary, a transaction  
10 between a trustee and a beneficiary [*that does not concern trust property but from which the trustee*  
11 *obtains an advantage is voidable by the beneficiary if the transaction occurs during the existence of the*  
12 *trust or while the trustee retains significant influence over the beneficiary.*] **is voidable by the bene-**  
13 **ficiary if:**

14 (a) **The transaction does not concern trust property;**

15 (b) **The trustee obtains an advantage from the transaction;**

16 (c) **The transaction is outside the ordinary course of the trustee's business or on terms**  
17 **and conditions substantially less favorable than those the trustee offers similarly situated**  
18 **customers; and**

19 (d) **The transaction occurs during the existence of the trust or while the trustee retains**  
20 **significant influence over the beneficiary.**

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

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

34 (7) In voting shares of stock of a corporation or in exercising powers of control over similar  
35 interests in corporations and other forms of business entities, the trustee shall act in the best in-  
36 terests of the beneficiaries. If the trust is an owner of a corporation or other form of business entity,  
37 the trustee shall elect or appoint directors or other managers who will manage the corporation or  
38 entity in the best interests of the beneficiaries.

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

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

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

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

45 (d) A deposit of trust money in a financial institution operated by the trustee;

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

2 (f) An advance by the trustee of money to the trust for the payment of expenses, losses or li-  
3 abilities sustained by the trustee in the administration of the trust or by reason of owning or pos-  
4 ssuming any trust assets; or

5 (g) A loan to the trustee for the protection of the trust, or for the payment of expenses, losses  
6 or liabilities sustained by the trustee in the administration of the trust or by reason of owning or  
7 possessing any trust assets. A loan under this paragraph may be from a lender operated by, or af-  
8 filiated with, the trustee.

9 (9) A trustee is not required to object to a modification, reformation or termination of the trust  
10 under ORS 130.045, 130.200, 130.205, 130.210, 130.215, 130.220 or 130.225, or a trust combination or  
11 division under ORS 130.230, solely because of the existence of the duty of loyalty under subsection  
12 (1) of this section or the duty to administer the trust under ORS 130.650 (1).

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

15 **SECTION 4. The amendments to ORS 130.655 by section 3 of this 2017 Act apply only to**  
16 **transactions occurring on or after the effective date of this 2017 Act.**

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