

House Bill 2598

Sponsored by Representative FAHEY (Pre-session filed.)

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**.

Permits creation of noncharitable business purpose trust. Provides exemption from statutory rule against perpetuities for noncharitable business purpose trust if terms of trust expressly elect exemption.

A BILL FOR AN ACT

1
2 Relating to noncharitable trusts with business purposes; amending ORS 105.965 and 130.190.

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

4 **SECTION 1.** ORS 130.190 is amended to read:

5 130.190. Except as otherwise provided in ORS 130.185 or by another statute:

6 (1) A trust may be created for a noncharitable purpose without a definite or definitely
7 ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the
8 trustee.

9 **(2) Except as provided in subsection (5) of this section, a trust authorized by this section**
10 *[The trust]* may not be enforced for more than 90 years.

11 *[(2)]* **(3)** A trust authorized by this section may be enforced by a person appointed in the terms
12 of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the
13 court.

14 *[(3)]* **(4)** Property of a trust authorized by this section may be applied only to its intended use,
15 except to the extent the court determines that the value of the trust property exceeds the amount
16 required for the intended use. Trust property not required for the intended use must be distributed
17 to those persons designated in the trust. In the absence of a designation, the property shall be dis-
18 tributed to the settlor if the settlor is living when the distribution is made, or to the settlor's suc-
19 cessors in interest if the settlor is not living when the distribution is made.

20 **(5)(a) A trust authorized by this section may be created for a noncharitable business**
21 **purpose as provided in this subsection.**

22 **(b) A trust authorized under this subsection must hold an ownership interest of any**
23 **corporation, partnership, limited partnership, cooperative, limited liability company, limited**
24 **liability partnership or joint venture, other than an entity subject to the provisions of ORS**
25 **chapter 65, in a way that provides for the achievement of objectives in the management of**
26 **the entity other than the direct financial or economic benefit of any shareholder, partner**
27 **or member through share value or profit maximization.**

28 **(c) A noncharitable business purpose may include, but is not limited to, meeting a**
29 **third-party standard, as defined in ORS 60.750.**

30 **(d) Administration of a trust created for a noncharitable business purpose may provide**
31 **indirect, incidental or discretionary benefits to persons provided that the trust is adminis-**

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 **tered to achieve the noncharitable business purpose of the trust.**

2 **(e) A trust authorized by this subsection may be enforced for more than 90 years if the**
3 **terms of the trust provide that the trust will be enforceable for a specific period not less**
4 **than 90 years or in perpetuity.**

5 **SECTION 2.** ORS 105.965 is amended to read:

6 105.965. ORS 105.950, statutory rule against perpetuities, does not apply to:

7 (1) A nonvested property interest or a power of appointment arising out of a nondonative
8 transfer, except a nonvested property interest or a power of appointment arising out of:

9 (a) A premarital or postmarital agreement;

10 (b) A separation or divorce settlement;

11 (c) A spouse's election;

12 (d) A similar arrangement arising out of a prospective existing or previous marital relationship
13 between the parties;

14 (e) A contract to make or not to revoke a will or trust;

15 (f) A contract to exercise or not to exercise a power of appointment;

16 (g) A transfer in satisfaction of a duty of support; or

17 (h) A reciprocal transfer;

18 (2) A fiduciary's power relating to the administration or management of assets, including the
19 power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine
20 principal and income;

21 (3) A power to appoint a fiduciary;

22 (4) A discretionary power of a trustee to distribute principal before termination of a trust to a
23 beneficiary having an indefeasibly vested interest in the income and principal;

24 (5) A nonvested property interest held by a charity, government or governmental agency or
25 subdivision, if the nonvested property interest is preceded by an interest held by another charity,
26 government or governmental agency or subdivision;

27 (6) A nonvested property interest in or a power of appointment with respect to a trust or other
28 property arrangement forming part of a pension, profit sharing, stock bonus, health, disability, death
29 benefit, income deferral or other current or deferred benefit plan for one or more employees, inde-
30 pendent contractors or their beneficiaries or spouses, to which contributions are made for the pur-
31 pose of distributing to or for the benefit of the participants or their beneficiaries or spouses the
32 property, income or principal in the trust or other property arrangement, except a nonvested prop-
33 erty interest or a power of appointment that is created by an election of a participant or a benefi-
34 ciary or spouse; [or]

35 (7) A property interest, power of appointment or arrangement that was not subject to the
36 common-law rule against perpetuities or is excluded by another statute of this state[.]; or

37 **(8) A trust created for a noncharitable business purpose described in ORS 130.190 (5), but**
38 **only if the terms of the trust:**

39 **(a) Expressly state that the statutory rule against perpetuities does not apply; and**

40 **(b) Include a specific reference to this subsection.**

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