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

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

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

SECTION 1. ORS 130.190 is amended to read:

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

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

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

(3) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court.

(4) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Trust property not required for the intended use must be distributed to those persons designated in the trust. In the absence of a designation, the property shall be distributed to the settlor if the settlor is living when the distribution is made, or to the settlor's successors in interest if the settlor is not living when the distribution is made.

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

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

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

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

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

SECTION 2. ORS 105.965 is amended to read:
105.965. ORS 105.950, statutory rule against perpetuities, does not apply to:
(1) A nonvested property interest or a power of appointment arising out of a nondonative
transfer, except a nonvested property interest or a power of appointment arising out of:
(a) A premarital or postmarital agreement;
(b) A separation or divorce settlement;
(c) A spouse's election;
(d) A similar arrangement arising out of a prospective existing or previous marital relationship
between the parties;
(e) A contract to make or not to revoke a will or trust;
(f) A contract to exercise or not to exercise a power of appointment;
(g) A transfer in satisfaction of a duty of support; or
(h) A reciprocal transfer;
(2) A fiduciary's power relating to the administration or management of assets, including the
power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine
principal and income;
(3) A power to appoint a fiduciary;
(4) A discretionary power of a trustee to distribute principal before termination of a trust to a
beneficiary having an indefeasibly vested interest in the income and principal;
(5) A nonvested property interest held by a charity, government or governmental agency or
subdivision, if the nonvested property interest is preceded by an interest held by another charity,
government or governmental agency or subdivision;
(6) A nonvested property interest in or a power of appointment with respect to a trust or other
property arrangement forming part of a pension, profit sharing, stock bonus, health, disability, death
benefit, income deferral or other current or deferred benefit plan for one or more employees, inde-
dependent contractors or their beneficiaries or spouses, to which contributions are made for the pur-
pose of distributing to or for the benefit of the participants or their beneficiaries or spouses the
property, income or principal in the trust or other property arrangement, except a nonvested prop-
erty interest or a power of appointment that is created by an election of a participant or a benefi-
ciary or spouse; [or]
(7) A property interest, power of appointment or arrangement that was not subject to the
common-law rule against perpetuities or is excluded by another statute of this state[.]; or
(8) A trust created for a noncharitable business purpose described in ORS 130.190 (5), but
only if the terms of the trust:
(a) Expressly state that the statutory rule against perpetuities does not apply; and
(b) Include a specific reference to this subsection.