

Requested by Representative FAHEY

**PROPOSED AMENDMENTS TO
HOUSE BILL 2598**

1 On page 1 of the printed bill, line 2, after “purposes;” delete the rest of
2 the line and insert “creating new provisions; and amending ORS 105.965,
3 130.040, 130.045 and 130.155.”.

4 Delete lines 4 through 31 and delete page 2 and insert:

5 **“SECTION 1. Section 2 of this 2019 Act is added to and made a part
6 of ORS chapter 130.**

7 **“SECTION 2. (1) A stewardship trust may be created under this
8 section for a business purpose without a definite or definitely
9 ascertainable beneficiary. The business purpose may seek economic
10 and noneconomic benefits.**

11 **“(2) A stewardship trust may hold an ownership interest of any
12 corporation, partnership, limited partnership, cooperative, limited li-
13 ability company, limited liability partnership or joint venture.**

14 **“(3) A stewardship trust may be enforced by one or more trust
15 enforcers appointed in the terms of the trust. The terms of the trust
16 may provide a process for appointing successor trust enforcers. If at
17 any time no person is acting as trust enforcer, the court shall name
18 one or more trust enforcers. Each trust enforcer shall enforce the
19 purpose and the terms of the trust and shall exercise authority as a
20 fiduciary. If more than one person is acting as a trust enforcer, action
21 may be taken by a majority of the persons acting as trust enforcers.**

1 **A trust enforcer is not a beneficiary of a trust created pursuant to this**
2 **section, but a trust enforcer has the rights of a qualified beneficiary.**

3 **“(4) A stewardship trust must have a trust stewardship committee**
4 **with at least three persons as members. Each member of the trust**
5 **stewardship committee shall exercise authority as a fiduciary. The**
6 **terms of the trust may appoint the initial members of the trust**
7 **stewardship committee and may provide a process for appointing suc-**
8 **cessor members. A vacancy on the trust stewardship committee must**
9 **be filled if the trust stewardship committee has fewer than three**
10 **members.**

11 **“(5) A vacancy on the trust stewardship committee that is required**
12 **to be filled must be filled in the following order of priority:**

13 **“(a) By a person designated in the terms of the trust.**

14 **“(b) By a person appointed by unanimous agreement of the trust**
15 **enforcers.**

16 **“(c) By a person appointed by the court.**

17 **“(6) Unless the terms of the trust provide otherwise and except as**
18 **provided in subsections (7)(d) and (11) of this section, the trust**
19 **stewardship committee may take action by a majority vote of its**
20 **members.**

21 **“(7) Unless the terms of the trust provide otherwise, the trust**
22 **stewardship committee has the power, in carrying out the purposes**
23 **of the trust and after notice to the trust enforcers, to:**

24 **“(a) Remove a trustee, with or without cause;**

25 **“(b) Appoint one or more successor trustees or cotrustees;**

26 **“(c) Remove a trust enforcer, with or without cause;**

27 **“(d) Remove a member of the trust stewardship committee, by**
28 **unanimous vote of all other members of the trust stewardship com-**
29 **mittee;**

30 **“(e) Direct distributions from the trust; and**

1 “(f) Exercise all rights belonging to a trustee, including the right
2 to vote stock owned by the trust.

3 “(8) Unless the terms of the trust provide otherwise, a member of
4 the trust stewardship committee or a trust enforcer may resign:

5 “(a) After at least 30 days’ notice to the trustee, all trust enforcers,
6 and all members of the trust stewardship committee; or

7 “(b) At any time with the approval of a court.

8 “(9) The trust stewardship committee must send a report to the
9 trustee and to the trust enforcers at least annually showing receipts
10 and disbursements and listing trust property and liabilities. The trust
11 stewardship committee shall keep the trustee and the trust enforcers
12 reasonably informed about the administration of the trust and of the
13 material facts necessary for the trustee to comply with the trustee’s
14 duties under ORS 130.710 and for the trust enforcers to protect the
15 purposes of the trust.

16 “(10) A trustee shall act in accordance with a direction from the
17 trust stewardship committee unless the action is manifestly contrary
18 to the terms of the trust or the trustee knows that the action would
19 constitute a serious breach of a fiduciary duty that the trust
20 stewardship committee, a trust enforcer or the trustee owes to the
21 trust. A trustee is liable only for willful misconduct and is not liable
22 for reliance on documents provided by the trust stewardship commit-
23 tee or a trust enforcer.

24 “(11) Unless the terms of the trust provide otherwise, the trust
25 stewardship committee and the trust enforcers, acting together, may
26 modify or terminate a stewardship trust by unanimous agreement of
27 the members of the trust stewardship committee and unanimous
28 agreement of the trust enforcers.

29 “(12) Upon termination of a stewardship trust, the trustee shall
30 distribute all remaining trust property as the terms of the trust pro-

1 **vide, or if the terms of the trust do not provide for complete distrib-**
2 **ution of the property, as a court determines to be consistent with the**
3 **purposes for which the trust was created.**

4 **“(13) A person serving as a trustee may not serve as a trust**
5 **enforcer or as a member of the trust stewardship committee, and a**
6 **person serving as a trust enforcer may not serve as a member of the**
7 **trust stewardship committee.**

8 **“(14) A stewardship trust may be enforced for more than 90 years**
9 **if the terms of the trust provide that the trust will be enforceable for**
10 **a specific period not less than 90 years or in perpetuity.**

11 **“(15) This section does not apply to trusts created pursuant to ORS**
12 **60.254.**

13 **“SECTION 3.** ORS 130.040 is amended to read:

14 “130.040. (1) A charitable organization expressly designated to receive
15 distributions under the terms of a charitable trust has the rights of a quali-
16 fied beneficiary under this chapter if the charitable organization is otherwise
17 a qualified beneficiary as defined in ORS 130.010.

18 “(2) A person appointed to enforce a trust created for the care of an ani-
19 mal or another noncharitable purpose as provided in ORS 130.185 or 130.190
20 has the rights of a qualified beneficiary under this chapter.

21 **“(3) A person appointed as a trust enforcer of a stewardship trust**
22 **as provided in section 2 of this 2019 Act has the rights of a qualified**
23 **beneficiary under this chapter.**

24 “[3] (4) The Attorney General has the rights of a qualified beneficiary
25 with respect to a charitable trust having its principal place of administration
26 in Oregon.

27 **“SECTION 4.** ORS 130.045 is amended to read:

28 “130.045. (1) For purposes of this section, ‘interested persons’ means:

29 “(a) Any settlor of a trust who is living;

30 “(b) All qualified beneficiaries;

1 “(c) Any acting trustee of the trust; *[and]*

2 “(d) The Attorney General if the trust is a charitable trust; **and**

3 **“(e) All members of a trust stewardship committee acting pursuant**
4 **to section 2 of this 2019 Act.**

5 “(2) If the trust or a portion of the trust is a charitable trust and is
6 irrevocable, and the settlor retains a power to change the beneficiaries of the
7 charitable trust during the settlor’s lifetime or upon the settlor’s death, the
8 Attorney General shall be substituted as the sole interested person to rep-
9 resent all charitable trust beneficiaries whose beneficial interests are subject
10 to the settlor’s retained power.

11 “(3)(a) Except as otherwise provided in subsection (4) of this section, in-
12 terested persons may enter into a nonjudicial settlement agreement with re-
13 spect to any matter involving a trust.

14 “(b) If the agreement is not filed with the court under subsection (6) of
15 this section, the agreement is binding on all parties to the agreement.

16 “(c) If the agreement is filed with the court, the agreement is binding as
17 provided in subsections (6) and (7) of this section unless, after the filing of
18 objections and a hearing, the court does not approve the agreement. If the
19 court does not approve the agreement, the agreement is not binding on any
20 beneficiary or party to the agreement.

21 “(4) A nonjudicial settlement agreement is valid only to the extent the
22 agreement does not violate a material purpose of the trust and includes
23 terms and conditions that could be properly approved by the court under this
24 chapter or other applicable law.

25 “(5) Matters that may be resolved by a nonjudicial settlement agreement
26 include:

27 “(a) The interpretation or construction of the terms of the trust or other
28 writings that affect the trust.

29 “(b) The approval of a trustee’s report or accounting.

30 “(c) Direction to a trustee to refrain from performing a particular act or

1 the grant to a trustee of any necessary or desirable power.

2 “(d) The resignation or appointment of a trustee or cotrustee and the de-
3 termination of a trustee’s compensation.

4 “(e) Transfer of a trust’s principal place of administration.

5 “(f) Liability of a trustee for an action or failure to act relating to the
6 trust.

7 “(g) Determining classes of creditors, beneficiaries, heirs, next of kin or
8 other persons.

9 “(h) Resolving disputes arising out of the administration or distribution
10 of the trust.

11 “(i) Modifying the terms of the trust, including extending or reducing the
12 period during which the trust operates.

13 “(6)(a) Any interested person may file a settlement agreement entered into
14 under this section, or a memorandum summarizing the provisions of the
15 agreement, with the circuit court for any county where trust assets are lo-
16 cated or where the trustee administers the trust.

17 “(b) After collecting the fee provided for in subsection (8) of this section,
18 the clerk shall enter the agreement or memorandum of record in the court’s
19 register.

20 “(c) Within five days after the filing of an agreement or memorandum
21 under this subsection, the person making the filing must serve a notice of
22 the filing and a copy of the agreement or memorandum on each beneficiary
23 of the trust whose address is known at the time of the filing and who is not
24 a party to the agreement. Service may be made personally, or by registered
25 or certified mail, return receipt requested. The notice of filing shall be sub-
26 stantially in the following form:

27 “ _____
28 CAPTION NOTICE OF FILING OF
29 OF CASE SETTLEMENT AGREEMENT
30 OR MEMORANDUM OF

1 SETTLEMENT AGREEMENT

2
3 You are hereby notified that the attached document was filed by the
4 undersigned in the above entitled court on the _____ day of _____, ____.
5 Unless you file objections to the agreement within 60 days after that date,
6 the agreement will be approved and will be binding on all beneficiaries and
7 parties to the agreement.

8 If you file objections within the 60-day period, the court will fix a time
9 and place for a hearing. At least 10 days before the date of that hearing, you
10 must serve a copy of your objections and give notice of the time and place
11 of the hearing to all beneficiaries and parties to the agreement. See ORS
12 130.045.

13 _____
14 Signature

15 “ _____
16 “(d) Proof of mailing of the notices required under this subsection must
17 be filed with the court. Proof of service may be made by a certificate of
18 service in the form provided by ORCP 7 F, by a signed acceptance of service
19 or by a return receipt from the postal authorities.

20 “(e) If no objections are filed with the court within 60 days after the filing
21 of the agreement or memorandum, the agreement is effective and binding on
22 all beneficiaries who received notice under paragraph (c) of this subsection
23 and all beneficiaries who waived notice under subsection (7)(e) of this sec-
24 tion.

25 “(7)(a) If objections are filed with the court within 60 days after the filing
26 of a settlement agreement or memorandum under this section, the clerk of
27 the court shall collect the fee provided in subsection (8) of this section. Upon
28 the filing of objections, the court shall fix a time and place for a hearing.
29 The person filing the objections must serve a copy of the objections on all
30 beneficiaries who are parties to the agreement and all beneficiaries who re-

1 ceived notice under subsection (6)(c) of this section, and give notice to those
2 persons of the time and place fixed by the court for a hearing. Service must
3 be made at least 10 days before the date set by the court for the hearing.
4 Service of the objections may be made personally or by registered or certified
5 mail, return receipt requested.

6 “(b) Proof of mailing of objections must be filed with the court. Proof of
7 service may be made by a certificate of service in the form provided by ORCP
8 7 F, by a signed acceptance of service or by a return receipt from the postal
9 authorities.

10 “(c) The court shall approve an agreement entered into under this section
11 after a hearing upon objections filed under this subsection unless:

12 “(A) The agreement does not reflect the signatures of all persons required
13 by this section;

14 “(B) The agreement is not authorized by this section; or

15 “(C) Approval of the agreement would not be equitable to beneficiaries
16 who are not interested persons and who are not parties to the agreement.

17 “(d) An agreement approved by the court after a hearing is binding on
18 all beneficiaries and parties to the agreement.

19 “(e) Beneficiaries entitled to notice under subsection (6)(c) of this section
20 may waive the notice.

21 “(8) The clerk of the circuit court shall collect in advance the filing fees
22 established under ORS 21.135 for the filing of an agreement or memorandum
23 of agreement under subsection (6) of this section and for the filing of ob-
24 jections under subsection (7) of this section.

25 **“SECTION 5.** ORS 130.155 is amended to read:

26 “130.155. (1) A trust is created only if all of the following requirements
27 are met:

28 “(a) The settlor has capacity to create a trust.

29 “(b) The settlor indicates an intention to create the trust.

30 “(c) The trust has a definite beneficiary or is:

1 “(A) A charitable trust;

2 “(B) A trust for the care of an animal, as provided in ORS 130.185; [or]

3 “(C) A trust for a noncharitable purpose, as provided in ORS 130.190; **or**

4 **“(D) A stewardship trust, as provided in section 2 of this 2019 Act.**

5 “(d) The trustee has duties to perform.

6 “(e) The same person is not the sole trustee and sole beneficiary.

7 “(2) A beneficiary is definite for the purposes of subsection (1)(c) of this

8 section if the beneficiary can be ascertained when the trust is created or at

9 any time thereafter, subject to any applicable rule against perpetuities.

10 “(3) A power of a trustee to select a beneficiary from an indefinite class

11 is valid. If the power is not exercised within a reasonable time, the power

12 fails and the property subject to the power passes to the persons who would

13 have taken the property had the power not been conferred.

14 **“SECTION 6.** ORS 105.965 is amended to read:

15 “105.965. ORS 105.950, statutory rule against perpetuities, does not apply

16 to:

17 “(1) A nonvested property interest or a power of appointment arising out

18 of a nondonative transfer, except a nonvested property interest or a power

19 of appointment arising out of:

20 “(a) A premarital or postmarital agreement;

21 “(b) A separation or divorce settlement;

22 “(c) A spouse’s election;

23 “(d) A similar arrangement arising out of a prospective existing or pre-

24 vious marital relationship between the parties;

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

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

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

28 “(h) A reciprocal transfer;

29 “(2) A fiduciary’s power relating to the administration or management of

30 assets, including the power of a fiduciary to sell, lease or mortgage property,

1 and the power of a fiduciary to determine principal and income;

2 “(3) A power to appoint a fiduciary;

3 “(4) A discretionary power of a trustee to distribute principal before ter-
4 mination of a trust to a beneficiary having an indefeasibly vested interest
5 in the income and principal;

6 “(5) A nonvested property interest held by a charity, government or gov-
7 ernmental agency or subdivision, if the nonvested property interest is pre-
8 ceded by an interest held by another charity, government or governmental
9 agency or subdivision;

10 “(6) A nonvested property interest in or a power of appointment with re-
11 spect to a trust or other property arrangement forming part of a pension,
12 profit sharing, stock bonus, health, disability, death benefit, income deferral
13 or other current or deferred benefit plan for one or more employees, inde-
14 pendent contractors or their beneficiaries or spouses, to which contributions
15 are made for the purpose of distributing to or for the benefit of the partic-
16 ipants or their beneficiaries or spouses the property, income or principal in
17 the trust or other property arrangement, except a nonvested property interest
18 or a power of appointment that is created by an election of a participant or
19 a beneficiary or spouse; [or]

20 “(7) A property interest, power of appointment or arrangement that was
21 not subject to the common-law rule against perpetuities or is excluded by
22 another statute of this state; or

23 **“(8) A stewardship trust created pursuant to section 2 of this 2019**
24 **Act if the terms of the trust clearly elect that the statutory rule**
25 **against perpetuities not apply to the trust and include a reference to**
26 **this subsection.”.**

27
