

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO  
SENATE BILL 361**

1 On page 1 of the printed bill, line 2, after “ORS” insert “130.020 and”.

2 Delete lines 4 through 30 and delete page 2 and insert:

3 **“SECTION 1. ORS 130.020 is amended to read:**

4 “130.020. (1) Except as otherwise provided in the terms of the trust, this  
5 chapter governs the duties and powers of a trustee, relations among trustees,  
6 and the rights and interests of a beneficiary.

7 **“(2) Except as provided in subsection (3) of this section, the terms**  
8 **of a trust may expand, restrict, eliminate or otherwise vary any laws**  
9 **of general application to trustees pertaining to the manner in which**  
10 **the trustee should invest assets, including whether to engage in one**  
11 **or more sustainable or socially responsible investment strategies in**  
12 **addition to or in place of other investment strategies, with or without**  
13 **regard to investment performance.**

14 “[~~(2)~~] **(3)** The terms of a trust prevail over the provisions of this chapter  
15 except:

16 “(a) The requirements of ORS 130.150 to 130.190 governing the creation  
17 of a trust.

18 “(b) The duty of a trustee to act in good faith and in accordance with the  
19 purposes of the trust.

20 “(c) The requirement that a trust and the terms of a trust be for the  
21 benefit of the trust beneficiaries, and that the trust have a purpose that is

1 lawful, not contrary to public policy and possible to achieve.

2 “(d) The power of the court to modify or terminate a trust under ORS  
3 130.195 to 130.225.

4 “(e) The effect of a spendthrift provision and the rights of creditors and  
5 assignees to reach interests in a trust as provided in ORS 130.300 to 130.325.

6 “(f) The power of the court under ORS 130.605 to require, dispense with,  
7 modify or terminate a bond.

8 “(g) The power of the court under ORS 130.635 (2) to adjust a trustee’s  
9 compensation specified in the terms of the trust if the compensation is un-  
10 reasonably low or high.

11 “(h) Subject to subsection [(3)] (4) of this section, the duty under ORS  
12 130.710 (2)(b) and (c) to notify qualified beneficiaries of an irrevocable trust  
13 of the existence of the trust, of the identity of the trustee and of their right  
14 to request trustee reports.

15 “(i) Subject to subsection [(3)] (4) of this section, the duty under ORS  
16 130.710 (1) to respond to the request of a qualified beneficiary of an irrev-  
17 ovable trust for trustee reports and other information reasonably related to  
18 the administration of a trust.

19 “(j) The effect of an exculpatory term under ORS 130.835.

20 “(k) The rights under ORS 130.845, 130.850, 130.855 and 130.860 of a person  
21 other than a trustee or beneficiary.

22 “(L) Periods of limitation for commencing a judicial proceeding.

23 “(m) The power of the court to take such action and exercise such juris-  
24 diction as may be necessary in the interests of justice.

25 “(n) The subject-matter jurisdiction of the court and venue for commenc-  
26 ing a proceeding as provided in ORS 130.060 and 130.065.

27 “[3] (4) Except as provided in subsection [(4)] (5) of this section, the  
28 settlor, in the trust instrument or in another writing delivered to the trustee,  
29 may waive or modify the duties of a trustee under ORS 130.710 to give notice,  
30 information and reports to qualified beneficiaries by:

1 “(a) Waiving or modifying those duties during the period that either the  
2 settlor is alive and financially capable, or the settlor’s spouse, if a qualified  
3 beneficiary, is alive and financially capable; or

4 “(b) Designating a person or persons to act in good faith to protect the  
5 interests of qualified beneficiaries and to receive any notice, information or  
6 reports required under ORS 130.710 (1), (2)(b) to (d) and (3) in lieu of pro-  
7 viding the notice, information or reports to the qualified beneficiaries.

8 “[4] (5) All reports under ORS 130.710 (3) that contain information re-  
9 lating to termination of the trust must be provided to the qualified benefi-  
10 ciaries and to any person or persons designated under subsection [(3)(b)]  
11 (4)(b) of this section.

12 **“SECTION 2.** ORS 130.755 is amended to read:

13 “130.755. (1) A trustee shall invest and manage trust assets as a prudent  
14 investor would, by considering the purposes, terms, distribution requirements  
15 and other circumstances of the trust. In satisfying this standard, the trustee  
16 shall exercise reasonable care, skill and caution.

17 “(2) A trustee’s investment and management decisions respecting individ-  
18 ual assets are not evaluated in isolation, but in the context of the trust  
19 portfolio as a whole and as a part of the overall investment strategy having  
20 risk and return objectives reasonably suited to the trust.

21 “(3) A trustee shall consider all relevant circumstances in investing and  
22 managing trust assets, including any of the following that are relevant to the  
23 trust or the beneficiaries of the trust:

24 “(a) General economic conditions;

25 “(b) The possible effect of inflation or deflation;

26 “(c) The expected tax consequences of investment decisions or strategies;

27 “(d) The role that each investment or course of action plays within an  
28 overall trust portfolio, which may include financial assets, interests in  
29 closely held enterprises, tangible and intangible personal property, and real  
30 property;

1 “(e) The expected total return from income and the appreciation of capi-  
2 tal;

3 “(f) Other resources of the beneficiaries;

4 “(g) Needs for liquidity, regularity of income and preservation or appre-  
5 ciation of capital; [*and*]

6 “(h) An asset’s special relationship or special value, if any, to the pur-  
7 poses of the trust or to one or more of the beneficiaries[.];

8 **“(i) The intent, desire and personal values of the settlor, including**  
9 **the settlor’s desire to engage in sustainable or socially responsible in-**  
10 **vestment strategies that align with the settlor’s social, environmental,**  
11 **governance or other values or beliefs to the extent known by the**  
12 **trustee; and**

13 **“(j) The needs of the beneficiaries, including but not limited to the**  
14 **beneficiaries’ personal values and desire that the trustee engage in**  
15 **sustainable or socially responsible investing strategies that align with**  
16 **the beneficiaries’ social, environmental, governance or other values**  
17 **or beliefs, as well as the financial needs of the beneficiaries.**

18 “(4) A trustee shall make a reasonable effort to verify facts relevant to  
19 the investment and management of trust assets.

20 “(5) A trustee may invest in any kind of property or type of investment  
21 consistent with the standards of ORS 130.750 to 130.775.

22 “(6) A trustee who has special skills or expertise, or is named trustee in  
23 reliance upon the trustee’s representation that the trustee has special skills  
24 or expertise, has a duty to use those special skills or expertise in investing  
25 and managing trust assets.”.

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