

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

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

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

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

14 “(a) By a person designated in the terms of the trust or selected
15 through a process provided in the terms of the trust;

16 “(b) By a person appointed by unanimous agreement of the trust
17 enforcers; or

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

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

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

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

27 “(b) Appoint one or more successor trustees or co-trustees;

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

29 “(d) Remove a member of the stewardship committee, by unani-
30 mous vote of all other members of the trust stewardship committee;

1 “(e) Direct distributions from the trust; and

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

4 “(8) Unless the trust agreement provides otherwise, a member of
5 the trust stewardship committee or a trust enforcer may resign:

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

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

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

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

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

30 “(12) Upon termination of a stewardship trust, the trustee shall

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

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

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

12 **“(15) This section does not apply to trusts created pursuant to ORS**
13 **60.254.**

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

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

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

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

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

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

29 **“130.045. (1) For purposes of this section, ‘interested persons’ means:**

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

1 “(b) All qualified beneficiaries;

2 “(c) Any acting trustee of the trust; *and*

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

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

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

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

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

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

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

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

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

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

1 “(c) Direction to a trustee to refrain from performing a particular act or
2 the grant to a trustee of any necessary or desirable power.

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

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

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

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

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

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

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

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

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

28 “ _____

29 CAPTION NOTICE OF FILING OF
30 OF CASE SETTLEMENT AGREEMENT

1 "OR MEMORANDUM OF
2 "SETTLEMENT AGREEMENT

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

9 "If you file objections within the 60-day period, the court will fix a time
10 and place for a hearing. At least 10 days before the date of that hearing, you
11 must serve a copy of your objections and give notice of the time and place
12 of the hearing to all beneficiaries and parties to the agreement. See ORS
13 130.045.

14 _____
15 Signature

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(c) The trust has a definite beneficiary or is:
2 “(A) A charitable trust;
3 “(B) A trust for the care of an animal, as provided in ORS 130.185; [or]
4 “(C) A trust for a noncharitable purpose, as provided in ORS 130.190; or
5 **“(D) A stewardship trust, as provided in section 2 of this 2019 Act.**
6 “(d) The trustee has duties to perform.
7 “(e) The same person is not the sole trustee and sole beneficiary.
8 “(2) A beneficiary is definite for the purposes of subsection (1)(c) of this
9 section if the beneficiary can be ascertained when the trust is created or at
10 any time thereafter, subject to any applicable rule against perpetuities.
11 “(3) A power of a trustee to select a beneficiary from an indefinite class
12 is valid. If the power is not exercised within a reasonable time, the power
13 fails and the property subject to the power passes to the persons who would
14 have taken the property had the power not been conferred.
15 **“SECTION 6.** ORS 105.965 is amended to read:
16 “105.965. ORS 105.950, statutory rule against perpetuities, does not apply
17 to:
18 “(1) A nonvested property interest or a power of appointment arising out
19 of a nondonative transfer, except a nonvested property interest or a power
20 of appointment arising out of:
21 “(a) A premarital or postmarital agreement;
22 “(b) A separation or divorce settlement;
23 “(c) A spouse’s election;
24 “(d) A similar arrangement arising out of a prospective existing or pre-
25 vious marital relationship between the parties;
26 “(e) A contract to make or not to revoke a will or trust;
27 “(f) A contract to exercise or not to exercise a power of appointment;
28 “(g) A transfer in satisfaction of a duty of support; or
29 “(h) A reciprocal transfer;
30 “(2) A fiduciary’s power relating to the administration or management of

1 assets, including the power of a fiduciary to sell, lease or mortgage property,
2 and the power of a fiduciary to determine principal and income;

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

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

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

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

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

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

28
