

Enrolled
House Bill 2360

Sponsored by Representative ROBLAN (at the request of John Whitty) (Presession filed.)

CHAPTER

AN ACT

Relating to trusts; creating new provisions; and amending ORS 130.355, 130.370 and 130.860.

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

SECTION 1. ORS 130.355 is amended to read:

130.355. (1) At any time after the death of a settlor of a trust described in ORS 130.350 (2), a trustee of the trust may petition the probate court to determine the claims of creditors of the settlor. A petition under this section must include all of the following information to the extent known by the trustee:

- (a) The settlor's name, **the settlor's** date of birth, **the settlor's** date and place of death and **the last four digits of the settlor's** Social Security number.
- (b) The name of the trustee.
- (c) The address at which claims must be presented.
- (d) The name of the trust, if any, and the date of the trust, including the dates of any amendments.

(e) The facts establishing venue in the county where the petition is being filed.

(2) The clerk of the court shall charge and collect in advance from the trustee the filing fee required from a plaintiff under ORS 21.110 (1).

(3) A proceeding under this section may be brought only:

- (a) In the county where the settlor had domicile or a place of abode at the time of death;
- (b) In any county where assets of the trust were located at the time of death or are located at the time the proceeding is commenced; or
- (c) In the county where the settlor died.

(4) The court has personal jurisdiction over a trustee that files a petition under this section, whether the trustee is a resident or nonresident of this state, for the purposes of any proceeding relating to the trust that may be instituted by an interested person.

SECTION 2. ORS 130.370 is amended to read:

130.370. (1) Within three months after a petition is entered in the register of the court under ORS 130.355, or within such longer time as the court allows, a trustee must make reasonably diligent efforts to investigate the financial records and affairs of the settlor and to take such further actions as are reasonably necessary to ascertain the identity and address of each person who has or asserts a claim against the trust estate. The court shall allow the trustee as much time as requested by the trustee for the purpose of determining the claims against the trust estate. The trustee must thereafter cause to be delivered or mailed a notice containing the information required in subsection (2) of this section to each person known by the trustee to have or to assert a claim against the trust estate and to the Department of Human Services. Notice under this section is not

required for any claim that has already been presented, accepted or paid in full or on account of a claim that is merely conjectural.

(2) The notice required by this section must include:

(a) The name **of the settlor and the last four digits of the settlor's** Social Security number [of the settlor];

(b) The name of the trustee and the address at which claims must be presented;

(c) A statement that claims against the trust estate that are not presented to the trustee within 30 days after the date of the notice may be barred;

(d) The date of the notice, which shall be the date on which the notice is delivered or mailed; and

(e) A copy of the settlor's death certificate.

SECTION 3. ORS 130.860 is amended to read:

130.860. (1) A person who is not a beneficiary and who proposes to deal with the trustee of a trust may require that all trustees execute and furnish to the person a certification of trust.

(2) The certification of trust shall contain the following information:

(a) That the trust exists and the date the trust instrument was executed;

(b) The identity of the settlor;

(c) The identity and address of the currently acting trustee;

(d) The powers of the trustee;

(e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(f) The existence or nonexistence of any power to modify or amend the trust and the identity of any person holding a power to modify or amend the trust;

(g) The authority of cotrustees to sign or otherwise authenticate and whether all cotrustees or fewer than all are required in order to exercise powers of the trustee;

(h) [The trust's taxpayer identification number, whether] **The last four digits of** the settlor's Social Security number, or [an] **the trust's** employer identification number;

(i) The manner of taking title to trust property; and

(j) The state, country or other jurisdiction under the laws of which the trust was established.

(3) A certification of trust must be signed or otherwise authenticated by all the trustees.

(4) A certification of trust must state that the trust has not been revoked, modified or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(5) A certification of trust need not contain the dispositive terms of a trust.

(6) A recipient of a certification of trust may not require the trustee to furnish the entire trust instrument, but may require the trustee to furnish copies of excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

(7) A person may require that the certification of trust:

(a) Include facts other than those listed in this section that are reasonably related to the administration of the trust;

(b) Be executed by one or more of the settlors;

(c) Be executed by one or more of the beneficiaries if the certification is reasonably related to a pending or contemplated transaction with the person; and

(d) Be adapted to the person's own standard form, which may be incorporated in an account signature agreement or other account document.

(8) A certification of trust may contain the identity of any successor trustee or trustees and the circumstances under which any successor trustee or trustees will assume trust powers.

(9)(a) A person who acts in reliance upon a certification of trust without actual knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. A

person does not have actual knowledge that the representations contained in the certification are incorrect solely by reason of having a copy of all or part of the trust instrument.

(b) Any transaction, and any lien created by that transaction, is enforceable against a trust if the transaction is entered into by a person acting in reliance on a certification of trust containing the information set forth in this section without actual knowledge that the representations contained in the certification are incorrect.

(c) If a person has actual knowledge that the trustee or trustees are acting outside the scope of the trust, and the actual knowledge was acquired by the person before entering into the transaction or making a binding commitment to do so, the transaction is not enforceable against the trust.

(10) A person is not liable for acting in reliance on a certification of trust solely because the certification fails to contain all the information required in this section.

(11) This section does not limit the rights of the beneficiaries of the trust against a trustee.

(12) A person's failure to demand or refusal to accept and rely solely upon a certification of trust does not affect the protection provided the person by ORS 130.855, and no inference as to whether the person has acted in good faith may be drawn from the failure to demand or the refusal to accept and rely solely upon a certification.

(13) This section applies to all trusts, whether established under the laws of this state or under the law of another state, country or other jurisdiction.

SECTION 4. (1) The amendments to ORS 130.355 by section 1 of this 2009 Act apply only to petitions filed under ORS 130.355 on or after the effective date of this 2009 Act.

(2) The amendments to ORS 130.370 by section 2 of this 2009 Act apply only to notices given under ORS 130.370 on or after the effective date of this 2009 Act.

(3) The amendments to ORS 130.860 by section 3 of this 2009 Act apply only to certifications of trust furnished under ORS 130.860 on or after the effective date of this 2009 Act.

Passed by House February 24, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 19, 2009

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President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State