

SENATE AMENDMENTS TO SENATE BILL 361

By COMMITTEE ON JUDICIARY

April 5

- 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 chapter governs the
- 5 duties and powers of a trustee, relations among trustees, and the rights and interests of a benefi-
- 6 cary.
- 7 “**(2) Except as provided in subsection (3) of this section, the terms of a trust may expand,**
- 8 **restrict, eliminate or otherwise vary any laws of general application to trustees pertaining**
- 9 **to the manner in which the trustee should invest assets, including whether to engage in one**
- 10 **or more sustainable or socially responsible investment strategies in addition to or in place**
- 11 **of other investment strategies, with or without regard to investment performance.**
- 12 “[~~2~~] **(3)** The terms of a trust prevail over the provisions of this chapter except:
- 13 “(a) The requirements of ORS 130.150 to 130.190 governing the creation of a trust.
- 14 “(b) The duty of a trustee to act in good faith and in accordance with the purposes of the trust.
- 15 “(c) The requirement that a trust and the terms of a trust be for the benefit of the trust bene-
- 16 ficiaries, and that the trust have a purpose that is lawful, not contrary to public policy and possible
- 17 to achieve.
- 18 “(d) The power of the court to modify or terminate a trust under ORS 130.195 to 130.225.
- 19 “(e) The effect of a spendthrift provision and the rights of creditors and assignees to reach in-
- 20 terests in a trust as provided in ORS 130.300 to 130.325.
- 21 “(f) The power of the court under ORS 130.605 to require, dispense with, modify or terminate a
- 22 bond.
- 23 “(g) The power of the court under ORS 130.635 (2) to adjust a trustee’s compensation specified
- 24 in the terms of the trust if the compensation is unreasonably low or high.
- 25 “(h) Subject to subsection [~~3~~] **(4)** of this section, the duty under ORS 130.710 (2)(b) and (c) to
- 26 notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of
- 27 the trustee and of their right to request trustee reports.
- 28 “(i) Subject to subsection [~~3~~] **(4)** of this section, the duty under ORS 130.710 (1) to respond to
- 29 the request of a qualified beneficiary of an irrevocable trust for trustee reports and other informa-
- 30 tion reasonably related to the administration of a trust.
- 31 “(j) The effect of an exculpatory term under ORS 130.835.
- 32 “(k) The rights under ORS 130.845, 130.850, 130.855 and 130.860 of a person other than a trustee
- 33 or beneficiary.
- 34 “(L) Periods of limitation for commencing a judicial proceeding.
- 35 “(m) The power of the court to take such action and exercise such jurisdiction as may be nec-

1 essary in the interests of justice.

2 “(n) The subject-matter jurisdiction of the court and venue for commencing a proceeding as
3 provided in ORS 130.060 and 130.065.

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

7 “(a) Waiving or modifying those duties during the period that either the settlor is alive and fi-
8 nancially capable, or the settlor’s spouse, if a qualified beneficiary, is alive and financially capable;
9 or

10 “(b) Designating a person or persons to act in good faith to protect the interests of qualified
11 beneficiaries and to receive any notice, information or reports required under ORS 130.710 (1), (2)(b)
12 to (d) and (3) in lieu of providing the notice, information or reports to the qualified beneficiaries.

13 “[4] (5) All reports under ORS 130.710 (3) that contain information relating to termination of
14 the trust must be provided to the qualified beneficiaries and to any person or persons designated
15 under subsection [(3)(b)] (4)(b) of this section.

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

17 “130.755. (1) A trustee shall invest and manage trust assets as a prudent investor would, by
18 considering the purposes, terms, distribution requirements and other circumstances of the trust. In
19 satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

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

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

25 “(a) General economic conditions;

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

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

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

31 “(e) The expected total return from income and the appreciation of capital;

32 “(f) Other resources of the beneficiaries;

33 “(g) Needs for liquidity, regularity of income and preservation or appreciation of capital; [and]

34 “(h) An asset’s special relationship or special value, if any, to the purposes of the trust or to
35 one or more of the beneficiaries[.];

36 “(i) **The intent, desire and personal values of the settlor, including the settlor’s desire to**
37 **engage in sustainable or socially responsible investment strategies that align with the**
38 **settlor’s social, environmental, governance or other values or beliefs to the extent known**
39 **by the trustee; and**

40 “(j) **The needs of the beneficiaries, including but not limited to the beneficiaries’ personal**
41 **values and desire that the trustee engage in sustainable or socially responsible investing**
42 **strategies that align with the beneficiaries’ social, environmental, governance or other val-**
43 **ues or beliefs, as well as the financial needs of the beneficiaries.**

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

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

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

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