

Enrolled Senate Bill 275

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CHAPTER

AN ACT

Relating to the Oregon Uniform Trust Code; creating new provisions; amending ORS 18.618, 65.860, 97.830, 114.305, 115.335, 128.256, 128.258, 128.264, 128.266, 128.272, 128.280, 128.288, 128.290, 128.294, 128.300, 128.370, 128.375, 128.378, 128.385, 128.388, 128.390, 128.395, 128.397, 128.398, 129.220, 129.225, 293.790 and 706.005; and repealing ORS 128.003, 128.005, 128.007, 128.009, 128.015, 128.021, 128.026, 128.031, 128.035, 128.041, 128.045, 128.047, 128.051, 128.055, 128.065, 128.102, 128.115, 128.125, 128.135, 128.145, 128.155, 128.165, 128.175, 128.177, 128.179, 128.181, 128.183, 128.185, 128.192, 128.194, 128.196, 128.198, 128.202, 128.204, 128.206, 128.208, 128.212, 128.214, 128.216, 128.218, 128.232, 128.234, 128.236, 128.238, 128.242, 128.244, 128.246, 128.255, 128.308, 128.460, 128.470, 128.480, 128.490 and 128.500.

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

GENERAL PROVISIONS AND DEFINITIONS

SECTION 1. Short title [Uniform Trust Code Section 101]. Sections 1 to 95 of this 2005 Act may be cited as the Oregon Uniform Trust Code.

SECTION 2. Scope [Uniform Trust Code Section 102]. (1) Except as provided in subsection (2) of this section, sections 1 to 95 of this 2005 Act apply to express trusts, whether charitable or noncharitable, and to trusts created pursuant to a statute or a judgment that requires that the trust be administered in the manner of an express trust.

(2) Sections 1 to 95 of this 2005 Act do not apply to:

(a) A trust that is part of an employee benefit arrangement or an individual retirement account.

(b) A trust account established under a qualified tuition savings program pursuant to ORS 348.841 to 348.873.

(c) Trust accounts maintained on behalf of clients or customers by licensed service professionals, including trust accounts maintained by attorneys pursuant to rules of professional conduct adopted under ORS 9.490 and by real estate brokers pursuant to ORS 696.241.

(d) An endowment care fund established by a cemetery authority pursuant to ORS 97.810.

(e) Funds maintained by public bodies as defined by ORS 174.109 or other governmental entities.

(f) Trust funds held for a single business transaction or an escrow arrangement.

- (g) Trusts created by a depository agreement with a financial institution.
- (h) Trusts created by an account agreement with a regulated financial services entity.
- (i) An account maintained under the Oregon Uniform Transfers to Minors Act as set forth in ORS 126.805 to 126.886.
- (j) A fund maintained pursuant to court order in conjunction with a bankruptcy proceeding or business liquidation.
- (k) A business trust as described in ORS 128.560.
- (L) A voting trust as described in ORS 60.254.
- (m) Funds maintained to manage proceeds from class actions.
- (n) A trust deed as defined in ORS 86.705 (5) or any other trust created solely to secure the performance of an obligation.
- (o) A trust established on behalf of a resident of a residential facility under ORS 443.880.
- (p) A trust managed by a nonprofit association for disabled persons under 42 U.S.C. 1396p(d)(4)(C), as in effect on the effective date of this 2005 Act, and under the rules of the Department of Human Services.
- (q) A resulting or constructive trust.
- (r) A trust fund established for a purchaser who enters into a prearrangement sales contract, as defined in ORS 97.923, or a preconstruction sales contract, as defined in ORS 97.923.

SECTION 3. Definitions [Uniform Trust Code Section 103]. For the purposes of sections 1 to 95 of this 2005 Act:

- (1) "Ascertainable standard" means an ascertainable standard relating to an individual's health, education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, as in effect on the effective date of this 2005 Act.
- (2) "Beneficiary" means a person that:
 - (a) Has a present or future beneficial interest in a trust, whether vested or contingent; or
 - (b) Holds a power of appointment over trust property in a capacity other than that of trustee.
- (3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 25 (1) of this 2005 Act.
- (4) "Conservator" means a person appointed by a court to administer the estate of a minor or adult individual.
- (5) "Environmental law" means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.
- (6) "Financial institution" has the meaning given that term in ORS 706.008.
- (7) "Financially incapable" has the meaning given that term in ORS 125.005. "Financially capable" means not financially incapable.
- (8) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health and welfare of a minor or adult individual. "Guardian" does not include a guardian ad litem.
- (9) "Interests of the beneficiaries" means the beneficial interests provided in the terms of a trust.
- (10) "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.
- (11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body as defined in ORS 174.109 or any other legal or commercial entity.
- (12) "Power of withdrawal" means a presently exercisable general power of appointment, other than a power exercisable by a trustee that is limited by an ascertainable standard or

that is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(13) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(14) "Qualified beneficiary" means a beneficiary who:

(a) Is a permissible distributee on the date the beneficiary's qualification is determined;

(b) Would be a permissible distributee if the interests of all permissible distributees described in paragraph (a) of this subsection terminated on the date the beneficiary's qualification is determined; or

(c) Would be a permissible distributee if the trust terminated on the date the beneficiary's qualification is determined.

(15) "Revocable trust" means a trust that can be revoked by the settlor without the consent of the trustee or a person holding an adverse interest.

(16) "Settlor" means a person, including a testator, who creates a trust or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution and of the portion as to which that person has the power to revoke or withdraw.

(17) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(19) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(20) "Trust instrument" means an instrument executed by a settlor that contains terms of the trust, including any amendments to the instrument.

(21) "Trustee" means an original trustee, an additional trustee, a successor trustee or a cotrustee.

SECTION 4. Knowledge [Uniform Trust Code Section 104]. (1) Subject to subsection (2) of this section, a person has knowledge of a fact if the person:

(a) Has actual knowledge of the fact;

(b) Has received a notice or notification of the fact; or

(c) From all the facts and circumstances known to the person at the time in question, has reason to know the fact.

(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the employee's regular duties or the employee knows a matter involving the trust would be materially affected by the information.

SECTION 5. Default and mandatory rules [Uniform Trust Code Section 105]. (1) Except as otherwise provided in the terms of the trust, sections 1 to 95 of this 2005 Act govern the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(2) The terms of a trust prevail over the provisions of sections 1 to 95 of this 2005 Act except:

(a) The requirements of sections 21 to 29 of this 2005 Act governing the creation of a trust.

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

(c) The requirement that a trust and the terms of a trust be for the benefit of the trust beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve.

(d) The power of the court to modify or terminate a trust under sections 30 to 36 of this 2005 Act.

(e) The effect of a spendthrift provision and the rights of creditors and assignees to reach interests in a trust as provided in sections 39 to 44 of this 2005 Act.

(f) The power of the court under section 51 of this 2005 Act to require, dispense with, modify or terminate a bond.

(g) The power of the court under section 57 (2) of this 2005 Act to adjust a trustee's compensation specified in the terms of the trust if the compensation is unreasonably low or high.

(h) Subject to subsection (3) of this section, the duty under section 71 (2)(b) and (c) of this 2005 Act to notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of the trustee and of their right to request trustee reports.

(i) Subject to subsection (3) of this section, the duty under section 71 (1) of this 2005 Act to respond to the request of a qualified beneficiary of an irrevocable trust for trustee reports and other information reasonably related to the administration of a trust.

(j) The effect of an exculpatory term under section 90 of this 2005 Act.

(k) The rights under sections 92, 93, 94 and 95 of this 2005 Act of a person other than a trustee or beneficiary.

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

(m) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

(n) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 14 and 15 of this 2005 Act.

(3) The settlor, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under section 71 of this 2005 Act to give notice, information and reports to qualified beneficiaries by:

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

(b) Designating a person or persons to act in good faith to protect the interests of qualified beneficiaries and to receive any notice, information or reports required under section 71 (1), (2)(b) and (2)(c) of this 2005 Act in lieu of providing the notice, information or reports to the qualified beneficiaries.

SECTION 6. Common law of trusts; principles of equity [Uniform Trust Code Section 106]. The common law of trusts and principles of equity supplement sections 1 to 95 of this 2005 Act, except to the extent modified by sections 1 to 95 of this 2005 Act or other law.

SECTION 7. Governing law [Uniform Trust Code Section 107]. The meaning and effect of the terms of a trust are determined by:

(1) The law of the state, country or other jurisdiction designated in the terms of the trust unless the designation of the law of that state, country or other jurisdiction is contrary to a strong public policy of the state, country or other jurisdiction having the most significant relationship to the matter at issue; or

(2) In the absence of a controlling designation in the terms of the trust, the law of the state, country or other jurisdiction having the most significant relationship to the matter at issue.

SECTION 8. Principal place of administration [Uniform Trust Code Section 108]. (1) Terms of a trust designating the principal place of administration are valid and controlling if:

(a) A trustee's principal place of business is located in the designated state, country or other jurisdiction, or the trustee is a resident of the designated state, country or other jurisdiction;

(b) All or part of the administration occurs in the designated state, country or other jurisdiction; or

(c) Other means exist for establishing a sufficient connection with the designated state, country or other jurisdiction.

(2) A trustee is under a continuing duty to administer the trust at a place appropriate to the trust's purposes, the trust's administration and the interests of the beneficiaries. Absent a substantial change of circumstances, the trustee may assume that the original place of administration is also the appropriate place of administration. The duty to administer the trust at an appropriate place may prevent a trustee from moving the place of administration.

(3)(a) A trustee may transfer the trust's principal place of administration to another state, country or other jurisdiction if the transfer is in furtherance of the duty imposed by subsection (2) of this section.

(b) A trustee shall notify qualified beneficiaries of the trust of a proposed transfer of the trust's principal place of administration not fewer than 60 days before initiating the transfer. The notice of proposed transfer must include all of the following:

(A) The name of the state, country or other jurisdiction to which the principal place of administration is to be transferred.

(B) The address and telephone number at the new location at which the trustee can be contacted.

(C) An explanation of the reasons for the proposed transfer.

(D) The date on which the proposed transfer is anticipated to occur.

(E) The date by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer. The date for notifying a trustee of an objection may not be fewer than 60 days after the date on which the notice is given.

(c) The authority of a trustee under this subsection to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(d) The trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 53 of this 2005 Act in connection with a transfer of the trust's principal place of administration.

SECTION 9. Methods of giving notice; waiver of notice [Uniform Trust Code Section 109].

(1) If any provision of sections 1 to 95 of this 2005 Act requires that a trustee or other person give notice or requires that the trustee or other person send a document, the trustee or other person must give the notice or send the document in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of giving notice and sending documents under sections 1 to 95 of this 2005 Act include first class mail, personal delivery, delivery to a person's last known place of residence or place of business, or properly directed electronic mail.

(2) If any provision of sections 1 to 95 of this 2005 Act requires that a trustee or other person give notice or requires that the trustee or other person send a document to another person, the trustee or other person need not give the notice or send the document to any person whose identity or location is unknown and not reasonably ascertainable. If the trustee or other person cannot give notice or send a document, the trustee or other person shall prepare an affidavit setting forth the efforts made to find the person. The trustee must file

the affidavit in any pending court proceeding or hold the affidavit as part of the trust records if a court proceeding is not pending.

(3) Any person entitled to receive a notice or a document under sections 1 to 95 of this 2005 Act may waive receipt of the notice or document.

(4) Except as provided in subsection (5) of this section, notice of a judicial proceeding shall be given in the manner required by statute for the approval of the final account in a decedent's estate. Notice of a judicial proceeding must be given by the petitioner to the following persons:

(a) To the trustee and all persons whose interests are affected by the requested action or relief.

(b) If a person who is entitled to notice is a minor, to the minor's conservator or to another appropriate representative under sections 16 to 20 of this 2005 Act if the minor does not have a conservator. If the minor is 14 years of age or older, notice must also be given to the minor.

(c) If a person who is entitled to notice is financially incapable, to the person and to the person's conservator or another appropriate representative under sections 16 to 20 of this 2005 Act if the person does not have a conservator.

(d) To any other person the court requires.

(5) A judicial proceeding to contest the validity of a revocable trust must be commenced by the service of a summons in the manner required by ORCP 7. Notice of any other judicial proceeding must be given in the manner prescribed by subsection (4) of this section.

SECTION 10. Other persons treated as qualified beneficiaries [Uniform Trust Code Section 110]. (1) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under sections 1 to 95 of this 2005 Act if the charitable organization is otherwise a qualified beneficiary as defined in section 3 of this 2005 Act.

(2) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 28 or 29 of this 2005 Act has the rights of a qualified beneficiary under sections 1 to 95 of this 2005 Act.

(3) The Attorney General has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in Oregon, unless contingencies make the charitable interest negligible.

SECTION 11. Nonjudicial settlement agreements [Uniform Trust Code Section 111]. (1) For purposes of this section, "interested persons" means any settlor of a trust who is living, all beneficiaries of the trust who have an interest in the subject of the agreement, any acting trustee of the trust, and the Attorney General if the trust is a charitable trust subject to the enforcement or supervisory powers of the state or the Attorney General under the provisions of ORS 128.610 to 128.750.

(2) Except as otherwise provided in subsection (3) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(3) A nonjudicial settlement agreement is valid only to the extent the agreement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under sections 1 to 95 of this 2005 Act or other applicable law.

(4) Matters that may be resolved by a nonjudicial settlement agreement include:

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

(b) The approval of a trustee's report or accounting.

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

(d) The resignation or appointment of a trustee and the determination of a trustee's compensation.

- (e) Transfer of a trust's principal place of administration.
 - (f) Liability of a trustee for an action or failure to act relating to the trust.
 - (g) Determining classes of creditors, beneficiaries, heirs, next of kin or other persons.
 - (h) Resolving disputes arising out of the administration or distribution of the trust.
- (5) Any interested person may petition the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in sections 16 to 20 of this 2005 Act was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.
- (6) Modification or termination of an irrevocable trust by nonjudicial settlement agreement is governed by section 31 of this 2005 Act.

JUDICIAL PROCEEDINGS

SECTION 12. Role of court in administration of trust [Uniform Trust Code Section 201].

- (1) A court may intervene in the administration of a trust to the extent the court's jurisdiction is invoked by an interested person or as provided by law.
- (2) A trust is not subject to continuing judicial supervision unless ordered by a court.
- (3) A judicial proceeding may relate to any matter involving a trust's administration, including a request for instructions or a declaratory judgment action.

SECTION 13. Jurisdiction over trustee and beneficiary [Uniform Trust Code Section 202].

- (1) By accepting the trusteeship of a trust having its principal place of administration in Oregon or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.
- (2) The beneficiaries of a trust having its principal place of administration in Oregon are subject to the jurisdiction of the courts of Oregon regarding any matter involving the beneficiaries' interests in the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(3) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.

SECTION 14. Subject-matter jurisdiction [Uniform Trust Code Section 203]. The circuit court has jurisdiction of proceedings in this state concerning the administration of a trust.

SECTION 15. Venue [Uniform Trust Code Section 204]. (1) Except as otherwise provided in this section, venue for a judicial proceeding involving a trust is in the county in which the trust's principal place of administration is or will be located.

(2) If a trust is created by will and the estate is not yet closed, venue for a judicial proceeding involving a trust is in the county in which the decedent's estate is being administered.

(3) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county in which a beneficiary resides, in a county in which any trust property is located and, if the trust is created by will, in the county in which the decedent's estate was or is being administered.

REPRESENTATION

SECTION 16. Representation; basic effect [Uniform Trust Code Section 301]. (1) Notice to a person who may represent and bind another person under sections 16 to 20 of this 2005 Act has the same effect as if notice were given directly to the other person. Notice to a representative must comply with section 9 (4) of this 2005 Act.

(2) The consent of a person who may represent and bind another person under sections 16 to 20 of this 2005 Act is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(3) Except as otherwise provided in sections 31 and 46 of this 2005 Act, a person who is authorized to represent a financially incapable settlor under sections 16 to 20 of this 2005 Act may receive notice and give binding consent on the settlor's behalf.

(4) A settlor may not represent and bind a beneficiary under sections 16 to 20 of this 2005 Act with respect to the termination or modification of an irrevocable trust under section 31 (1) of this 2005 Act.

SECTION 17. Representation by holder of general testamentary power of appointment [Uniform Trust Code Section 302]. To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests are subject to the power as permissible appointees, as takers in default or by other reason.

SECTION 18. Representation by fiduciaries and parents [Uniform Trust Code Section 303]. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A conservator may represent and bind the estate that the conservator controls;

(2) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(3) A trustee may represent and bind the beneficiaries of the trust;

(4) A personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(5) A parent may represent and bind the parent's minor or unborn child if a conservator for the child has not been appointed.

SECTION 19. Representation by person having substantially identical interest [Uniform Trust Code Section 304]. Unless otherwise represented, a minor, financially incapable individual or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

SECTION 20. Appointment of special representative [Uniform Trust Code Section 305].
(1) If the court determines that the interest of a person is not represented under sections 16 to 20 of this 2005 Act, or that the otherwise available representation might be inadequate, the court may appoint a special representative to receive notice, give consent and otherwise represent, bind and act on behalf of a minor, financially incapable individual or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable. A special representative may be appointed to represent several persons or interests, if the interests of the persons represented do not conflict.

(2) A special representative may act on behalf of the individual represented with respect to any matter that the court has authorized, whether or not a judicial proceeding concerning the trust is pending.

(3) In making decisions, a special representative may consider general benefit accruing to the living members of the individual's family.

(4) A person appointed as special representative must have appropriate skills and experience necessary to adequately represent the individual in the matter for which the special representative is appointed. A special representative may not have an interest in the trust that is the subject of the appointment of the special representative. A special representative

may not be related to a personal representative of an estate with an interest in the trust, or to a trustee, beneficiary or other person with an interest in the trust.

(5) A person requesting the appointment of a special representative must file a petition with the court describing the proposed special representative, the need for a special representative, the qualifications of the special representative, the person or persons who will be represented, the actions that the special representative will take and the approximate date or event when the authority of the special representative will terminate. The person seeking to serve as special representative must file a consent to serve.

(6) A special representative appointed under this section is entitled to reasonable compensation for services. The trustee shall pay compensation to the special representative from the principal of the trust that is attributable to those beneficiaries who are represented. If the beneficiaries who are represented do not have principal that is attributable to them, compensation is an administrative expense of the trust.

(7) Upon completion of the responsibilities of the special representative, the special representative shall move the court for an order discharging the special representative. Upon order of the court, a special representative appointed under this section shall be discharged from any further responsibility with respect to the trust.

CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

SECTION 21. Methods of creating trust [Uniform Trust Code Section 401]. (1) A trust may be created:

(a) By transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(b) By declaration by the owner of property that the owner holds identifiable property as trustee;

(c) By exercise of a power of appointment in favor of a trustee;

(d) By an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; or

(e) Pursuant to a statute or judgment that requires property to be administered in the manner of an express trust.

(2) The following apply to trusts for death benefits:

(a) A trustee may be named as beneficiary of any death benefits, and the death benefits shall be paid to the trustee and be held and disposed of by the trustee as provided in a trust created by the designator during the lifetime of the designator. A trust is valid even though the trust does not have a trust corpus other than the right of the trustee to receive death benefits as beneficiary.

(b) A trustee named by will may be designated as beneficiary of death benefits if the designation is made in accordance with the provisions of the policy, contract, plan, trust or other governing instrument. Upon probate of the will, the death benefits are payable to the trustee to be held and disposed of under the terms of the designator's will in the same manner as other testamentary trusts are administered. Unless otherwise provided by the designator, an obligor may make payment of death benefits to the personal representative of the designator, or to the persons who are otherwise entitled to the death benefits, if a qualified trustee does not claim the death benefits within one year after the death of the designator, or if satisfactory evidence is furnished within the one-year period showing that there is no trustee who can qualify to receive the death benefits. The obligor is discharged from any liability for the death benefits upon making the payment.

(c) Death benefits received by the trustee are not subject to the debts of the designator or to inheritance or estate taxes to any greater extent than if the death benefits were payable to the beneficiaries named in the trust and not to the estate of the designator.

(d) Death benefits held in trust may be commingled with any other assets that may properly become a part of the trust.

(3) As used in this section:

(a) “Death benefits” means death benefits of any kind, including proceeds of life insurance policies, payments under annuity or endowment contracts, and funds payable in connection with pension, retirement, stock bonus or profit-sharing plans, or any trust administered in connection with these arrangements.

(b) “Designator” means the person entitled to designate the beneficiary of death benefits upon the death of the person.

(c) “Obligor” means the insurer or other person obligated to pay death benefits.

SECTION 22. Requirements for creation [Uniform Trust Code Section 402]. (1) A trust is created only if all of the following requirements are met:

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

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

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

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in section 28 of this 2005 Act; or

(C) A trust for a noncharitable purpose, as provided in section 29 of this 2005 Act.

(d) The trustee has duties to perform.

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

(2) A beneficiary is definite for the purposes of subsection (1)(c) of this section if the beneficiary can be ascertained when the trust is created or at any time thereafter, subject to any applicable rule against perpetuities.

(3) A power of a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

SECTION 23. Trusts created in other states, countries or jurisdictions [Uniform Trust Code Section 403]. A trust not created by will is validly created if the creation of the trust complies with the law of the state, country or other jurisdiction in which the trust instrument was executed, or the law of the state, country or other jurisdiction in which, at the time of creation:

(1) The settlor was domiciled, had a place of abode or was a national;

(2) A trustee was domiciled or had a place of business; or

(3) Any trust property was located.

SECTION 24. Trust purposes [Uniform Trust Code Section 404]. A trust may be created only to the extent the purposes of the trust are lawful, not contrary to public policy and possible to achieve. A trust and its terms must be for the benefit of the trust’s beneficiaries.

SECTION 25. Charitable purposes; enforcement [Uniform Trust Code Section 405]. (1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes beneficial to the community.

(2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor’s intention to the extent that intent can be ascertained.

(3) The settlor of a charitable trust, in addition to other persons authorized by law or the trust instrument, may maintain a proceeding to enforce the trust.

(4) A court may modify or terminate any trust of property for charitable purposes only if the Attorney General is a party to the proceedings.

SECTION 26. Creation of trust induced by fraud, duress or undue influence [Uniform Trust Code Section 406]. A trust is void to the extent the creation of the trust was induced by fraud, duress or undue influence.

SECTION 27. Evidence of oral trust [Uniform Trust Code Section 407]. Except as required by a statute other than sections 1 to 95 of this 2005 Act, a trust need not be evidenced by a trust instrument. The creation of an oral trust, and the terms of an oral trust, must be established by clear and convincing evidence.

SECTION 28. Pet trust [Uniform Trust Code Section 408]. (1) A trust may be created to provide for the care of one or more animals that are alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal, upon the death of the last surviving animal. An oral or written declaration shall be liberally construed in favor of finding the creation of a trust under this section. There is a presumption against merely precatory or honorary disposition on behalf of an animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

(3) Property of a trust authorized by this section may be applied only to its intended use. Upon termination of the trust, property of the trust must be distributed to those persons designated in the trust. In the absence of a designation, the property shall be distributed to the settlor if the settlor is living when the distribution is made, or to the settlor's successors in interest if the settlor is not living when the distribution is made.

(4) Except as ordered by a circuit court or required by the trust instrument, a trustee for a trust authorized under this section need not pay any fee or make any filing, report, registration, periodic accounting, separate maintenance of funds or appointment by reason of the existence of the fiduciary relationship of the trustee. A person appointed to enforce the trust may request a report under section 71 (3) of this 2005 Act.

SECTION 29. Noncharitable trust without ascertainable beneficiary [Uniform Trust Code Section 409]. Except as otherwise provided in section 28 of this 2005 Act or by another statute:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 90 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Trust property not required for the intended use must be distributed to those persons designated in the trust. In the absence of a designation, the property shall be distributed to the settlor if the settlor is living when the distribution is made, or to the settlor's successors in interest if the settlor is not living when the distribution is made.

SECTION 30. Modification or termination of trust; proceedings for approval or disapproval [Uniform Trust Code Section 410]. (1) In addition to the methods of termination prescribed by sections 31, 32, 33 and 34 of this 2005 Act, a trust terminates:

- (a) To the extent the trust is revoked or expires pursuant to the terms of the trust;
- (b) If no purpose of the trust remains to be achieved; or

(c) To the extent one or more of the purposes of the trust have become unlawful, contrary to public policy or impossible to achieve.

(2) A proceeding to approve or disapprove a proposed modification or termination under sections 31, 32, 33, 34, 35 and 36 of this 2005 Act, or trust combination or division under section 37 of this 2005 Act, may be commenced by a trustee or beneficiary. A proceeding to approve or disapprove a proposed modification or termination under section 31 of this 2005 Act may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 33 of this 2005 Act.

SECTION 31. Modification or termination of irrevocable trust by consent [Uniform Trust Code Section 411]. (1) An irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. The Attorney General must consent to any modification or termination of a charitable trust, unless contingencies make the charitable interest negligible. A settlor's power to consent to a trust's modification or termination may be exercised by:

(a) An agent or attorney-in-fact under a power of attorney only to the extent expressly authorized by the terms of the trust;

(b) The settlor's conservator with the approval of the court supervising the conservatorship if an agent or attorney-in-fact is not authorized by the terms of the trust; or

(c) The settlor's guardian with the approval of the court supervising the guardianship if an agent or attorney-in-fact is not authorized by the terms of the trust and a conservator has not been appointed.

(2) An irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. An irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that the modification is not inconsistent with a material purpose of the trust. The Attorney General must consent to any modification or termination of a charitable trust, unless contingencies make the charitable interest negligible.

(3) For the purposes of subsections (1) and (2) of this section, a spendthrift provision in the terms of the trust is rebuttably presumed to constitute a material purpose of the trust.

(4) Upon termination of a trust under subsection (1) or (2) of this section, the trustee shall distribute the trust property as agreed to by the beneficiaries and, in the case of a charitable trust requiring the Attorney General's consent, as agreed to by the Attorney General.

(5) If all of the required parties do not consent to a proposed modification or termination of the trust under subsection (1) or (2) of this section, the modification or termination may be approved by the court if the court finds that:

(a) If all of the required parties had consented, the trust could have been modified or terminated under this section; and

(b) The interests of any beneficiary who does not consent will be adequately protected.

(6)(a) A trustee, or any other person interested in the trust, may file an agreement entered into under subsection (1) or (2) of this section, or a memorandum summarizing the provisions of the agreement, with the circuit court for any county where trust assets are located or where the trustee administers the trust.

(b) After collecting the fee provided for in subsection (8)(a) of this section, the clerk shall enter the agreement or memorandum of record in the court's register.

(c) Within five days after the filing of an agreement or memorandum under this subsection, the person making the filing must serve a notice of the filing and a copy of the agreement or memorandum on each person interested in the trust whose address is known at the time of the filing. Service may be made personally, or by registered or certified mail, return receipt requested. The notice of filing shall be substantially in the following form:

CAPTION OF CASE

**NOTICE OF FILING OF AGREEMENT
OR MEMORANDUM OF AGREEMENT**

You are hereby notified that the attached document was filed by the undersigned in the above entitled court on the _____ day of _____, _____. Unless you file objections to the agreement within 120 days after that date, the agreement will be approved and will be binding on all persons interested in the trust.

If you file objections within the 120-day period, the court will fix a time and place for a hearing. At least 10 days before the date of that hearing, you must serve a copy of your objections and give notice of the time and place of the hearing to all persons interested in the trust. See section 31 of this 2005 Act.

Signature

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

(e) If no objections are filed with the court within 120 days after the filing of the agreement or memorandum, the agreement is effective and binding on all persons interested in the trust.

(7)(a) If objections are filed with the court within 120 days after the filing of an agreement or memorandum under this section, the clerk of the court shall collect the fee provided in subsection (8)(a) of this section. Upon the filing of objections, the court shall fix a time and place for a hearing. The person filing the objections must serve a copy of the objections on all persons interested in the trust and give notice to those persons of the time and place fixed by the court for a hearing. Service must be made at least 10 days before the date set by the court for the hearing. Service of the objections may be made personally or by registered or certified mail, return receipt requested.

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

(c) The court shall approve an agreement entered into under subsection (1) or (2) of this section after a hearing upon objections filed under this subsection unless:

(A) The agreement does not reflect the signatures of all persons required by subsection (1) or (2) of this section;

(B) The agreement is not authorized by subsection (1) or (2) of this section; or

(C) Approval of the agreement would not be equitable.

(d) An agreement approved by the court after a hearing is binding on all persons interested in the trust.

(e) Persons interested in the trust may waive the notice required under subsection (6) of this section. If all persons interested in the trust waive the notice, the agreement is effective and binding on all persons interested in the trust upon filing of the agreement or memorandum with the court.

(8)(a) The clerk of the circuit court shall collect in advance a fee of \$65 for the filing of an agreement or memorandum of agreement under subsection (6) of this section, and a fee of \$32.50 for the filing of objections under subsection (7) of this section.

(b) In addition to the filing fees provided for in paragraph (a) of this subsection, the clerk shall charge and collect in proceedings under this section all additional fees authorized by law for civil actions, suits or proceedings in circuit court.

(c) A paper or pleading is not considered filed unless the fees required by this subsection are paid. Filing fees may not be refunded to any party.

SECTION 32. Modifications or termination because of unanticipated circumstances or inability to administer trust effectively [Uniform Trust Code Section 412]. (1) The court may modify the administrative or dispositive terms of a trust or terminate the trust if modification or termination will further the purposes of the trust and the modification or termination is requested by reason of circumstances not anticipated by the settlor. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(2) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful, or would impair the trust's administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

SECTION 33. Cy pres [Uniform Trust Code Section 413]. (1) Except as otherwise provided in subsection (2) of this section, if a particular charitable purpose of a trust becomes unlawful, impracticable, impossible to achieve or wasteful:

(a) The trust does not fail, in whole or in part;

(b) The trust property does not revert to the settlor or the settlor's successors in interest; and

(c) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(2) If a provision in the terms of a charitable trust would result in distribution of the trust property to a noncharitable beneficiary, a court may apply cy pres to modify or terminate the trust under subsection (1)(c) of this section only if, when the provision takes effect:

(a) The trust property is to revert to the settlor and the settlor is still living; or

(b) Fewer than 50 years have elapsed since the date of the trust's creation.

SECTION 34. Modification or termination of uneconomic trust [Uniform Trust Code Section 414]. (1) After notice to the qualified beneficiaries, a trustee may terminate a trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. A trustee may not terminate a trust under this section if the trustee is a beneficiary of the trust or has a duty of support for a beneficiary of the trust.

(2) The court may modify or terminate a trust, or remove the trustee and appoint a different trustee, if the court finds that the value of the trust property is insufficient to justify the cost of administration.

(3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(4) This section does not apply to an easement for conservation or preservation.

SECTION 35. Reformation to correct mistakes [Uniform Trust Code Section 415]. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if the person requesting reformation proves by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

SECTION 36. Modification to achieve settlor's tax objectives [Uniform Trust Code Section 416]. The court may modify the terms of a trust to achieve the settlor's tax objectives if the modification is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

SECTION 37. Combination and division of trusts [Uniform Trust Code Section 417]. After notice to all qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not materially impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

SECTION 38. In terrorem clause. (1) Except as provided in this section, an in terrorem clause in a trust is valid and enforceable. If a beneficiary challenges a trust that contains an in terrorem clause that applies to the beneficiary, the court shall enforce the clause against the beneficiary even though the beneficiary establishes that there was probable cause for the challenge.

(2) The court shall not enforce an in terrorem clause if the beneficiary challenging the trust establishes that the beneficiary has probable cause to believe that the trust is a forgery or that the trust has been revoked.

(3) The court shall not enforce an in terrorem clause if the challenge is brought by a fiduciary acting on behalf of a protected person under the provisions of ORS chapter 125, a guardian ad litem appointed for a minor or a guardian ad litem appointed for an incapacitated or financially incapable person.

(4) For the purposes of this section, “in terrorem clause” means a provision in a trust that reduces or eliminates the interest of a beneficiary under the trust if the beneficiary challenges the validity of part or all of the trust.

CREDITOR’S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

SECTION 39. Rights of beneficiary’s creditor or assignee [Uniform Trust Code Section 501]. To the extent a beneficiary’s interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary’s interest by garnishment or other execution against present or future distributions to or for the benefit of the beneficiary or by other means. The court may limit the award to such relief as is appropriate under the circumstances.

SECTION 40. Spendthrift provision [Uniform Trust Code Section 502]. (1) A spendthrift provision is valid only if the provision restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(2) A term of a trust providing that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary’s interest.

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision. Except as otherwise provided in sections 39 to 44 of this 2005 Act, a creditor or assignee of a beneficiary may not reach the interest of a beneficiary or a distribution by the trustee before the distribution is received by the beneficiary.

SECTION 41. Exceptions to spendthrift provisions [Uniform Trust Code Section 503]. (1) As used in this section, “child” means any individual for whose benefit a judgment, court order or administrative order for child support has been entered in any state, country or other jurisdiction.

(2) Even if a trust contains a spendthrift provision, the holder of a judgment, court order or administrative order against a beneficiary for support or maintenance of the beneficiary’s child, spouse or former spouse or a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust, may obtain an order from a court of this state authorizing garnishment or other execution against present or future distributions to or for the benefit of the beneficiary. The court may issue an order authorizing execution against such amount as the court determines to be equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary. Distributions subject to execution under this subsection include distributions required by the express terms of the trust, such as mandatory payments of income, and distributions the trustee has otherwise decided to make, such as through the exercise of discretion.

(3) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

SECTION 42. Creditor's claim against settlor [Uniform Trust Code Section 505]. (1) Whether or not the terms of a trust contain a spendthrift provision:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(b) A creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If an irrevocable trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) If a trust was revocable at the settlor's death, the property of the trust becomes subject to creditors' claims as provided in ORS 128.256 to 128.300 when the settlor dies. The payment of claims is subject to the settlor's right to direct the priority of the sources from which liabilities of the settlor are to be paid.

(2) For the purpose of creditors' claims, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent property of the trust is subject to the power. The provisions of this subsection apply to the holder of a power of withdrawal only during the period that the power may be exercised.

(3) Upon the lapse, release or waiver of a power of withdrawal, the property of the trust that is the subject of the lapse, release or waiver becomes subject to claims of creditors of the holder of the power only to the extent the value of the property exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code, as in effect on the effective date of sections 1 to 95 of this 2005 Act, or section 2503(b) of the Internal Revenue Code, as in effect on the effective date of sections 1 to 95 of this 2005 Act.

(4) Subsections (2) and (3) of this section do not apply to a person other than a settlor who is a beneficiary of a revocable or irrevocable trust and who is also a trustee of the trust, if the power to withdraw for the person's own benefit is limited by an ascertainable standard.

SECTION 43. Overdue distribution [Uniform Trust Code Section 506]. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

SECTION 44. Personal obligations of trustee [Uniform Trust Code Section 507]. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

REVOCABLE TRUSTS

SECTION 45. Capacity of settlor of revocable trust [Uniform Trust Code Section 601]. A person who has capacity to make a will has capacity to create, amend, revoke or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust.

SECTION 46. Revocation or amendment of revocable trust [Uniform Trust Code Section 602]. (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor of the trust may revoke or amend the trust.

(2) Unless the trust expressly provides otherwise, if a revocable trust is created or funded by more than one settlor:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(b) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust as to the portion of the trust property attributable to that settlor's contribution; and

(c) Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(3) The settlor may revoke or amend a revocable trust:
(a) By substantial compliance with a method provided in the terms of the trust; or
(b) If the terms of the trust do not provide a method, by any other method, except for execution of a will or codicil, manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor's powers with respect to revocation, amendment or distribution of trust property may be exercised by an agent or attorney-in-fact under a power of attorney only to the extent expressly authorized by the terms of the trust.

(6) The settlor's conservator, or the settlor's guardian if a conservator has not been appointed for the settlor, may exercise a settlor's powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

SECTION 47. Section 46 (1) of this 2005 Act does not apply to a trust created under an instrument executed before the effective date of this 2005 Act.

SECTION 48. Settlor's powers; powers of withdrawal [Uniform Trust Code Section 603].

(1) While the settlor of a revocable trust is alive, rights of the beneficiaries are subject to the control of the settlor, and the duties of the trustee are owed exclusively to the settlor. Beneficiaries other than the settlor have no right to receive notice, information or reports under section 71 of this 2005 Act.

(2) The rights of the beneficiaries with respect to property that is subject to a power of withdrawal are subject to the control of the holder of the power during the period that the power may be exercised, and the duties of the trustee are owed exclusively to the holder of a power of withdrawal with respect to the property that is subject to the power.

SECTION 49. Limitation on action contesting validity of revocable trust; distribution of trust property [Uniform Trust Code Section 604]. (1) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death in the manner prescribed by ORS 12.020 within the earlier of:

(a) Three years after the settlor's death; or

(b) Four months after the trustee sends the person a copy of the trust instrument and notice informing the person of the trust's existence, of the trustee's name and address and of the time allowed for commencing a proceeding.

(2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for distribution of the property unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) Any person has notified the trustee in writing that the person might commence a judicial proceeding to contest the trust and a judicial proceeding is commenced by the person within 60 days after the person gives the notification.

(3) If a trust is determined to be invalid, any beneficiary who received a distribution from the trust is liable to the person entitled to the distributed property for the amount or value of the distribution.

OFFICE OF TRUSTEE

SECTION 50. Accepting or declining trusteeship [Uniform Trust Code Section 701]. (1) Except as otherwise provided in subsection (3) or (4) of this section, a person designated as trustee accepts the trusteeship:

(a) By substantially complying with a method of acceptance provided in the terms of the trust; or

(b) If the terms of the trust do not provide a method of acceptance, or the method provided in the terms of the trust is not expressly made exclusive, by knowingly accepting delivery of the trust property, knowingly exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(3) A person designated as trustee may act to preserve the trust property without accepting the trusteeship. The person must send a rejection of the trusteeship to the settlor within a reasonable time after taking the action. If the settlor is dead or is financially incapable, the person must send the rejection to a qualified beneficiary within a reasonable time after taking the action.

(4) A person designated as trustee may inspect or investigate trust property to determine potential liability under environmental or other law, or for any other purpose, without accepting the trusteeship.

SECTION 51. Trustee's bond [Uniform Trust Code Section 702]. (1) A trustee shall acquire a bond to secure performance of the trustee's duties only if a bond is required by the terms of the trust or if a court finds that a bond is needed to protect the interests of the beneficiaries. A court may waive a bond required by the terms of a trust if the court finds that a bond is not needed to protect the interests of the beneficiaries.

(2) The court may specify the amount and terms of a bond. The court may modify or terminate any requirement for a bond at any time.

(3) A trust company as defined in ORS 706.008 need not give a bond, even if required by the terms of the trust.

SECTION 52. Cotrustees [Uniform Trust Code Section 703]. (1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustee or cotrustees may act for the trust.

(3) A cotrustee must participate in the performance of a trustee's function unless:

(a) The cotrustee is unavailable to perform the function because of absence, illness or disqualification under other law;

(b) The cotrustee is unavailable to perform the function because the cotrustee is temporarily financially incapable; or

(c) The cotrustee has properly delegated the performance of the function to another trustee.

(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law or temporary financial incapability, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5) Except as prohibited in the terms of the trust, a cotrustee may delegate to a cotrustee the performance of a function. Unless a delegation was irrevocable, a cotrustee may revoke any delegation.

(6) Except as otherwise provided in subsection (7) of this section, a cotrustee who does not join in an action of another cotrustee is not liable for the action.

(7) Each cotrustee shall exercise reasonable care to:

(a) Prevent a cotrustee from committing a serious breach of trust; and

(b) Compel a cotrustee to redress a serious breach of trust.

(8) A dissenting cotrustee who joins in an action at the direction of the majority of the cotrustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

SECTION 53. Vacancy in trusteeship; appointment of successor [Uniform Trust Code Section 704]. (1) A vacancy in a trusteeship occurs if:

- (a) A person designated as trustee rejects the trusteeship;
- (b) A person designated as trustee cannot be identified, cannot be located or does not exist;
- (c) A trustee resigns;
- (d) A trustee is disqualified or removed;
- (e) A trustee dies; or
- (f) A guardian or conservator is appointed for an individual serving as trustee.

(2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

- (a) By a person designated in the terms of the trust to act as successor trustee;
- (b) By a person appointed by unanimous agreement of the qualified beneficiaries; or
- (c) By a person appointed by the court.

(4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

- (a) By a person designated in the terms of the trust to act as successor trustee;
- (b) By a person appointed by unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust, all noncharitable qualified beneficiaries and the Attorney General; or
- (c) By a person appointed by the court.

(5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

SECTION 54. Resignation of trustee [Uniform Trust Code Section 705]. (1) A trustee may resign:

(a) After at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

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

(2) If a court approves a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

SECTION 55. Removal of trustee [Uniform Trust Code Section 706]. (1) The settlor, a cotrustee or a beneficiary may request that a court remove a trustee, or a trustee may be removed by a court on its own motion.

(2) A court may remove a trustee if the court finds:

(a) The trustee has committed a serious breach of trust;

(b) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(c) Removal of the trustee best serves the interests of the beneficiaries because the trustee is unfit or unwilling, or has persistently failed to administer the trust effectively; or

(d) Removal of the trustee best serves the interests of all of the beneficiaries and:

(A) There has been a substantial change of circumstances or removal has been requested by all of the qualified beneficiaries;

(B) Removal is not inconsistent with a material purpose of the trust; and

(C) A suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under section 83 (2) of this 2005 Act as may be necessary to protect the trust property or the interests of the beneficiaries.

SECTION 56. Delivery of property by former trustee [Uniform Trust Code Section 707].

(1) Unless a cotrustee remains in office or the court otherwise orders, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property until the trust property is delivered to a successor trustee or other person who is entitled to the property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver any trust property in the trustee's possession to the cotrustee, successor trustee or other person who is entitled to the property.

SECTION 57. Compensation of trustee [Uniform Trust Code Section 708]. (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(a) The duties of the trustee are substantially different from those contemplated when the trust was created; or

(b) The compensation specified by the terms of the trust would be unreasonably low or high.

SECTION 58. Reimbursement of expenses [Uniform Trust Code Section 709]. (1) A trustee is entitled to be reimbursed out of the trust property, with reasonable interest if appropriate, for:

(a) Expenses that were properly incurred in the administration of the trust; and

(b) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(2) A trustee is entitled to be reimbursed out of the trust property or from property that has been distributed from the trust, with reasonable interest, for an advance of money made by the trustee for the protection of the trust.

DUTIES AND POWERS OF TRUSTEE

SECTION 59. Duty to administer trust [Uniform Trust Code Section 801]. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with sections 1 to 95 of this 2005 Act.

SECTION 60. Duty of loyalty [Uniform Trust Code Section 802]. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in section 94 of this 2005 Act, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the trust;

(b) The transaction was approved by a court;

(c) The beneficiary did not commence a judicial proceeding within the time allowed by section 87 of this 2005 Act;

(d) The beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in the manner provided by section 91 of this 2005 Act; or

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3) A sale, encumbrance or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between the personal and fiduciary interests of the trustee if it is entered into by the trustee with:

- (a) The trustee's spouse;
- (b) The trustee's descendants, siblings or parents, or their spouses;
- (c) An agent or attorney of the trustee; or

(d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) Unless a trustee can establish that the transaction was fair to the beneficiary, a transaction between a trustee and a beneficiary that does not concern trust property but from which the trustee obtains an advantage is voidable by the beneficiary if the transaction occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary.

(5) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(6) An investment by a trustee in securities of an investment company or an investment trust to which the trustee, or an affiliate of the trustee, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of sections 77 to 82 of this 2005 Act. In addition to compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall give notice of the rate and method by which that compensation was determined to the persons entitled under section 71 of this 2005 Act to receive a copy of the trustee's annual report.

(7) In voting shares of stock of a corporation or in exercising powers of control over similar interests in other forms of business entities, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of business entity, the trustee shall elect or appoint directors or other managers who will manage the corporation or entity in the best interests of the beneficiaries.

(8) This section does not preclude the following transactions, if fair to the beneficiaries:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) Payment of reasonable compensation to the trustee;

(c) A transaction between a trust and another trust, decedent's estate, custodianship or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a financial institution operated by the trustee; or

(e) An advance by the trustee of money for the protection of the trust.

(9) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

SECTION 61. Impartiality [Uniform Trust Code Section 803]. If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests.

SECTION 62. Prudent administration [Uniform Trust Code Section 804]. A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

SECTION 63. Costs of administration [Uniform Trust Code Section 805]. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

SECTION 64. Trustee's skills [Uniform Trust Code Section 806]. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise in administering the trust.

SECTION 65. Delegation by trustee [Uniform Trust Code Section 807]. (1) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

- (a) Selecting an agent;
- (b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with subsection (1) of this section is not liable to the beneficiaries or to the trust for an action of the agent.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to this state's law, an agent submits to the jurisdiction of the courts of this state.

SECTION 66. Powers to direct [Uniform Trust Code Section 808]. (1) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(2) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(3) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(4) A person other than a beneficiary who holds a power to direct is rebuttably presumed to be a fiduciary and is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

SECTION 67. Control and protection of trust property [Uniform Trust Code Section 809]. A trustee shall take reasonable steps to take control of and protect the trust property.

SECTION 68. Recordkeeping and identification of trust property [Uniform Trust Code Section 810]. (1) A trustee shall keep adequate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in subsection (4) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(4) If the trustee maintains records clearly indicating the respective interests of the different trusts, a trustee may invest as a whole the property of two or more separate trusts.

SECTION 69. Enforcement and defense of claims [Uniform Trust Code Section 811]. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

SECTION 70. Collecting trust property [Uniform Trust Code Section 812]. A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property

to the trustee, and to remedy a breach of trust known to the trustee to have been committed by a former trustee.

SECTION 71. Duty to inform and report [Uniform Trust Code Section 813]. (1) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for those beneficiaries to protect their interests. If reasonable under the circumstances, a trustee may respond to a request for information related to the administration of the trust from a beneficiary who is not a qualified beneficiary.

(2)(a) Upon request of a qualified beneficiary, a trustee shall promptly furnish to the qualified beneficiary a copy of the trust instrument.

(b) Within a reasonable time after accepting a trusteeship, a trustee shall notify all qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number.

(c) Within a reasonable time after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument and of the right to a trustee's report as provided in subsection (3) of this section.

(d) A trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(3) At least annually and upon termination of the trust, a trustee shall send a trustee report to the permissible distributees of trust income or principal and to other qualified beneficiaries who request the report. The report must include a listing of trust property and liabilities, and must show the market values of trust assets, if feasible. The report must reflect all receipts and disbursements of the trust, including the source and amount of the trustee's compensation. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a trustee report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator or guardian may send the qualified beneficiaries a trustee report on behalf of a deceased or financially incapable trustee.

(4) A qualified beneficiary may waive the right to a trustee report or other information otherwise required to be furnished under this section. A qualified beneficiary may withdraw a waiver at any time for the purpose of future reports and other information.

(5) A trustee may charge a reasonable fee to a beneficiary for providing information under this section.

(6) A beneficiary's request for any information under this section must be with respect to a single trust that is sufficiently identified to enable the trustee to locate the trust's records.

(7) If the trustee is bound by any confidentiality restrictions regarding a trust asset, any beneficiary eligible under this section to receive information about that asset must agree to be bound by the same confidentiality restrictions before receiving the information.

(8) Despite any other provision of this section, information, notice and reports required by this section shall be given only to the settlor's spouse if:

- (a) The spouse survives the settlor;
- (b) The spouse is financially capable;
- (c) The spouse is the only permissible distributee of the trust; and
- (d) All of the other qualified beneficiaries of the trust are descendants of the spouse.

(9) Despite any other provision of this section, while the settlor of a revocable trust is alive, beneficiaries other than the settlor have no right to receive notice, information or reports under this section.

SECTION 72. (1) Section 71 (2)(b) of this 2005 Act applies only to a trustee who accepts a trusteeship on or after the effective date of this 2005 Act.

(2) Section 71 (2)(c) of this 2005 Act applies only to irrevocable trusts created on or after the effective date of this 2005 Act and to revocable trusts that become irrevocable on or after the effective date of this 2005 Act.

SECTION 73. Discretionary powers; tax savings [Uniform Trust Code Section 814]. (1) A trustee shall exercise a discretionary power in good faith and in a manner that is in accordance with the terms and purposes of the trust and the interests of the beneficiaries. The duty imposed by this subsection is not affected by the grant of discretion in the terms of the trust, even though the terms of the trust provide that the trustee has absolute, sole or uncontrolled discretion or use other words purporting to convey broad discretion.

(2) Subject to subsection (4) of this section, and unless the terms of the trust expressly provide otherwise:

(a) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(b) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(3) A power the exercise of which is limited or prohibited by subsection (2) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(4) Subsection (2) of this section does not apply to:

(a) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as described in section 2056(b)(5) or 2523(e) of the Internal Revenue Code, as in effect on the effective date of sections 1 to 95 of this 2005 Act, was previously allowed;

(b) Any trust during any period that the trust may be revoked or amended by its settlor; or

(c) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code, as in effect on the effective date of sections 1 to 95 of this 2005 Act.

SECTION 74. General powers of trustee [Uniform Trust Code Section 815]. (1) A trustee, without authorization by the court, may exercise powers conferred by the terms of the trust and, except as limited by the terms of the trust:

(a) All powers over the trust property that an unmarried financially capable owner has over individually owned property;

(b) Any other powers appropriate to achieve the proper investment, management and distribution of the trust property; and

(c) Any other powers conferred by sections 1 to 95 of this 2005 Act.

(2) The exercise of a power is subject to the fiduciary duties prescribed by sections 59 to 76 of this 2005 Act.

SECTION 75. Specific powers of trustee [Uniform Trust Code Section 816]. Without limiting the authority conferred by section 74 of this 2005 Act, a trustee may do any of the following:

(1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person.

(2) Acquire or sell property, for cash or on credit, at public or private sale.

(3) Exchange, partition or otherwise change the character of trust property.

(4) Deposit trust money in an account in a financial institution, including a financial institution operated by the trustee, if the deposit is adequately insured or secured.

(5) Borrow money, with or without security, to be repaid from trust assets or otherwise, and advance money for the protection of the trust and for all expenses, losses and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets. A trustee is entitled to be reimbursed out of the trust property or from prop-

erty that has been distributed from the trust, with reasonable interest, for an advance of money under this subsection.

(6) Continue operation of any proprietorship, partnership, limited liability company, business trust, corporation or other form of business or enterprise in which the trust has an interest, and take any action that may be taken by shareholders, members or property owners, including merging, dissolving or otherwise changing the form of business organization or contributing additional capital.

(7) Exercise the rights of an absolute owner of stocks and other securities, including the right to:

(a) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(b) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(c) Pay calls, assessments and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(d) Deposit the securities with a depository or other financial institution.

(8) Construct, repair, alter or otherwise improve buildings or other structures on real property in which the trust has an interest, demolish improvements, raze existing or erect new party walls or buildings on real property in which the trust has an interest, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries.

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, even though the period of the lease extends beyond the duration of the trust.

(10) Grant an option involving a sale, lease or other disposition of trust property or acquire an option for the acquisition of property, even though the option is exercisable after the trust is terminated, and exercise an option so acquired.

(11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust.

(12) Abandon or decline to administer property of no value or property of a value that is not adequate to justify its collection or continued administration.

(13) Avoid possible liability for violation of environmental law by:

(a) Inspecting or investigating property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(b) Taking action to prevent, abate or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(c) Declining to accept property into trust or disclaiming any power with respect to property that is or may be burdened with liability for violation of environmental law;

(d) Compromising claims against the trust that may be asserted for an alleged violation of environmental law; and

(e) Paying the expense of any inspection, review, abatement or remedial action to comply with environmental law.

(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust.

(15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust.

- (16) Exercise elections available under federal, state and local tax laws.
- (17) Select a mode of payment under any employee benefit or retirement plan, annuity or life insurance payable to the trustee, exercise rights under employee benefit or retirement plans, annuities or policies of life insurance, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.
- (18) Make loans out of trust property. The trustee may make a loan to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee may collect loans made to a beneficiary by making deductions from future distributions to the beneficiary.
- (19) Pledge trust property to guarantee loans made by others to the beneficiary.
- (20) Appoint a trustee to act in another state, country or other jurisdiction with respect to trust property located in the other state, country or other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security and remove any trustee so appointed.
- (21) Make a distribution to a beneficiary who is under a legal disability or who the trustee reasonably believes is financially incapable, either:
- (a) Directly;
 - (b) By application of the distribution for the beneficiary's benefit;
 - (c) By paying the distribution to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;
 - (d) By creating a custodianship under the Uniform Transfers to Minors Act by paying the distribution to a custodian for the beneficiary;
 - (e) By paying the distribution to any existing custodian under the Uniform Transfers to Minors Act;
 - (f) By paying the distribution to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf, if the trustee does not know of a conservator, guardian or custodian for the beneficiary; or
 - (g) By managing the distribution as a separate fund held by the trustee on behalf of the beneficiary, subject to the beneficiary's continuing right to withdraw the distribution.
- (22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes and adjust for resulting differences in valuation.
- (23) Resolve a dispute concerning the interpretation of the trust or the administration of the trust by mediation, arbitration or other procedure for alternative dispute resolution.
- (24) Prosecute or defend an action, claim or judicial proceeding in any state, country or other jurisdiction to protect trust property and the trustee in the performance of the trustee's duties.
- (25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers.
- (26) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to the property.
- (27) Allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties.
- (28) Employ persons, including attorneys, auditors, investment advisors or agents, to advise or assist the trustee in the performance of administrative duties. A trustee may act based on the recommendations of professionals without independently investigating the recommendations.

(29) Apply for and qualify all or part of the property in the trust estate for special governmental tax programs or other programs that may benefit the trust estate or any of the beneficiaries.

(30) Deposit securities in a clearing corporation as provided in ORS 128.100.

SECTION 76. Distribution upon termination [Uniform Trust Code Section 817]. (1) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to a distribution made pursuant to the proposal terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent, but only if the proposal informed the beneficiary of the right to object and the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to the property. The trustee may retain a reasonable reserve for the payment of debts, expenses and taxes.

(3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(a) The release was induced by improper conduct of the trustee; or

(b) The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

UNIFORM PRUDENT INVESTOR ACT

SECTION 77. Trustee's duty to comply with prudent investor rule. (1) Except as otherwise provided in subsection (2) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in section 78 of this 2005 Act.

(2) The prudent investor rule is a default rule that may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

SECTION 78. Prudent investor rule. (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

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

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

(a) General economic conditions;

(b) The possible effect of inflation or deflation;

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

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

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

(f) Other resources of the beneficiaries;

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

(h) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

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

(5) A trustee may invest in any kind of property or type of investment consistent with the standards of sections 77 to 82 of this 2005 Act.

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

SECTION 79. Diversification of trust investments. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

SECTION 80. Trustee duty. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the requirements of sections 77 to 82 of this 2005 Act and with the purposes, terms, distribution requirements and other circumstances of the trust.

SECTION 81. Determination of compliance with prudent investor rule. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

SECTION 82. Trust language authorizing investments permitted under prudent investor rule. Unless otherwise limited or modified, the following terms or comparable language in the provisions of a trust authorize any investment or strategy permitted under sections 77 to 82 of this 2005 Act: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule" and "prudent investor rule."

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

SECTION 83. Remedies for breach of trust [Uniform Trust Code Section 1001]. (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust. A breach of trust may occur by reason of an action or by reason of a failure to act.

(2) To remedy a breach of trust that has occurred or to prevent a breach of trust, the court may:

- (a) Compel the trustee to perform the trustee's duties;
- (b) Enjoin the trustee from committing a breach of trust;
- (c) Compel the trustee to pay money or restore property;
- (d) Order a trustee to account;
- (e) Appoint a special fiduciary to take possession of the trust property and administer the trust;
- (f) Suspend the trustee;
- (g) Remove the trustee as provided in section 55 of this 2005 Act;
- (h) Reduce or deny compensation to the trustee;
- (i) Subject to section 94 of this 2005 Act, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (j) Order any other appropriate relief.

SECTION 84. Damages for breach of trust [Uniform Trust Code Section 1002]. (1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

- (a) The amount of damages caused by the breach;
- (b) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or
- (c) The profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. In determining the amount of contribution, the court shall consider the degree of fault of each trustee and whether any trustee or trustees acted in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

SECTION 85. Damages in absence of breach [Uniform Trust Code Section 1003]. (1) Except as provided by ORS 709.175 or section 75 (4) and (15) of this 2005 Act or other law of this state, a trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, without regard to whether the profit resulted from a breach of trust.

(2) Unless there is a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

SECTION 86. Attorney fees and costs [Uniform Trust Code Section 1004]. In a judicial proceeding involving the validity or administration of a trust, the court may award costs and expenses and reasonable attorney's fees to any party, to be paid by another party or from the trust.

SECTION 87. Limitation of action against trustee [Uniform Trust Code Section 1005]. (1) Notwithstanding ORS chapter 12 or any other provision of law, but subject to subsection (2) of this section, a civil action against a trustee based on any act or omission of the trustee, whether based in tort, contract or other theory of recovery, must be commenced within six years after the date the act or omission is discovered, or six years after the date the act or omission should have been discovered, whichever is earlier.

(2) A beneficiary may not commence a proceeding against a trustee more than one year after the date the beneficiary or a representative of the beneficiary is sent a report by certified or regular mail that adequately discloses the existence of a potential claim and that informs the beneficiary of the time allowed for commencing a proceeding. A copy of this section must be attached to the report. The report must provide sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(3) If subsections (1) and (2) of this section do not apply, a judicial proceeding against a trustee must be commenced within 10 years from the date of the act or omission complained of, or two years from the termination of any fiduciary account established under the trust, whichever is later.

SECTION 88. Reliance on trust instrument [Uniform Trust Code Section 1006]. A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

SECTION 89. Event affecting administration or distribution [Uniform Trust Code Section 1007]. A trustee is not liable for failing to determine whether a marriage, a divorce, a death, the performance of educational requirements or another event affecting the administration or distribution of a trust has occurred if the trustee has exercised reasonable care in attempting to determine whether the event has occurred.

SECTION 90. Exculpation of trustee [Uniform Trust Code Section 1008]. (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that the term:

(a) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(b) Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless:

(a) The settlor is represented by an independent counsel who reviewed the term; or

(b) The trustee proves that the exculpatory term is fair under the circumstances and that the term's existence and contents were adequately communicated to the settlor.

SECTION 91. Beneficiary's consent, release or ratification [Uniform Trust Code Section 1009]. If a beneficiary consents to conduct of a trustee that constitutes a breach of trust, releases a trustee from liability for a breach of trust or ratifies a transaction entered into by a trustee that constitutes a breach of trust, the trustee is not liable to the beneficiary for the breach of trust unless:

(1) The consent, release or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release or ratification, the beneficiary did not know of the beneficiary's rights or know of the material facts relating to the breach.

SECTION 92. Limitation on personal liability of trustee [Uniform Trust Code Section 1010]. (1) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee disclosed the trustee's fiduciary capacity in the contract.

(2) A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(3) The following claims may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim:

(a) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity.

(b) A claim based on an obligation arising from ownership or control of trust property.

(c) A claim based on a tort committed in the course of administering a trust.

(4) This section does not impose personal liability on a trustee solely because the trustee holds property under an instrument that shows title in the name of the trustee but does not state that the trustee holds the property in a representative capacity.

SECTION 93. Interest as general partner [Uniform Trust Code Section 1011]. (1) Except as otherwise provided in subsection (3) of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the trustee's fiduciary capacity is disclosed.

(2) Except as otherwise provided in subsection (3) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(3) The immunity provided by this section does not apply if an interest in a partnership is held by the trustee in a capacity other than that of trustee.

(4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership to the same extent that the settlor would be liable if the settlor were a general partner.

SECTION 94. Protection of person dealing with trustee [Uniform Trust Code Section 1012]. (1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, is not liable for acts of the trustee that exceed the trustee's powers or for the improper exercise of the trustee's powers, unless the person knows that the trustee has exceeded the trustee's powers or improperly exercised those powers.

(2) A person other than a beneficiary who deals with a trustee in good faith is not required to inquire about the extent of the trustee's powers or about the propriety of the trustee's exercise of those powers.

(3) A person who in good faith delivers assets to a trustee need not ensure that the assets are properly applied.

(4) Any person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated, is not liable solely because the former trustee is no longer a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

SECTION 95. Certification of trust [Uniform Trust Code Section 1013]. (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 settlor's Social Security number or an 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 section 94 of this 2005 Act, 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.

MISCELLANEOUS PROVISIONS

SECTION 96. Uniformity of application and construction. In applying and construing sections 1 to 95 of this 2005 Act, consideration must be given to the need to promote uniformity of the law with respect to trusts among states that enact the Uniform Trust Code.

SECTION 97. Electronic records and signatures [Uniform Trust Code Section 1102]. The legal effect, validity or enforceability of electronic records or electronic signatures under sections 1 to 95 of this 2005 Act, and of contracts formed or performed with the use of such records or signatures, are governed by ORS 84.001 to 84.061.

SECTION 98. Application [Uniform Trust Code Section 1106]. (1) Except as otherwise provided in sections 1 to 95 of this 2005 Act:

(a) Sections 1 to 95 of this 2005 Act apply to all trusts created before, on or after the effective date of this 2005 Act.

(b) Sections 1 to 95 of this 2005 Act do not apply to judicial, administrative and other proceedings concerning trusts commenced before the effective date of this 2005 Act.

(c) Any rule of construction or presumption provided in sections 1 to 95 of this 2005 Act applies to trust instruments executed before the effective date of this 2005 Act unless there is a clear indication of a contrary intent in the terms of the trust.

(d) An act done before the effective date of this 2005 Act is not affected by sections 1 to 95 of this 2005 Act.

(2) If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this 2005 Act, that statute continues to apply to the right even if it has been repealed or superseded.

SECTION 98a. ORS 18.618 is amended to read:

18.618. (1) Notwithstanding ORS 18.615, the following are not garnishable property:

(a) Equitable interests, **except to the extent allowed under sections 1 to 95 of this 2005 Act.**

(b) Property in the custody of the law.

(c) Property in the possession of a conservator.

(d) Property in the possession of a personal representative that constitutes the subject matter of a trust contained in a duly probated will of a decedent.

(2) Notwithstanding any other provision of law, if a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the debtor after a writ of garnishment could be issued under ORS 18.605, the garnishment of any property of the debtor in the garnishee's possession, control or custody is stayed pursuant to section 362 of the United States Bankruptcy Code (11 U.S.C. 101 to 1330).

SECTION 99. ORS 128.256 is amended to read:

128.256. (1) Claims against a [*nontestamentary*] trust described in subsection (2) of this section that are not presented within the time limitations established under ORS 128.262 or within the statute of limitations applicable to the claim, whichever is earlier, are barred from payment from the trust estate.

(2) ORS 128.256 to 128.300 apply only if:

(a) A claim is made against assets of a trust[, *as defined in ORS 128.005*];

[*(b) The trust came into existence during the grantor's lifetime and was revocable by the grantor at any time after the trust was created and before the death of the grantor;*]

(b) The trust came into existence during the settlor's lifetime and was a revocable trust at any time after the trust was created and before the death of the settlor;

(c) The claim is based on the debts or liabilities of the [*grantor*] **settlor**; and

(d) The claim is made against the assets of the trust after the death of the [*grantor*] **settlor**.

(3) ORS 128.256 to 128.300 apply to all claims against a [*nontestamentary*] trust described in subsection (2) of this section, without regard to whether the claims are contingent, unliquidated or not yet due.

SECTION 100. ORS 128.258 is amended to read:

128.258. (1) At any time after the death of a [*grantor*] **settlor** of a [*nontestamentary*] trust described in ORS 128.256 (2), a trustee of the trust may petition the probate court to determine the claims of creditors of the [*trust grantor*] **settlor**. A petition under this section must include all of the following information to the extent known by the trustee:

(a) The [*grantor's*] **settlor's** name, date of birth, date and place of death and 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 [*grantor*] **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 [*grantor*] **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 101. ORS 128.264 is amended to read:

128.264. After filing a petition under ORS 128.258, a trustee must cause a notice to claimants to be published once in each of three consecutive weeks in a newspaper of general circulation published in the county in which the petition is filed. The notice must include:

- (1) The name of the [*grantor*] **settlor**;
- (2) The name of the trustee and the address at which claims must be presented;
- (3) The date of the first publication of the notice; and
- (4) A statement that claims against the trust estate may be barred unless presented to the trustee at the address specified in the notice within four months after the date of the first publication of the notice.

SECTION 102. ORS 128.266 is amended to read:

128.266. (1) Within three months after a petition is entered in the register of the court under ORS 128.258, 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 [*grantor*] **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 and Social Security number of the [*grantor*] **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 [*grantor's*] **settlor's** death certificate.

SECTION 103. ORS 128.272 is amended to read:

128.272. (1) If a claim on a debt due is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance.

(2) If a judgment was entered on a claim prior to the death of the [*grantor*] **settlor**, the claim shall be presented under ORS 128.256 to 128.300 in the same manner as if no judgment had been entered, and a copy of the judgment shall be attached to the claim. The claim may be disallowed only if the judgment was void or voidable, or if the judgment could have been set aside on the date of the [*grantor's*] **settlor's** death, or if the claim is not presented within the time required by ORS 128.256. If the judgment was a lien against the property of the trust estate on the date of the [*grantor's*] **settlor's** death, the judgment shall be treated as a claim on a debt due for which the creditor holds security. In all other respects, a claim that has been reduced to judgment shall have the same priority under ORS 128.290 as a claim that has not been reduced to judgment.

SECTION 104. ORS 128.288 is amended to read:

128.288. If a claim is not barred by the statute of limitations on the date of death of the [*grantor*] **settlor**, the claim is not barred by any statute of limitations until at least one year after the date of death.

SECTION 105. ORS 128.290 is amended to read:

128.290. (1) Claims allowed against the trust estate under ORS 128.256 to 128.300 must be paid by the trustee in the following order of priority:

- (a) Expenses of administering the trust estate.
- (b) Expenses of a plain and decent funeral and disposition of the remains of the [grantor] settlor.
- (c) Debts and taxes with preference under federal law.
- (d) Reasonable and necessary medical and hospital expenses of the last illness of the [grantor] settlor, including compensation of persons attending the [grantor] settlor.
- (e) Taxes with preference under the laws of this state that are due and payable while possession of the trust estate of the [grantor] settlor is retained by the trustee.
- (f) Debts owed employees of the [grantor] settlor for labor performed within 90 days immediately preceding the date of death of the [grantor] settlor.
- (g) Child support arrearages.
- (h) A claim of the Department of Human Services for the net amount of public assistance, as defined in ORS 411.010, paid to or for the [grantor] settlor, and the claim of the department for care and maintenance of any [grantor] settlor who was at a state institution to the extent provided in ORS 179.610 to 179.770.
- (i) All other claims against the trust estate.

(2) If the assets of the trust estate are insufficient to pay in full all expenses or claims of any one class specified in subsection (1) of this section, each expense or claim of that class shall be paid only in proportion to the amount thereof.

SECTION 106. ORS 128.294 is amended to read:

128.294. The statutes of limitations and time limitations provided by ORS 128.256 to 128.300 do not affect:

- (1) Any proceeding to enforce a mortgage, pledge or other lien upon property of the trust estate;
- (2) Any proceeding to quiet title or reform any instrument with respect to title to property; or
- (3) To the limits of the insurance protection only, any proceeding to establish liability of the [grantor] settlor or the trustee for which the [grantor] settlor or trustee is protected by liability insurance at the time the proceeding is commenced.

SECTION 107. ORS 128.300 is amended to read:

128.300. If the proceeding to determine claims against a deceased [grantor] settlor is pending under ORS 128.256 to 128.300 at the same time as probate proceedings under ORS chapter 115, upon motion of any party or upon the court's own motion, any of the courts conducting proceedings may:

- (1) Order a joint hearing or trial on the common claims;
- (2) Order that the proceedings be consolidated; or
- (3) Make orders concerning the proceedings to avoid unnecessary costs for delays.

SECTION 108. ORS 128.370 is amended to read:

128.370. For the purposes of ORS 128.370 to 128.397[.],

[1] "Grantor" means the individual who created a trust described in subsection (3) of this section.]

[2] "specific distribution" means a distribution of specific property to a specific beneficiary that is required under the terms of a trust instrument.

[3] "Trust" means a trust as defined in ORS 128.005, or a portion of a trust as defined in ORS 128.005, that comes into existence during the grantor's lifetime and is revocable by the grantor at any time after the trust was created and before the death of the grantor.]

SECTION 109. Section 110 of this 2005 Act is added to and made a part of ORS 128.370 to 128.397.

SECTION 110. ORS 128.370 to 128.397 apply only to a trust, or a portion of a trust, that comes into existence during the settlor's lifetime and is a revocable trust at any time after the trust was created and before the death of the settlor.

SECTION 111. ORS 128.375 is amended to read:

128.375. Unless otherwise provided by the terms of the trust instrument, a trust is not revoked by the marriage of the [grantor] settlor after the trust instrument is executed.

SECTION 112. ORS 128.378 is amended to read:

128.378. (1) Unless otherwise provided by the terms of the trust instrument, a [grantor's] **settlor's** divorce or the annulment of the [grantor's] **settlor's** marriage, after the trust instrument is executed:

- (a) Revokes all provisions of the trust in favor of the former spouse of the [grantor] **settlor**;
- (b) Revokes all powers of appointment, general or nongeneral, in the trust **that are** exercisable by the former spouse; and
- (c) Revokes any provision in the trust naming the former spouse as trustee.

(2) Unless otherwise provided by the terms of the trust instrument, a trust shall be construed as though the former spouse predeceased the [grantor] **settlor** if, after the trust instrument is executed, the [grantor] **settlor** divorces the spouse or the marriage of the [grantor] **settlor** to the spouse is annulled.

SECTION 113. ORS 128.385 is amended to read:

128.385. Unless otherwise provided by the terms of the trust instrument, when property is to be distributed under the trust to any beneficiary who is related by blood or adoption to the [grantor] **settlor**, and the beneficiary dies leaving lineal descendants either before the [grantor] **settlor** dies or before the time set in the trust instrument for distribution, the descendants take by right of representation the property the beneficiary would have taken if the beneficiary had not died. Unless otherwise provided by the terms of the trust instrument, this section applies to a beneficiary who is entitled to receive property under a class gift if the beneficiary dies after the trust instrument is executed.

SECTION 114. ORS 128.388 is amended to read:

128.388. (1) As used in this section, "pretermitted child" means a child of a [grantor] **settlor** who is born or adopted after the execution of the trust instrument, who is not provided for in the trust or mentioned in the trust instrument and who survives the [grantor] **settlor**.

(2) If a [grantor] **settlor** has one or more children living when the [grantor] **settlor** executes a trust instrument and no provision is made in the trust for any of those children, a pretermitted child is not entitled to any share of the trust estate.

(3) If a [grantor] **settlor** has one or more children living when the [grantor] **settlor** executes a trust instrument and provision is made in the trust for any of those children, a pretermitted child is entitled to share in the trust estate as follows:

(a) The pretermitted child may share only in the portion of the trust estate intended to benefit living children.

(b) The share of each pretermitted child is equal to the total value of the portion of the trust estate intended to benefit the living children divided by the number of pretermitted children plus the number of living children for whom provision, other than nominal provision, is made in the trust.

(c) To the extent possible, the interest of each pretermitted child in the trust estate shall be of the same character, whether equitable or legal, as the interest the [grantor] **settlor** gave to the living children under the trust.

(4) If a [grantor] **settlor** has no child living when the [grantor] **settlor** executes a trust instrument, a pretermitted child is entitled to a share of the trust estate as though the [grantor] **settlor** had died intestate and had not executed the trust instrument.

(5) A pretermitted child may recover the share of the trust estate to which the child is entitled as follows:

(a) If the pretermitted child is entitled to a share of the trust estate under subsection (3) of this section, the share must be recovered from the other children.

(b) If the pretermitted child is entitled to a share of the trust estate under subsection (4) of this section, the share must be recovered from the beneficiaries on a pro rata basis, out of the portions of the trust estate passing to those persons under the trust.

(c) In reducing the shares of the beneficiaries under this subsection, the character of the dispositive plan adopted by the [grantor] **settlor** in the trust must be preserved to the extent possible.

SECTION 115. ORS 128.390 is amended to read:

128.390. (1) Subject to this section, a specific distribution does not fail by reason of the destruction, damage, sale, condemnation or change in form of the property that is the subject of the specific distribution unless:

(a) The trust instrument provides that the specific distribution fails under the particular circumstances; or

(b) The [grantor] **settlor**, during the lifetime of the [grantor] **settlor**, or the trustee gives property to the beneficiary of the specific distribution with the intent of satisfying the specific distribution.

(2) If part of the property that is the subject of a specific distribution is destroyed, damaged, sold or condemned, the remaining interest in the property passes pursuant to the specific distribution. The part of the property that is destroyed, damaged, sold or condemned is subject to subsections (3) to (6) of this section if the property would have been deemed under the common law **had the property been subject to probate in the settlor's estate.**

(3) If property that is the subject of a specific distribution is insured and the property is destroyed or damaged, the beneficiary of the specific distribution is entitled to receive the following amounts, less any amount expended or incurred by the [grantor] **settlor** or trust estate in restoration or repair of the property:

(a) Any insurance proceeds for the destroyed or damaged property unpaid at the time set in the trust instrument for the specific distribution; and

(b) An amount equal to all insurance payments paid to the [grantor] **settlor**, and such proceeds or awards paid to the trustee for the destroyed or damaged property, during the six-month period immediately preceding the time set in the trust instrument for the specific distribution.

(4) If property that is the subject of a specific distribution is sold by the [grantor] **settlor** or the trustee, the beneficiary of the specific distribution is entitled to receive:

(a) Any balance of the purchase price unpaid at the time set in the trust instrument for the specific distribution, including any security interest in the property and interest accruing before the time set in the trust instrument for the specific distribution; and

(b) An amount equal to all payments paid to the [grantor] **settlor** or the trustee for the property during the six-month period immediately preceding the time set in the trust instrument for the specific distribution. Acceptance of a promissory note of the purchaser or a third party is not considered payment under this paragraph, but payment on the note is payment on the purchase price.

(5) If property that is the subject of a specific distribution is taken by condemnation before the time set in the trust instrument for the specific distribution, the beneficiary of the specific distribution is entitled to receive:

(a) Any amount of the condemnation award unpaid at the time set in the trust instrument for the specific distribution; and

(b) An amount equal to the sums paid under the condemnation award to the [grantor] **settlor** or the trustee during the six-month period immediately preceding the time set in the trust instrument for the specific distribution.

(6) If securities as defined in ORS 59.015 are the subject of a specific distribution, and after the execution of the trust **instrument** other securities of the same or another entity are distributed to the trustee or trust estate by reason of a partial liquidation, stock dividend, stock split, merger, consolidation, reorganization, recapitalization, redemption, exchange or any other similar transaction, the specific distribution includes the additional or substituted securities.

(7) The amount that a beneficiary of a specific distribution receives under this section must be reduced by any expenses of the sale or of the collection of the proceeds of insurance, sale or condemnation award and by any amount by which income is increased by reasons of items provided for in this section. Expenses subject to this subsection include attorney fees.

SECTION 116. ORS 128.395 is amended to read:

128.395. Property that the [grantor] **settlor** gives during the [grantor's] **settlor's** lifetime to a beneficiary of the trust is an advancement against the beneficiary's share of the trust only if either the [grantor] **settlor** makes a written statement that the property constitutes an advancement or the

beneficiary makes a written statement acknowledging that the property constitutes an advancement. For purposes of applying the property against the beneficiary's share of the trust, the property must be valued as of the time the beneficiary takes possession or enjoyment of the property, or as of the time of death of the [grantor] settlor, whichever occurs first.

SECTION 117. ORS 128.397 is amended to read:

128.397. (1) If the value of an advancement made to a beneficiary under ORS 128.395 exceeds the beneficiary's share in the trust estate, the beneficiary shall be excluded from any further share of the trust estate, but the beneficiary is not required to refund any part of the advancement. If the value of the beneficiary's share in the trust estate is greater than the value of all property received as advancements, the beneficiary is entitled to receive from the trust estate the balance of the share owing to the beneficiary after deducting all amounts received as advancements.

(2) For the purpose of determining the shares of the beneficiaries of either a residuary gift or a class gift under a trust, the value of all advancements made by the [grantor] settlor to beneficiaries of such gift shall be added to the value of the total property distributed pursuant to the gift, the sum then divided among all beneficiaries of the gift, and the value of the advancement then deducted from the share of the beneficiary to whom the advancement was made.

SECTION 118. ORS 128.398 is amended to read:

128.398. (1) As used in this section:

(a) "Marital deduction" means the federal estate tax deduction allowed for transfers under section 2056 of the Internal Revenue Code, as in effect on [May 24, 2003] **the effective date of this 2005 Act**, or the federal gift tax deduction allowed for transfers under section 2523 of the Internal Revenue Code, as in effect on [May 24, 2003] **the effective date of this 2005 Act**.

(b) "Marital deduction gift" means a transfer of property that the [grantor] settlor intended to qualify for the marital deduction.

[c] "*Trust*" means a trust as defined ORS 128.005.]

(2) If a trust contains a marital deduction gift:

(a) The provisions of the trust, including any power, duty or discretionary authority given to a fiduciary, must be construed as necessary to comply with the marital deduction provisions of the Internal Revenue Code.

(b) The fiduciary may not take any action or have any power that impairs the tax deduction for the marital deduction gift.

(c) The marital deduction gift may be satisfied only with property that qualifies for the tax deduction.

(3) If a trust executed before September 12, 1981, indicates the [grantor] settlor intended that a gift provide the maximum allowable marital deduction, the trust gives the recipient an amount equal to the maximum amount of the marital deduction that would have been allowed as of the date of the gift under federal law as it existed before September 12, 1981, with adjustments for:

(a) The provisions of section 2056(c)(1)(B) and (C) of the Internal Revenue Code in effect immediately before September 12, 1981.

(b) Reduction of the amount passing under the gift by the final federal estate tax values of any other property that passes under the trust, or by other means, that qualifies for the marital deduction. This paragraph does not apply to qualified terminable interest property under section 2056(b)(7) of the Internal Revenue Code, as in effect on [May 24, 2003] **the effective date of this 2005 Act**.

(4) If a marital deduction gift is made in trust:

(a) The [grantor's] settlor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse lives. Nothing in this paragraph prevents exercise by the [grantor's] settlor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(b) Subject to paragraph (d) of this subsection, the [grantor's] settlor's spouse is entitled to all of the income of the marital deduction property at least once a year, as long as the spouse is alive.

(c) The [grantor's] **settlor's** spouse has the right to require that the trustee of the trust make unproductive marital deduction property productive or convert it into productive property within a reasonable time.

(d) Notwithstanding any provision of ORS 129.005 to 129.125, upon the death of the [grantor's] **settlor's** spouse all remaining accrued or undistributed income from qualified terminable interest property under sections 2056(b)(7) or 2523(f) of the Internal Revenue Code, as in effect on [May 24, 2003] **the effective date of this 2005 Act**, passes to the estate of the [grantor's] **settlor's** spouse, unless the trust provides a different disposition that qualifies for the marital deduction.

(5)(a) Except as provided in paragraph (b) of this subsection, if a trust that makes a marital deduction gift includes a requirement that the [grantor's] **settlor's** spouse survive the [grantor] **settlor** by a period of more than six months, or contains provisions that could result in a loss of the spouse's interest in the trust if the spouse fails to survive the [grantor] **settlor** by at least six months, the spouse need only survive the [grantor] **settlor** by six months to receive the marital deduction gift.

(b) If a trust that makes a marital deduction gift includes a requirement that the [grantor's] **settlor's** spouse survive a common disaster that results in the death of the [grantor] **settlor**, the spouse need only survive until the final audit of the federal estate tax return for the [grantor's] **settlor's** estate, if any, to receive the marital deduction gift.

(6) A trustee is not liable for a good faith decision whether to make any election referred to in sections 2056(b)(7) or 2523(f) of the Internal Revenue Code, as in effect on [May 24, 2003] **the effective date of this 2005 Act**.

(7) Subsections (4) and (6) of this section do not apply to a trust that qualifies for the marital deduction under section 20.2056(e)-2(b) of the Code of Federal Regulations, as in effect on [May 24, 2003] **the effective date of this 2005 Act**.

SECTION 119. ORS 129.220 is amended to read:

129.220. (1) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(2) The decisions to which subsection (1) of this section applies include:

(a) A decision under ORS 129.215 (1) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(b) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant and the weight, if any, to be given to those factors in deciding whether and to what extent to exercise the discretionary power conferred by ORS 129.215 (1).

(3) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(a) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(b) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(c) To the extent that the court is unable, after applying paragraphs (a) and (b) of this subsection, to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(4) Upon petition by the fiduciary for instructions [*under ORS 128.135 (2)(c)*], the court having jurisdiction over a trust or estate may instruct the fiduciary on whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this chapter will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

SECTION 120. ORS 129.225 is amended to read:

129.225. (1) As used in this section, "beneficiary" means a person who has an interest in the trust to be converted and who has the legal capacity to take all actions authorized under this section.

(2)(a) Unless expressly prohibited by the terms of the trust, a trustee may release the power to make adjustments under ORS 129.215 (1) and convert a trust into a unitrust if the trustee determines that the conversion will enable the trustee to carry out more accurately the intent of the settlor and the purposes of the trust and that operation of the trust as a unitrust is consistent with the duties of the trustee under ORS 129.210 (2).

(b) Not less than 60 days before making a conversion under this section, a trustee must give written notice to all beneficiaries who either are eligible to receive income from the trust at the time the notice is given, or who would receive a distribution of principal if the trust were to terminate immediately before the notice is given and no power of appointment was exercised. The notice must indicate that the trustee intends to release the power to adjust and to convert the trust into a unitrust, must describe how the unitrust will operate and must include a description of the initial decisions the trustee will make under this section.

(c) A trustee may not convert a trust to a unitrust under this section if any beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days after notice is given under this subsection.

(3) The trustee or any beneficiary may file a petition [*pursuant to ORS 128.135 (2)(e)*] to seek issuance of a court order directing conversion of a trust to a unitrust. The court shall order the requested conversion if the court concludes that the conversion will enable the trustee to carry out more accurately the intent of the settlor and the purposes of the trust, and that operation of the trust as a unitrust is consistent with the duties of the trustee under ORS 129.210 (2).

(4) After a trust is converted to a unitrust under this section, all of the following apply:

(a) The trustee must invest and manage trust assets as a prudent investor, and must follow an investment policy seeking a total return for trust investments, whether that return is derived from appreciation of principal or from earnings and distributions from principal.

(b) The trustee must make regular distributions in accordance with the terms of the trust. All provisions of the trust relating to distribution of income shall be construed to refer to an annual unitrust distribution equal to four percent of the fair market value of trust assets, averaged over the lesser of the three preceding calendar years or the period during which the trust has been in existence.

(c) In calculating the unitrust distribution, the trustee shall use the value of trust assets on the first business day of each calendar year for purposes of determining average value. The trustee may, in the trustee's discretion, determine the manner in which the unitrust distribution will be prorated for a year in which a beneficiary's right to payments begins or ends, the effect on trust asset valuation of other payments from or contributions to the trust, whether to estimate the value of non-liquid assets, whether to omit from the calculations trust property occupied or possessed by a beneficiary and any other matters necessary for the proper administration of the unitrust.

(d) Expenses that would be deducted from income under this chapter if the trust was not a unitrust shall not be deducted from the unitrust distribution.

(e) Unless otherwise provided by the terms of the trust, the unitrust distribution must be paid first from net income, as that amount would be determined if the trust were not a unitrust. To the extent that net income is insufficient, the unitrust distribution shall be paid first from net realized short-term capital gains, then from net realized long-term capital gains and finally from trust principal.

(f) Conversion to a unitrust does not affect any provision in the terms of the trust directing or authorizing a trustee to distribute trust principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(5) The trustee or any beneficiary may file a petition [*pursuant to ORS 128.135 (2)(e)*] to seek issuance of a court order directing any of the following:

(a) The distribution of net income, as that amount would be determined if the trust were not a unitrust, in excess of the unitrust distribution, if the excess distribution is necessary to preserve a tax benefit.

(b) The selection of a period other than three years for purposes of calculating average trust asset values.

(c) Reconversion from a unitrust. If a reconversion is ordered, the power to make adjustments under ORS 129.215 (1) is revived.

(6) A trustee does not have and may not exercise any power under this section in any of the following circumstances:

(a) The unitrust distribution would be made from any amount that is permanently set aside for charitable purposes under the terms of the trust and for which a charitable deduction from federal gift, estate or income taxes has been taken.

(b) The possession or exercise of the power would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes and the individual would not be treated as an owner if the trustee did not possess or exercise the power.

(c) The possession or exercise of the power would cause all or any part of the trust assets to be subject to any federal gift or estate tax with respect to an individual and the trust assets would not be subject to that taxation if the trustee did not possess or exercise the power.

(d) The possession or exercise of the power would result in the disallowance of a marital deduction from federal estate or gift tax that would be allowed if the trustee did not possess or exercise the power.

(e) The trustee is a beneficiary of the trust.

(7) If subsection (6) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom subsection (6) of this section does not apply may possess and exercise the powers under this section unless the possession or exercise of those powers is not permitted by the terms of the trust. If subsection (6) of this section restricts all trustees from possessing or exercising a power under this section, a trustee may file a petition [*pursuant to ORS 128.135 to*] **requesting that the court** order the requested action.

SECTION 120a. ORS 115.335 is amended to read:

115.335. The provisions of this chapter do not apply to claims against [*nontestamentary*] trusts that are subject to the provisions of ORS 128.256 to 128.300.

SECTION 121. ORS 128.280 is amended to read:

128.280. (1) The trustee may compromise a claim against the trust estate.

(2) A claim presented to a trustee under ORS 128.256 to 128.300 shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the trustee mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and to the attorney of the claimant if the claimant has an attorney.

(3) A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless the claimant requests a summary determination or brings an action in the manner provided by subsection (4) of this section.

(4) If a trustee disallows a claim submitted under ORS 128.256 to 128.300 in whole or in part, the claimant, within 30 days after the date of mailing or delivery of the notice of disallowance, may:

(a) File a request for summary determination of the claim in the probate court, with proof of service of a copy of the request upon the trustee or the attorney of the trustee; or

(b) Commence a separate action against the trustee on the claim in the circuit court.

(5) If the claimant fails either to request a summary determination or commence a separate action as provided in subsection (4) of this section, the claim is barred to the extent the claim has been disallowed by the trustee.

(6) If a claimant prevails in a proceeding or action under subsection (4) of this section, the claim shall be allowed or judgment entered in the full amount determined to be due to the claimant. The claim or judgment shall be paid from the assets of the trust estate only to the extent that funds are available after payment of other claims with higher priority under ORS 128.290.

(7) If the claimant files a request for summary determination of a claim under subsection (4) of this section, the trustee may notify the claimant in writing that the claimant must commence a separate action against the trustee on the claim within 60 days after the claimant receives the notice. Notice under this subsection must be given by the trustee within 30 days after the request for summary determination is served on the trustee or the attorney of the trustee. If the claimant fails to commence a separate action within the time allowed, the claim is barred to the extent the claim has been disallowed by the trustee.

(8) In a proceeding for summary determination under this section:

(a) The trustee shall make response to the claim as though the claim were a complaint filed in an action.

(b) The court shall hear the matter without a jury, after notice to the claimant and trustee. The court shall determine the claim in a summary manner, and shall make an order allowing or disallowing the claim in whole or in part.

(c) No appeal may be taken from the order of the court made in a proceeding for summary determination under this section.

(9) If a civil action is commenced under subsection (4) of this section, a trustee, or beneficiary [as defined by ORS 128.135], may petition the court to approve a proposed disposition of claims or to provide instructions on the treatment of claims.

(10) A claimant filing a request for summary determination of a claim under subsection (4) of this section must pay the filing fee required of a defendant or respondent under ORS 21.110 (1) and other fees applicable to civil actions in circuit court.

SECTION 122. ORS 293.790 is amended to read:

293.790. (1) Under authority of section 6, Article XI of the Oregon Constitution, the state, subject to subsection (2) of this section, may hold and dispose of the stock of any company, association or corporation, including stock already received, that is donated or bequeathed and the state, acting by and through the State Board of Higher Education, subject to subsection (2) of this section, may invest and reinvest in the stock of any company, association or corporation, any funds or moneys of the State Board of Higher Education that:

(a) Are or have been donated or bequeathed for higher education purposes;

(b) Are the proceeds from the disposition of stock that is donated or bequeathed for higher education purposes, including stock already received; or

(c) Are dividends paid with respect to stock that is donated or bequeathed for higher education purposes, including stock already received.

(2) The state, including any of its agencies having control of, or authority to invest and reinvest in, any stock described in subsection (1) of this section, in holding, disposing of or investing and reinvesting in such stock, shall be governed by [ORS 128.065 and 128.194 to 128.218] **sections 77 to 82 of this 2005 Act**, notwithstanding the date of acquisition of such stock. Moneys received from the disposition of such stock, including dividends, shall be maintained separate and distinct from the General Fund, and those moneys, including interest earned thereon, are appropriated continuously for the purposes of the donation or bequest and of the investments and reinvestments authorized by

subsection (1) of this section and by ORS 351.130. Except as specifically authorized by law, the state or any of its agencies may not purchase stock.

(3)(a) This section does not apply to investment and reinvestment of moneys in the Public Employees Retirement Fund, the Industrial Accident Fund, the Deferred Compensation Fund and the Education Stability Fund or to acquisition, retention, management and disposition of investments of those funds as provided in ORS 293.701 to 293.820.

(b) This section does not apply to investment or reinvestment of moneys or stock resulting from the holding and disposing of stock by the state as allowed under section 6 (2), Article XI of the Oregon Constitution.

SECTION 123. ORS 706.005 is amended to read:

706.005. As used in the Bank Act, unless the context requires otherwise:

(1) "Access area" means any paved walkway or sidewalk within 50 feet of an automated teller machine or night deposit facility. "Access area" does not include publicly maintained sidewalks or roads.

(2) "Access device" means:

(a) An "access device" as defined in Federal Reserve Board Regulation E (12 C.F.R. Part 205) adopted under the Electronic Fund Transfer Act (15 U.S.C. 1601, et seq.); or

(b) A key or other mechanism issued by a financial institution to a customer to give the customer access to the institution's or bank's night deposit facility.

(3) "Acquisition transaction" means:

(a) The sale and purchase of all or substantially all of the assets of a bank that is not in the ordinary course of business of such bank; or

(b) The transfer and assumption of all or substantially all of the liabilities of a bank.

(4) "Automated teller machine" or "ATM" means any electronic information processing device located in this state that:

(a) Accepts or dispenses cash in connection with a credit, deposit or convenience account, provides information and initiates transactions in accordance with the request or instruction of a customer or the customer's agent; and

(b) Is unstaffed except for persons installing the device, providing security or providing periodic servicing, maintenance or repair. The term does not include devices used solely to facilitate check guarantees or check authorizations, or used in connection with the acceptance or dispensing of cash on a person to person basis, such as by a store cashier.

(5) "Bank Act" means ORS chapters 706 to 716.

(6) "Banking business" or "business of banking" means the business of receiving or accepting money or its equivalent on deposit as a regular business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a pass book or other writing or evidence, but does not include:

(a) Depositing money or its equivalent in escrow or with an agent, pending investments in real estate or securities for or on account of a principal;

(b) The business of a savings and loan association or a credit union;

(c) Deposits accepted in connection with the purchase or lease of property or services; or

(d) Accepting deposits through an ATM or night deposit facility.

(7) "Banking day" has the meaning given that term in ORS 708A.650.

(8) "Branch" means an office or other place, except a principal place of business or an ATM, at which:

(a) A bank engages in banking business; or

(b) A trust company transacts trust business.

(9) "Candlefoot power" means a light intensity of candles on a horizontal plane at 36 inches above ground level and 5 feet in front of the area to be measured.

(10) "Capital debentures" means capital notes, capital debentures and any other form of unsecured obligations issued by an institution or stock savings bank to evidence borrowings where the rights of the lender are subordinate to the rights of the depositors.

(11)(a) "Defined parking area" means that portion of any parking area opened for customer parking that is:

(A) Contiguous to the access area of an ATM or night deposit facility;

(B) Regularly, principally and lawfully used for parking by users of the ATM or night deposit facility while the users conduct transactions during hours of darkness; and

(C) Owned or leased by the operator of the ATM or night deposit facility or owned or controlled by the party leasing the ATM or night deposit facility site to the operator.

(b) "Defined parking area" does not include any parking area that is not open or regularly used for parking by users of the ATM or night deposit facility who are conducting transactions during the hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of paragraph (a) of this subsection and would therefore otherwise be a defined parking area, only the single parking level designated by the operator of the ATM and night deposit facility to be the most directly accessible to the users of the ATM and night deposit facility shall be a defined parking area.

(12) "Department" means the Department of Consumer and Business Services.

(13) "Director" means the Director of the Department of Consumer and Business Services.

(14) "Document of title" means document of title as defined in ORS 71.2010.

(15) "Federal Reserve Act" means the Act of Congress approved December 23, 1913 (38 Stat. 251), as amended.

(16) "Federal Reserve Bank" means the Federal Reserve Banks created and organized under the authority of the Federal Reserve Act.

(17) "Federal Reserve Board" means the Federal Reserve Board created and described in the Federal Reserve Act.

(18) "Home state" means:

(a) With respect to a state bank, the state under the laws of which the state bank is incorporated or otherwise organized;

(b) With respect to a federal bank, the state in which the main office of the federal bank is located;

(c) With respect to an extranational institution, the state determined to be the home state by election of the extranational institution, or in default of such election, by the Board of Governors of the Federal Reserve System; and

(d) With respect to a financial holding company or a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the date on which the company becomes a financial holding company or a bank holding company.

(19) "Hours of darkness" means the period that commences 30 minutes after sunset and ends 30 minutes before sunrise.

(20) "Loan production office" means a physical location in this state at which representatives of a financial institution hold themselves out to the public as providing loan origination services, leasing services or services of a similar nature, but at which representatives of the financial institution do not conduct banking business.

(21) "Merger" includes consolidation.

(22) "Night deposit facility" means a receptacle that is provided by a financial institution for the use of the institution's customers in delivering cash, checks and other items to the financial institution.

(23) "Obligations" includes:

(a) The direct liability of the maker or acceptor of paper discounted with or sold to an institution;

(b) The liability of the drawer, indorser or assignor;

(c) If obligations of a copartnership or association, the obligations of the several members of the copartnership or association;

(d) If obligations of a corporation, the obligations of all subsidiaries of the corporation in which the corporation owns or controls 50 percent or more of the capital stock; and

(e) The liability of a lessee under a lease.

(24) "Officer" of a banking institution means a chief executive officer, president, any vice president, secretary, treasurer or cashier.

(25) "Operator" means any financial institution or other business entity, or any person who operates an ATM or night deposit facility.

(26) "Paid-in capital" means the aggregate amount received by an institution or stock savings bank from the issuance of its stock or transferred from retained earnings.

(27) "Person" means an individual, corporation, limited liability company, partnership, association, joint stock company, business trust or unincorporated organization.

(28) "Stockholders' equity" means the aggregate of paid-in capital and retained earnings of an institution or Oregon stock savings bank.

(29) "Trust business" means:

(a) Acting as a trustee of a trust[, *as defined in ORS 128.005*];

(b) Acting as a fiduciary, as defined in ORS 125.005;

(c) Acting as a personal representative, as defined in ORS 111.005;

(d) Acting as a receiver, trustee or assignee for the benefit of creditors; or

(e) Acting in a court-appointed position of trust or any other position of trust.

SECTION 124. ORS 65.860 is amended to read:

65.860. (1) A nonprofit corporation organized or existing solely for the purposes of either owning and operating a cemetery or cremating dead bodies and burying and caring for incinerate remains may, by its bylaws, provide that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations, gifts or other sources of revenue shall constitute an irreducible fund. Any bylaw enacted for the creation of the irreducible fund cannot be amended to reduce the fund.

(2) The board of directors may direct the investment of the money in the irreducible fund, but all investments of money deposited in the fund on or after January 1, 1972, shall be in securities in classes and amounts approved by the State Treasurer and published in a list pursuant to ORS 97.820. If a bank or trust company qualified to engage in the trust business is directed by the board of directors to invest the money in the irreducible fund, the bank or trust company shall be governed by [*the provisions of ORS 128.194 to 128.218*] **sections 77 to 82 of this 2005 Act** and shall not be required to invest the money according to the list approved by the State Treasurer. An officer of the corporation shall file with the Director of the Department of Consumer and Business Services on or before April 15 of each year a verified statement in duplicate containing the same information pertaining to the irreducible fund as provided in ORS 97.810 (3) regarding endowment care funds. The director may require the corporation to file, as often as the director considers it to be necessary, a detailed report of the conditions and assets of the irreducible fund.

(3) The interest or income arising from the irreducible fund provided for in this section or by any bylaws, or so much thereof as is necessary, shall be devoted exclusively to the preservation and embellishment of the grounds, buildings and property of the corporation and the lots and space in buildings or grounds sold to the members of the corporation, or to the payment of the interest or principal of the debts authorized by subsection (5) of this section for the purchase of land, erecting buildings, and improvements. Any surplus thereof not needed or used for such purposes shall be invested as provided in this section and shall become part of the irreducible fund.

(4) After paying for the land and the erection of the original buildings and improvements thereon, all the future receipts and income of the corporation subject to the provisions in this section relating to the creation of an irreducible fund, whether from the sale of lots and burial space, cremation of bodies, donations, gifts and other sources, shall be applied exclusively to laying out, preserving, protecting, embellishing and beautifying the cemetery or the crematory and grounds thereof, and the avenues leading thereto, and to the erection of such buildings and improvements

as may be necessary or convenient for cemetery or crematory purposes, and to pay the necessary expenses of the corporation.

(5) No debts shall be contracted by such corporation in anticipation of any future receipts, except for originally purchasing the lands authorized to be purchased by it, laying out and embellishing the grounds and avenues, erecting buildings and vaults on such land, and improving them for the purposes of the corporation. The corporation may issue bonds or notes for debts so contracted and may secure them by way of mortgage upon any of its lands, buildings, property and improvements excepting lots or space conveyed to the members.

SECTION 125. ORS 97.830 is amended to read:

97.830. (1) The principal of all funds for endowed care shall be invested, from time to time re-invested and kept invested. If a trust agreement imposes upon the trustee or custodian the duty to direct the investment or reinvestment of endowed care funds, the trustee or custodian shall perform this duty governed by [*the provisions of ORS 128.194 to 128.218*] **sections 77 to 82 of this 2005 Act**. Otherwise, the cemetery authority, governed by [*the provisions of ORS 128.194 to 128.218*] **sections 77 to 82 of this 2005 Act**, shall direct the investment and reinvestment of endowed care funds in the time or savings deposits of the custodian bank or savings association.

(2) The principal of invested endowed care funds shall never be voluntarily reduced, but shall be maintained separate and distinct by the trustee or custodian from all other funds except that it shall be proper to commingle endowment care funds with special care funds. The payment of charges chargeable against principal under ORS chapter 129 or of other expenses necessarily incurred in the administration of the trust in accordance with subsection (1) of this section shall not constitute a voluntary reduction of principal. The net income earned shall be used solely for the general care and maintenance of the cemetery property entitled to endowment care, as stipulated in the resolution, bylaw and other action or instrument by which the fund was established, and in such manner as the cemetery authority may from time to time determine to be in the best interests of such endowed property. Such net income shall never be used for the improvement or embellishment of undeveloped property offered for sale.

SECTION 126. ORS 114.305 is amended to read:

114.305. Subject to the provisions of ORS 97.130 (2) and except as restricted or otherwise provided by the will of the decedent, a document of anatomical gift under ORS 97.952 or by court order, a personal representative, acting reasonably for the benefit of interested persons, is authorized to:

(1) Direct and authorize disposition of the remains of the decedent pursuant to ORS 97.130 and incur expenses for the funeral, burial or other disposition of the remains in a manner suitable to the condition in life of the decedent. Only those funeral expenses necessary for a plain and decent funeral and disposition of the remains of the decedent may be paid from the estate if the assets are insufficient to pay the claims of the Department of Human Services for the net amount of public assistance, as defined in ORS 411.010, paid to or for the decedent and for care and maintenance of any decedent who was at a state institution to the extent provided in ORS 179.610 to 179.770.

(2) Retain assets owned by the decedent pending distribution or liquidation.

(3) Receive assets from fiduciaries or other sources.

(4) Complete, compromise or refuse performance of contracts of the decedent that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease real property, the personal representative, among other courses of action, may:

(a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt of the note of the purchaser adequately secured; or

(b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(5) Satisfy written pledges of the decedent for contributions, whether or not the pledges constituted binding obligations of the decedent or were properly presented as claims.

(6) Deposit funds not needed to meet currently payable debts and expenses, and not immediately distributable, in bank or savings and loan association accounts, or invest the funds in bank or savings and loan association certificates of deposit, or federally regulated money-market funds and short-term investment funds suitable for investment by trustees under [ORS 128.194 to 128.218] **sections 77 to 82 of this 2005 Act**, or short-term United States Government obligations.

(7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition that it is of no benefit to the estate.

(8) Vote stocks or other securities in person or by general or limited proxy.

(9) Pay calls, assessments and other sums chargeable or accruing against or on account of securities.

(10) Sell or exercise stock subscription or conversion rights.

(11) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.

(12) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held.

(13) Insure the assets of the estate against damage and loss, and insure the personal representative against liability to third persons.

(14) Advance or borrow money with or without security.

(15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. A personal representative who holds a mortgage, pledge, lien or other security interest may accept a conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction of the indebtedness.

(16) Accept other real property in part payment of the purchase price of real property sold by the personal representative.

(17) Pay taxes, assessments and expenses incident to the administration of the estate.

(18) Employ qualified persons, including attorneys, accountants and investment advisers, to advise and assist the personal representative and to perform acts of administration, whether or not discretionary, on behalf of the personal representative.

(19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties as personal representative.

(20) Prosecute claims of the decedent including those for personal injury or wrongful death.

(21) Continue any business or venture in which the decedent was engaged at the time of death to preserve the value of the business or venture.

(22) Incorporate or otherwise change the business form of any business or venture in which the decedent was engaged at the time of death.

(23) Discontinue and wind up any business or venture in which the decedent was engaged at the time of death.

(24) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(25) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117.

(26) Perform all other acts required or permitted by law or by the will of the decedent.

SECTION 127. ORS 128.256, 128.258, 128.262, 128.264, 128.266, 128.268, 128.272, 128.274, 128.276, 128.278, 128.280, 128.282, 128.284, 128.286, 128.288, 128.290, 128.292, 128.294, 128.296, 128.298, 128.300, 128.370, 128.375, 128.378, 128.380, 128.382, 128.385, 128.388, 128.390, 128.392, 128.395, 128.397 and 128.398 are added to and made a part of sections 1 to 95 of this 2005 Act.

SECTION 128. ORS 128.003, 128.005, 128.007, 128.009, 128.015, 128.021, 128.026, 128.031, 128.035, 128.041, 128.045, 128.047, 128.051, 128.055, 128.065, 128.102, 128.115, 128.125, 128.135, 128.145, 128.155, 128.165, 128.175, 128.177, 128.179, 128.181, 128.183, 128.185, 128.192, 128.194, 128.196, 128.198, 128.202, 128.204, 128.206, 128.208, 128.212, 128.214, 128.216, 128.218, 128.232,

128.234, 128.236, 128.238, 128.242, 128.244, 128.246, 128.255, 128.308, 128.460, 128.470, 128.480, 128.490 and 128.500 are repealed.

SECTION 129. The unit and section captions used in this 2005 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2005 Act.

Passed by Senate April 5, 2005

Received by Governor:

Repassed by Senate June 14, 2005

.....M.,....., 2005

Approved:

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Secretary of Senate

.....M.,....., 2005

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President of Senate

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Governor

Passed by House June 10, 2005

Filed in Office of Secretary of State:

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Speaker of House

.....M.,....., 2005

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Secretary of State