

House Bill 2309

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Extends length of conservatorship created for minor from date protected person attains 18 years of age to date person attains 21 years of age.

Allows protected person to control income and property acquired after person attains 18 years of age.

Allows creditor of protected person who attains 18 years of age to enforce claim against property acquired after person attains 18 years of age.

Applies to conservatorships created prior to, on or after effective date of Act for persons who are minors on or after effective date.

A BILL FOR AN ACT

1
2 Relating to protective proceedings; creating new provisions; and amending ORS 125.090, 125.230,
3 125.420 and 125.475.

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

5 **SECTION 1.** ORS 125.090 is amended to read:

6 125.090. (1) A protected person is entitled to the same rights and procedures provided in the
7 original proceedings when a motion to terminate the protective proceeding is filed and a fiduciary
8 opposes the motion. The fiduciary has the burden of proving by clear and convincing evidence that
9 a protected person continues to be incapacitated or financially incapable if a motion to terminate
10 a protective proceeding is filed and the fiduciary opposes the motion. A visitor must be appointed
11 if a motion for termination of a guardianship is filed and objections are filed to the motion. A visitor
12 may be appointed if a motion for termination of a conservatorship is filed.

13 (2) The court may terminate protective proceedings upon motion after determining any of the
14 following:

15 (a) The appointment of a fiduciary **other than a conservator** or other protective order was
16 made because the protected person was a minor, and the protected person has attained the age of
17 majority.

18 **(b) The appointment of a conservator was made because the protected person was a mi-**
19 **nor, and the protected person has attained 21 years of age.**

20 *[(b)]* (c) The appointment of a fiduciary or other protective order was made because the pro-
21 tected person was incapacitated, and the protected person is no longer incapacitated.

22 *[(c)]* (d) The appointment of a fiduciary or other protective order was made because the pro-
23 tected person was financially incapable, and the protected person is no longer financially incapable
24 or the conditions of ORS 125.535 have been met.

25 *[(d)]* (e) The protected person has died.

26 *[(e)]* (f) The best interests of the protected person would be served by termination of the pro-
27 ceedings.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (3) The court shall terminate a protective proceeding by entry of a general judgment **as defined**
 2 **in ORS 18.005.**

3 **SECTION 2.** ORS 125.230 is amended to read:

4 125.230. (1)(a) Except as provided in subsection (3) of this section, a fiduciary's authority ter-
 5 minates upon the death, resignation or removal of the fiduciary or upon the protected person's
 6 death.

7 (b) If the fiduciary is a guardian appointed solely by reason of the minority of the protected
 8 person, the fiduciary's authority terminates upon the protected person attaining 18 years of age.

9 (c) **If the fiduciary is a conservator appointed solely by reason of the minority of the**
 10 **protected person, the fiduciary's authority terminates upon the protected person attaining**
 11 **21 years of age.**

12 (2) Resignation or removal of a fiduciary does not discharge the fiduciary until a final report
 13 or accounting has been approved by the court, any surety exonerated and the fiduciary discharged
 14 by order of the court.

15 (3) A guardian retains the authority to direct disposition of the remains of a deceased protected
 16 person if the guardian is unaware of any contact during the 12-month period immediately preceding
 17 the death of the protected person between the protected person and any person with priority over
 18 the fiduciary to control disposition of the remains under ORS 97.130 or to make an anatomical gift
 19 under ORS 97.965.

20 **SECTION 3.** ORS 125.420 is amended to read:

21 125.420. (1) **Except as provided in subsections (2) and (3) of this section,** a conservator shall
 22 take possession of all the property of substantial value of the protected person, and of rents, income,
 23 issues and profits from those properties whether accruing before or after the appointment of the
 24 conservator. The conservator shall also take possession of all proceeds from the sale, mortgage,
 25 lease or other disposition of property of the protected person. [*The conservator may permit the pro-*
 26 *protected person to retain possession and control of property and funds for living requirements as appro-*
 27 *prate to the needs and capacities of the protected person.*] The title to all property of the protected
 28 person is in the protected person and not in the conservator.

29 (2) **The conservator may permit the protected person to retain possession and control**
 30 **of property and funds for living requirements as appropriate to the needs and capacities of**
 31 **the protected person.**

32 (3) **The protected person, rather than a conservator appointed solely by reason of the**
 33 **minority of the protected person, has the right to possess, control, convey, encumber and**
 34 **make contracts or elections affecting income and property acquired by the protected person**
 35 **after the person has attained 18 years of age. However, income from and increase in value**
 36 **of conservatorship property are considered property acquired by the conservator and not by**
 37 **the protected person.**

38 **SECTION 4.** ORS 125.475 is amended to read:

39 125.475. (1) Unless the court by order provides otherwise, a conservator shall account to the
 40 court for the administration of the protected estate within 60 days after each anniversary of ap-
 41 pointment. In addition, a conservator shall account to the court for the administration of the pro-
 42 tected estate:

43 (a) Within 60 days after:

44 (A) The death of the protected person[,];

45 (B) A [*minor*] protected person **for whom a conservator was appointed because the pro-**

1 **ected person was a minor** attains [*majority*] **21 years of age**; or

2 (C) An adult protected person becomes able to manage the protected person's financial re-
3 sources; and

4 (b) Within 30 days after the removal of the conservator, the resignation of the conservator or
5 the termination of the conservator's authority under ORS 125.410 (7).

6 (2) Each accounting must include the following information:

7 (a) The period of time covered by the accounting.

8 (b) The total value of the property with which the conservator is chargeable according to the
9 inventory, or, if there was a prior accounting, the amount of the balance of the prior accounting.

10 (c) All money and property received during the period covered by the accounting.

11 (d) All disbursements made during the period covered by the accounting.

12 (e) The amount of bond posted by the conservator during the period covered by the accounting.

13 (f) Such other information as the conservator considers necessary, or that the court might re-
14 quire, for the purpose of disclosing the condition of the estate.

15 (3) Vouchers for disbursements must accompany the accounting unless otherwise provided by
16 order or rule of the court or unless the conservator is a trust company that has complied with ORS
17 709.030. If vouchers are not required, the conservator shall:

18 (a) Maintain the vouchers for a period of not less than one year following the date on which the
19 order approving the final accounting is entered;

20 (b) Permit interested persons to inspect the vouchers and receive copies of the vouchers at their
21 own expense at the place of business of the conservator during the conservator's normal business
22 hours at any time before the end of one year following the date on which the order approving the
23 final accounting is entered; and

24 (c) Include in each annual accounting and the final accounting a statement that the vouchers
25 are not filed with the accounting but are maintained by the conservator and may be inspected and
26 copied as provided in this subsection.

27 (4) The court may waive a final accounting if:

28 (a) The conservator was appointed because the protected person was a minor, and the protected
29 person has attained [*the age of majority*] **21 years of age**, or the conservator was appointed because
30 the protected person was financially incapable, and the protected person is no longer financially
31 incapable;

32 (b) The protected person gives a receipt to the conservator for the property delivered to the
33 protected person; and

34 (c) The conservator files with the court a copy of the receipt issued by the protected person to
35 the conservator.

36 (5) Copies of accountings must be served on all persons listed in ORS 125.060 (3). The court may
37 waive service on the protected person if service of the copy would not assist the protected person
38 in understanding the proceedings.

39 (6) The court may require a conservator to submit to a physical check of the estate in the
40 control of the conservator at any time and in any manner the court may specify.

41 (7) The Chief Justice of the Supreme Court may by rule specify the form and contents of ac-
42 counts that must be filed by a conservator.

43 **SECTION 5. Section 6 of this 2009 Act is added to and made a part of ORS chapter 125.**

44 **SECTION 6. (1) ORS 125.495, 125.500, 125.505, 125.510, 125.515 and 125.520 do not apply to**
45 **property acquired by a protected person after the person has attained 18 years of age as**

1 **described in ORS 125.420 (3).**

2 **(2) A creditor of the protected person may elect to enforce the creditor's claim against**
3 **the property described in subsection (1) of this section to the extent permitted by law other**
4 **than provisions of ORS chapter 125.**

5 **SECTION 7. Section 6 of this 2009 Act and the amendments to ORS 125.090, 125.230,**
6 **125.420 and 125.475 by sections 1 to 4 of this 2009 Act apply to appointments of conservators**
7 **made prior to, on or after the effective date of this 2009 Act for protected persons who are**
8 **minors on or after the effective date of this 2009 Act.**

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