

Senate Bill 237

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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**.

Provides that power of attorney may become effective at specified future time, or upon occurrence of specified future event or contingency. Allows principal to authorize person or persons to determine whether specified event or contingency has occurred, and manner in which determination must be made.

Provides that physician may make determination as to whether principal has become financially incapable if power of attorney does not designate person or persons to make determination or if designated person or persons are not willing or able to make determination.

A BILL FOR AN ACT

1
2 Relating to powers of attorney; creating new provisions; and amending ORS 127.005, 127.015, 127.025,
3 127.035 and 127.045.

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

5 **SECTION 1. For the purposes of ORS 127.005 to 127.045:**

6 (1) **"Agent" includes an attorney-in-fact; and**

7 (2) **"Financially incapable" has the meaning given that term in ORS 125.005.**

8 **SECTION 2. ORS 127.005 is amended to read:**

9 127.005. (1) When a principal designates another **person** as an [*attorney-in-fact or*] agent by a
10 power of attorney in writing, and the [*writing*] **power of attorney** does not contain words that
11 otherwise **delay or** limit the period of time of its effectiveness:

12 (a) The power of attorney [*shall remain*] **becomes effective when executed and remains** in
13 effect until the power is revoked by the principal;

14 (b) The powers of the [*attorney-in-fact or*] agent are unaffected by the passage of time; and

15 (c) The powers of the [*attorney-in-fact or agent shall be*] **agent are** exercisable by the [*attorney-*
16 *in-fact or*] agent on behalf of the principal [*notwithstanding the later disability or incompetence of the*
17 *principal at law*] **even though the principal becomes financially incapable.**

18 (2) **The terms of a power of attorney may provide that the power of attorney will become**
19 **effective at a specified future time, or will become effective upon the occurrence of a speci-**
20 **fied future event or contingency such as the principal becoming financially incapable. If a**
21 **power of attorney becomes effective upon the occurrence of a specified future event or con-**
22 **tingency, the power of attorney may designate a person or persons to determine whether the**
23 **specified event or contingency has occurred, and the manner in which the determination**
24 **must be made. A person designated by a power of attorney to determine whether the prin-**
25 **icipal is financially incapable is the principal's personal representative for the purposes of**
26 **ORS 192.518 to 192.529 and the federal Health Insurance Portability and Accountability Act**
27 **privacy regulations, 45 C.F.R. parts 160 and 164.**

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) If a power of attorney becomes effective upon the principal becoming financially in-**
 2 **capable and either the power of attorney does not designate a person or persons to make the**
 3 **determination as to whether the principal is financially incapable or none of the designated**
 4 **persons is willing or able to make the determination, a determination that the principal is**
 5 **financially incapable may be made by any physician. The physician's determination must be**
 6 **made in writing.**

7 [(2)] **(4)** All acts done by [*the attorney-in-fact or*] **an** agent under [*the*] **a** power of attorney during
 8 [*any period of disability or incompetence of the principal at law shall*] **a period in which the prin-**
 9 **cipal is financially incapable** have the same effect, and [*shall*] inure to the benefit of and bind the
 10 principal, as though the principal were not [*disabled or incompetent*] **financially incapable.**

11 [(3)] **(5)** If a conservator is appointed [*thereafter for the*] **for a** principal, the [*attorney-in-fact or*
 12 *agent, during the continuation of that appointment,*] **agent** shall account to the conservator, rather
 13 than to the principal, **for so long as the conservatorship lasts.** The conservator has the same
 14 power that the principal would have[, *but for the disability or incompetence of the principal,*] to re-
 15 voke, suspend or terminate all or any part of the power of attorney [*or agency*].

16 [(4)] **(6)** This section does not apply to powers of attorney for health care executed under ORS
 17 127.505 to 127.660 and 127.995.

18 **SECTION 3.** ORS 127.015 is amended to read:

19 127.015. (1) The death of [*any*] **a** principal who has executed a power of attorney in writing, **or**
 20 **the occurrence of any other event that would otherwise terminate the authority of the agent,**
 21 does not revoke or terminate the [*agency as to the attorney-in-fact or*] **authority of an** agent who,
 22 without actual knowledge of the death of the principal **or other event,** acts in good faith under the
 23 power of attorney [*or agency*]. Any action so taken, unless otherwise invalid or unenforceable, binds
 24 the principal and heirs, devisees and personal representatives of the principal.

25 (2) An affidavit[, *executed by the attorney-in-fact or agent stating*] **executed by an agent that**
 26 **states** that the [*attorney-in-fact or*] agent did not have, at the time of doing an act under the power
 27 of attorney, actual knowledge of the revocation or termination of the power of attorney by death
 28 **or other event,** is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination
 29 of the power at that time. If the exercise of the power requires execution and delivery of any in-
 30 strument [*which*] **that** is recordable, the affidavit [*when authenticated for record is likewise record-*
 31 *able*] **may also be recorded.**

32 (3) This section [*shall not be construed to*] **does not** alter or affect any provision for revocation
 33 or termination contained in the power of attorney.

34 **SECTION 4.** ORS 127.025 is amended to read:

35 127.025. A person may not refuse to recognize the authority of an [*attorney-in-fact or*] agent un-
 36 der a power of attorney based solely on the passage of time since the power of attorney was exe-
 37 cuted.

38 **SECTION 5.** ORS 127.035 is amended to read:

39 127.035. Any person who reasonably relies in good faith on the authority of an [*attorney-in-fact*
 40 *or*] agent under a power of attorney is not liable to any other person based on that reliance, and is
 41 not required to ensure that assets of the principal that are paid or delivered to the [*attorney-in-fact*
 42 *or*] agent are properly applied. Any person who has not received actual notice of revocation of a
 43 power of attorney is not liable to any other person by reason of relying on a power of attorney that
 44 has been revoked.

45 **SECTION 6.** ORS 127.045 is amended to read:

1 127.045. Unless otherwise provided in the power of attorney document, an [*attorney-in-fact or*]
2 agent must use the property of the principal for the benefit of the principal.

3 **SECTION 7. Section 1 of this 2009 Act and the amendments to ORS 127.005, 127.015,**
4 **127.025, 127.035 and 127.045 by sections 2 to 6 of this 2009 Act apply to all powers of attorney,**
5 **whether executed before, on or after the effective date of this 2009 Act.**

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