

A-Engrossed
House Bill 2652

Ordered by the House March 30
Including House Amendments dated March 30

Sponsored by Representatives GELSER, SCHAUFLER; Representatives BARKER, DEMBROW, DOHERTY, OLSON, TOMEI (Pre-session filed.)

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.

Disqualifies person from serving as fiduciary, health care representative, attorney-in-fact or surrogate if prior court order terminated parental rights of person or determined it unsafe for protected person, principal, child, youth or youth offender, while ward of court, to return to person's home. **Allows protected person who is not incapacitated to petition court to remove disqualification of specified persons from serving as fiduciary. Allows principal who is not incapable to petition court to remove disqualification of specified persons from serving as health care representative or attorney-in-fact.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to persons who can serve in representative capacity for other persons; creating new pro-
3 visions; amending ORS 125.205, 127.520, 127.635, 127.727, 343.155, 419B.220 and 419C.220; and
4 declaring an emergency.

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

6 **SECTION 1.** ORS 125.205 is amended to read:

7 125.205. (1) A person is not qualified to serve as a fiduciary if the person:

8 (a) Is incapacitated, financially incapable[,] or a minor; [or]

9 (b) Is acting as a health care provider, as defined in ORS 127.505, for the protected person[.];

10 **or**

11 (c) **Is the protected person's parent or former guardian and:**

12 (A) **At any time while the protected person was under the care, custody or control of the**
13 **person, a court entered an order:**

14 (i) **Taking the protected person into protective custody under ORS 419B.150; or**

15 (ii) **Committing the protected person to the legal custody of the Department of Human**
16 **Services for care, placement and supervision under ORS 419B.337; and**

17 (B) **The court entered a subsequent order that:**

18 (i) **The protected person should be permanently removed from the person's home, or**
19 **continued in substitute care, because it was not safe for the protected person to be returned**
20 **to the person's home, and no subsequent order of the court was entered that permitted the**
21 **protected person to return to the person's home before the protected person's wardship was**
22 **terminated under ORS 419B.328; or**

23 (ii) **Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.**

24 (2) **A protected person, while not incapacitated, may petition the court to remove a pro-**

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 **hibition contained in subsection (1)(c) of this section.**

2 **SECTION 2.** ORS 127.520 is amended to read:

3 127.520. (1) Except as provided in ORS 127.635 or as may be allowed by court order, the fol-
4 lowing persons may not serve as health care representatives:

5 (a) If unrelated to the principal by blood, marriage or adoption:

6 [(a)] (A) The attending physician or an employee of the attending physician[.]; **or**

7 [(b)] (B) An owner, operator or employee of a health care facility in which the principal is a
8 patient or resident, unless the health care representative was appointed before the principal's ad-
9 mission to the facility[.]; **or**

10 (b) **A person who is the principal's parent or former guardian and:**

11 (A) **At any time while the principal was under the care, custody or control of the person,**
12 **a court entered an order:**

13 (i) **Taking the principal into protective custody under ORS 419B.150; or**

14 (ii) **Committing the principal to the legal custody of the Department of Human Services**
15 **for care, placement and supervision under ORS 419B.337; and**

16 (B) **The court entered a subsequent order that:**

17 (i) **The principal should be permanently removed from the person's home, or continued**
18 **in substitute care, because it was not safe for the principal to be returned to the person's**
19 **home, and no subsequent order of the court was entered that permitted the principal to re-**
20 **turn to the person's home before the principal's wardship was terminated under ORS**
21 **419B.328; or**

22 (ii) **Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.**

23 (2) **A principal, while not incapable, may petition the court to remove a prohibition con-**
24 **tained in subsection (1)(b) of this section.**

25 [(2)] (3) A capable adult may disqualify any other person from making health care decisions for
26 the capable adult. The disqualification must be in writing and signed by the capable adult. The dis-
27 qualification must specifically designate those persons who are disqualified.

28 [(3)] (4) A health care representative whose authority has been revoked by a court is disquali-
29 fied.

30 [(4)] (5) A health care provider who has actual knowledge of a disqualification may not accept
31 a health care decision from a disqualified individual.

32 [(5)] (6) A person who has been disqualified from making health care decisions for a principal,
33 and who is aware of that disqualification, may not make health care decisions for the principal.

34 **SECTION 3.** ORS 127.635 is amended to read:

35 127.635. (1) Life-sustaining procedures as defined in ORS 127.505 [*which*] **that** would otherwise
36 be applied to an incapable principal who does not have an appointed health care representative or
37 applicable valid advance directive may be withheld or withdrawn in accordance with subsections (2)
38 and (3) of this section if the principal has been medically confirmed to be in one of the following
39 conditions:

40 (a) A terminal condition;

41 (b) Permanently unconscious;

42 (c) A condition in which administration of life-sustaining procedures would not benefit the
43 principal's medical condition and would cause permanent and severe pain; or

44 (d) The person has a progressive illness that will be fatal and is in an advanced stage, the per-
45 son is consistently and permanently unable to communicate by any means, swallow food and water

1 safely, care for the person's self and recognize the person's family and other people, and it is very
2 unlikely that the person's condition will substantially improve.

3 (2) If a principal's condition has been determined to meet one of the conditions set forth in
4 subsection (1) of this section, and the principal does not have an appointed health care represen-
5 tative or applicable advance directive, the principal's health care representative shall be the first
6 of the following, in the following order, who can be located upon reasonable effort by the health
7 care facility and who is willing to serve as the health care representative:

8 (a) A guardian of the principal who is authorized to make health care decisions, if any;

9 (b) The principal's spouse;

10 (c) An adult designated by the others listed in this subsection who can be so located, if no
11 person listed in this subsection objects to the designation;

12 (d) A majority of the adult children of the principal who can be so located;

13 (e) Either parent of the principal;

14 (f) A majority of the adult siblings of the principal who can be located with reasonable effort;

15 or

16 (g) Any adult relative or adult friend.

17 (3) If none of the persons described in subsection (2) of this section is available, then life-
18 sustaining procedures may be withheld or withdrawn upon the direction and under the supervision
19 of the attending physician.

20 (4) Life-sustaining procedures may be withheld or withdrawn upon the direction and under the
21 supervision of the attending physician at the request of a person designated the health care repre-
22 sentative under subsections (2) and (3) of this section only after the person has consulted with con-
23 cerned family and close friends, and if the principal has a case manager, as defined by rules adopted
24 by the Department of Human Services, after giving notice to the principal's case manager.

25 **(5) Notwithstanding subsection (2) of this section, a person who is the principal's parent**
26 **or former guardian may not withhold or withdraw life-sustaining procedures under this sec-**
27 **tion if:**

28 **(a) At any time while the principal was under the care, custody or control of the person,**
29 **a court entered an order:**

30 **(A) Taking the principal into protective custody under ORS 419B.150; or**

31 **(B) Committing the principal to the legal custody of the Department of Human Services**
32 **for care, placement and supervision under ORS 419B.337; and**

33 **(b) The court entered a subsequent order that:**

34 **(A) The principal should be permanently removed from the person's home, or continued**
35 **in substitute care, because it was not safe for the principal to be returned to the person's**
36 **home, and no subsequent order of the court was entered that permitted the principal to re-**
37 **turn to the person's home before the principal's wardship was terminated under ORS**
38 **419B.328; or**

39 **(B) Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.**

40 **(6) A principal, while not incapable, may petition the court to remove a prohibition con-**
41 **tained in subsection (5) of this section.**

42 **SECTION 4.** ORS 127.727 is amended to read:

43 127.727. (1) None of the following may serve as attorney-in-fact:

44 *[(1)]* **(a)** The attending physician or mental health service provider or an employee of the phy-
45 sician or provider, if the physician, provider or employee is unrelated to the principal by blood,

1 marriage or adoption.

2 [(2)] (b) An owner, operator or employee of a health care facility in which the principal is a
3 patient or resident, if the owner, operator or employee is unrelated to the principal by blood, mar-
4 riage or adoption.

5 (c) A person who is the principal's parent, guardian or former guardian if:

6 (A) At any time while the principal was under the care, custody or control of the person,
7 a court entered an order:

8 (i) Taking the principal into protective custody under ORS 419B.150; or

9 (ii) Committing the principal to the legal custody of the Department of Human Services
10 for care, placement and supervision under ORS 419B.337; and

11 (B) The court entered a subsequent order that:

12 (i) The principal should be permanently removed from the person's home, or continued
13 in substitute care, because it was not safe for the principal to be returned to the person's
14 home, and no subsequent order of the court was entered that permitted the principal to re-
15 turn to the person's home before the principal's wardship was terminated under ORS
16 419B.328; or

17 (ii) Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.

18 (4) A principal, while not incapable, may petition the court to remove a prohibition con-
19 tained in subsection (1)(c) of this section.

20 **SECTION 5.** Section 6 of this 2011 Act is added to and made a part of ORS chapter 343.

21 **SECTION 6.** A school district or other educational agency may not appoint as a surro-
22 gate, nor may a court order the appointment as a surrogate, to protect the special educa-
23 tional rights of a child with a disability, a person who is the child's parent, guardian or
24 former guardian if:

25 (1) At any time while the child was under the care, custody or control of the person, a
26 court entered an order:

27 (a) Taking the child into protective custody under ORS 419B.150; or

28 (b) Committing the child to the legal custody of the Department of Human Services for
29 care, placement and supervision under ORS 419B.337; and

30 (2) The court entered a subsequent order that:

31 (a) The child should be permanently removed from the person's home, or continued in
32 substitute care, because it was not safe for the child to be returned to the person's home,
33 and no subsequent order of the court was entered that permitted the child to return to the
34 person's home before the child's wardship was terminated under ORS 419B.328; or

35 (b) Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.

36 **SECTION 7.** ORS 343.155 is amended to read:

37 343.155. The State Board of Education shall establish by rule procedures to protect the rights
38 of every child with a disability who is eligible for special education and every child who there is a
39 reasonable cause to believe has a disability, including:

40 (1) Rules providing for the participation of the parents of a child with a disability in meetings
41 regarding the child's identification, evaluation, individualized education program, educational place-
42 ment and the provision of a free appropriate public education to the child.

43 (2) Rules governing the procedures for the appointment of a surrogate for the parent and other
44 rules necessary to protect the special educational rights of the child, which shall include, but need
45 not be limited to, rules applicable whenever:

1 (a) No parent of the child can be identified or located after reasonable efforts;

2 (b) There is reasonable cause to believe that the child has a disability and is a ward of the state;

3 (c) The child is an unaccompanied homeless youth; *[or]*

4 (d) The child reaches the age of majority and has been determined not to have the ability to give
5 informed consent regarding the child's education; **or**

6 **(e) The parent, guardian or former guardian of the child is disqualified from being ap-**
7 **pointed as a surrogate under section 6 of this 2011 Act.**

8 (3) Rules prescribing mediation procedures, resolution sessions and hearings procedures if iden-
9 tification, evaluation, individual education program or placement is contested.

10 (4) Rules prescribing when notice of procedural safeguards must be given to the parents or the
11 child with a disability who has reached the age of majority, the content of the notice and the lan-
12 guage of the notice.

13 (5) Rules prescribing standards and procedures for disciplinary actions for behavior or miscon-
14 duct of a child with a disability.

15 (6) Other procedural safeguards as required by law.

16 **SECTION 8.** ORS 419B.220 is amended to read:

17 419B.220. (1) Upon the request of any party, the court shall appoint a surrogate for a child who
18 is temporarily or permanently in the custody of, or committed to, a public or private agency through
19 the action of the juvenile court if:

20 (a) The court finds that the child may be eligible for special education programs because of a
21 disabling condition as provided in ORS chapter 343;

22 (b) The child does not already have a surrogate appointed by a school district or other educa-
23 tional agency; and

24 (c) The requesting party nominates a person who is willing to serve as the surrogate and who
25 meets the requirements described in subsection (2) of this section.

26 (2) A surrogate appointed under this section:

27 (a) May not be an employee of the state educational agency, a school district or any other
28 agency that is involved in the education or care of the child;

29 (b) May not have a conflict of interest that would interfere with the surrogate representing the
30 special education interests of the child; *[and]*

31 (c) Shall have knowledge and skills that ensure that the surrogate can adequately represent the
32 child in special education decisions; **and**

33 **(d) May not be a person who is the child's parent, guardian or former guardian if:**

34 **(A) At any time while the child was under the care, custody or control of the person, a**
35 **court entered an order:**

36 **(i) Taking the child into protective custody under ORS 419B.150; or**

37 **(ii) Committing the child to the legal custody of the Department of Human Services for**
38 **care, placement and supervision under ORS 419B.337; and**

39 **(B) The court entered a subsequent order that:**

40 **(i) The child should be permanently removed from the person's home, or continued in**
41 **substitute care, because it was not safe for the child to be returned to the person's home,**
42 **and no subsequent order of the court was entered that permitted the child to return to the**
43 **person's home before the child's wardship was terminated under ORS 419B.328; or**

44 **(ii) Terminated the person's parental rights under ORS 419B.500 and 419B.502 to**
45 **419B.524.**

1 **SECTION 9.** ORS 419C.220 is amended to read:

2 419C.220. (1) Upon the request of any party, the court shall appoint a surrogate for a youth or
3 youth offender who is temporarily or permanently in the custody of, or committed to, a public or
4 private agency through the action of the juvenile court if:

5 (a) The court finds that the youth or youth offender may be eligible for special education pro-
6 grams because of a disabling condition as provided in ORS chapter 343;

7 (b) The youth or youth offender does not already have a surrogate appointed by a school district
8 or other educational agency; and

9 (c) The requesting party nominates a person who is willing to serve as the surrogate and who
10 meets the requirements described in subsection (2) of this section.

11 (2) A surrogate appointed under this section:

12 (a) May not be an employee of the state educational agency, a school district or any other
13 agency that is involved in the education or care of the youth or youth offender;

14 (b) May not have a conflict of interest that would interfere with the surrogate representing the
15 special education interests of the youth or youth offender; *[and]*

16 (c) Shall have knowledge and skills that ensure that the surrogate can adequately represent the
17 youth or youth offender in special education decisions; **and**

18 **(d) May not be a person who is the youth's or youth offender's parent, guardian or for-**
19 **mer guardian if:**

20 **(A) At any time while the youth or youth offender was under the care, custody or control**
21 **of the person, a court entered an order:**

22 **(i) Taking the youth or youth offender into protective custody under ORS 419B.150; or**

23 **(ii) Committing the youth or youth offender to the legal custody of the Department of**
24 **Human Services for care, placement and supervision under ORS 419B.337; and**

25 **(B) The court entered a subsequent order that:**

26 **(i) The youth or youth offender should be permanently removed from the person's home,**
27 **or continued in substitute care, because it was not safe for the youth or youth offender to**
28 **be returned to the person's home, and no subsequent order of the court was entered that**
29 **permitted the youth or youth offender to return to the person's home before the youth's or**
30 **youth offender's wardship was terminated under ORS 419B.328; or**

31 **(ii) Terminated the person's parental rights under ORS 419B.500 and 419B.502 to**
32 **419B.524.**

33 **SECTION 10.** The amendments to ORS 125.205, 127.520, 127.635, 127.727, 343.155, 419B.220
34 and 419C.220 by sections 1 to 4 and 7 to 9 of this 2011 Act apply to appointments of persons
35 as representatives made on or after the effective date of this 2011 Act.

36 **SECTION 11.** This 2011 Act being necessary for the immediate preservation of the public
37 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
38 on its passage.