

Enrolled
House Bill 2652

Sponsored by Representatives GELSER, SCHAUFLEER; Representatives BARKER, DEMBROW,
DOHERTY, OLSON, TOMEI (Presession filed.)

CHAPTER

AN ACT

Relating to persons who can serve in representative capacity for other persons; creating new provisions; amending ORS 125.205, 127.520, 127.635, 127.727, 343.155, 419B.220 and 419C.220; and declaring an emergency.

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

SECTION 1. ORS 125.205 is amended to read:

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

- (a) Is incapacitated, financially incapable[,] **or** a minor; [or]
- (b) Is acting as a health care provider, as defined in ORS 127.505, for the protected person[.];

or

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

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

- (i) **Taking the protected person into protective custody under ORS 419B.150; or**
- (ii) **Committing the protected person to the legal custody of the Department of Human Services for care, placement and supervision under ORS 419B.337; and**

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

- (i) **The protected person should be permanently removed from the person's home, or continued in substitute care, because it was not safe for the protected person to be returned to the person's home, and no subsequent order of the court was entered that permitted the protected person to return to the person's home before the protected person's wardship was terminated under ORS 419B.328; or**
- (ii) **Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.**

(2) **A protected person, while not incapacitated, may petition the court to remove a prohibition contained in subsection (1)(c) of this section.**

SECTION 2. ORS 127.520 is amended to read:

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

- (a) If unrelated to the principal by blood, marriage or adoption:
 - [a] (A) The attending physician or an employee of the attending physician[.]; **or**
 - [b] (B) An owner, operator or employee of a health care facility in which the principal is a patient or resident, unless the health care representative was appointed before the principal's admission to the facility[.]; **or**

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

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

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

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

(B) The court entered a subsequent order that:

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

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

(2) A principal, while not incapable, may petition the court to remove a prohibition contained in subsection (1)(b) of this section.

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

[3] (4) A health care representative whose authority has been revoked by a court is disqualified.

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

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

SECTION 3. ORS 127.635 is amended to read:

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

(a) A terminal condition;

(b) Permanently unconscious;

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

(d) The person has a progressive illness that will be fatal and is in an advanced stage, the person is consistently and permanently unable to communicate by any means, swallow food and water safely, care for the person's self and recognize the person's family and other people, and it is very unlikely that the person's condition will substantially improve.

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

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

(b) The principal's spouse;

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

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

(e) Either parent of the principal;

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

or

(g) Any adult relative or adult friend.

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

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

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

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

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

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

(b) The court entered a subsequent order that:

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

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

(6) A principal, while not incapable, may petition the court to remove a prohibition contained in subsection (5) of this section.

SECTION 4. ORS 127.727 is amended to read:

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

[1] (a) The attending physician or mental health service provider or an employee of the physician or provider, if the physician, provider or employee is unrelated to the principal by blood, marriage or adoption.

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

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

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

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

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

(B) The court entered a subsequent order that:

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

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

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

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

SECTION 6. A school district or other educational agency may not appoint as a surrogate, nor may a court order the appointment as a surrogate, to protect the special educa-

tional rights of a child with a disability, a person who is the child's parent, guardian or former guardian if:

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

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

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

(2) The court entered a subsequent order that:

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

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

SECTION 7. ORS 343.155 is amended to read:

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

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

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

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

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

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

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

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

(3) Rules prescribing mediation procedures, resolution sessions and hearings procedures if identification, evaluation, individual education program or placement is contested.

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

(5) Rules prescribing standards and procedures for disciplinary actions for behavior or misconduct of a child with a disability.

(6) Other procedural safeguards as required by law.

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

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

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

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

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

(2) A surrogate appointed under this section:

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

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

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

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

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

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

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

(B) The court entered a subsequent order that:

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

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

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

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

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

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

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

(2) A surrogate appointed under this section:

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

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

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

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

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

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

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

(B) The court entered a subsequent order that:

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

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

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

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

Passed by House April 5, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 17, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State