

# House Bill 2683

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Elder Law Section)

## 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**.

Establishes procedure for requesting confidential information in protective proceeding.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to confidential information in protective proceedings; amending ORS 125.012; and declaring  
3 an emergency.

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

5 **SECTION 1.** ORS 125.012 is amended to read:

6 125.012. (1) **As used in this section:**

7 (a) **“Party” means:**

8 (A) **A person who is the subject of a petition for a protective order.**

9 (B) **A person who has petitioned for appointment, or who has been appointed, as a**  
10 **fiduciary for a protected person under this chapter.**

11 (C) **A person, not otherwise a party under this paragraph, who has filed objections as**  
12 **allowed under this chapter.**

13 (D) **A visitor appointed by the court in a proceeding under this chapter.**

14 (E) **Any other person who has filed a petition or motion in a proceeding under this**  
15 **chapter.**

16 (b) **“Protected health information” has the meaning given that term in ORS 192.519.**

17 (c) **“Protective services” has the meaning given that term in ORS 410.040.**

18 [(1)] (2) The Department of Human Services **or the Oregon Health Authority**, for the purpose  
19 of providing protective services [*as that term is defined in ORS 410.040*], may petition for a protec-  
20 tive order under this chapter. When the department **or authority**, or a petitioning attorney with  
21 whom the department **or authority** has contracted, petitions for a protective order under this sec-  
22 tion, the department **or authority** shall disclose to the court or to the petitioning attorney only a  
23 minimum amount of information about the person who is the subject of the petition, including pro-  
24 tected health, mental health, financial, substantiated abuse and legal information, as is reasonably  
25 necessary to prevent or lessen a serious and imminent threat to the health or safety of the person  
26 who is the subject of the petition or protective order.

27 [(2)] (3) When a petition for a protective order is filed under this chapter by a person other than  
28 the Department of Human Services, **the Oregon Health Authority** or an attorney with whom the  
29 department **or authority** has contracted, or when a protective order has already been entered, the  
30 department **or authority** may disclose to a court protected health, mental health, financial, sub-  
31 stantiated abuse and legal information about the person who is the subject of the petition or 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 tective order, or about a person who has petitioned for appointment, or who has been appointed, as  
 2 a fiduciary for a protected person under this chapter. The department **or authority** may disclose  
 3 such information without authorization from the person or fiduciary if the disclosure is made in good  
 4 faith and with the belief that the disclosure is the minimum amount of information about the person  
 5 or fiduciary as is reasonably necessary to prevent or lessen a serious and imminent threat to the  
 6 health or safety of the person who is the subject of the petition or protective order.

7 [(3)(a)] **(4)(a)** All confidential and protected health, mental health, financial, substantiated abuse  
 8 and legal information disclosed **by the Department of Human Services, the Oregon Health Au-**  
 9 **thority or an attorney with whom the department or authority has contracted** under this  
 10 section must remain confidential [*and, when disclosed to the court, must be sealed by the court*].

11 (b) Information disclosed under this section must be identified and marked by the entity or  
 12 person making the disclosure as confidential and protected information that is subject to the re-  
 13 quirements [*of paragraph (a)*] of this subsection.

14 (c) Information disclosed under this section [*that is subject to the requirements of paragraph (a)*  
 15 *of this subsection*] is subject to inspection only by the parties to the proceedings and their  
 16 attorneys[, *and*] **as provided in subsection (5) of this section. Information disclosed under this**  
 17 **section** is not subject to inspection by members of the public except pursuant to a court order en-  
 18 tered after a showing of good cause. **Good cause under this paragraph includes the need for**  
 19 **inspection of the information by an attorney considering representation of the person who**  
 20 **is the subject of the petition or protective order, or of a person who has petitioned for ap-**  
 21 **pointment, or who has been appointed, as a fiduciary for a protected person under this**  
 22 **chapter.**

23 (d) Notwithstanding ORS 125.155 (4), to the extent that the report of a visitor appointed by the  
 24 court under ORS 125.150 contains information that is subject to the requirements [*of paragraph*  
 25 *(a)*] of this subsection, the report in its entirety shall be considered subject to the requirements [*of*  
 26 *paragraph (a)*] of this subsection and may be disclosed only as provided in paragraph (c) of this  
 27 subsection.

28 [(4) *As used in this section, "protected health information" has the meaning given that term in ORS*  
 29 *192.519.*]

30 **(5)(a) The court may enter an order allowing inspection of information subject to disclo-**  
 31 **sure under this section upon the filing of a written request for inspection and the payment**  
 32 **of any fees or costs charged to copy the information.**

33 **(b) The written request for inspection filed under this subsection must contain certif-**  
 34 **ications, made under penalty of perjury, and signed by the party and the party's attorney,**  
 35 **if any:**

36 **(A) That the party and the party's attorney, if any, will not disclose to any other person**  
 37 **in any form or by any means the information received for inspection except as necessary to**  
 38 **inform an expert retained in connection with the pending proceeding or as otherwise ordered**  
 39 **by the court;**

40 **(B) That the party and the party's attorney, if any, will not reproduce or in any manner**  
 41 **make copies of the information received for inspection; and**

42 **(C) That the party and the party's attorney, if any, will return to the clerk of the court**  
 43 **the information received pursuant to the written request for inspection at the conclusion of**  
 44 **the proceeding in which the request was made.**

45 **(c) Nothing in this subsection prohibits a party and the party's attorney, if any, from**

1 verbally discussing the contents of the information received for inspection with other par-  
2 ties, or other parties' attorneys.

3 (d) A party and the party's attorney, if any, may request that the court have available,  
4 at the time of a hearing or trial held in a proceeding under this chapter, a copy of the in-  
5 formation that was provided in response to an order allowing inspection that was entered in  
6 the proceeding, provided the copy is returned to the court at the conclusion of the hearing  
7 or trial. The copy of information made available under this paragraph may not be removed  
8 from the courtroom or duplicated without permission of the court.

9 [(5)] (6) Nothing in this section is intended to limit the application of ORS 125.050 to the use  
10 of information disclosed under this section in proceedings under this chapter.

11 [(6)] (7) Information may be disclosed under this section only for the purpose of providing pro-  
12 tective services [*as that term is defined in ORS 410.040*].

13 **SECTION 2. This 2011 Act being necessary for the immediate preservation of the public**  
14 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
15 **on its passage.**

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