

House Bill 2570

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**.

Clarifies that funds of protected person may be used to pay reasonable compensation rendered on behalf of respondent in protective proceeding.

Provides that court approval is required for payment of attorney fees for services provided in protective proceeding by attorney who appeared in proceeding. Excepts payment of attorney fees for certain services provided prior to filing of protective proceeding.

Allows party or attorney to file motion requesting court approval and payment of attorney fees at any time during pendency of protective proceeding but no later than two years after date services were provided.

Specifies factors for court to consider in determining whether to award attorney fees in protective proceeding and in determining amount of attorney fees to award.

A BILL FOR AN ACT

1
2 Relating to compensation in protective proceedings; creating new provisions; and amending ORS
3 125.095.

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

5 **SECTION 1.** ORS 125.095 is amended to read:

6 125.095. (1) Funds of the protected person may be used to pay reasonable compensation to any
7 visitor, attorney, physician, fiduciary or temporary fiduciary for services [*rendered*] **provided** in the
8 protective proceeding or for services [*rendered*] **provided** on behalf of the fiduciary, **respondent** or
9 protected person.

10 (2) Prior court approval is required:

11 (a) Before [*the*] payment of the fees of any visitor or physician if the fees are incurred for ser-
12 vices relating to proceedings arising out of the filing of an objection to a petition or motion.

13 [(3)] (b) [*Prior court approval is required*] Before payment of compensation to a fiduciary [*or to*
14 *the attorneys for a fiduciary*], except that prior court approval is not required before payment of
15 compensation to a conservator if the conservator is a trust company that has complied with ORS
16 709.030, or if the conservator is the Department of Veterans' Affairs.

17 (c) **Before payment of attorney fees to an attorney who has made an appearance in a**
18 **protective proceeding filed on behalf of the protected person. However, prior court approval**
19 **is not required before payment of attorney fees for services provided prior to the filing of a**
20 **protective proceeding, unless the services were in furtherance of a subsequently filed pro-**
21 **jective proceeding in which the attorney provided services.**

22 (3) **Notwithstanding ORCP 68 C(2)(a), a pleading that alleges a basis for payment of at-**
23 **torney fees is not required before payment of attorney fees is approved or made under this**
24 **section.**

25 (4) **Notwithstanding ORCP 68 C(4)(a), a party or attorney may file a motion requesting**
26 **court approval and payment of attorney fees under this section at any time during the**

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 pendency of a protective proceeding but no later than two years after the date on which the
2 services for which fees are requested were provided.

3 **SECTION 2.** (1) As used in this section, “party” means a person represented by an at-
4 torney where a request for court approval and payment of the attorney’s fees has been made
5 in a protective proceeding under ORS 125.095.

6 (2) Notwithstanding ORS 20.075, a court shall consider the following factors in deter-
7 mining whether to award attorney fees under ORS 125.095:

8 (a) Whether the relief sought by a party was granted in whole or in part.

9 (b) The party’s pecuniary interest in the proceeding.

10 (c) The benefit to the protected person of the party’s actions in the proceeding.

11 (3) A court shall consider the factors specified in subsection (2) of this section in deter-
12 mining the amount of an award of attorney fees under ORS 125.095. In addition, the court
13 shall consider the following factors in determining the amount of an award of attorney fees:

14 (a) The time and labor required in the proceeding, the novelty and difficulty of the issues
15 involved and the skill needed to provide the legal services.

16 (b) The likelihood that the acceptance of the employment on behalf of the party by the
17 attorney would preclude the attorney from other employment, where the likelihood should
18 be apparent or was made apparent to the party.

19 (c) The fee customarily charged by an attorney in the locality for similar legal services.

20 (d) The time limitations imposed by the party or the circumstances of the proceeding.

21 (e) The experience, reputation and ability of the attorney providing the legal services.

22 (f) The amount of the attorney fees requested relative to the protected person’s estate,
23 whether or not the protected person’s estate is subject to the direct or indirect control of a
24 conservator.

25 (4) In an appeal from the award of or denial of a request for attorney fees under ORS
26 125.095 and this section, the court reviewing the award may not modify the decision of the
27 court below in making or denying an award, or the decision of that court as to the amount
28 of the award, except upon a finding of an abuse of discretion.

29 **SECTION 3.** Section 2 of this 2013 Act is added to and made a part of ORS chapter 125.

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