

A-Engrossed
House Bill 3129

Ordered by the House April 5
Including House Amendments dated April 5

Sponsored by Representatives DEMBROW, GELSER, Senator DINGFELDER; Representatives DOHERTY, GOMBERG, KENY-GUYER, Senator EDWARDS

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.

Prohibits person from being nominated as fiduciary or serving as fiduciary for three or more protected persons who are not related to person unless person is certified [*as professional fiduciary by Department of Human Services*] **by Center for Guardianship Certification or its successor organization.**

Establishes [*State Board of Professional Fiduciaries*] **Fiduciary Education Work Group** for purpose of [*adopting rules related to certification and regulation of professional fiduciaries.*] **reviewing practices and making recommendations related to such fiduciaries. Sunsets work group on January 2, 2016.**

[*Continuously appropriates moneys for purposes related to certification and regulation of professional fiduciaries and funding activities of board.*]

A BILL FOR AN ACT

1
2 Relating to professional fiduciaries; creating new provisions; and amending ORS 125.240.

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

4 **SECTION 1.** ORS 125.240 is amended to read:

5 125.240. (1) If a petition seeks the appointment of a professional fiduciary [*as described in sub-*
6 *section (5) of this section*], the petition must contain the following information in addition to that
7 information required under ORS 125.055:

8 **(a) Proof that the professional fiduciary is certified by the Center for Guardianship Cer-**
9 **tification or its successor organization as a National Certified Guardian or a National Master**
10 **Guardian.**

11 [(a)] **(b)** A description of the events that led to the involvement of the professional fiduciary in
12 the case.

13 [(b)] **(c)** The professional fiduciary's educational background and professional experience.

14 [(c)] **(d)** The fees charged by the professional fiduciary and whether the fees are on an hourly
15 basis or are based on charges for individual services rendered.

16 [(d)] **(e)** The names of providers of direct services to protected persons that are repeatedly used
17 by the professional fiduciary under contract.

18 [(e)] **(f)** The disclosures required under ORS 125.221 if the person nominated to act as a **pro-**
19 **fessional** fiduciary will employ a person in which the nominated person has a pecuniary or financial
20 interest.

21 [(f)] **(g)** The number of protected persons for whom the person performs fiduciary services at the
22 time of the petition.

23 [(g)] **(h)** Whether the professional fiduciary has ever had a claim against the bond of the **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 **essional** fiduciary and a description of the circumstances causing the claim.

2 [(h)] (i) Whether the professional fiduciary or any staff with responsibility for making decisions
3 for clients or for management of client assets has ever filed for bankruptcy and the date of filing.

4 [(i)] (j)(A) Whether the professional fiduciary or any staff with responsibility for making deci-
5 sions for clients or for management of client assets has ever been denied a professional license that
6 is directly related to responsibilities of the professional fiduciary, or has ever held a professional
7 license that is directly related to responsibilities of the professional fiduciary that was revoked or
8 canceled. If such a license has been denied, revoked or canceled, the petition must reflect the date
9 of the denial, revocation or cancellation and the name of the regulatory body that denied, revoked
10 or canceled the license.

11 **(B) A professional license under this paragraph includes a certificate described in para-**
12 **graph (a) of this subsection.**

13 [(j)] (k) A statement that the criminal records check required under subsection (2) of this section
14 does not disqualify the person from acting as a **professional** fiduciary.

15 [(k)] (L) Whether [*the professional fiduciary and*] any staff responsible for making decisions for
16 clients or for management of client assets is or has been certified by a national or state association
17 [*of professional fiduciaries*], the name of any such association and whether the [*professional fiduciary*
18 *or other*] staff person has ever been disciplined by any such association and the result of the disci-
19 plinary action.

20 [(L)] (m) The name, address and telephone number of the individual who is to act as primary
21 decision maker for the protected person and the name of the person with whom the protected person
22 will have personal contact if that person is not the person who will act as primary decision maker
23 for the protected person.

24 (2)(a) If a petition seeks the appointment of a professional fiduciary as described in subsection
25 (5) of this section, the professional fiduciary and all staff with responsibility for making decisions for
26 clients or for management of client assets must undergo a criminal records check before the court
27 may appoint the professional fiduciary. The results of the criminal records check shall be provided
28 by the petitioner to the court. Results of criminal records checks submitted to the court are confi-
29 dential, shall be subject to inspection only by the parties to the proceedings and their attorneys, and
30 shall not be subject to inspection by members of the public except pursuant to a court order entered
31 after a showing of good cause. A professional fiduciary must disclose to the court any criminal
32 conviction of the professional fiduciary that occurs after the criminal records check was performed.
33 The criminal records check under this subsection shall consist of a check for a criminal record in
34 the State of Oregon and a national criminal records check if:

35 (A) The person has resided in another state within five years before the date that the criminal
36 records check is performed;

37 (B) The person has disclosed the existence of a criminal conviction; or

38 (C) A criminal records check in Oregon discloses the existence of a criminal record in another
39 jurisdiction.

40 (b) The requirements of this subsection do not apply to any person who serves as a public
41 guardian or conservator, or any staff of a public guardian or conservator, who is operating under
42 ORS 125.700 to 125.730 or 406.050 and who is otherwise required to acquire a criminal records check
43 for other purposes.

44 (3)(a) If a petition seeks the appointment of a public guardian and conservator operating under
45 the provisions of ORS 125.700 to 125.730, or the appointment of a conservator under ORS 406.050 (8),

1 the petition need not contain the information described in subsection [(1)(d) or (L)] (1)(e) or (m) of
2 this section.

3 (b) If a public guardian and conservator operating under the provisions of ORS 125.700 to
4 125.730 is appointed to act as a **professional** fiduciary, or a conservator operating under the au-
5 thority of ORS 406.050 (8) is appointed, the public guardian or conservator must file with the court
6 within three days after receipt of written notice of the appointment a statement containing the
7 name, address and telephone number of the individual who will act as primary decision maker for
8 the protected person and the name of the person with whom the protected person will have personal
9 contact if the person named as primary decision maker will not have personal contact with the
10 protected person.

11 (4) If the court appoints a professional fiduciary as described in subsection (5) of this section,
12 the professional fiduciary must update all information required to be disclosed by subsection (1) of
13 this section and provide a copy of the updated statement upon the request of the protected person
14 or upon the request of any person entitled to notice under ORS 125.060 (3). The professional
15 fiduciary must provide an updated statement without demand to the court, the protected person and
16 persons entitled to notice under ORS 125.060 (3) at any time that there is a change in the informa-
17 tion provided under subsection [(1)(L)] (1)(m) or (3)(b) of this section.

18 (5) *[The provisions of this section apply to any]* **As used in this section, “professional**
19 **fiduciary” means a person nominated as a fiduciary or serving as a fiduciary who is acting at the**
20 **same time as a fiduciary for three or more protected persons who are not related to the fiduciary.**

21 **SECTION 2. (1) As used in this section:**

22 (a) **“Professional fiduciary” has the meaning given that term in ORS 125.240.**

23 (b) **“Protected person” has the meaning given that term in ORS 125.005.**

24 (2) **The Fiduciary Education Work Group is established, consisting of 11 members ap-**
25 **pointed as follows:**

26 (a) **The Chief Justice of the Supreme Court shall appoint three members who are former**
27 **or current judges who have experience in cases involving protected persons or officers or**
28 **employees of the State Court Administrator who have experience in cases involving protected**
29 **persons; and**

30 (b) **The Governor shall appoint eight members as follows:**

31 (A) **Three members shall be professional fiduciaries;**

32 (B) **Three members shall represent groups that advocate for persons with disabilities;**

33 (C) **One member shall be a representative from the Department of Human Services; and**

34 (D) **One member shall be an attorney who is a member of the Oregon State Bar.**

35 (3) **The work group shall:**

36 (a) **Review best practices for training and providing ongoing education for professional**
37 **fiduciaries, including:**

38 (A) **Training and continuing education programs and requirements provided by the Cen-**
39 **ter for Guardianship Certification or its successor organization for National Certified**
40 **Guardians and National Master Guardians;**

41 (B) **Training and continuing education programs and requirements required by other**
42 **states; and**

43 (C) **Training and continuing education programs currently available in Oregon through**
44 **colleges and other organizations;**

45 (b) **Develop recommendations related to training and providing continuing education for**

1 professional fiduciaries;

2 (c) Develop recommendations related to mechanisms that will provide, organize and track
3 the training and continuing education of professional fiduciaries;

4 (d) Develop recommendations on whether this state should require certification of pro-
5 fessional fiduciaries in addition to, or instead of, certification as a National Certified Guard-
6 ian or a National Master Guardian; and

7 (e) Develop recommendations on whether the operations of the work group should be
8 extended beyond the date specified in section 3 of this 2013 Act.

9 (4) A majority of the voting members of the work group constitutes a quorum for the
10 transaction of business.

11 (5) Official action by the work group requires the approval of a majority of the voting
12 members of the work group.

13 (6) The work group shall elect one of its members to serve as chairperson.

14 (7) If there is a vacancy for any cause, the appointing authority shall make an appoint-
15 ment to become immediately effective.

16 (8) The work group shall meet at times and places specified by the call of the chairperson
17 or of a majority of the voting members of the work group, but no less than once per month
18 until the date specified in subsection (10) of this section.

19 (9) The work group may adopt rules necessary for the operation of the work group.

20 (10) The work group shall report its recommendations developed under subsection (3) of
21 this section to the interim committees of the Legislative Assembly related to judiciary no
22 later than August 1, 2014.

23 (11) The Judicial Department shall provide staff support to the work group.

24 (12) Members of the work group are not entitled to compensation, but may be reimbursed
25 for actual and necessary travel and other expenses incurred by them in the performance of
26 their official duties in the manner and amounts provided for in ORS 292.495. Claims for ex-
27 penses shall be paid out of funds appropriated to the Judicial Department for purposes of the
28 work group.

29 (13) All agencies of state government, as defined in ORS 174.111, are directed to assist
30 the work group in the performance of its duties and, to the extent permitted by laws relating
31 to confidentiality, to furnish such information and advice as the members of the work group
32 consider necessary to perform their duties.

33 **SECTION 3.** Section 2 of this 2013 Act is repealed on January 2, 2016.

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