

**B-Engrossed**  
**House Bill 3129**

Ordered by the House June 20  
Including House Amendments dated April 5 and June 20

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, **or individual responsible for making decisions for clients or for managing client assets for person**, is certified by Center for Guardianship Certification or its successor organization.

*[Establishes Fiduciary Education Work Group for purpose of reviewing practices and making recommendations related to such fiduciaries. Sunsets work group on January 2, 2016.]*

**A BILL FOR AN ACT**

1  
2 Relating to professional fiduciaries; 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, or an individual responsible for making decisions**  
9 **for clients or for managing client assets for the professional fiduciary, is certified by the**  
10 **Center for Guardianship Certification or its successor organization as a National Certified**  
11 **Guardian or a National Master Guardian.**

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

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

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

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

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

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

24 *[(g)]* **(h)** Whether the professional fiduciary has ever had a claim against the bond of the **pro-**  
25 **fessional** fiduciary and a description of the circumstances causing the claim.

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

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

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

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

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

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

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

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

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

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

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

43        (3)(a) If a petition seeks the appointment of a public guardian and conservator operating under  
44 the provisions of ORS 125.700 to 125.730, or the appointment of a conservator under ORS 406.050 (8),  
45 the petition need not contain the information described in subsection *[(1)(d) or (L)]* **(1)(e) or (m)** of

1 this section.

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

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

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

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