

Enrolled
House Bill 3129

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

CHAPTER

AN ACT

Relating to professional fiduciaries; amending ORS 125.240.

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

SECTION 1. ORS 125.240 is amended to read:

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

(a) Proof that the professional fiduciary, or an individual responsible for making decisions for clients or for managing client assets for the professional fiduciary, is certified by the Center for Guardianship Certification or its successor organization as a National Certified Guardian or a National Master Guardian.

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

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

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

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

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

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

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

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

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

(B) A professional license under this paragraph includes a certificate described in paragraph (a) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

Passed by House June 21, 2013

.....
Ramona J. Line, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 27, 2013

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

.....
Kate Brown, Secretary of State