

**PROPOSED AMENDMENTS TO
HOUSE BILL 2570**

1 On page 1 of the printed bill, delete lines 5 through 26 and delete page
2 2 and insert:

3 **“SECTION 1.** ORS 125.095 is amended to read:

4 “125.095. (1) Funds of [*the protected person*] **a person subject to a pro-**
5 **TECTIVE PROCEEDING** may be used to pay reasonable [*compensation*] **fees,**
6 **COSTS AND DISBURSEMENTS** to any visitor, attorney, physician, fiduciary or
7 temporary fiduciary for services [*rendered in*] **RELATED TO** the protective pro-
8 ceeding or for services [*rendered*] **PROVIDED** on behalf of [*the fiduciary or*
9 *protected person*] **a fiduciary, respondent, petitioner, cross-petitioner,**
10 **OBJECTOR OR PROTECTED PERSON.**

11 “(2) Prior court approval is required before the payment of [*the*] fees **FROM**
12 **THE FUNDS OF A PERSON SUBJECT TO A PROTECTIVE PROCEEDING WHEN THE**
13 **PAYMENT IS TO:**

14 “(a) [*of any visitor or*] **A** physician if the fees are incurred for services
15 relating to proceedings arising out of the filing of an objection to a
16 petition, **CROSS-PETITION** or motion.

17 “[3] (b) **An appointed fiduciary** [*prior court approval is required before*
18 *payment of compensation to a fiduciary or to the attorneys for a fiduciary*],
19 except that prior court approval is not required before payment of [*compen-*
20 *sation*] **fees** to a conservator if the conservator is a trust company that has
21 complied with ORS 709.030, or if the conservator is the Department of
22 Veterans’ Affairs.

1 “(c) Any attorney who has provided services relating to a protective
2 proceeding, including services provided in preparation or anticipation
3 of the filing of a petition in a protective proceeding.

4 “(3) Subject to ORS 125.495 to 125.520, prior court approval is not
5 required before:

6 “(a) Payment of attorney fees incurred prior to the filing of a peti-
7 tion in a protective proceeding for services unrelated to the protective
8 proceeding; or

9 “(b) Payment for services provided by an attorney who is hired as
10 a mediator for mediation services related to a protective proceeding.

11 “(4) A pleading that alleges a basis for payment of attorney fees is
12 not required before payment of attorney fees is approved or made un-
13 der this section.

14 “(5) ORCP 68 does not apply to requests for approval and payment
15 of attorney fees made under this chapter.

16 “SECTION 2. Section 3 of this 2013 Act is added to and made a part
17 of ORS chapter 125.

18 “SECTION 3. (1) As used in this section, ‘party’ means a person
19 represented by an attorney when a request for court approval and
20 payment of attorney fees has been made relating to a protective pro-
21 ceeding under ORS 125.095.

22 “(2) A court shall consider the following factors in determining
23 whether to award attorney fees under ORS 125.095:

24 “(a) The benefit to the person subject to the protective proceeding
25 by the party’s actions in the proceeding.

26 “(b) The objective reasonableness of the position asserted by the
27 party.

28 “(c) The party’s self-interest in the outcome of the proceeding.

29 “(d) Whether the relief sought by the party was granted in whole
30 or in part, subject to the respondent’s right to contest the proceeding.

1 “(e) The conduct of the party in the transactions or occurrences
2 that gave rise to the need for a protective proceeding, including any
3 conduct of the party that was reckless, willful, malicious, in bad faith
4 or illegal.

5 “(f) The extent to which an award of attorney fees in the proceeding
6 would deter others from asserting good faith positions in similar pro-
7 ceedings.

8 “(g) The extent to which an award of attorney fees in the proceed-
9 ing would deter others from asserting meritless positions in similar
10 proceedings.

11 “(h) The objective reasonableness of the party and the diligence of
12 the party and the attorney during the proceeding.

13 “(i) The objective reasonableness of the party and the diligence of
14 the party in pursuing settlement of the dispute.

15 “(j) Any other factor the court may consider appropriate under the
16 circumstances of the proceeding.

17 “(3) A court shall consider the factors specified in subsection (2) of
18 this section in determining the amount of an award of attorney fees
19 under ORS 125.095. In addition, the court shall consider the following
20 factors in determining the amount of an award of attorney fees:

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

24 “(b) The likelihood that the acceptance of the employment on be-
25 half of the party by the attorney would preclude the attorney from
26 other employment, when the likelihood should be apparent or was
27 made apparent to the party.

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

30 “(d) The time limitations imposed by the party or the circumstances

1 of the proceeding.

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

4 “(f) The amount of the attorney fees requested relative to the estate
5 of the person subject to the protective proceeding, whether or not the
6 estate of the person subject to the protective proceeding is subject to
7 the direct or indirect control of a conservator.

8 “(4) No single factor listed in subsections (2) and (3) of this section
9 shall be controlling in the court’s determination regarding attorney
10 fees under this section.

11 “(5) In an appeal from the award of or denial of a request for at-
12 torney fees under ORS 125.095 and this section, the court reviewing the
13 award may not modify the decision of the court below in making or
14 denying an award, or the decision of that court as to the amount of
15 the award, except upon a finding of an abuse of discretion.”.

16
