

House Bill 4114

Sponsored by Representatives GALLEGOS, GILLIAM, Senator MONNES ANDERSON; Representatives BARKER, GOMBERG, GORSEK, HOYLE, KENY-GUYER, TOMEI, VEGA PEDERSON, WHITSETT, WITT (Presession filed.)

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**.

Authorizes court to appoint protected person special advocate in protective proceeding at any time after appointment of fiduciary.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to special advocates for protected persons; creating new provisions; amending ORS 125.025;
3 and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2014 Act is added to and made a part of ORS chapter 125.**

6 **SECTION 2. (1) At any time after the appointment of a fiduciary, the court, on its own**
7 **motion or on the motion of any person who is interested in the affairs or welfare of the**
8 **protected person, may appoint a volunteer to serve as a protected person special advocate.**

9 **(2) The protected person special advocate shall:**

10 **(a) Investigate and evaluate the protected person's circumstances to establish whether**
11 **the fiduciary is fulfilling the fiduciary duties and obligations with which the fiduciary has**
12 **been charged;**

13 **(b) Inform the fiduciary of support services and resources available in the community to**
14 **assist in the care and welfare of the protected person;**

15 **(c) Provide a written report to the court of the findings of the protected person special**
16 **advocate, in a form approved by the court, and provide copies of the report to all persons**
17 **entitled to notice under ORS 125.060; and**

18 **(d) Perform any other duties, responsibilities or functions as ordered by the court.**

19 **(3)(a) Unless a person appointed as a protected person special advocate is an employee**
20 **of the court, the person shall perform the duties, responsibilities and functions of a protected**
21 **person special advocate as a volunteer and is not entitled to compensation or reimbursement**
22 **for expenses from the court, the protected person or the protected person's estate.**

23 **(b) A person appointed as a protected person special advocate shall be absolutely immune**
24 **from civil liability in the performance of the person's duties, responsibilities and functions**
25 **as a protected person special advocate.**

26 **(4) Subject to any law relating to confidentiality and as specified in the court's order**
27 **appointing the protected person special advocate, the special advocate may inspect and copy**
28 **records and information related to the health, mental health, finances, education and welfare**
29 **of the protected person as is necessary to perform the duties, responsibilities and functions**
30 **of the special advocate. Records and information inspected and copied by the special advocate**

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 **under this subsection may be disclosed only for the purpose of performing the duties, re-**
 2 **sponsibilities and functions specified in the court’s order appointing the special advocate.**

3 **(5)(a) When a court is appointing persons as protected person special advocates, the**
 4 **presiding judge shall by court order establish:**

5 **(A) Qualifications for persons serving as protected person special advocates; and**

6 **(B) Standards and procedures to be used by protected person special advocates in the**
 7 **performance of their duties, responsibilities and functions.**

8 **(b) Protected person special advocates may be employees of the court but may not have**
 9 **any personal interest in the protected person or any pecuniary or financial interest in the**
 10 **proceedings.**

11 **SECTION 3.** ORS 125.025 is amended to read:

12 125.025. (1) Subject to ORS 125.800 to 125.852 for adults as defined in ORS 125.802, a court
 13 having jurisdiction over a protective proceeding shall exercise continuing authority over the pro-
 14 ceeding. Subject to the provisions of ORS 125.800 to 125.852 and this chapter, the court may act
 15 upon the petition or motion of any person or upon its own authority at any time and in any manner
 16 it deems appropriate to determine the condition and welfare of the respondent or protected person
 17 and to inquire into the proper performance of the duties of a fiduciary appointed under the pro-
 18 visions of this chapter.

19 (2) A court having jurisdiction over a protective proceeding in which the respondent or pro-
 20 tected person is a minor shall consider and apply all relevant provisions of the Indian Child Welfare
 21 Act codified at 25 U.S.C. sections 1901 et seq.

22 (3) A court having jurisdiction over a protective proceeding may:

23 (a) Compel the attendance of any person, including respondents, protected persons, fiduciaries
 24 and any other person who may have knowledge about the person or estate of a respondent or pro-
 25 tected person. The court may require those persons to respond to inquiries and produce documents
 26 that are subject to discovery under ORCP 36.

27 (b) Appoint counsel for a respondent or protected person.

28 (c) Appoint investigators, visitors, **protected person special advocates** and experts to aid the
 29 court in the court’s investigation.

30 (d) Exercise jurisdiction over any transaction entered into by a fiduciary to determine if a con-
 31 flict of interest existed and enter an appropriate judgment with respect to the transaction.

32 (e) Surcharge a surety for any loss caused by failure of a fiduciary to perform a fiduciary duty
 33 or any other duty imposed by this chapter, including a surcharge for attorney fees incurred by a
 34 respondent or protected person by reason of the failure.

35 (f) Require immediate delivery of a protected person or property of the protected person, in-
 36 cluding records, accounts and documents relating to that property, to the court or to a place it
 37 designates.

38 (g) Require the fiduciary to produce any and all records that might provide information about
 39 the treatment or condition of the protected person or property of the protected person.

40 (h) Remove a fiduciary whenever that removal is in the best interests of the protected person.

41 (i) Appoint a successor fiduciary when a fiduciary has died, resigned or been removed.

42 (j) Require a respondent or protected person to submit to a physical or mental examination
 43 pursuant to ORCP 44.

44 (k) Make provisions for parenting time or visitation or order support for any minor who is a
 45 respondent or protected person in a protective proceeding.

1 (L) Impose any conditions and limitations upon the fiduciary that the court considers appropri-
 2 ate, including limitations on the duration of the appointment. Any conditions or limitations imposed
 3 on the fiduciary must be reflected in the letters of appointment.

4 (4) When a person files a petition or motion for a support order under subsection (3)(k) of this
 5 section:

6 (a) The person shall state in the petition or motion, to the extent known:

7 (A) Whether there is pending in this state or any other jurisdiction any type of support pro-
 8 ceeding involving the minor, including a proceeding brought under ORS 25.287, 107.085, 107.135,
 9 107.431, 108.110, 109.100, 109.103, 109.165, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter
 10 110; and

11 (B) Whether there exists in this state or any other jurisdiction a support order, as defined in
 12 ORS 110.303, involving the minor.

13 (b) The person shall include with the petition or motion a certificate regarding any pending
 14 support proceeding and any existing support order. The person shall use a certificate that is in a
 15 form established by court rule and include information required by court rule and paragraph (a) of
 16 this subsection.

17 (5) When the court acts upon its own authority to order support under subsection (3)(k) of this
 18 section, at least 21 days before the hearing the court shall notify the Administrator of the Division
 19 of Child Support of the Department of Justice, or the branch office providing support services to the
 20 county where the hearing will be held, of the hearing. Before the hearing the administrator shall
 21 inform the court, to the extent known:

22 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
 23 ceeding involving the minor, including a proceeding brought under ORS 25.287, 107.085, 107.135,
 24 107.431, 108.110, 109.100, 109.103, 109.165, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter
 25 110; and

26 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
 27 ORS 110.303, involving the minor.

28 (6) The Judicial Department and the Department of Justice may enter into an agreement re-
 29 garding how the courts give the notice required under subsection (5) of this section to the Depart-
 30 ment of Justice and how the Department of Justice gives the information described in subsection
 31 (5)(a) and (b) to the courts.

32 (7) If the court finds that a conservator should be appointed, the court may exercise all the
 33 powers over the estate and affairs of the protected person that the protected person could exercise
 34 if present and not under disability, except the power to make a will. The court shall exercise those
 35 powers for the benefit of the protected person and members of the household of the protected per-
 36 son.

37 (8) The powers of the court in protective proceedings may be exercised by the court directly or
 38 through a fiduciary.

39 **SECTION 4. This 2014 Act being necessary for the immediate preservation of the public**
 40 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
 41 **on its passage.**