

Representative Jeff Barker  
Representative Andy Olson  
Representative Jennifer Williamson  
Representative Brent Barton  
Representative Mitch Greenlick  
Representative Wayne Krieger  
Representative Ann Lininger  
Representative Bill Post  
Representative Sherrie Sprenger

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*Via e-mail to:* [hjud.exhibits@state.or.us](mailto:hjud.exhibits@state.or.us)

Dear Chairman Barker and Members of the House Committee on Judiciary:

I request that you do not pass House Bill 2349.

I offer testimony on this proposed bill because I am the chairman of the Legislative Committee of the Guardian/Conservator Association of Oregon and a National Certified Guardian Emeritus. I worked as an Oregon professional fiduciary for 25 years and, since retirement, have been active in fiduciary affairs, currently serving on the Board of Directors of the GCA.

House Bill 2349 (the Bill) proposes that professional guardians and conservators must disclose to a probate court, in every petition for their appointment, information relating to the licensing of broker-dealers, investment advisers, and salespersons regulated by Oregon Securities Law.

The Bill, if passed, would **confusingly intertwine** the state-wide regulatory authority of the Oregon Division of Finance and Corporate Securities and the Department of Consumer and Business Services (with oversight of securities transactions) with a county Circuit Court's exclusive probate jurisdiction (with judicial authority over persons appointed to manage an incapacitated individual's medical care and income/asset management). Moreover, while the Bill appears to require guardians and conservators to essentially audit an investment company or trust company's profit-generating activities (presumably at a protected person's expense), the Bill provides **no additional**

**protections** for the public or persons protected by court order, no practical benefit to guardians or conservators providing accountings to the court, and no relevant information that fiduciaries do not already disclose under ORS 125.240 and ORS 125.221.

Professional guardians and conservators are persons that act as a guardian or conservator for three or more individuals found by a court to be incapacitated or financially incapable; they are appointed by judges to care for elderly, disabled, and other individuals lacking the capacity to make their own decisions in life, and are properly and effectively scrutinized by county courts.

In contrast, banks, trust companies, investment advisers and broker-dealers are regulated by state agencies, and those agencies license those businesses as deemed appropriate. There is no reliable evidence before this Committee tending to show this Bill would benefit persons under guardianship or conservatorship, and the additional costs of compliance are likely be ordered chargeable to a protected person's estate.

The Legislature has already enacted laws to enhance the protection of persons under guardianship and conservatorship by ensuring that court-appointed fiduciaries, whether professionals or lay-persons, are **qualified** (under statute, *see. e.g.* ORS 125.205) and, if assisting three or more unrelated persons, are **certified** by an appropriate organization functioning on a national level: the Center for Guardianship Certification (ORS 125.240(1)(a)). Requiring guardians and conservators to make disclosures under a securities regulatory scheme, and to attempt to accurately report to the courts the fees formulae and profit-making computations of third-party broker-dealers is neither necessary nor helpful in ORS Ch. 125 protective proceedings. Courts can and do already require annual or intermittent accountings by conservators that must adequately convey information on a protected person's assets and withstand objection by interested parties.

Significantly, and unlike trust or investment companies, guardians and conservators may not take their fee without prior court approval. ORS 125.095(2)(b). The professional fiduciary's fee is calculated and submitted at the end of a period of work and **not in advance**. Each person under guardianship or conservatorship is unique and the services to be provided by a professional fiduciary can vary greatly among individuals served, or even across a range of any number of days or weeks for the same individual, depending on the protected person's health, illness, diagnoses, and differing levels of cognitive impairment. Accordingly, the quantity of work for any individual client **cannot be predicted** a year in advance, and any projected guess at a fiduciary's annual

compensation on an individual case would be either incalculable or so vague in nature as to provide unreliable information to a court. Court-appointed fiduciaries should not be required to make such disclosures.

In sum, guardianships and conservatorships are primarily about care-giving and providing day-to-day assistance and managerial oversight for an individual with heightened needs; these human relationships with incapacitated persons come under the purview of the judiciary. Differently, securities sales and marketing activities (and the fees and compensation that those activities generate) are arms-length financial transactions better held in check by state and federal securities laws and the agencies that enforce them.

Because HB 2349 creates regulatory reporting burdens that offer no clear benefit to persons involved in protective proceedings, I ask the Members of this Committee to not pass this Bill.

Respectfully,  
Jeff Brandon  
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