

STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Fiscal: Has minimal fiscal impact

Revenue: No Revenue Impact

Action Date: 05/06/15

Action: Do Pass.

Meeting Dates: 05/06

Vote:

Yeas: 5 - Burdick, Gelser, Kruse, Prozanski, Thatcher

Prepared By: Channa Newell, Counsel

WHAT THE MEASURE DOES:

Requires court to give greatest weight of consideration, when determining award for attorney fees, to benefit of person subject to protective proceeding by actions of party requesting attorney fees.

ISSUES DISCUSSED:

- Court takes 16 factors into consideration when awarding of attorney fees in protective proceeding
- Attorney fees may be awarded in protective proceeding
- Protected person may be required to pay attorney fees
- Need for courts to focus on benefit to proposed protected person

EFFECT OF COMMITTEE AMENDMENT:

No amendment.

BACKGROUND:

Protective proceedings include guardianships and conservatorships. Guardianship is a relationship created by law in which a court gives a person or entity the duty and power to make decisions for another. Conservatorship is a similar relationship, but is limited to financial oversight. The appointment of a guardian or conservator occurs after a petition is filed and a court finds that the person who is the subject of the proceedings lacks capacity to make decisions on his or her own behalf. Appointment of a guardian may be appropriate or necessary in circumstances where an adult has significant developmental delays or illness, including dementia. Guardianship may be limited, but frequently removes significant decision-making authority from the person and gives it to the guardian. The guardian may be making determinations on housing, daily activity, health care treatment, and finances.

Under current Oregon law, parties in a protective proceeding may request attorney fees be paid by another party, including the protected person. The court considers multiple factors when making the determination to award fees, including the benefit to the person subject to the proceeding by the actions of the requesting party, the objective reasonableness of the position asserted by the party, the party's self interest in the outcome, whether relief sought was granted in whole or in part, the conduct of the party giving rise to the proceeding, the reasonableness of the party and diligence of the attorneys in the proceeding, the extent to which the award would deter others from asserting good faith positions in similar proceedings and any other factors the court considers appropriate.

House Bill 2362 requires the court to give the most weight to the consideration of the benefit of the action to the protected person.