

A-Engrossed
House Bill 2349

Ordered by the House April 6
Including House Amendments dated April 6

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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.

Requires petition for appointment of professional fiduciary to include information regarding investment credentials, licensing, [*compensation and*] **fees**, method for assessing or charging [*compensation*] **fees and acknowledgment that professional fiduciary will make all investments of client assets in accordance with certain investment standards.**

Requires conservator who is professional fiduciary to account to court amount of compensation charged or received by investment advisers or brokers other than professional fiduciary in administration of protected estate.

A BILL FOR AN ACT

1
2 Relating to professional fiduciaries; amending ORS 125.240 and 125.475.

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

4 **SECTION 1.** ORS 125.240, as amended by section 20, chapter 117, Oregon Laws 2014, is
5 amended to read:

6 125.240. (1) If a petition seeks the appointment of a professional fiduciary, the petition must
7 contain the following information in addition to that information required under ORS 125.055:

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

12 (b) A description of the events that led to the involvement of the professional fiduciary in the
13 case.

14 (c) The [*professional fiduciary's*] educational background, [*and*] professional experience, **invest-**
15 **ment credentials and licensing under ORS chapter 59 of the individual responsible as, or**
16 **acting on behalf of, the professional fiduciary.**

17 (d)(A) The fees charged by the professional fiduciary and whether the fees are on an hourly
18 basis or are based on charges for individual services rendered, **including whether there is any**
19 **revenue sharing arrangement between the professional fiduciary and any other person.**

20 **(B) The method by which the fees described in subparagraph (A) of this paragraph will**
21 **be assessed or charged, whether by commissions, monthly charges or any other method.**

22 (e) The names of providers of direct services to protected persons that are repeatedly used by
23 the professional fiduciary under contract.

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

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 (g) The number of protected persons for whom the person performs fiduciary services at the time
2 of the petition.

3 (h) Whether the professional fiduciary has ever had a claim against the bond of the professional
4 fiduciary and a description of the circumstances causing the claim.

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

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

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

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

18 (L) Whether the professional fiduciary and any staff responsible for making decisions for clients
19 or for management of client assets is or has been certified by a national or state association of
20 professional fiduciaries, the name of any such association and whether the professional fiduciary or
21 other staff person has ever been disciplined by any such association and the result of the discipli-
22 nary action.

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

27 **(n) An acknowledgment by the professional fiduciary that the professional fiduciary will**
28 **make all investments of client assets in accordance with the standards set forth in ORS**
29 **130.750 to 130.775.**

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

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

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

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

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

5 (3)(a) If a petition seeks the appointment of a county public guardian and conservator operating
6 under the provisions of ORS 125.700 to 125.730, or the appointment of a conservator under ORS
7 406.050 (8), the petition need not contain the information described in subsection (1)(e) or (m) of this
8 section.

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

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

24 (5) As used in this section, "professional fiduciary" means a person nominated as a fiduciary or
25 serving as a fiduciary who is acting at the same time as a fiduciary for three or more protected
26 persons who are not related to the fiduciary.

27 **SECTION 2.** ORS 125.475 is amended to read:

28 125.475. (1) Unless the court by order provides otherwise, a conservator shall account to the
29 court for the administration of the protected estate within 60 days after each anniversary of ap-
30 pointment. In addition, a conservator shall account to the court for the administration of the pro-
31 tected estate:

32 (a) Within 60 days after the death of the protected person, a minor protected person attains
33 majority or an adult protected person becomes able to manage the protected person's financial re-
34 sources; and

35 (b) Within 30 days after the removal of the conservator, the resignation of the conservator or
36 the termination of the conservator's authority under ORS 125.410 (7).

37 (2) Each accounting must include the following information:

38 (a) The period of time covered by the accounting.

39 (b) The total value of the property with which the conservator is chargeable according to the
40 inventory, or, if there was a prior accounting, the amount of the balance of the prior accounting.

41 (c) All money and property received during the period covered by the accounting.

42 (d) All disbursements made during the period covered by the accounting.

43 (e) The amount of bond posted by the conservator during the period covered by the accounting.

44 (f) **With respect to conservators who are professional fiduciaries, the total amount of**
45 **compensation that investment advisers or brokers other than the professional fiduciary**

1 **charged or received in charges for investments managed or transacted by the investment**
2 **advisers or brokers.**

3 [(f)] (g) Such other information as the conservator considers necessary, or that the court might
4 require, for the purpose of disclosing the condition of the estate.

5 (3) Vouchers for disbursements must accompany the accounting unless otherwise provided by
6 order or rule of the court or unless the conservator is a trust company that has complied with ORS
7 709.030. If vouchers are not required, the conservator shall:

8 (a) Maintain the vouchers for a period of not less than one year following the date on which the
9 order approving the final accounting is entered;

10 (b) Permit interested persons to inspect the vouchers and receive copies of the vouchers at their
11 own expense at the place of business of the conservator during the conservator's normal business
12 hours at any time before the end of one year following the date on which the order approving the
13 final accounting is entered; and

14 (c) Include in each annual accounting and the final accounting a statement that the vouchers
15 are not filed with the accounting but are maintained by the conservator and may be inspected and
16 copied as provided in this subsection.

17 (4) The court may waive a final accounting if:

18 (a) The conservator was appointed because the protected person was a minor, and the protected
19 person has attained the age of majority, or the conservator was appointed because the protected
20 person was financially incapable, and the protected person is no longer financially incapable;

21 (b) The protected person gives a receipt to the conservator for the property delivered to the
22 protected person; and

23 (c) The conservator files with the court a copy of the receipt issued by the protected person to
24 the conservator.

25 (5) Copies of accountings must be served on all persons listed in ORS 125.060 (3). The court may
26 waive service on the protected person if service of the copy would not assist the protected person
27 in understanding the proceedings.

28 (6) The court may require a conservator to submit to a physical check of the estate in the
29 control of the conservator at any time and in any manner the court may specify.

30 (7) The Chief Justice of the Supreme Court may by rule specify the form and contents of ac-
31 counts that must be filed by a conservator.

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