

House Bill 2349

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 **as introduced**.

Requires petition for appointment of professional fiduciary to include information regarding investment credentials, licensing, compensation and method for assessing or charging compensation.

A BILL FOR AN ACT

1
2 Relating to professional fiduciaries; amending ORS 125.240.

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:**

16 **(A) The professional fiduciary, if the professional fiduciary is an individual; or**

17 **(B) Each employee of the professional fiduciary responsible for making decisions for cli-**
18 **ents or for management of client assets, if the professional fiduciary is a person other than**
19 **an individual.**

20 (d)(A) [*The fees charged by the professional fiduciary and whether the fees are on an hourly basis*
21 *or are based on charges for individual services rendered.*] **The total expected annual compensation,**
22 **whether direct or indirect, charged by the professional fiduciary, including but not limited**
23 **to:**

24 **(i) All fees charged by the professional fiduciary;**

25 **(ii) Any revenue sharing arrangement between the professional fiduciary and any other**
26 **person; and**

27 **(iii) Any compensation that investment advisors or brokers other than the professional**
28 **fiduciary may charge or receive in charges for investments managed or transacted by the**
29 **investment advisors or brokers.**

30 **(B) The method by which the compensation described in subparagraph (A) of this para-**
31 **graph will be assessed or charged, whether by commissions, monthly charges or any other**

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 **method.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (3)(a) If a petition seeks the appointment of a county public guardian and conservator operating
 8 under the provisions of ORS 125.700 to 125.730, or the appointment of a conservator under ORS
 9 406.050 (8), the petition need not contain the information described in subsection (1)(e) or (m) of this
 10 section.

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

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

26 (5) As used in this section[,]:

27 (a) **“Person” has the meaning given that term in ORS 174.100.**

28 (b) “Professional fiduciary” means a person nominated as a fiduciary or serving as a fiduciary
 29 who is acting at the same time as a fiduciary for three or more protected persons who are not re-
 30 lated to the fiduciary.

31 _____