

# House Bill 2362

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 court to give greatest consideration to benefit to person who is subject of protective proceeding by party's actions in proceeding when determining whether to award attorney fees.

## A BILL FOR AN ACT

1  
2 Relating to attorney fees in protective proceedings; amending ORS 125.098.

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

4 **SECTION 1.** ORS 125.098 is amended to read:

5 125.098. (1) As used in this section, "party" means a person represented by an attorney when a  
6 request for court approval and payment of attorney fees has been made relating to a protective  
7 proceeding under ORS 125.095.

8 (2) A court shall consider the following factors in determining whether to award attorney fees  
9 under ORS 125.095:

10 (a) The benefit to the person subject to the protective proceeding by the party's actions in the  
11 proceeding, **which factor shall be given the greatest weight in the court's consideration under**  
12 **this section.**

13 (b) The objective reasonableness of the position asserted by the party.

14 (c) The party's self-interest in the outcome of the proceeding.

15 (d) Whether the relief sought by the party was granted in whole or in part, subject to the  
16 respondent's right to contest the proceeding.

17 (e) The conduct of the party in the transactions or occurrences that gave rise to the need for  
18 a protective proceeding, including any conduct of the party that was reckless, willful, malicious, in  
19 bad faith or illegal.

20 (f) The extent to which an award of attorney fees in the proceeding would deter others from  
21 asserting good faith positions in similar proceedings.

22 (g) The extent to which an award of attorney fees in the proceeding would deter others from  
23 asserting meritless positions in similar proceedings.

24 (h) The objective reasonableness of the party and the diligence of the party and the attorney  
25 during the proceeding.

26 (i) The objective reasonableness of the party and the diligence of the party in pursuing settle-  
27 ment of the dispute.

28 (j) Any other factor the court may consider appropriate under the circumstances of the pro-  
29 ceeding.

30 (3) A court shall consider the factors specified in subsection (2) of this section in determining  
31 the amount of an award of attorney fees under ORS 125.095. In addition, the court shall consider the

**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 following factors in determining the amount of an award of attorney fees:

2 (a) The time and labor required in the proceeding, the novelty and difficulty of the issues in-  
3 volved and the skill needed to provide the legal services.

4 (b) The likelihood that the acceptance of the employment on behalf of the party by the attorney  
5 would preclude the attorney from other employment, when the likelihood should be apparent or was  
6 made apparent to the party.

7 (c) The fee customarily charged by an attorney in the locality for similar legal services.

8 (d) The time limitations imposed by the party or the circumstances of the proceeding.

9 (e) The experience, reputation and ability of the attorney providing the legal services.

10 (f) The amount of the attorney fees requested relative to the estate of the person subject to the  
11 protective proceeding, whether or not the estate of the person subject to the protective proceeding  
12 is subject to the direct or indirect control of a conservator.

13 (4) **Except as provided in subsection (2)(a) of this section**, no single factor listed in sub-  
14 sections (2) and (3) of this section shall be controlling in the court's determination regarding attor-  
15 ney fees under this section.

16 (5) In an appeal from the award of or denial of a request for attorney fees under ORS 125.095  
17 and this section, the court reviewing the award may not modify the decision of the court below in  
18 making or denying an award, or the decision of that court as to the amount of the award, except  
19 upon a finding of an abuse of discretion.

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