

House Bill 2630

Introduced and printed pursuant to House Rule 12.00. Presession 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**.

Makes changes to Oregon guardianship laws to assure adequate safeguards for respondents and protected persons.

A BILL FOR AN ACT

1
2 Relating to guardianship proceedings; amending ORS 125.055, 125.060, 125.075, 125.225, 125.315 and
3 125.325.

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

5 **SECTION 1.** ORS 125.055 is amended to read:

6 125.055. (1) A petition in a protective proceeding that seeks the appointment of a fiduciary must
7 designate the type of fiduciary that the petitioner seeks to have appointed. If the petition does not
8 request the appointment of a fiduciary, or if the petition requests both the appointment of a
9 fiduciary and some other protective order, the petition must contain a statement of the nature of the
10 protective order requested. The caption of the petition must reflect the type of fiduciary whose ap-
11 pointment is requested or, if the appointment of a fiduciary is not requested, the nature of the pro-
12 tective order requested. An original and duplicate copy of the petition must be filed with the court.

13 (2) A petition in a protective proceeding must contain the following information to the extent
14 that the petitioner is aware of the information or to the extent that the petitioner is able to acquire
15 the information with reasonable effort:

16 (a) The name, age, residence address and current location of the respondent.

17 (b) The interest of the petitioner.

18 (c) The name, age and address of the petitioner and any person nominated as fiduciary in the
19 petition and the relationship of the nominated person to the respondent.

20 (d) A statement as to whether the person nominated to be fiduciary has been convicted of a
21 crime, has filed for or received protection under the bankruptcy laws or has had a license revoked
22 or canceled that was required by the laws of any state for the practice of a profession or occupation.
23 If the nominated person has been convicted of a crime, filed for or received protection under bank-
24 ruptcy laws or had a professional or occupational license revoked or canceled, the petition shall
25 contain a statement of the circumstances surrounding those events. If the person nominated is not
26 the petitioner, the statement must indicate that the person nominated is willing and able to serve.

27 (e) The name and address of any fiduciary that has been appointed for the respondent by a court
28 of any state, any trustee for a trust established by or for the respondent, any person appointed as
29 a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting
30 as attorney-in-fact for the respondent under a power of attorney.

31 (f) The name and address of the respondent's treating physician and any other person who is

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 providing care to the respondent.

2 (g) The factual information that supports the request for the appointment of a fiduciary or entry
 3 of other protective order, **alternatives to the appointment of a fiduciary that have been con-**
 4 **sidered and why the alternatives are inadequate** and the names and addresses of all persons who
 5 have information that would support a finding that an adult respondent is incapacitated or finan-
 6 cially incapable.

7 (h) A statement that indicates whether the nominated person intends to place the respondent in
 8 a mental health treatment facility, a nursing home or other residential facility.

9 (i) A general description of the estate of the respondent and the respondent's sources of income
 10 and the amount of that income.

11 (j) A statement indicating whether the person nominated as fiduciary is a public or private
 12 agency or organization that provides services to the respondent or an employee of a public or pri-
 13 vate agency or organization that provides services to the respondent.

14 (3) In addition to the requirements of subsection (2) of this section:

15 (a) If a petition seeks appointment of a guardian, the petition must contain a statement on
 16 whether the guardian will exercise any control over the estate of the respondent. If the guardian
 17 will exercise any control over the estate of the respondent, the petition must contain a statement
 18 of the monthly income of the respondent, the sources of the respondent's income, and the amount
 19 of any moneys that the guardian will be holding for the respondent at the time of the appointment.

20 (b) If the petition seeks the appointment of a guardian for an adult respondent, of a guardian for
 21 a minor respondent who is more than 16 years of age, in cases where the court determines there is
 22 the likelihood that a petition seeking appointment of a guardian for the respondent as an adult will
 23 be filed before the date that the respondent attains majority, in accordance with subsection (6) of
 24 this section, or as an adult, or of a temporary fiduciary who will exercise the powers of a guardian
 25 for an adult respondent, the petition must contain a statement notifying the court that a visitor must
 26 be appointed.

27 (4) In addition to the requirements of subsection (2) of this section, if a petition seeks appoint-
 28 ment of a conservator or a temporary fiduciary who will exercise the powers of a conservator or if
 29 a petition seeks a protective order relating to the estate of the respondent, the petition must contain
 30 the petitioner's estimate of the value of the estate.

31 (5) A petitioner may join parties in a petition in the manner provided by ORCP 28 for the joining
 32 of defendants.

33 (6) A parent or guardian of a minor may file a petition that seeks the appointment of a guardian
 34 for the minor as an adult, to become effective on the date that the minor attains majority, at any
 35 time within 90 days before the date that the minor attains majority or at any other time determined
 36 by the court to be necessary and appropriate to ensure the ongoing protection, safety and welfare
 37 of the minor upon attaining majority.

38 (7) The court shall review a petition seeking appointment of a guardian and shall dismiss the
 39 proceeding without prejudice, or require that the petition be amended, if the court determines that
 40 the petition does not meet the requirements of this section.

41 **SECTION 2.** ORS 125.060 is amended to read:

42 125.060. (1) The notices required by this section must be given to all persons whose identities
 43 and addresses can be ascertained in the exercise of reasonable diligence by the person required to
 44 give the notice.

45 (2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other pro-

1 tective order must be given by the petitioner to the following persons:

2 (a) The respondent, if the respondent has attained 14 years of age.

3 (b) The spouse, parents and adult children of the respondent.

4 (c) If the respondent does not have a spouse, parent or adult child, the person or persons most
5 closely related to the respondent.

6 (d) Any person who is cohabiting with the respondent and who is interested in the affairs or
7 welfare of the respondent.

8 (e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the
9 respondent by a court of any state, any trustee for a trust established by or for the respondent, any
10 person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and
11 any person acting as attorney-in-fact for the respondent under a power of attorney.

12 (f) If the respondent is a minor, the person who has exercised principal responsibility for the
13 care and custody of the respondent during the 60-day period before the filing of the petition.

14 (g) If the respondent is a minor and has no living parents, any person nominated to act as
15 fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

16 (h) If the respondent is receiving moneys paid or payable by the United States through the De-
17 partment of Veterans Affairs, a representative of the United States Department of Veterans Affairs
18 regional office that has responsibility for the payments to the protected person.

19 (i) If the respondent is receiving moneys paid or payable for public assistance provided under
20 ORS chapter 411 by the State of Oregon through the Department of Human Services, a represen-
21 tative of the department.

22 (j) If the respondent is receiving moneys paid or payable for medical assistance provided under
23 ORS chapter 414 by the State of Oregon through the Oregon Health Authority, a representative of
24 the authority.

25 (k) If the respondent is committed to the legal and physical custody of the Department of Cor-
26 rections, the Attorney General and the superintendent or other officer in charge of the facility in
27 which the respondent is confined.

28 (L) If the respondent is a foreign national, the consulate for the respondent's country.

29 (m) Any other person that the court requires.

30 (3) Notice of a motion for the termination of the protective proceedings, for removal of a
31 fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's
32 actions or for protective orders in addition to those sought in the petition must be given by the
33 person making the motion to the following persons:

34 (a) The protected person, if the protected person has attained 14 years of age.

35 (b) Any person who has filed a request for notice in the proceedings.

36 (c) Except for a fiduciary who is making a motion, any fiduciary who has been appointed for the
37 protected person.

38 (d) If the protected person is receiving moneys paid or payable by the United States through the
39 Department of Veterans Affairs, a representative of the United States Department of Veterans Af-
40 fairs regional office that has responsibility for the payments to the protected person.

41 (e) If the protected person is committed to the legal and physical custody of the Department of
42 Corrections, the Attorney General and the superintendent or other officer in charge of the facility
43 in which the protected person is confined.

44 (f) Any other person that the court requires.

45 (4) A request for notice under subsection (3)(b) of this section must be in writing and include

1 the name, address and phone number of the person requesting notice. A copy of the request must
 2 be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has
 3 been appointed. The original request must be filed with the court. The person filing the request must
 4 pay the fee specified by ORS 21.135.

5 (5) A person who files a request for notice in the proceedings in the manner provided by sub-
 6 section (4) of this section is entitled to receive notice from the fiduciary of any motion specified in
 7 subsection (3) of this section and of any other matter to which a person listed in subsection (2) of
 8 this section is entitled to receive notice under a specific provision of this chapter.

9 (6) If the Department of Human Services is nominated as guardian for the purpose of consenting
 10 to the adoption of a minor, the notice provided for in this section must also be given to the minor's
 11 brothers, sisters, aunts, uncles and grandparents.

12 (7) In addition to the requirements of subsection (2) of this section, notice of the filing of a pe-
 13 tition for the appointment of a guardian for a person who is alleged to be incapacitated must be
 14 given by the petitioner to the following persons:

15 (a) Any attorney who is representing the respondent in any capacity.

16 (b) If the respondent is a resident of a nursing home or residential facility, or if the person
 17 nominated to act as fiduciary intends to place the respondent in a nursing home or residential fa-
 18 cility, the office of the Long Term Care Ombudsman.

19 (c) If the respondent is a resident of a mental health treatment facility or a residential facility
 20 for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends
 21 to place the respondent in such a facility, the system described in ORS 192.517 (1).

22 (8) In addition to the requirements of subsection (3) of this section, in a protective proceeding
 23 in which a guardian has been appointed, notice of the motions specified in subsection (3) of this
 24 section, **and the address, telephone number or other contact information of the protected**
 25 **person**, must be given by the person making the motion to the following persons:

26 (a) Any attorney who represented the protected person at any time during the protective pro-
 27 ceeding.

28 (b) If the protected person is a resident of a nursing home or residential facility, or if the motion
 29 seeks authority to place the protected person in a nursing home or residential facility, the office of
 30 the Long Term Care Ombudsman.

31 (c) If the protected person is a resident of a mental health treatment facility or a residential
 32 facility for individuals with developmental disabilities, or if the motion seeks authority to place the
 33 protected person in such a facility, the system described in ORS 192.517 (1).

34 (9) A respondent or protected person may not waive the notice required under this section.

35 (10) The requirement that notice be served on an attorney for a respondent or protected person
 36 under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney
 37 receiving the notice to represent the respondent or protected person in the protective proceeding.

38 **SECTION 3.** ORS 125.075 is amended to read:

39 125.075. (1) Any person who is interested in the affairs or welfare of a respondent or protected
 40 person may present objections to a petition or to a motion in a protective proceeding, including but
 41 not limited to:

42 (a) Any person entitled to receive notice under ORS 125.060.

43 (b) Any stepparent or stepchild of the respondent or protected person.

44 (c) Any other person the court may allow.

45 (2) Objections to a petition may be either written or oral. Objections to a motion must be in

1 writing, **except that a protected person may object orally in person or by other means that**
 2 **are intended to convey the protected person's objections to the court.** Objections to a petition
 3 or to a motion must be made or filed with the court within 15 days after notice of the petition or
 4 motion is served or mailed in the manner prescribed by ORS 125.065. The court shall designate [*a*
 5 *place where*] **the manner in which** oral objections may be made **that ensures that a protected**
 6 **person will have the protected person's objection presented to the court.** [*If a person appears*
 7 *within the time allowed at the place designated by the court for the purpose of making oral*
 8 *objections,*] The clerk of the court shall provide a means of reducing the oral objections to a signed
 9 writing for the purpose of filing the objection.

10 (3) If objections are presented by any of the persons listed in subsection (1) of this section, the
 11 court shall schedule a hearing on the objections. The petitioner or person making the motion shall
 12 give notice to all persons entitled to notice under ORS 125.060 (3) of the date, time and place of the
 13 scheduled hearing at least 15 days before the date set for hearing. Notice shall be given in the
 14 manner prescribed by ORS 125.065.

15 (4) Notwithstanding ORS 21.170, the court may not charge or collect any fee for the filing of
 16 objections under the provisions of this section or for the filing of any motion from any of the fol-
 17 lowing:

- 18 (a) The respondent or the protected person;
- 19 (b) The office of the Long Term Care Ombudsman; or
- 20 (c) The system described in ORS 192.517 (1).

21 (5) The court for good cause shown may provide for a different method or time of giving notice
 22 under subsection (3) of this section.

23 **SECTION 4.** ORS 125.225 is amended to read:

24 125.225. (1) A court shall remove a fiduciary whenever that removal is in the best interests of
 25 the protected person.

26 (2) In addition to any other grounds, the court may remove a conservator if the conservator fails
 27 to use good business judgment and diligence in the management of the estate under the control of
 28 the conservator. The court may apply a higher standard of care to a conservator who claims to have
 29 greater than ordinary skill or expertise.

30 (3) The court may remove a guardian if the guardian places the protected person in a mental
 31 health treatment facility, a nursing home or other residential facility and:

- 32 (a) Failed to disclose in the petition for appointment that the guardian intended to make the
 33 placement; or
- 34 (b) Failed to comply with ORS 125.320 (3) before making the placement.

35 (4) On termination of the authority of a fiduciary, an interim fiduciary may be appointed by the
 36 court to serve for a period not to exceed 60 days. An interim fiduciary under this subsection may
 37 be appointed by the court without the appointment of a visitor, additional notices or any other ad-
 38 ditional procedure, except as may be determined necessary by the court.

39 (5) Upon termination of the authority of a fiduciary, the court may appoint a successor fiduciary.
 40 A petition for appointment as successor fiduciary must be filed in the same manner as provided for
 41 an original petition, and is subject to all provisions applicable to an original petition for the ap-
 42 pointment of a fiduciary [*except:*].

43 [(a)] No filing fee shall be charged or collected for the filing of a petition for the appointment
 44 of a successor fiduciary[; and]

45 [(b) The court may enter an order waiving the requirement of appointing a visitor if the termination

1 of the fiduciary's authority results from the resignation or death of the fiduciary].

2 **SECTION 5.** ORS 125.315 is amended to read:

3 125.315. (1) A guardian has the following powers and duties:

4 (a) Except to the extent of any limitation under the order of appointment, the guardian has
 5 custody of the protected person and may establish **or change** the protected person's place of abode
 6 within or without this state. **The guardian must provide 15 days' prior written notice to the**
 7 **protected person and persons entitled to receive notice under ORS 125.060 before changing**
 8 **the place of abode of a protected person. The guardian must inform the court if the protected**
 9 **person objects to a change of abode prior to making the change. The court shall receive and**
 10 **consider an objection to the change of abode in the same manner as objections under ORS**
 11 **125.075.**

12 (b) The guardian shall provide for the care, comfort and maintenance of the protected person
 13 and, whenever appropriate, shall arrange for training and education of the protected person.
 14 Without regard to custodial rights of the protected person, the guardian shall take reasonable care
 15 of the person's clothing, furniture and other personal effects unless a conservator has been ap-
 16 pointed for the protected person.

17 (c) Subject to the provisions of ORS 127.505 to 127.660 and subsection (3) of this section, the
 18 guardian may consent, refuse consent or withhold or withdraw consent to health care, as defined in
 19 ORS 127.505, for the protected person. A guardian is not liable solely by reason of consent under
 20 this paragraph for any injury to the protected person resulting from the negligence or acts of third
 21 persons.

22 (d) The guardian may:

23 (A) Make advance funeral and burial arrangements;

24 (B) Subject to the provisions of ORS 97.130, control the disposition of the remains of the pro-
 25 tected person; and

26 (C) Subject to the provisions of ORS 97.965, make an anatomical gift of all or any part of the
 27 body of the protected person.

28 (e) The guardian of a minor has the powers and responsibilities of a parent who has legal cus-
 29 tody of a child, except that the guardian has no obligation to support the minor beyond the support
 30 that can be provided from the estate of the minor, and the guardian is not liable for the torts of the
 31 minor. The guardian may consent to the marriage or adoption of a protected person who is a minor.

32 (f) Subject to the provisions of ORS 125.320 (2), the guardian may receive money and personal
 33 property deliverable to the protected person and apply the money and property for support, care and
 34 education of the protected person. The guardian shall exercise care to conserve any excess for the
 35 protected person's needs.

36 (2) If a conservator has been appointed for the protected person, the guardian may file a motion
 37 with the court seeking an order of the court on the duties of the conservator relating to payment
 38 of support for the protected person.

39 (3) A guardian may consent to the withholding or withdrawing of artificially administered nu-
 40 trition and hydration for a protected person only under the circumstances described in ORS 127.580
 41 (1)(a), (b), (d), (e) or (f) and, if the protected person has a medical condition specified in ORS 127.580
 42 (1)(b), (d), (e) or (f), the condition has been medically confirmed.

43 **SECTION 6.** ORS 125.325 is amended to read:

44 125.325. Within 30 days after each anniversary of appointment, a guardian for an adult protected
 45 person shall file with the court a written report. The report must include a declaration under pen-

1 alty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800 to
2 194.835, if the declarant is physically outside the boundaries of the United States. Copies of the
3 guardian’s report must be given to those persons specified in ORS 125.060 (3). The report shall be
4 in substantially the following form:

5 _____

6
7 IN THE _____ COURT _____ COUNTY,
8 STATE OF OREGON
9 DEPARTMENT OF PROBATE

10 In the Matter of the) No. _____
11 Guardianship of)
12 _____,)
13 (Name of protected)
14 person))
15 A Protected)
16 Person.)

17 GUARDIAN’S REPORT

18 I am the guardian for the person named above, and I make the following report to the court as
19 required by law:

20 1. My name is _____.

21 2. My address and telephone number are:

22 _____

23 _____

24 Phone _____

25 3. The name, if applicable, and address of the place where the person now resides are:

26 _____

27 _____

28 4. The person is currently residing at the following type of facility or residence:

29 _____

30 5. The person is currently engaged in the following programs and activities and receiving the
31 following services (brief description):

32 _____

33 6. I was paid for providing the following items of lodging, food or other services to the person:

34 _____

35 _____

36 7. The name of the person primarily responsible for the care of the person at the person’s place
37 of residence is:

38 _____

39 8. The name and address of any hospital or other institution where the person is now admitted
40 on a temporary or permanent basis are:

41 _____

42 _____

43 9. The person’s physical condition is as follows (brief description):

44 _____

45 _____

10. The person's mental condition is as follows (brief description):

11. Facts that support the conclusion that the person is incapable include the following:

[11.] **12.** I made the following contacts with the person during the past year (brief description):

[12.] **13.** I made the following major decisions on behalf of the person during the past year (brief description):

[13.] **14.** I believe the guardianship should or should not continue because:

[14.] **15.** At the time of my last report, I held the following amount of money on behalf of the person: \$_____. Since my last report, I received the following amount of money on behalf of the person: \$_____. I spent the following amount of money on behalf of the person: \$_____. I now hold the following amount of money on behalf of the person: \$_____.

[15.] **16.** A true copy of this report will be given to the person, any conservator for the person and any other person who has requested notice.

[16.] **17.** Since my last report:

(a) I have been convicted of the following crimes (not including traffic violations):

(b) I have filed for or received protection from creditors under the Federal Bankruptcy Code (yes or no): _____.

(c) I have had a professional or occupational license revoked or suspended (yes or no): _____.

(d) I have had my driver license revoked or suspended (yes or no): _____.

[17.] **18.** Since my last report, I have delegated the following powers over the protected person for the following periods of time (provide name of person powers delegated to):

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this ____ day of _____, 2_____.

Guardian

NOTICE: ANY PERSON INTERESTED IN THE AFFAIRS OR WELFARE OF THE PROTECTED PERSON WHO IS THE SUBJECT OF THIS REPORT WHO HAS CONCERNS ABOUT THIS REPORT OR THE GUARDIAN'S PERFORMANCE MAY CONTACT THE COURT AS FOLLOWS:

1
2
3
4
5
6
