

Requested by HOUSE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
HOUSE BILL 2817**

1 In line 2 of the printed bill, after “proceedings” delete the rest of the line
2 and insert a period.

3 Delete lines 4 through 21 and insert:

4 **“SECTION 1. Sections 3 and 4 of this 2017 Act shall be known and
5 may be cited as the Falk-Alfano Act.**

6 **“SECTION 2. Sections 3 and 4 of this 2017 Act are added to and
7 made a part of ORS chapter 125.**

8 **“SECTION 3. (1)(a) Unless specifically authorized by the court’s
9 order appointing a guardian or conservator, by court order issued un-
10 der subsection (2) or (5) of this section or as described in paragraph
11 (b) of this subsection, a guardian or conservator may not, without
12 good cause, restrict a protected person’s right of communication,
13 visitation or interaction with other persons, including but not limited
14 to the right to receive visits, telephone calls and personal and elec-
15 tronic mail.**

16 **“(b)(A) If a protected person is able to express consent to or a
17 preference for communication, visitation or interaction with a person,
18 the guardian or conservator shall comply with the protected person’s
19 expressed consent or preference unless good cause exists for restrict-
20 ing the communication, visitation or interaction with the person.**

21 **“(B) If a protected person is unable to express consent or a prefer-**

1 **ence for communication, visitation or interaction with a person, the**
2 **guardian or conservator may presume the protected person’s consent**
3 **to, or refusal of, the communication, visitation or interaction based**
4 **on proof concerning the nature of the protected person’s relationship**
5 **with the person. In determining the nature of the protected person’s**
6 **relationship with the person who seeks to communicate, visit or**
7 **interact with the protected person, the guardian or conservator shall**
8 **consider proof such as family history, photographs, documents, let-**
9 **ters, communications, prior incidences of contact and other appropri-**
10 **ate proof.**

11 **“(c) As used in this subsection, ‘good cause’ includes the following:**

12 **“(A) Protective or restraining orders have been issued to protect the**
13 **protected person from the other person;**

14 **“(B) The person has been charged with abuse, neglect or financial**
15 **exploitation of the protected person;**

16 **“(C) The protected person has expressed a desire to not communi-**
17 **cate, visit or interact with the person;**

18 **“(D) If the protected person is incapacitated and unable to com-**
19 **municate, whether the protected person’s properly executed will,**
20 **power of attorney, advance directive or other documentation contains**
21 **a preference to not allow or to reject communication, visitation or**
22 **interaction with the person; or**

23 **“(E) Any other factors deemed to be relevant.**

24 **“(2)(a) A guardian or conservator may, with a showing of good**
25 **cause as described in subsection (1) of this section, move the court to**
26 **restrict a person’s ability to communicate, visit or interact with a**
27 **protected person.**

28 **“(b) Prior to issuing an order under this subsection, the court shall**
29 **consider the following alternatives to a complete restriction of the**
30 **person’s communication, visitation or interaction with the protected**

1 **person:**

2 **“(A) Placing reasonable time, manner or place restrictions on**
3 **communication, visitation or interaction between the protected person**
4 **and the person based on the prior relationship between the protected**
5 **person and the person or on the protected person’s wishes, or both;**
6 **or**

7 **“(B) Requiring that communication, visitation or interaction be-**
8 **tween the protected person and the person be supervised.**

9 **“(3) Any person or protected person who reasonably believes that a**
10 **guardian or conservator has violated a court order or abused the**
11 **guardian’s or conservator’s discretion under subsection (1) of this**
12 **section may move the court to:**

13 **“(a) Require the guardian or conservator to allow a person to**
14 **communicate, visit or interact with the protected person;**

15 **“(b) Restrict, or further restrict, a person’s communication,**
16 **visitation or interaction with the protected person;**

17 **“(c) Modify the powers, duties and responsibilities of the guardian**
18 **or conservator;**

19 **“(d) Remove the guardian or conservator pursuant to ORS 125.225;**
20 **or**

21 **“(e) Where the court determines that a guardian or conservator has**
22 **violated a court order, punish the violation as a contempt.**

23 **“(4) A guardian or conservator that knowingly isolates a protected**
24 **person in violation of subsection (1) of this section or that violates an**
25 **order of the court made under subsection (2) or (3) of this section is**
26 **subject to removal under ORS 125.225.**

27 **“(5)(a) Except as provided in paragraph (d) of this subsection, the**
28 **court shall hold a hearing on a motion filed under subsection (2) or (3)**
29 **of this section not later than 60 days after the date that the motion**
30 **was filed.**

1 **“(b) In the court’s discretion, the court may order the parties and**
2 **the protected person to participate in mediation. If mediation results**
3 **in agreement among the parties and the protected person with regard**
4 **to communication, visitation or interaction with the protected person,**
5 **the agreement shall be approved and made an order of the court.**

6 **“(c) In scheduling the hearing under paragraph (a) of this sub-**
7 **section, the court shall also make a preliminary order that supervised**
8 **communication, visitation or interaction with the protected person be**
9 **allowed during the period prior to the hearing unless the court, for**
10 **good cause as described in subsection (1) of this section, determines**
11 **that such communication, visitation or interaction would not be in the**
12 **best interests of the protected person.**

13 **“(d) If a motion under subsection (2) or (3) of this section states**
14 **that the protected person’s health is in significant decline or that the**
15 **protected person’s death may be imminent, the court shall conduct**
16 **an emergency hearing as soon as practicable but no later than 10 days**
17 **after the date that the motion is filed.**

18 **“(e) Notice of the hearing, a copy of the motion and a copy of any**
19 **order issued pursuant to this section, if applicable, shall be personally**
20 **served upon the protected person and any person, guardian or**
21 **conservator against whom the motion is filed. The protected person**
22 **has a right to appear and be heard at the hearing.**

23 **“(f) The court may award the prevailing party in any proceeding**
24 **brought under this section costs and reasonable attorney fees. An**
25 **award of costs or attorney fees may be paid out of the protected**
26 **person’s estate.**

27 **“(g) Upon motion of a party or protected person, or on the court’s**
28 **own motion, the court may order that an attorney be retained to**
29 **represent the interests of the protected person in a proceeding under**
30 **this section, provided there are sufficient funds available in the pro-**

1 tected person’s estate or otherwise to pay for the cost of retaining the
2 attorney. This paragraph is not intended to prohibit obtaining legal
3 advice, counsel or representation for the protected person that may
4 be otherwise available to the protected person, whether through the
5 Oregon Public Guardian and Conservator, local or state agency ser-
6 vices and resources or otherwise.

7 **“SECTION 4. (1) Except as provided in subsections (5) and (6) of this**
8 **section, a guardian or conservator shall promptly notify the following**
9 **persons of any event or circumstance described in subsection (2) of**
10 **this section regarding an adult protected person:**

11 **“(a) The spouse of the protected person;**

12 **“(b) The parents of the protected person;**

13 **“(c) The adult children of the protected person;**

14 **“(d) Other persons who are closely related to the protected person;**

15 **“(e) Any person designated in writing or otherwise by the protected**
16 **person to be notified;**

17 **“(f) All parties of record to the guardianship or conservatorship**
18 **proceeding; and**

19 **“(g) Any person who has filed a request for notice in the**
20 **guardianship or conservatorship proceeding.**

21 **“(2) The notice required by subsection (1) of this section must be**
22 **provided when:**

23 **“(a) The protected person changes the protected person’s residence,**
24 **including but not limited to a change of residence to or from a long**
25 **term care facility as defined in ORS 442.015 or a residential facility as**
26 **defined in ORS 441.402;**

27 **“(b) The protected person resides at a location other than the pro-**
28 **ected person’s usual place of residence for more than seven days;**

29 **“(c) The protected person is admitted to a medical facility for acute**
30 **care or for emergency care;**

1 “(d) The protected person dies; or

2 “(e) Funeral or memorial services are scheduled for the protected
3 person, in which case the notice must be provided in advance of and
4 immediately upon scheduling of the services.

5 “(3) Notice to persons described in subsection (1)(a) to (e) of this
6 section shall be provided by telephone, in person or by express mail.
7 Notice to persons described in subsection (1)(f) and (g) of this section
8 shall be provided by written correspondence sent by express mail.

9 “(4) The notice provided pursuant to this section must include the
10 location of the protected person at the time the notice was given.

11 “(5) A guardian or conservator is not required to provide notice to
12 a person in accordance with this section if:

13 “(a) The person informs the guardian or conservator in writing that
14 the person does not wish to receive such notice; or

15 “(b) The protected person or a court order expressly prohibits the
16 guardian or conservator from providing notice to the person.

17 “(6) A guardian or conservator may not provide notice to a person
18 under this section if an order of restraint or protection has been issued
19 against the person on behalf of the protected person.”.

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