

B-Engrossed
House Bill 4094

Ordered by the Senate March 1
Including House Amendments dated February 15 and Senate Amendments
dated March 1

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.

Provides that affidavit submitted to court in support of petition for approval of settlement of personal injury claim of incapacitated person, minor or decedent is confidential.

Modifies information required in petition in protective proceeding seeking appointment of fiduciary. Requires person nominated or appointed as fiduciary to inform court of circumstances of certain events.

A BILL FOR AN ACT

1
2 Relating to courts; creating new provisions; and amending ORS 125.055 and 125.210.

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

4 **SECTION 1. (1) As used in this section, "incapacitated" and "minor" have the meanings**
5 **given those terms in ORS 125.005.**

6 **(2) An affidavit submitted to a court in support of a petition for approval of settlement**
7 **of a personal injury claim of an incapacitated person, a minor or a decedent is confidential.**
8 **The caption of the affidavit must state that the affidavit is confidential. The affidavit is not**
9 **subject to inspection except pursuant to a court order entered after a showing of good cause.**

10 **SECTION 2. ORS 125.055 is amended to read:**

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

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

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

22 (b) The interest of the petitioner.

23 (c) The name, age and address of the petitioner and any person nominated as fiduciary in the
24 petition and the relationship of the **person** nominated [*person*] to the respondent.

25 (d) A statement as to whether the person nominated [*to be*] **as** fiduciary:

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 (A) Has been convicted of a crime[.];

2 (B) Has filed for or received protection under the bankruptcy laws [or];

3 (C) **Has caused any loss resulting in a surcharge under ORS 125.025 (3)(e) or a similar**
4 **statute of another jurisdiction;**

5 (D) **Has been removed as a fiduciary under ORS 125.225; or**

6 (E) Has had a license revoked or canceled that was required by the laws of any state for the
7 practice of a profession or occupation. [*If the nominated person has been convicted of a crime, filed*
8 *for or received protection under bankruptcy laws or had a professional or occupational license revoked*
9 *or canceled, the petition shall contain a statement of the circumstances surrounding those events.*]

10 (e) **If an event listed in paragraph (d) of this subsection has occurred, a statement of the**
11 **circumstances surrounding the event.**

12 (f) If the person nominated **as fiduciary** is not the petitioner, [*the statement must indicate*] **a**
13 **statement indicating** that the person nominated is willing and able to serve.

14 [(e)] (g) The name and address of any fiduciary that has been appointed for the respondent by
15 a court of any state, any trustee for a trust established by or for the respondent, any person ap-
16 pointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any
17 person acting as attorney-in-fact for the respondent under a power of attorney.

18 [(f)] (h) The name and address of the respondent's treating physician and any other person who
19 is providing care to the respondent.

20 [(g)] (i) The factual information that supports the request for the appointment of a fiduciary or
21 entry of other protective order, less restrictive alternatives to the appointment of a fiduciary that
22 have been considered and why the alternatives are inadequate and the names and addresses of all
23 persons who have information that would support a finding that an adult respondent is incapacitated
24 or financially incapable.

25 [(h)] (j) A statement that indicates whether the [*nominated*] person **nominated as fiduciary** in-
26 tends to place the respondent in a mental health treatment facility, a nursing home or other resi-
27 dential facility.

28 [(i)] (k) A general description of the estate of the respondent and the respondent's sources of
29 income and the amount of that income.

30 [(j)] (L) A statement indicating whether the person nominated as fiduciary is a public or private
31 agency or organization that provides services to the respondent or an employee of a public or pri-
32 vate agency or organization that provides services to the respondent.

33 [(k)] (m) A statement that indicates whether the petitioner is petitioning for plenary authority
34 or specified limited authority for the person nominated as fiduciary.

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

36 (a) If a petition seeks appointment of a guardian, the petition must contain a statement on
37 whether the guardian will exercise any control over the estate of the respondent. If the guardian
38 will exercise any control over the estate of the respondent, the petition must contain a statement
39 of the monthly income of the respondent, the sources of the respondent's income, and the amount
40 of any moneys that the guardian will be holding for the respondent at the time of the appointment.

41 (b) If the petition seeks the appointment of a guardian for an adult respondent, of a guardian for
42 a minor respondent who is more than 16 years of age, in cases where the court determines there is
43 the likelihood that a petition seeking appointment of a guardian for the respondent as an adult will
44 be filed before the date that the respondent attains majority, in accordance with subsection (6) of
45 this section, or as an adult, or of a temporary fiduciary who will exercise the powers of a guardian

1 for an adult respondent, the petition must contain a statement notifying the court that a visitor must
2 be appointed.

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

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

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

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

17 **SECTION 3.** ORS 125.210 is amended to read:

18 125.210. (1)(a) A person nominated as a fiduciary *[who]* **shall inform the court of the cir-**
19 **cumstances of an event before the person is appointed if the person:**

20 (A) Has been convicted of a crime[.];

21 (B) Has filed for or received protection under the bankruptcy laws *[or]*;

22 (C) **Has caused any loss resulting in a surcharge under ORS 125.025 (3)(e) or a similar**
23 **statute of another jurisdiction;**

24 (D) **Has been removed as a fiduciary under ORS 125.225; or**

25 (E) Has had a license revoked or canceled that was required by the laws of any state for the
26 practice of a profession or occupation *[must inform the court of the circumstances of those events be-*
27 *fore the person is appointed].*

28 (b) If the person nominated *[to be]* as a fiduciary is also the petitioner, the information required
29 by this *[section]* **subsection** may be provided in the petition for appointment of a fiduciary in the
30 manner specified by ORS 125.055.

31 (2) A person who *[has been]* is appointed as a fiduciary *[who]* **shall inform the court of the**
32 **circumstances of an event immediately if the person:**

33 (a) Is convicted of a crime[.];

34 (b) Files for or receives protection under the bankruptcy laws *[or]*;

35 (c) **Causes any loss resulting in a surcharge under ORS 125.025 (3)(e) or a similar statute**
36 **of another jurisdiction;**

37 (d) **Is removed as a fiduciary under ORS 125.225; or**

38 (e) Has a license revoked or canceled that is required by the laws of any state for the practice
39 of a profession or occupation *[must inform the court of the circumstances of those events*
40 *immediately].*

41 (3) A person who is required to give notice to the court under subsection (2) of this section
42 *[must]* **shall** also give notice to those persons listed in ORS 125.060 (3).

43 (4) The court may decline to appoint a person as a fiduciary, or may remove a person as a
44 fiduciary, if the person fails to comply with the provisions of this section.

45 **SECTION 4. Section 1 of this 2018 Act applies to affidavits submitted on or after the ef-**

1 **fective date of this 2018 Act.**

2 **SECTION 5. The amendments to ORS 125.055 by section 2 of this 2018 Act apply to pe-**
3 **titions in protective proceedings filed on or after the effective date of this 2018 Act.**

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