

Requested by HOUSE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4094**

1 In line 2 of the printed bill, before the period insert “, 125.055 and  
2 125.210”.

3 After line 24, insert:

4 **“SECTION 3.** ORS 125.055 is amended to read:

5 “125.055. (1) A petition in a protective proceeding that seeks the ap-  
6 pointment of a fiduciary must designate the type of fiduciary that the  
7 petitioner seeks to have appointed. If the petition does not request the ap-  
8 pointment of a fiduciary, or if the petition requests both the appointment of  
9 a fiduciary and some other protective order, the petition must contain a  
10 statement of the nature of the protective order requested. The caption of the  
11 petition must reflect the type of fiduciary whose appointment is requested  
12 or, if the appointment of a fiduciary is not requested, the nature of the pro-  
13 tective order requested. An original and duplicate copy of the petition must  
14 be filed with the court.

15 “(2) A petition in a protective proceeding must contain the following in-  
16 formation to the extent that the petitioner is aware of the information or to  
17 the extent that the petitioner is able to acquire the information with rea-  
18 sonable effort:

19 “(a) The name, age, residence address and current location of the re-  
20 spondent.

21 “(b) The interest of the petitioner.

1 “(c) The name, age and address of the petitioner and any person nomi-  
2 nated as fiduciary in the petition and the relationship of the **person** nomi-  
3 nated [*person*] to the respondent.

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

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

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

8 “(C) **Has been surcharged under ORS 125.025 (3)(e);**

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

10 “(E) Has had a license revoked or canceled that was required by the laws  
11 of any state for the practice of a profession or occupation. [*If the nominated*  
12 *person has been convicted of a crime, filed for or received protection under*  
13 *bankruptcy laws or had a professional or occupational license revoked or can-*  
14 *celed, the petition shall contain a statement of the circumstances surrounding*  
15 *those events.*]

16 “(e) **If an event listed in paragraph (d) of this subsection has oc-**  
17 **curred, a statement of the circumstances surrounding the events.**

18 (f) If the person nominated **as fiduciary** is not the petitioner, [*the state-*  
19 *ment must indicate*] **a statement indicating** that the person nominated is  
20 willing and able to serve.

21 “[(e)] (g) The name and address of any fiduciary that has been appointed  
22 for the respondent by a court of any state, any trustee for a trust established  
23 by or for the respondent, any person appointed as a health care represen-  
24 tative under the provisions of ORS 127.505 to 127.660 and any person acting  
25 as attorney-in-fact for the respondent under a power of attorney.

26 “[(f)] (h) The name and address of the respondent’s treating physician and  
27 any other person who is providing care to the respondent.

28 “[(g)] (i) The factual information that supports the request for the ap-  
29 pointment of a fiduciary or entry of other protective order, less restrictive  
30 alternatives to the appointment of a fiduciary that have been considered and

1 why the alternatives are inadequate and the names and addresses of all  
2 persons who have information that would support a finding that an adult  
3 respondent is incapacitated or financially incapable.

4 “[*h*] (j) A statement that indicates whether the [*nominated*] person  
5 **nominated as fiduciary** intends to place the respondent in a mental health  
6 treatment facility, a nursing home or other residential facility.

7 “[*i*] (k) A general description of the estate of the respondent and the  
8 respondent’s sources of income and the amount of that income.

9 “[*j*] (L) A statement indicating whether the person nominated as  
10 fiduciary is a public or private agency or organization that provides services  
11 to the respondent or an employee of a public or private agency or organiza-  
12 tion that provides services to the respondent.

13 “[*k*] (m) A statement that indicates whether the petitioner is petitioning  
14 for plenary authority or specified limited authority for the person nominated  
15 as fiduciary.

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

17 “(a) If a petition seeks appointment of a guardian, the petition must  
18 contain a statement on whether the guardian will exercise any control over  
19 the estate of the respondent. If the guardian will exercise any control over  
20 the estate of the respondent, the petition must contain a statement of the  
21 monthly income of the respondent, the sources of the respondent’s income,  
22 and the amount of any moneys that the guardian will be holding for the re-  
23 spondent at the time of the appointment.

24 “(b) If the petition seeks the appointment of a guardian for an adult re-  
25 spondent, of a guardian for a minor respondent who is more than 16 years  
26 of age, in cases where the court determines there is the likelihood that a  
27 petition seeking appointment of a guardian for the respondent as an adult  
28 will be filed before the date that the respondent attains majority, in accord-  
29 ance with subsection (6) of this section, or as an adult, or of a temporary  
30 fiduciary who will exercise the powers of a guardian for an adult respondent,

1 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  
4 petition seeks appointment of a conservator or a temporary fiduciary who  
5 will exercise the powers of a conservator or if a petition seeks a protective  
6 order relating to the estate of the respondent, the petition must contain the  
7 petitioner’s estimate of the value of the estate.

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

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

16 “(7) The court shall review a petition seeking appointment of a guardian  
17 and shall dismiss the proceeding without prejudice, or require that the peti-  
18 tion be amended, if the court determines that the petition does not meet the  
19 requirements of this section.

20 **“SECTION 4.** ORS 125.210 is amended to read:

21 “125.210. (1)(a) A person nominated as a fiduciary *[who]* **shall inform the**  
22 **court of the circumstances of an event before the person is appointed**  
23 **if the person:**

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

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

26 “(C) **Has been surcharged under ORS 125.025 (3)(e);**

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

28 “(E) Has had a license revoked or canceled that was required by the laws  
29 of any state for the practice of a profession or occupation [*must inform the*  
30 *court of the circumstances of those events before the person is appointed*].

1 “(b) If the person nominated [to be] as a fiduciary is also the petitioner,  
2 the information required by this [section] **subsection** may be provided in the  
3 petition for appointment of a fiduciary in the manner specified by ORS  
4 125.055.

5 “(2) A person who [has been] is appointed as a fiduciary [who] **shall in-**  
6 **form the court of the circumstances of an event immediately if the**  
7 **person:**

8 “(a) Is convicted of a crime[.];

9 “(b) Files for or receives protection under the bankruptcy laws [or];

10 “(c) **Is surcharged under ORS 125.025 (3)(e);**

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

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

15 “(3) A person who is required to give notice to the court under subsection  
16 (2) of this section [*must*] **shall** also give notice to those persons listed in ORS  
17 125.060 (3).

18 “(4) The court may decline to appoint a person as a fiduciary, or may  
19 remove a person as a fiduciary, if the person fails to comply with the pro-  
20 visions of this section.”.

21 In line 25, delete “3” and insert “5”.

22 After line 26, insert:

23 “**SECTION 6. The amendments to ORS 125.055 by section 3 of this**  
24 **2018 Act apply to petitions in protective proceedings filed on or after**  
25 **the effective date of this 2018 Act.”.**

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