

Requested by HOUSE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
HOUSE BILL 4094**

1 In line 2 of the printed bill, delete “1.860” and insert “125.055 and
2 125.210”.

3 Delete lines 4 through 18.

4 In line 19, delete “2” and insert “1”.

5 Delete lines 25 and 26 and insert:

6 **“SECTION 2.** ORS 125.055 is amended to read:

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

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

21 “(a) The name, age, residence address and current location of the re-

1 spondent.

2 “(b) The interest of the petitioner.

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

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

8 “(A) Has been convicted of a crime[,];

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

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

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

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

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

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

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

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

30 “[*g*] (i) The factual information that supports the request for the ap-

1 pointment of a fiduciary or entry of other protective order, less restrictive
2 alternatives to the appointment of a fiduciary that have been considered and
3 why the alternatives are inadequate and the names and addresses of all
4 persons who have information that would support a finding that an adult
5 respondent is incapacitated or financially incapable.

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

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

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

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

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

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

26 “(b) If the petition seeks the appointment of a guardian for an adult re-
27 spondent, of a guardian for a minor respondent who is more than 16 years
28 of age, in cases where the court determines there is the likelihood that a
29 petition seeking appointment of a guardian for the respondent as an adult
30 will be filed before the date that the respondent attains majority, in accord-

1 ance with subsection (6) of this section, or as an adult, or of a temporary
2 fiduciary who will exercise the powers of a guardian for an adult respondent,
3 the petition must contain a statement notifying the court that a visitor must
4 be appointed.

5 “(4) In addition to the requirements of subsection (2) of this section, if a
6 petition seeks appointment of a conservator or a temporary fiduciary who
7 will exercise the powers of a conservator or if a petition seeks a protective
8 order relating to the estate of the respondent, the petition must contain the
9 petitioner’s estimate of the value of the estate.

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

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

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

22 “**SECTION 3.** ORS 125.210 is amended to read:

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

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

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

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

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

30 “(E) Has had a license revoked or canceled that was required by the laws

1 of any state for the practice of a profession or occupation [*must inform the*
2 *court of the circumstances of those events before the person is appointed*].

3 “(b) If the person nominated [*to be*] **as** a fiduciary is also the petitioner,
4 the information required by this [*section*] **subsection** may be provided in the
5 petition for appointment of a fiduciary in the manner specified by ORS
6 125.055.

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

10 “(a) Is convicted of a crime[.];

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

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

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

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

17 “(3) A person who is required to give notice to the court under subsection
18 (2) of this section [*must*] **shall** also give notice to those persons listed in ORS
19 125.060 (3).

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

23 “**SECTION 4. Section 1 of this 2018 Act applies to affidavits sub-**
24 **mitted on or after the effective date of this 2018 Act.**

25 “**SECTION 5. The amendments to ORS 125.055 by section 2 of this**
26 **2018 Act apply to petitions in protective proceedings filed on or after**
27 **the effective date of this 2018 Act.”.**

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