

AARP Oregon Testimony on SB 682

Date: February 5th, 2019

TO: Senate Committee on Judiciary, Sen. Prozanski, Chair

FROM: Jon Bartholomew, Government Relations Director, AARP Oregon

AARP Oregon supports Senate Bill 682, because it will provide Oregonians the “due process” protections we should all expect when faced with a determination of incapacity under guardianship proceedings threatens. Our AARP Public Policy is explicit regarding those protections, as cited below from Chapter 12, AARP Public Policy Book:

“States should enact guardianship and conservatorship laws that protect the due process rights of persons under guardianship. These safeguards should include, at a minimum:

- **a mandated right to legal counsel** (including a right to have counsel appointed by the court and present at all proceedings);
- timely notification of proceedings in understandable language;
- consideration by the court of less-restrictive alternatives to guardianship (such as money management, powers of attorney, advance directives, and trusts) in determining whether appointment of a guardian is necessary;
- a process for emergency proceedings that includes actual notice to the respondent, mandatory appointment of counsel, proof of investigation of the background and qualifications of respondent’s emergency, appropriate limitations on emergency powers, and termination upon showing that the emergency no longer exists; prospective guardians and conservators, including criminal background checks;
- proof that the individual lacks decision making capacity and requires a guardian by clear and convincing evidence;
- protections against conflicts of interest in the selection of guardians and conservators;
- periodic accounting and reporting on personal status by guardians and thorough oversight of guardianship by the court, with appropriate civil or criminal penalties for guardian malfeasance;
- retention by the person under guardianship of all rights and authority except those expressly delegated to the guardian due to the individual’s functional limitations; and

- assessment by the court of the individual's capacity to vote, and retention of the right to vote unless the court makes a specific finding of incapacity to vote.”

AARP Oregon urges your support for SB 682.

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With 510,000 members in Oregon, AARP works to strengthen communities and advocate for what matters most to families with a focus on health security, financial stability and personal fulfillment.